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DEBATES AND PROCEEDINGS

OF THE

CONSTITUTIONAL CONVENTION

OF THE

STATE OF CALIFORNIA,—

CONVENED AT THE CITY OF SACRAMENTO, SATURDAY, SEPTEMBER 28, 1878.

E. B. WILLIS AND P. K. STOCKTON,

OFFICIAL STENOGRAPHERS.

Volume I.

SACRAMENTO:

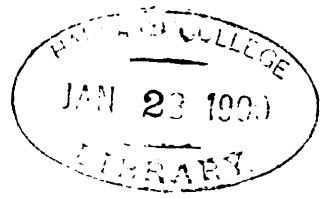
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OF THE

CONSTITUTIONAL CONVENTION OF THE STATE OF CALIFORNIA,

1878 AND 1879.

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HON. I. S. BELCHER ..... *President pro tem.*

JOSEPH A. JOHNSON ..... *Secretary.*
ED. F. SMITH (after January 17th, 1879) ..... *Secretary.*
GEO. A. THORNTON and ED. F. SMITH ..... *Assistant Secretaries.*
J. M. WRIGHT (after January 24th, 1879) ..... *Assistant Secretary.*
E. L. CRAWFORD ..... *Minute Clerk.*
GEO. E. McSTAY ..... *Journal Clerk.*
T. J. SHERWOOD ..... *Sergeant-at-Arms.*
BENJ. CHAMBERS ..... *Assistant Sergeant-at-Arms.*

MEMBERS.

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BELCHER, ISAAC S. ..... Third Congressional District.
BELL, PETER ..... City and County of San Francisco.
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DOYLE, LUKE ..... City and County of San Francisco.
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DUDLEY, W. L. ..... San Joaquin and Amador Counties.
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FINNEY, CHAS. G. ..... Ventura County.
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FREUD, JACOB R. ..... City and County of San Francisco.
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GLASCOCK, B. B. ..... Colusa County.
GORMAN, JOSEPH C. ..... City and County of San Francisco.
GRACE, WILLIAM P. ..... City and County of San Francisco.
GRAVES, WILLIAM J. ..... Fourth Congressional District.
GREGG, V. A. ..... Kern County.
HAGER, JOHN S. ..... First Congressional District.
HAIGHT, H. H.* ..... Second Congressional District.
HALE, JAMES E. ..... Second Congressional District.
HALL, J. B. ..... Second Congressional District.
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HARVEY, JOEL A. ..... Solano County.
HEISKELL, TYLER D. ..... Stanislaus County.
HEROLD, CONRAD ..... City and County of San Francisco.
HERRINGTON, DENNIS W. ..... Santa Clara County.
HILBORN, S. G. ..... Solano County.
HITCHCOCK, JOHN R. W. ..... San Joaquin County.
HOGE, JOSEPH P. ..... First Congressional District.
HOLMES, SAMUEL A. ..... Fresno County.
HOWARD, VOLNEY E. ..... Los Angeles County.
HOWARD, W. J.† ..... Mariposa and Merced Counties.
HUESTIS, W. F. ..... Third Congressional District.
HUGHEY, WM. P. ..... City and County of San Francisco.
HUNTER, G. W. ..... El Dorado and Alpine Counties.
INMAN, DANIEL ..... Alameda County.
JOHNSON, G. A. ..... Sonoma County.
JONES, L. F. ..... Mariposa, Merced, and Stanislaus Counties.
JOYCE, PETER J. ..... City and County of San Francisco.
KELLEY, JOHN M. ..... Third Congressional District.
KENNY, BERNARD F.* ..... City and County of San Francisco.
KENNY, JOHN J.† ..... City and County of San Francisco.
KEYES, JAMES H. ..... Yuba and Sutter Counties.
KLEINE, CHARLES R. ..... City and County of San Francisco.
LAINE, THOMAS H. ..... Santa Clara County.
LAMPSON, R. M. ..... Tuolumne and Calaveras Counties.
LARKIN, HENRY ..... El Dorado County.
LARUE, HUGH M. ..... Sacramento County.
LAVIGNE, RAYMOND ..... City and County of San Francisco.

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LEWIS, DAVID.....San Joaquin County.
LINDOW, JOHN F.....City and County of San Francisco.
MANSFIELD, JOHN.....Fourth Congressional District.
MARTIN, EDWARD.....Fourth Congressional District.
MARTIN, J. W.†.....Second Congressional District.
McCALLUM, JOHN G.....Alameda County.
McCOMAS, RUSH.....Santa Clara County.
McCONNELL, THOMAS.....Sacramento County.
McCOY, JOHN.....Nevada County.
McFARLAND, THOMAS B.....Sacramento County.
McNUTT, JOHN F.....Yuba County.
MILLER, JOHN F.....First Congressional District.
MILLS, HIRAM.....Contra Costa County.
MOFFAT, WM. S.....San Mateo County.
MORELAND, W. W.....Sonoma County.
MORRIS, THOMAS‡.....City and County of San Francisco.
MORSE, LUCIUS D.....San Francisco and San Mateo Counties.
MURPHY, JAMES E.....Del Norte County.
NASON, EDMUND.....San Benito County.
NELSON, THORWALD.....City and County of San Francisco.
NEUNABER, HENRY.....City and County of San Francisco.
NOEL, ALONZO E.....Lake County.
O'DONNELL, CHARLES C.....City and County of San Francisco.
OHLEYER, GEORGE.....Sutter County.
O'SULLIVAN, JAMES.....City and County of San Francisco.
OVERTON, A. P.....Third Congressional District.
PORTER, J. M.....Second Congressional District.
PROUTY, WM. H.....Amador County.
PULLIAM, MARK R. C.....Butte County.
REDDY, PATRICK.....Mono and Inyo Counties.
REED, CHARLES F.....Solano and Yolo Counties.
REYNOLDS, JAMES S.....City and County of San Francisco.
RHODES, JOHN M.....Yolo County.
RINGOLD, CHARLES S.....City and County of San Francisco.
ROLFE, HORACE C.....San Diego and San Bernardino Counties.
SCHELL, GEORGE W.....Fourth Congressional District.
SCHOMP, JUSTUS.....San Joaquin County.
SHAFTER, JAMES McM.....Third Congressional District.
SHOEMAKER, RUFUS.....Second Congressional District.
SHURTLEFF, BENJAMIN.....Third Congressional District.
SMITH, E. O.....Santa Clara County.
SMITH, GEORGE V.....Fourth Congressional District.
SMITH, HENRY W.....City and County of San Francisco.
SOULE, EZRA P.....Plumas and Lassen Counties.
STEDMAN, JOHN C.....City and County of San Francisco.
STEELE, GEORGE.....San Luis Obispo County.
STEVENSON, D. C.....Siskiyou, Modoc, Trinity, and Shasta Counties.
STRONG, J. M.*†.....Mariposa and Merced Counties.
STUART, C. V.....Sonoma County.
SWEASEY, W. J.....Humboldt County.
SWENSON, CHARLES.....City and County of San Francisco.
SWING, RANDOLPH S.....San Bernardino County.
TERRY, DAVID S.....San Joaquin County.
THOMPSON, S. B.†.....City and County of San Francisco.
TINNIN, W. J.....Third Congressional District.
TOWNSEND, F. O.....Mendocino County.
TULLY, P. B.....Fourth Congressional District.
TURNER, HENRY K.....Sierra County.
TUTTLE, DANIEL.....Santa Cruz County.
VACQUEREL, ALPHONSE.....City and County of San Francisco.
VAN DYKE, WALTER.....Second Congressional District.
VAN VOORHIES, WILLIAM.....Alameda County.
WALKER, HUGH.....Marin County.
WALKER, JOHN.....Tuolumne County.
WATERS, BYRON.....Fourth Congressional District.
WEBSTER, JONATHAN V.....Alameda County.
WELLER, JOSEPH R.....Santa Clara County.
WELLIN, PATRICK M.....City and County of San Francisco.
WEST, JOHN P.....Los Angeles County.
WICKES, JOHN T.....Nevada County.
WHITE, WM. F.....Santa Cruz, Monterey, and San Benito Counties.
WILSON, H. C.....Tehama County.
WILSON, SAMUEL M.....First Congressional District.
WINANS, JOSEPH W.....First Congressional District.
WYATT, N. G.....Monterey County.

* Deceased. † Elected to fill vacancy. ‡ Resigned.

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CONSTITUTION OF CALIFORNIA.

CONSTITUTION.

ADOPTED BY THE CONVENTION, OCTOBER 10, 1849; RATIFIED BY THE PEOPLE, NOVEMBER 13, 1849; PROCLAIMED, DECEMBER 20, 1849; AND AMENDED, 1862.

PREAMBLE.

We, the people of California, grateful to Almighty God for our freedom, in order to secure its blessings, do establish this Constitution.

ARTICLE I. DECLARATION OF RIGHTS.
II. RIGHT OF SUFFRAGE.
III. DISTRIBUTION OF POWERS.
IV. LEGISLATIVE DEPARTMENT.
V. EXECUTIVE DEPARTMENT.
VI. JUDICIAL DEPARTMENT.
VII. MILITIA.
VIII. STATE DEBTS.
IX. EDUCATION.
X. MODE OF AMENDING AND REVISING THE CONSTITUTION.
XI. PROMISCUOUS PROVISIONS.
XII. BOUNDARY.
SCHEDULE.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. Inalienable rights.
2. Popular government.
3. Jury trial.
4. Religious worship, and liberty of conscience.
5. Habeas corpus.
6. Excessive bail, fines and punishments.
7. All offenses bailable—one exception.
8. Personal rights, and rights of property.
9. Liberty of speech and press, and law of libel.
10. Popular assemblies.
11. Uniformity of general laws.
12. Military power.
13. Quartering of soldiers.
14. Representation.
15. Imprisonment for debt.
16. Laws prohibited.
17. Rights of foreigners.
18. Slavery prohibited.
19. Search warrants.
20. Treason defined, and how punished.
21. Popular rights retained by the people.

SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

SEC. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties, in all civil cases, in the manner to be prescribed by law.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require its suspension.

SEC. 6. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishment be inflicted; nor shall witnesses be unreasonably detained.

SEC. 7. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident, or the presumption great.

SEC. 8. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature) unless on presentment or indictment of a Grand Jury; and, in any trial in any Court whatever, the party accused shall be allowed to appear and defend, in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

SEC. 10. The people shall have the right freely to assemble together to consult for the common good, to instruct their Representatives, and to petition the Legislature for redress of grievances.

SEC. 11. All laws of a general nature shall have a uniform operation.

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace; and, in time of war, no appropriation for a standing army shall be for a longer time than two years.

SEC. 13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

SEC. 14. Representation shall be apportioned according to population.

SEC. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

SEC. 17. Foreigners who are or who may hereafter become bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.

SEC. 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

SEC. 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but for probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

SEC. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open Court.

SEC. 21. This enumeration of rights shall not be construed to impair or deny others retained by the people.

SEC. 22. The Legislature shall have no power to make an appropriation, for any purpose whatever, for a longer period than two years. —[*Amended*, 1871.

ARTICLE II.

RIGHT OF SUFFRAGE.

SECTION 1. Who are or may be electors.
2. Privileges of electors.
3. Militia duty, when not to be performed by electors.
4. Residence of voters, gained or lost.
5. Who are not electors.
6. Election by ballot.

SECTION 1. Every white male citizen of the United States, and every white male citizen of Mexico who shall have elected to become a citizen of the United States, under the treaty of peace exchanged and ratified at Queretaro, on the thirteenth day of May, eighteen hundred and forty-eight, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and the county or district in which he claims his vote thirty days, shall be entitled to vote at all elections which are now or hereafter may be authorized by law; *provided*, that nothing herein contained shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage Indians, or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper.

SEC. 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, and going to and returning therefrom.

SEC. 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

SEC. 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas; nor while a student at any seminary of learning; nor while kept at any almshouse, or other asylum, at public expense; nor while confined in any public prison.

SEC. 5. No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector.

SEC. 6. All elections by the people shall be by ballot.

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ARTICLE III.

DISTRIBUTION OF POWERS.

SECTION 1. Three separate departments.

SECTION 1. The powers of the government of the State of California shall be divided into three separate departments: the legislative, the executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SECTION 1. Senate and Assembly, and enacting clause of laws.
2. Sessions of the Legislature.
3. Election and term of Assemblymen.
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5. Election and term of Senators.
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7. Number of Senators, when increased.
8. Organization of legislative Houses.
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10. Rules for their government, and expulsion.
11. Each House to keep a journal.
12. Members privileged from arrest and summons.
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14. Open doors, and secret sessions.
15. Adjournment, how long and where to.
16. Origin and passage of bills.
17. Bills to be approved by the Governor or return vetoed; passage over the veto.
18. Assembly to present and Senate to try articles of impeachment.
19. What officers liable to impeachment. Judgment in what.
20. Member ineligible to office created during his term of office.
21. Persons holding lucrative offices under the United States Government, etc., ineligible to office under State Government. Proviso.
22. Embezzlement or defalcation of public funds by officer. Penalty.
23. Public moneys and accounts, how disposed of and kept, and published with laws.
24. Compensation, how fixed.
25. Title of laws; how revised and amended.
26. Divorces shall not be granted by Legislature.
27. Lotteries prohibited.
28. Census, when and how taken. Basis of representation.
29. Apportionment of legislators.
30. Congressional, Senatorial, and Assembly Districts.
31. Corporations to be formed under general laws.
32. Dues of corporations, and individual liabilities therefor.
33. What are corporations. Their powers and duties.
34. Banks of deposit authorized.
35. Banks of circulation prohibited.
36. Individual liabilty of corporation for debt.
37. Organization of municipal corporations.
38. Legislative elections to be viva voce.
39. Amendments to Article IV, not to affect official incumbency.

SECTION 1. The legislative power of this State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California, and the enacting clause of every law shall be as follows: "The People of the State of California, represented in Senate and Assembly, do enact as follows."

SEC. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday of December next ensuing the election of its members, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation. No session shall continue longer than one hundred and twenty days.—[*Amended*, 1862.

SEC. 3. The members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, on the first Wednesday in September, unless otherwise ordered by the Legislature, and their term of office shall be two years.

SEC. 4. Senators and members of Assembly shall be duly qualified electors in the respective counties and districts which they represent.

SEC. 5. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly; and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State and of the county or district for which he shall be chosen, one year next before his election.—[*Amended*, 1862.

SEC. 6. The number of Senators shall not be less than one third, nor more than one half, of that of the members of the Assembly; and at the first session of the Legislature, after this section takes effect, the Senators shall be divided by lot, as equally as may be, into two classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, so that one half shall be chosen biennially.

SEC. 7. When the number of Senators is increased they shall be apportioned by lot, so as to keep the two classes as nearly equal in number as possible.

SEC. 8. Each House shall choose its own officers, and judge of the qualifications, elections, and returns of its own members.

SEC. 9. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each House may provide.

SEC. 10. Each House shall determine the rule of its own proceedings, and may, with the concurrence of two thirds of all the members elected, expel a member.

SEC. 11. Each House shall keep a journal of its own proceedings, and publish the same; and the yeas and nays of the members of either House on any question shall, at the desire of any three members present, be entered on the Journal.

SEC. 12. Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

SEC. 13. When vacancies occur in either House, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

SEC. 14. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

SEC. 15. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. 16. Any bill may originate in either House of the Legislature, and all bills passed by one House may be amended in the other.

SEC. 17. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it, but if not he shall return it, with his objections, to the House in which it originated, which shall enter the same upon the Journal, and proceed to reconsider it. If, after such reconsideration, it again pass both Houses, by yeas and nays, by a majority of two thirds of the members of each House present, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law, in like manner as if he had signed it, unless the Legislature, by adjournment, prevent such return.

SEC. 18. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two thirds of the members present.

SEC. 19. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Justices of the Supreme Court, and Judges of the District Court, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office, in such a manner as the Legislature may provide.

SEC. 20. No Senator or member of the Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State which shall have been created or the emoluments of which have been increased during such term, except such office as may be filled by election by the people.

SEC. 21. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that officers in the militia to which there is attached no annual salary, or local officers and Postmasters, whose compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative.

SEC. 22. No person who shall be convicted of the embezzlement or defalcation of the public funds of this State shall ever be eligible to any office of honor, trust, or profit under this State; and the Legislature shall, as soon as practicable, pass a law providing for the punishment of such embezzlement or defalcation as a felony.

SEC. 23. No money shall be drawn from the treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws at every regular session of the Legislature.

SEC. 24. The members of the Legislature shall receive for their services a compensation to be fixed by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the term for which the members of either House shall have been elected.

SEC. 25. Every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title; and no law shall be revised or amended by reference to its title; but in such case the Act revised or section amended shall be reënacted and published at length.

SEC. 26. No divorce shall be granted by the Legislature.

SEC. 27. No lottery shall be allowed by this State, nor shall the sale of lottery-tickets be allowed.

SEC. 28. The enumeration of the inhabitants of this State shall be taken, under the direction of the Legislature, in the years one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-five, and at the end of every ten years thereafter; and these enumerations, together with the census that may be taken under the direction of the Congress of the United States, in the year one thousand eight hundred and fifty, and every subsequent ten years, shall serve as the basis of representation in both Houses of the Legislature.

SEC. 29. The number of Senators and members of Assembly shall, at the first session of the Legislature holden after the enumerations herein provided for are made, be fixed by the Legislature, and apportioned among the several counties and districts to be established by law, according to the number of white inhabitants. The number of members of Assembly shall not be less than twenty-four, nor more than thirty-six, until the number of inhabitants within this State shall amount to one

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hundred thousand; and after that period, in such ratio that the whole number of members of Assembly shall never be less than thirty nor more than eighty.

SEC. 30. When a Congressional, Senatorial, or Assembly District shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county shall be divided in forming a Congressional, Senatorial, or Assembly District so as to attach one portion of a county to another county; but the Legislature may divide each county into as many Congressional, Senatorial or Assembly Districts as such county may by apportionment be entitled to.—[*Amended*, 1862.

SEC. 31. Corporations may be formed under general laws, but shall not be created by special Act, except for municipal purposes. All general laws and special Acts passed pursuant to this section may be altered from time to time, or repealed.

SEC. 32. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SEC. 33. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued in all Courts, in like cases as natural persons.

SEC. 34. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but associations may be formed, under general laws, for the deposit of gold and silver; but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

SEC. 35. The Legislature of this State shall prohibit, by law, any person or persons, association, company, or corporation, from exercising the privileges of banking or creating paper to circulate as money.

SEC. 36. Each stockholder of a corporation or joint stock association shall be individually and personally liable for his proportion of all its debts and liabilities.

SEC. 37. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations.

SEC. 38. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the Journal.

SEC. 39. In order that no inconvenience may result to the public service from the taking effect of the amendments proposed to Article IV by the Legislature of eighteen hundred and sixty-one, no officer shall be suspended or superseded thereby until the election and qualification of the several officers provided for in said amendments.—*Amended*, 1862.

ARTICLE V.

EXECUTIVE DEPARTMENT.

SECTION 1. Governor is vested with supreme executive power.
2. Election of Governor and term of office.
3. Qualifications and eligibility to the office.
4. Returns of, and counting the vote for Governor.
5. Governor to be Commander-in-Chief.
6. Transact all executive business.
7. See to the execution of the laws.
8. Fill vacancies not otherwise provided for.
9. Convene special sessions of the Legislature.
10. Executive messages.
11. Adjourn the Legislature when the Houses disagree.
12. Must not be Governor and hold other office.
13. Reprieves and pardons for offenses.
14. Keeper of "The great seal of the State of California."
15. Sign and seal grants and commissions.
16. Of the Lieutenant-Governor.
17. When powers of Governor devolve on the Lieutenant-Governor.
18. Election and terms of other State officers.
19. Duties of Secretary of State.
20. Election of State officers for the first term by Legislature; thereafter, as in section eighteen provided.
21. Compensation. Not to be increased or diminished.

SECTION 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of California.

SEC. 2. The Governor shall be elected by the qualified electors, at the time and places of voting for members of the Assembly, and shall hold his office for four years from and after the first Monday in December subsequent to his election, and until his successor is elected and qualified.—[*Amended*, 1862.

SEC. 3. No person shall be eligible to the office of Governor (except at the first election) who has not been a citizen of the United States and a resident of this State two years next preceding the election, and attained the age of twenty-five years at the time of said election.

SEC. 4. The return of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Assembly, who, shall, during the first week of the session, open and publish them in presence of both Houses of the Legislature. The person having the highest number of votes shall be Governor; but, in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint vote of both Houses, choose one of said persons so having an equal and the highest number of votes, for Governor.

SEC. 5. The Governor shall be Commander-in-Chief of the militia, the army, and navy of this State.

SEC. 6. He shall transact all executive business with the officers of government, civil and military, and may require information in writing from the officers of the Executive Department, upon any subject relating to the duties of their respective offices.

SEC. 7. He shall see that the laws are faithfully executed.

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

SEC. 9. He may, on extraordinary occasions, convene the Legislature by proclamation, and shall state to both Houses, when assembled, the purpose for which they shall have been convened.

SEC. 10. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

SEC. 11. In case of a disagreement between the two Houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

SEC. 12. No person shall, while holding any office under the United States, or this State, exercise the office of Governor, except as hereinafter expressly provided.

SEC. 13. The Governor shall have the power to grant reprieves and pardons after conviction, for all offenses, except treason and cases of impeachment, upon such conditions and with such restrictions and limitations as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, he shall have the power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the pardon or reprieve.

SEC. 14. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially and shall be called "The Great Seal of the State of California."

SEC. 15. All grants and commissions shall be in the name and by the authority of The People of the State of California, sealed with the Great Seal of the State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 16. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner, as the Governor; and his term of office, and his qualifications of eligibility, shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease.

SEC. 17. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military forces of the State.

SEC. 18. A Secretary of State, a Controller, a Treasurer, an Attorney-General, and a Surveyor-General, shall be elected at the same time and place, and in the same manner, as the Governor and Lieutenant-Governor, and whose term of office shall be the same as the Governor.—[*Amended*, 1862.

SEC. 19. The Secretary of State shall keep a fair record of the official acts of the legislative and executive departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law; and in order that no inconvenience may result to the public service from the taking effect of the amendments proposed to said Article V by the Legislature of eighteen hundred and sixty-one, no officer shall be superseded or suspended thereby, until the election and qualification of the several officers provided for in said amendments.—[*Amended*, 1862.

SEC. 20. The Controller, Treasurer, Attorney-General, and Surveyor-General, shall be chosen by joint vote of the two Houses of the Legislature at their first session under this Constitution, and thereafter shall be elected at the same time and places, and in the same manner, as the Governor and Lieutenant-Governor.

SEC. 21. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General, shall each, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected; but neither of these officers shall receive, for his own use, any fees for the performance of his official duties.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. Judicial powers.
2. Supreme Court, how constituted. Three Justices necessary to transact business.
3. Election of Supreme Court Justices.
4. Jurisdiction of the Supreme Court.

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SECTION 5. Judicial districts; Judges' terms; absence.
6. Jurisdiction of District Courts.
7. County Court; Judges; terms and powers of the Court, and Probate Judge of San Francisco.
8. Jurisdiction of County Court.
9. Justices of the Peace, their powers and duties.
10. Jurisdiction of Recorders' and other inferior municipal Courts.
11. Clerk of the Supreme Court, County Clerk, and other officers; their powers and duties.
12. Terms of the Courts, how to be fixed.
13. Fees and perquisites of judicial officers.
14. Decisions of the Supreme Court to be published.
15. Salaries of judicial officers, how fixed.
16. Ineligibility of Judges for other offices.
17. Charge of Judges to juries.
18. Style of "process."
19. Amendments to Article VI not to affect official incumbency.

SECTION 1. The judicial power of this State shall be vested in a Supreme Court, in District Courts, in County Courts, in Probate Courts, and in Justices of the Peace, and in such Recorders' and other inferior Courts as the Legislature may establish in any incorporated city or town.—[*Amended*, 1862.

SEC. 2. The Supreme Court shall consist of a Chief Justice and four Associate Justices. The presence of three Justices shall be necessary for the transaction of business, excepting such business as may be done at chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment.—[*Amended*, 1862.

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at special elections to be provided by law, at which elections no officer other than judicial shall be elected, except a Superintendent of Public Instruction. The first election for Justices of the Supreme Court shall be held in the year eighteen hundred and sixty-three. The Justices shall hold their offices for the term of ten years from the first day of January next after their election, except those elected at the first election, who, at their first meeting, shall so classify themselves by lot that one Justice shall go out of office every two years. The Justice having the shortest term to serve shall be the Chief Justice.—[*Amended*, 1862.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also, in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars; also, in all cases arising in the Probate Courts, and also in all criminal cases amounting to felony, on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any District Court, or any County Court in the State, or before any Judge of said Courts.—[*Amended*, 1862.

SEC. 5. The State shall be divided, by the Legislature of eighteen hundred and sixty-three, into fourteen judicial districts, subject to such alteration, from time to time, by a two-thirds vote of all the members elected to both Houses, as the public good may require; in each of which there shall be a District Court, and for each of which a District Judge shall be elected by the qualified electors of the district, at the special judicial elections to be held as provided for the election of Justices of the Supreme Court by section three of this article. The District Judges shall hold their offices for the term of six years from the first day of January next after their election. The Legislature shall have no power to grant leave of absence to a judicial officer; and any such officer who shall absent himself from the State for upwards of thirty consecutive days, shall be deemed to have forfeited his office.—[*Amended*, 1862.

SEC. 6. The District Courts shall have original jurisdiction in all cases in equity; also, in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and also in all criminal cases not otherwise provided for. The District Courts and their Judges shall have power to issue writs of habeas corpus, on petition by or on behalf of any person held in actual custody, in their respective districts.—[*Amended*, 1862.

SEC. 7. There shall be in each of the organized counties of the State a County Court, for each of which a County Judge shall be elected by the qualified electors of the county, at the special judicial election to be held as provided for the election of Justices of the Supreme Court, by section three of this article. The County Judges shall hold their offices for the term of four years from the first day of January next after their election. Said Courts shall also have power to issue naturalization papers. In the City and County of San Francisco the Legislature may separate the office of Probate Judge from that of County Judge, and may provide for the election of a Probate Judge, who shall hold his office for the term of four years.—[*Amended*, 1862.

SEC. 8. The County Courts shall have original jurisdiction of actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance, and of all such special cases and proceedings as are not otherwise provided for, and also such criminal jurisdiction as the Legislature may prescribe; they shall also have appellate jurisdiction in all cases arising in Courts held by Justices of the Peace and Recorders, and in such inferior Courts as may be established in pursuance of section one of this article, in their respective counties. The County Judges shall also hold, in their several counties, Probate Courts, and perform such duties as Probate Judges as may be prescribed by law. The County Courts and their Judges shall also have power to issue writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties.—[*Amended*, 1862.

SEC. 9. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and fix by law their powers, duties, and responsibilities; *provided*, such powers shall not in any case trench upon the jurisdiction of the several Courts of record. The Supreme Court, the District Courts, County Courts, the Probate Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.—[*Amended*, 1862.

SEC. 10. The Legislature shall fix by law the jurisdiction of any Recorder's or other inferior municipal Court which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.—[*Amended*, 1862.

SEC. 11. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties. The Legislature may also provide for the appointment by the several District Courts of one or more Commissioners in the several counties of their respective districts, with authority to perform chamber business of the Judges of the District Courts and County Courts, and also to take depositions, and to perform such other business connected with the administration of justice as may be prescribed by law.—[*Amended*, 1862.

SEC. 12. The times and places of holding the terms of the several Courts of record shall be provided for by law.—[*Amended*, 1862.

SEC. 13. No judicial officer, except Justices of the Peace, Recorders, and Commissioners, shall receive to his own use any fees or perquisites of office.—[*Amended*, 1862.

SEC. 14. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient; and all opinions shall be free for publication by any person.—[*Amended*, 1862.

SEC. 15. The Justices of the Supreme Court, District Judges, and County Judges, shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected; *provided*, that County Judges shall be paid out of the county treasury of their respective counties.—[*Amended*, 1862.

SEC. 16. The Justices of the Supreme Court, and the District Judges, and the County Judges, shall be ineligible to any other office than a judicial office during the term for which they shall have been elected.—[*Amended*, 1862.

SEC. 17. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.—[*Amended*, 1862.

SEC. 18. The style of all process shall be: "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.—[*Amended*, 1862.

SEC. 19. In order that no inconvenience may result to the public service from the taking effect of the amendments proposed to said Article VI by the Legislature of eighteen hundred and sixty-one, no officer shall be superseded thereby, nor shall the organization of the several Courts be changed thereby, until the election and qualification of the several officers provided for in said amendments.—[*Amended*, 1862.

ARTICLE VII.

MILITIA.

SECTION 1. Organization and disciplining of the militia.
2. Officers, how elected or appointed.
3. Governor to call out the militia.

SECTION 1. The Legislature shall provide by law for organizing and disciplining the militia in such manner as they shall deem expedient, not incompatible with the Constitution and laws of the United States.

SEC. 2. Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor.

SEC. 3. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, and repel invasions.

ARTICLE VIII.

STATE DEBTS.

SECTION 1. Restriction on the legislative power to contract debts.

SECTION 1. The Legislature shall not in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war, to repel invasion, or suppress insurrection, unless the same shall be authorized by some law for some single object or work, to be distinctly specified therein, which law shall provide ways and means, exclusive of loans, for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created. And such law

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shall be published in at least one newspaper in each judicial district, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people.

ARTICLE IX.

EDUCATION.

SECTION 1. Superintendent of Public Instruction.
2. Duties of Legislature to promote and encourage education. Proceeds of school lands. School Fund.
3. To provide a system of common schools.
4. University Fund; how created, managed, and applied.

SECTION 1. A Superintendent of Public Instruction shall, at the special election for judicial officers to be held in the year eighteen hundred and sixty-three, and every four years thereafter, at such special elections, be elected by the qualified voters of the State, and shall enter upon the duties of his office on the first day of December next after his election.—[*Amended*, 1862.

SEC. 2. The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that may be granted by the United States to this State for the support of schools, which may be sold or disposed of, and the five hundred thousand acres of land granted to the new States, under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

SEC. 3. The Legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each district at least three months in every year; and any school district neglecting to keep up and support such a school, may be deprived of its proportion of the interest of the public fund during such neglect.

SEC. 4. The Legislature shall take measures for the protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States, or any person or persons, to this State, for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source, for the purpose aforesaid, shall be and remain a permanent fund, the interest on which shall be applied to the support of said University, with such branches as the public convenience may demand, for the promotion of literature, the arts and sciences, as may be authorized by the terms of such grant. And it shall be the duty of the Legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

ARTICLE X.

MODE OF AMENDING AND REVISING THE CONSTITUTION.

SECTION 1. Proposals of amendments. Submission to the people.
2. By what authority, and how a constitutional convention is called and acts, and how its acts are ratified.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the Legislature then next to be chosen, and shall be published for three months next preceding the time of making such choice. And if, in the Legislature next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each House, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments, by a majority of the electors qualified to vote for members of the Legislature voting thereon, such amendment or amendments shall become part of the Constitution.

SEC. 2. And if at any time two thirds of the Senate and Assembly shall think it necessary to revise and change this entire Constitution, they shall recommend to the electors at the next election for members of the Legislature to vote for or against a convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a convention, the Legislature shall, at its next session, provide by law for calling a convention, to be holden within six months after the passage of such law; and such convention shall consist of a number of members not less than that of both branches of the Legislature. The Constitution that may have been agreed upon and adopted by such convention shall be submitted to the people, at a special election to be provided for by law, for their ratification or rejection. Each voter shall express his opinion by depositing in the ballot-box a ticket, whereon shall be written or printed the words "For the New Constitution," or "Against the New Constitution." The returns of such election shall, in such manner as the convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the votes so certified to him. If, by such examination, it be ascertained that a majority of the whole number of votes cast at such election be in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California.—[*Amended, Nov. 4th*, 1856.

ARTICLE XI.

MISCELLANEOUS PROVISIONS.

SECTION 1. Seat of government.
2. Dueling disqualifies for office.
3. The oath of office.
4. Legislature to provide a system of uniform county and town governments.
5. Boards of County Supervisors.
6. All officers not otherwise provided for elected by the people or appointed, as Legislature directs.
7. Duration not declared by Constitution to be fixed by law.
8. Fiscal year.
9. Provision for support of county and other inferior officers.
10. Credit of the State not to be given or loaned.
11. Suits against the State.
12. Marriage contracts to be valid.
13. Taxation shall be equal and uniform.
14. Separate property of wife defined and provided for.
15. Homesteads of heads of families to be provided for.
16. Perpetuities not to be allowed.
17. Giving or taking a bribe disqualifies for office.
18. Rights of suffrage to be protected, and improper persons excluded therefrom; from the jury and from the ballot-box.
19. Residence not affected by absence on the business of the State or Federal Government.
20. Plurality vote makes a choice.
21. Publication of laws, decrees, etc., in English and Spanish.

SECTION 1. The first session of the Legislature shall be held at the Pueblo de San José, which place shall be the permanent seat of government until removed by law; *provided, however*, that two thirds of all the members elected to each House of the Legislature shall concur in the passage of such law.

SEC. 2. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this Constitution.

SEC. 3. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of ——, according to the best of my ability."

And no other oath, declaration, or test shall be required as a qualification for any office or public trust.

SEC. 4. The Legislature shall establish a system of county and town governments, which shall be as nearly uniform as practicable throughout the State.

SEC. 5. The Legislature shall have power to provide for the election of a Board of Supervisors in each county, and these Supervisors shall jointly and individually perform such duties as may be prescribed by law.

SEC. 6. All officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

SEC. 7. When the duration of any office is not provided for by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment; nor shall the duration of any office, not fixed by this Constitution, ever exceed four years.

SEC. 8. The fiscal year shall commence on the first day of July.

SEC. 9. Each county, town, city, and incorporated village shall make provision for the support of its own officers, subject to such restrictions and regulations as the Legislature may prescribe.

SEC. 10. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association, or corporation; nor shall the State, directly or indirectly, become a stockholder in any association or corporation.

SEC. 11. Suits may be brought against the State in such manner and in such Courts as shall be directed by law.

SEC. 12. No contract of marriage, otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

SEC. 13. Taxation shall be equal and uniform throughout the State. All property in the State shall be taxed in proportion to its value, to be ascertained as directed by law; but Assessors and Collectors of town, county, and State taxes shall be elected by the qualified electors of the district, county, or town in which the property taxed for State, county, or town purposes is situated.

SEC. 14. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, shall be her separate property, and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

SEC. 15. The Legislature shall protect by law from forced sale, a certain portion of the homestead and other property of all heads of families.

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SEC. 16. No perpetuities shall be allowed except for eleemosynary purposes.

SEC. 17. Every person shall be disqualified from holding any office of profit in this State who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SEC. 18. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 19. Absence from this State on business of the State or of the United States, shall not affect the question of residence of any person.

SEC. 20. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution.

SEC. 21. All laws, decrees, regulations, and provisions, which from their nature require publication, shall be published in English and Spanish.

ARTICLE XII.

BOUNDARY.

SECTION 1. Boundary of the State defined.

SECTION 1. The boundary of the State of California shall be as follows: Commencing at the point of intersection of forty-second degree of north latitude with the one hundred and twentieth degree of longitude west from Greenwich, and running south on the line of said one hundred and twentieth degree of west longitude until it intersects the thirty-ninth degree of north latitude; thence running in a straight line in a southeasterly direction to the River Colorado, at a point where it intersects the thirty-fifth degree of north latitude; thence down the middle of the channel of said river to the boundary line between the United States and Mexico, as established by the treaty of May thirtieth, one thousand eight hundred and forty-eight; thence running west and along said boundary line to the Pacific Ocean, and extending therein three English miles; thence running in a northwesterly direction and following the direction of the Pacific coast to the forty-second degree of north latitude; thence, on the line of said forty-second degree of north latitude, to the place of beginning. Also, all the islands, harbors, and bays along and adjacent to the coast.

SCHEDULE.

SECTION 1. Mexican laws in force.
2. Removal of causes.
3. Change of government.
4. Residence necessary to hold office.
5. Who are voters at the first election.
6. Constitution to be submitted to vote of the people. Election, returns, canvass, and proclamation.
7. Transmission to Congress.
8. Election of officers.
9. Meeting of Legislature.
10. Report of canvassers.
11. Election by Legislature of United States Senator.
12. Application for admission into the Union.
13. Installation of officers.
14. Apportionment of representation.
15. Salaries of State officers till fixed.
16. Eighth article does not apply to expenditures of the first Legislature.

SECTION 1. All rights, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, and all laws in force at the time of the adoption of this Constitution, and not inconsistent therewith, until altered or repealed by the Legislature, shall continue as if the same had not been adopted.

SEC. 2. The Legislature shall provide for the removal of all causes which may be pending when this Constitution goes into effect, to Courts created by the same.

SEC. 3. In order that no inconvenience may result to the public service from the taking effect of this Constitution, no office shall be superseded thereby, nor the laws relative to the duties of the several officers be changed, until the entering into office of the new officers to be appointed under this Constitution.

SEC. 4. The provisions of this Constitution concerning the term of residence necessary to enable persons to hold certain offices therein mentioned, shall not be held to apply to officers chosen by the people at the first election, or by the Legislature at its first session.

SEC. 5. Every citizen of California declared a legal voter by this Constitution, and every citizen of the United States a resident of this State on the day of election, shall be entitled to vote at the first general election under this Constitution, and on the question of the adoption thereof.

SEC. 6. This Constitution shall be submitted to the people for their ratification or rejection at the general election to be held on Tuesday, the thirteenth day of November next. The Executive of the existing Government of California is hereby requested to issue a proclamation to the people, directing the Prefects of the several districts, or, in case of vacancy, the Sub-Prefects or Senior Judge of First Instance, to cause such election to be held on the day aforesaid in their respective districts. The election shall be conducted in the manner which was prescribed for the election of delegates to this convention, except that the Prefects, Sub-Prefects, or Senior Judge of First Instance, ordering such election in each district, shall have power to designate any additional number of places for opening the polls, and that in every place of holding the election a regular poll list shall be kept by the Judges and Inspectors of Election. It shall also be the duty of these Judges and Inspectors of Election, on the day aforesaid, to receive the vote of the electors qualified to vote at such election. Each voter shall express his opinion by depositing in the ballot-box a ticket, whereon shall be written or printed "For the Constitution," or "Against the Constitution," or some such words as will distinctly convey the intention of the voter. These Judges and Inspectors shall also receive the votes for the several officers to be voted for at the said election, as herein provided. At the close of the election the Judges and Inspectors shall carefully count each ballot, and forthwith make duplicate returns thereof to the Prefect, Sub-Prefect, or Senior Judge of First Instance, as the case may be, of their respective districts; and said Prefect, Sub-Prefect, or Senior Judge of First Instance shall transmit one of the same, by the most safe and rapid conveyance, to the Secretary of State. Upon the receipt of said returns, or on the tenth day of December next, if the returns be not sooner received, it shall be the duty of the Board of Canvassers, to consist of the Secretary of State, one of the Judges of the Superior Court, the Prefect, Judge of First Instance, and an Alcalde of the District of Monterey, or any three of the aforementioned officers, in the presence of all who shall choose to attend, to compare the votes given at said election, and to immediately publish an abstract of the same in one or more of the newspapers of California. And the Executive will also, immediately after ascertaining that the Constitution has been ratified by the people, make proclamation of the fact; and thenceforth this Constitution shall be ordained and established as the Constitution of California.

SEC. 7. If this Constitution shall be ratified by the people of California, the Executive of the existing government is hereby requested, immediately after the same shall be ascertained in the manner herein directed, to cause a fair copy thereof to be forwarded to the President of the United States, in order that he may lay it before the Congress of the United States.

SEC. 8. At the general election aforesaid, viz: the thirteenth day of November next, there shall be elected a Governor, Lieutenant-Governor, members of the Legislature, and also two members of Congress.

SEC. 9. If this Constitution shall be ratified by the people of California, the Legislature shall assemble at the seat of government on the fifteenth day of December next, and in order to complete the organization of that body the Senate shall elect a President pro tempore, until the Lieutenant-Governor shall be installed into office.

SEC. 10. On the organization of the Legislature, it shall be the duty of the Secretary of State to lay before each House a copy of the abstract made by the Board of Canvassers, and, if called for, the original returns of election, in order that each House may judge of the correctness of the report of said Board of Canvassers.

SEC. 11. The Legislature, at its first session, shall elect such officers as may be ordered by this Constitution to be elected by that body, and within four days after its organization proceed to elect two Senators to the Congress of the United States. But no law passed by this Legislature shall take effect until signed by the Governor after his installation into office.

SEC. 12. The Senators and Representatives of the Congress of the United States elected by the Legislature and people of California, as herein directed, shall be furnished with certified copies of this Constitution, when ratified, which they shall lay before the Congress of the United States, requesting, in the name of the people of California, the admission of the State of California into the American Union.

SEC. 13. All officers of this State, other than members of the Legislature, shall be installed into office on the fifteenth day of December next, or as soon thereafter as practicable.

SEC. 14. Until the Legislature shall divide the State into counties and Senatorial and Assembly Districts, as directed by this Constitution, the following shall be the apportionment of the two Houses of the Legislature, viz: The Districts of San Diego and Los Angeles shall jointly elect two Senators; the Districts of Santa Barbara and San Luis Obispo shall jointly elect one Senator; the District of Monterey, one Senator; the District of San José, one Senator; the District of San Francisco, two Senators; the District of Sonoma, one Senator; the District of Sacramento, four Senators; and the District of San Joaquin, four Senators. And the District of San Diego shall elect one member of the Assembly; the District of Los Angeles, two members of Assembly; the District of Santa Barbara, two members of Assembly; the District of San Luis Obispo, one member of Assembly; the District of Monterey, two members of Assembly; the District of San José, three members of Assembly; the District of San Francisco, five members of Assembly; the District of Sonoma, two members of Assembly; the District of Sacramento, nine members of Assembly; and the District of San Joaquin, nine members of Assembly.

SEC. 15. Until the Legislature shall otherwise direct, in accordance with the provisions of this Constitution, the salary of the Governor shall be ten thousand dollars per annum; and the salary of the Lieutenant-Governor shall be double the pay of a State Senator; and the pay of members of the Legislature shall be sixteen dollars per diem while in attendance, and sixteen dollars for every twenty miles traveled by the usual route from their residences to the place of holding the session of the Legislature, and in returning therefrom. And the Legislature shall fix the salaries of all officers other than those elected by the people at the first election.

SEC. 16. The limitation of the powers of the Legislature contained in Article VIII of this Constitution shall not extend to the first Legislature elected under the same, which is hereby authorized to negotiate

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for such amount as may be necessary to pay the expenses of the State Government.

R. SEMPLE,
President, and Delegate from Benicia.

WILLIAM G. MARCY, Secretary.

JOSEPH ARAM,
CH. T. BOTTS,
ELAM BROWN,
ELISHA O. CROSBY,
JOSÉ M. COVARUBIAS,
STEPHEN C. FOSTER,
PABLO DE LA GUERRA,
LEWIS DENT,
KIMBALL H. DIMMICK,
BENJ. F. MOORE,
RODMAN M. PRICE,
JNO. MCDOUGALL,
MAN'L DOMINGUEZ,
MYRON NORTON,
PACIFICUS ORD,
MIGUEL D. PEDRORENA,
M. M. MCCARVER,
ANTONIO MA. PICO,
A. J. ELLIS,
JOSÉ ANTO. CARRILLO,
WM. M. GWIN,
EDW. GILBERT,
HENRY HILL,
J. D. HOPPE,
JOSEPH HOBSON,
JULIAN HANKS,
H. W. HALLECK,
L. W. HASTINGS,
J. MCHENRY HOLLINGSWORTH,
JAS. MCHALL JONES,
THOMAS O. LARKIN,
FRANCIS J. LIPPITT,
BENJ. S. LIPPINCOTT,
JACINTO RODRIGUES,
HUGH REID,
J. A. SUTTER,
JACOB R. SNYDER,
WINFELD SCOTT SHERWOOD,
WILLIAM E. SHANNON,
ABEL STEARNS,
P. SAINSEVAIN,
WM. M. STEUART,
HENRY A. TEFFT,
M. G. VALLEJO,
THOS. L. VERMEULE,
J. P. WALKER,
O. M. WOZENCRAFT.

THE ENABLING ACT.

AN ACT TO PROVIDE FOR A CONVENTION TO FRAME A NEW CONSTITUTION FOR THE STATE OF CALIFORNIA.

[Approved March 30th, 1878.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. An election shall be held on the third Wednesday in June, eighteen hundred and seventy-eight, of delegates to meet in Convention to revise the Constitution of this State and to frame a new Constitution. No other question shall be submitted to the people or voted on at such election, any statute or law to the contrary notwithstanding. All other elections called for the same time shall be held at the next general or special State election.

SEC. 2. The number of delegates to be chosen to such Convention shall be one hundred and fifty-two, to be apportioned as follows: The Counties of San Diego and San Bernardino shall jointly elect one delegate; the County of San Diego shall elect one delegate; the County of San Bernardino shall elect one delegate; the County of Los Angeles shall elect three delegates; the Counties of Santa Barbara, Ventura, and San Luis Obispo shall each elect one delegate; the Counties of Tulare, Kern, and Fresno shall elect one delegate each; and the Counties of Mono and Inyo shall elect one delegate; the Counties of Mariposa, Merced, and Stanislaus shall jointly elect one delegate; the Counties of Mariposa and Merced shall jointly elect one delegate; the County of Stanislaus shall elect one delegate; the Counties of Santa Cruz, Monterey, and San Benito shall jointly elect one delegate; the County of Santa Cruz shall elect one delegate; the County of Monterey shall elect one delegate; the County of San Benito shall elect one delegate; the County of Santa Clara shall elect five delegates; the City and County of San Francisco shall elect at large thirty delegates; the City and County of San Francisco at large, jointly with the County of San Mateo, shall elect one delegate; the County of San Mateo shall elect one delegate; the County of Alameda shall elect five delegates; the Counties of Contra Costa and Marin shall jointly elect one delegate; the County of Contra Costa shall elect one delegate; the County of Marin shall elect one delegate; the Counties of San Joaquin and Amador shall jointly elect one delegate; the County of San Joaquin shall elect four delegates; the County of Amador shall elect two delegates; the Counties of Tuolumne and Calaveras shall jointly elect one delegate; the County of Tuolumne shall elect one delegate; the County of Calaveras shall elect one delegate; the County of Sacramento shall elect five delegates; the Counties of Solano and Yolo shall jointly elect one delegate; the County of Solano shall elect three delegates; the County of Yolo shall elect one delegate; the Counties of Napa, Lake, and Sonoma shall jointly elect one delegate; the County of Napa shall elect one delegate; the County of Lake shall elect one delegate; the County of Sonoma shall elect four delegates; the County of Placer shall elect two delegates; the Counties of El Dorado and Alpine shall jointly elect two delegates; the County of El Dorado shall elect one delegate; the Counties of Nevada and Sierra shall jointly elect one delegate; the County of Nevada shall elect four delegates; the County of Sierra shall elect one delegate; the Counties of Yuba and Sutter shall jointly elect one delegate; the County of Yuba shall elect two delegates; the County of Sutter shall elect one delegate; the Counties of Butte, Plumas, and Lassen shall jointly elect one delegate; the Counties of Plumas and Lassen shall jointly elect one delegate; the County of Butte shall elect two delegates; the Counties of Mendocino, Humboldt, and Del Norte shall jointly elect one delegate; the County of Humboldt shall elect one delegate; the County of Mendocino shall elect one delegate; the County of Del Norte shall elect one delegate; the Counties of Siskiyou, Modoc, Trinity, and Shasta shall jointly elect one delegate; the Counties of Siskiyou and Modoc shall jointly elect one delegate; the Counties of Trinity and Shasta shall jointly elect one delegate; the County of Tehama shall elect one delegate; the County of Colusa shall elect one delegate; and thirty-two (32) delegates shall be elected by the State at large, eight (8) residents of each Congressional District.

SEC. 3. All persons entitled by law to vote for members of Assembly shall be entitled to vote at such election in their respective election districts, and not elsewhere. Such election shall be by ballot.

SEC. 4. The following regulations shall apply to the aforesaid election, to be held on the third Wednesday in June, A. D. eighteen hundred and seventy-eight:

First—The said election shall be held and conducted by the proper election officers of the several election districts of this State, and shall be governed and regulated in all respects by the general election laws of the State in force at the time of said election, so far as the same shall be applicable thereto, and not inconsistent with the provisions of this Act.

Second—At the special election to be held under this Act, if no other provision for printing or using new Great Registers or Ward Registers shall have in the meantime been made by law, the copies of the Great Registers which were in use in the several counties of this State at the general election held in the year eighteen hundred and seventy-seven shall be used. The Boards of Supervisors must furnish the Boards of Election of each precinct in their respective counties before the day on which said special election is appointed to be held, at least one copy of the aforesaid Great Register. If the Boards of Supervisors cannot otherwise obtain a sufficient number of copies of the Register for the purpose, it must take the copies filed in the office of the County Clerk, in pursuance of section one thousand two hundred and sixty-eight of the Political Code. If the copy of the register which shall be furnished to any precinct shall have been used at a previous election, the character "X" may be used instead of the word "voted," as required by section one thousand two hundred and twenty-eight of the Political Code. It shall not be the duty of the Boards of Election to post copies of the Great Register, as required by section one thousand one hundred and forty-nine of the Political Code. The voter, when he offers his ballot at a polling place, shall not be required to announce his number on the Great Register, as provided for in section one thousand two hundred and twenty-five of the Political Code.

Third—The officers of the several counties of this State, whose duty it is under the law to receive and canvass the returns from the several precincts of their respective counties, as well as the City and County of San Francisco, shall meet at the usual place of meeting for such purpose on the second Monday after said election. If at the time of meeting the returns from each precinct in the county in which polls were opened have been received, the Board must then and there proceed to canvass the returns; but if all returns have not been received, the canvass must be postponed from day to day until all of the returns are received, or until six postponements have been had, when they shall proceed to make out returns of the votes cast for delegates to be members of the Convention; and the proceedings of the officers whose duty it is to make out said returns shall be the same as those prescribed for like officers in the case of an election for Governor, except that the returns shall be transmitted to the Secretary of State. The person receiving the highest number of votes at such election shall be elected, except in the case of persons voted for as delegates at large. Of the persons so voted for as delegates at large, the eight persons, residents of any one Congressional District, who shall have received a plurality of votes over all other persons, severally, who reside in the same Congressional District, shall be declared elected such delegates at large.

Fourth—The Secretary of State shall, as soon as the returns of said election shall be received by him, or within twenty days after said election, in the presence of the Governor and Controller of State, open and compute all the returns received of votes given for members of the Convention, and the Governor shall forthwith issue his proclamation, declaring the names of the persons who have been chosen members of said Convention.

SEC. 5. The delegates so chosen shall meet in Convention in the Assembly Chamber at the Capitol, in the City of Sacramento, on the twenty-eighth day of September, eighteen hundred and seventy-eight, at twelve o'clock M. They shall by a viva voce vote, and the vote shall be entered on the Journal, elect one of their number President, and such Secretaries and other officers as they may deem necessary. After the said Convention has met and organized, it shall have power to adjourn to and hold its meetings at any place in said City of Sacramento other than the said Assembly Chamber, and all committee rooms of the State Capitol building shall be under the control of said Convention. The President of the Convention may appoint not exceeding one Doorkeeper and four Pages. The Convention may select Phonographic Reporters, and fix the amount of their compensation; also a Sergeant-at-Arms and one Assistant. The delegates to the Convention shall receive the same per diem and mileage as members of the Legislature; *provided*, no compensation shall be allowed delegates after the expiration of one hundred days. No pay shall be allowed for any recess longer than three days at one time. The Secretary shall receive eight dollars per day, and his assistants each six dollars per day, and the Doorkeepers, Pages, Sergeant-at-Arms, and assistants shall receive the same compensation as provided by law for similar services and attendance on the Assembly. The amount of pay shall be certified by the President of

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the Convention, and shall be paid by the Treasurer of State, on the warrant of the Controller, in the same manner as members of the Legislature are paid. It shall be the duty of the Governor to attend said Convention at the opening thereof, and to administer the constitutional oath of office to the delegates, and to preside at all meetings thereof until a President has been elected and taken his seat, but the Governor shall have neither the casting vote nor any other vote therein. The Secretary of State shall also attend at the opening of the Convention and call the roll of delegates. All public Officers, Boards, and Commissions shall furnish such Convention with such information, papers, statements, books, or other public documents in their possession as the said Convention shall order or require for its use from time to time while in session. It shall be the duty of the Secretary of State to furnish the members of said Convention with stationery to the amount provided by law for the Legislature while in session, and to the Convention such stationery, manual, file boards, and other like things as are furnished to the two Houses of the Legislature. Said Convention may adopt such rules and regulations for its own government as a majority of its members may determine, and said Convention shall be the judge of the election and qualification of its own members.

SEC. 6. A journal of the proceedings of the said Convention shall be kept, and shall at the final adjournment thereof be filed in the office of the Secretary of State, and the Constitution agreed to by the Convention shall be recorded in his office. A majority of the Convention shall constitute a quorum to do business. The doors of the Convention shall be kept open, except when the public welfare shall require secrecy. Every delegate to the Convention shall have the like privileges from arrest and from civil process as members of the Legislature now have by law. For any speech or debate in the Convention the delegates shall not be questioned in any other place. The Convention shall have the power to expel any of its members, and to punish its members and officers for disorderly behavior by imprisonment or otherwise; but no member shall be expelled until the report of a committee appointed to inquire into the facts alleged as the grounds of his expulsion shall have been made. The Convention shall have the power to punish as a contempt, and by imprisonment or otherwise, a breach of his privileges, or of the privileges of its members; but such power shall not be exercised, except against persons guilty of one or more of the following offenses:

First—The offense of arresting or subjecting a member or officer of the Convention to civil process, in violation of his privilege from arrest, as heretofore declared.

Second—That of disorderly conduct in the immediate view and presence of the Convention, and directly tending to interrupt its proceedings.

Third—That of publishing any false and malicious report of the proceedings of the Convention, or of the conduct of a member in his delegated capacity.

Fourth—That of refusing to attend or be examined as a witness, either before the Convention or a committee to take testimony in the proceedings of the Convention.

Fifth—That of giving or offering a bribe to a member, or of attempting by menace or any other corrupt means or devise, directly or indirectly, to control or influence a member in giving his vote, or to prevent him from giving the same.

In all cases in which the Convention shall punish any of its members, or officers, or any other person, by imprisonment, such imprisonment shall not extend beyond the session of the Convention. Every person appointed to the office of Secretary of the Convention, shall, before he enters on the duties of his office, execute a bond to the people of the State, with such security as the Controller shall approve, in the penal sum of five thousand dollars, conditioned that he shall faithfully perform the duties of his office and account for all moneys which may come into his hands by virtue thereof.

SEC. 7. The Constitution framed by such Convention shall be submitted by the Convention to the people, for their adoption or rejection, at a special election to be held on the first Wednesday of May, eighteen hundred and seventy-nine, and every person hereby entitled to vote for delegates may vote at that election, on such adoption or rejection, in the election district in which he shall then reside, and not elsewhere. The said Constitution shall be voted on as a whole; no other question than the adoption or rejection of the proposed Constitution shall be submitted to the people, or voted on at such election, any statutes or law to the contrary notwithstanding. The Convention shall prescribe the publication of such Constitution, and the notice to be given of the election. The ballots or tickets shall have printed or written upon them the words "For the New Constitution," or "Against the New Constitution," and all the provisions of law now or at that time existing in regard to general elections shall be applicable to such election, except that the provisions of the first and second subdivisions of section four of this Act shall also apply to said election. The canvassing and returns of the votes cast upon such question shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the votes as certified to him. If, by such an examination, it is ascertained that a majority of the whole number of votes cast at such election be in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California, and that it will take effect at such time as the said Convention may have in its discretion, by resolution, or in said Constitution itself, fixed. If said Convention fix no time for said Constitution to take effect, then it shall take effect immediately upon such proclamation being made.

SEC. 8. All willful and corrupt false swearing in taking any of the oaths prescribed by this Act, or by the laws of this State made applicable to this Act, or in any other mode or form in carrying into effect this Act, shall be deemed perjury, and shall be punished in the manner now prescribed by law for willful and corrupt perjury.

SEC. 9. It shall be the duty of the Secretary of State to cause this Act to be published once a month after its passage, until the election of delegates herein provided, in not more than five of the public newspapers published in this State—one of said publications to be in some newspaper published in the City and County of San Francisco, and one in the City of Sacramento, and one in the County of Los Angeles, and one in the County of Nevada, and one in the County of Tulare; and the expense of publishing the same, and all other legal expenses incurred in printing for the Convention, shall be audited by the Controller and paid by the State Treasurer according to law.

SEC. 10. All the printing necessary for the said Convention, under the provisions of this Act, shall be done and performed at the State Printing Office.

SEC. 11. In case any vacancy occurs by reason of the death, resignation, or otherwise, of any delegate elected to said Convention, the same shall be filled by the Convention.

SEC. 12. The sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the State treasury to pay the expenses of the Convention provided for in this Act.

SEC. 13. This Act shall take effect immediately.

PROVISIONAL ACT.

AN ACT TO PROVIDE FOR THE PUBLICATION OF THE DEBATES AND PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF THE STATE OF CALIFORNIA.

[Approved March 31st, 1880.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. The State Board of Examiners are hereby authorized and directed to enter into a contract with E. B. Willis and P. K. Stockton, for the transcription into long-hand writing of the short-hand notes taken by said E. B. Willis and P. K. Stockton, of the proceedings, transactions, and debates of the Constitutional Convention which assembled on the twenty-eighth day of September, A. D. eighteen hundred and seventy-eight, in the City of Sacramento.

SEC. 2. The contract entered into by and between the said Board of Examiners and the said E. B. Willis and P. K. Stockton, shall stipulate for the immediate, consecutive, full, and accurate transcription into long-hand writing of the transactions and debates had in the Constitutional Convention and in the Committee of the Whole of said Convention. And the compensation to be paid to the said E. B. Willis and P. K. Stockton for such transcription shall be twenty cents per folio of one hundred words; *provided*, that the entire amount to be paid for said transcribing the entire transactions and debates of the said Convention, and of the Committee of the Whole of said Convention, shall not exceed the sum of eighteen thousand dollars; *and provided further*, that the said Board of Examiners shall not be required to receive and examine manuscripts covering less than five thousand folios, or audit any claim for less than one thousand dollars at one time, and shall not authorize the payment of more than seventy-five per cent. of any claim audited or allowed, until the entire work of transcription shall have been completed and placed in their hands.

SEC. 3. The transcription of the said short-hand notes shall be made of the proceedings of consecutive days of the said Convention, beginning with the first day, and all installments of manuscripts delivered to the said Board of Examiners shall be of continuous and consecutive days' proceedings, in plain, legible, long-hand copy, properly prepared for the printer; *provided*, that either House of the Legislature shall, upon the passage of this bill, be entitled to call for a transcription of such parts of the transactions and debates of the said Constitutional Convention, and of the Committee of the Whole thereof, as may be designated in a resolution calling for said transcription, and the transcription called for by either House shall be made and furnished without delay; but the manuscript of transcription called for by either House shall be returned to said Willis and Stockton, but shall not be by them presented to the Board of Examiners until they are reached in their proper connection by a consecutive transcription of the short-hand notes.

SEC. 4. Said Willis and Stockton shall verify the transcription of the report presented by them to said Board of Examiners, by an oath to be administered by the Governor.

SEC. 5. The said Board of Examiners shall have such power and authority as may be necessary to carry out, in good faith, the purposes and objects of this bill.

SEC. 6. The State Board of Examiners shall cause to be printed, at the State Printing Office, such numbers of copies of the said reports of the proceedings, transactions, and debates of said Convention as may be by them deemed advisable, under the direction of the Superintendent of Public Printing, at a cost which shall not exceed the sum of eighteen thousand dollars. The Board of Examiners shall copyright said publication, to the end that the State may be protected. Such copies, when printed, shall be placed in the hands of the Secretary of State, who shall dispose of them as follows, to wit: Ten full sets of volumes shall be filed in the State Library, for the use of members of the Legislature; one set shall be sent to the State Library of each of the States which have furnished the State Library of this State with volumes of the transactions and debates of the Constitutional Conventions held in such States; one full set of the volumes to each of the Justices of the Supreme Court; one full set of the volumes to each Judge of a Superior Court in this State. The remainder of the volumes shall be sold at a sum to be fixed by said Board of Examiners, but which shall not exceed fifteen dollars per set of the volumes.

SEC. 7. This Act shall take effect immediately.

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CONSTITUTIONAL CONVENTION.

SATURDAY, SACRAMENTO, CALIFORNIA. SEPT. 28, 1878.

IN CONVENTION.

FIRST DAY.

SACRAMENTO, Saturday, September 28, 1878.

Pursuant to an Act of the Legislature of the State of California, entitled "An Act to provide for a Convention to frame a new Constitution for the State of California," approved March 30th, 1878, the delegates elect to said Convention met in the Assembly Chamber of the State Capitol this day, at 12 o'clock M., His Excellency Governor William Irwin presiding.

Upon calling the Convention to order, Governor Irwin said:

The hour having arrived for the meeting of the Constitutional Convention to frame a Constitution for the State of California, all persons on the floor of the Chamber whose names do not appear in the proclamation of the Governor as having been elected delegates to the Convention, will please retire outside the bar of the Chamber. Gentlemen whose names are mentioned in that proclamation will please take the seats assigned them by the Secretary of State.

Article X, Section 2, of the Constitution, provides: "And if at any time two thirds of the Senate and Assembly shall think it necessary to revise and change this entire Constitution, they shall recommend to the electors at the next election for members of the Legislature to vote for or against a Convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for calling a Convention, to be holden within six months after the passage of said law."

At the Legislature of 1875–6 two thirds of both branches voted to recommend to the people of the State to vote for calling a Convention to amend or revise the Constitution. At the next general election a majority of those voting voted to call the Convention.

In pursuance of this section of the Constitution, the last Legislature passed an Act calling this Convention. In that Act it is provided as follows: "It shall be the duty of the Governor to attend said Convention at the opening thereof, and to administer the constitutional oath of office to the delegates, and preside at all meetings thereof until a President has been elected and taken his seat; and the Governor shall have neither the casting vote nor any other vote therein. The Secretary of State shall also attend at the opening of the Convention, and call the roll of delegates."

In pursuance of the power conferred by this Act of the Legislature, I have now called this Convention to order, and I will direct the Secretary of State, Mr. Beck, to proceed and call the roll of delegates. Delegates will answer to their names as the roll is called.

The Secretary of State, Hon. Thomas Beck, then called the roll, and the following delegates answered to their names:

DELEGATES PRESENT.

Andrews,	Edgerton,	Jones,
Ayers,	Estee,	Joyce,
Barbour,	Estey,	Kelley,
Barnes,	Evey,	Kenny,
Barry,	Farrell,	Keyes,
Barton,	Fawcett,	Kleine,
Beerstecher,	Filcher,	Laine,
Belcher,	Finney,	Lampson,
Bell,	Freeman,	Larkin,
Berry,	Freud,	Larue,
Biggs,	Garvey,	Lavigne,
Blackmer,	Glascock,	Lewis,
Boggs,	Gorman,	Lindow,
Boucher,	Grace,	Mansfield,
Brown,	Graves,	Martin,
Burt,	Gregg,	McCallum,
Caples,	Hager,	McComas,
Casserly,	Hale,	McConnell,
Chapman,	Hall,	McCoy,
Charles,	Harrison,	McFarland,
Condon,	Harvey,	McNutt,
Cowden,	Heiskell,	Mills,
Cross,	Herold,	Moffat,
Crouch,	Herrington,	Moreland,
Davis,	Huestis,	Morse,
Dean,	Hilborn,	Murphy,
Dowling,	Hitchcock,	Nason,
Doyle,	Hoge,	Nelson,
Dudley, of Solana,	Holmes,	Neunaber,
Dudley, of San Joaquin and Amador,	Howard,	Noel,
	Hughey,	O'Donnell,
Dunlap,	Hunter,	Ohleyer,
Eagon,	Johnson,	O'Sullivan,
Overton,	Smith, of 4th District,	Van Dyke,
Porter,	Smith, of San Francisco,	Van Voorhies,
Prouty,	Soule,	Walker, of Marin,
Pulliam,	Stedman,	Walker, of Tuolumne,
Reddy,	Steele,	Waters,
Reed,	Stevenson,	Webster,
Reynolds,	Stuart,	Weller,
Rhodes,	Sweasey,	Wellin,
Ringgold,	Swenson,	West,
Rolfe,	Swing,	Wickes,
Schell,	Tinnin,	White,
Schomp,	Townsend,	Wilson, of Tehama,
Shafter,	Tully,	Wilson, of 1st District,
Shoemaker,	Turner,	Winans,
Shurtleff,	Tuttle,	Wyatt.
Smith, of Santa Clara,	Vacquerel,	

ABSENT.

A. Campbell, Jr.,	David S. Terry,	George M. Hardwick, deceased.
Daniel Inman,	Thos. Morris, resigned,	
John F. Miller,	H. H. Haight, deceased,	

THE OATH OF OFFICE.

GOVERNOR IRWIN. The members of the Convention have all responded to their names, except four; there being a majority of the Convention present we will proceed to the next business in order, which will be to swear in the members. The Secretary will call the names of members in groups of four, in alphabetical order, and when their names are called members will come forward and take the constitutional oath of office.

Delegates then came forward in groups of four to the right of the President's desk, and took and subscribed to the following oath: "I do solemnly affirm that I will support the Constitution of the United States and the Constitution of the State of California; and that I will faithfully discharge the duties of the office of member of the Convention to frame a new Constitution for the State of California according to the best of my ability."

The delegates subscribed to the oath in the following order:

A. R. Andrews,	S. B. Burt,	William H. Prouty,
James J. Ayers,	A. C. Freeman,	A. P. Overton,
Clitus Barbour,	W. F. Huestis,	J. M. Porter,
W. H. L. Barnes,	T. D. Heiskell,	M. R. C. Pulliam,
Edward Barry,	Conrad Herold.	James S. Reynolds,
James N. Barton,	D. W. Herrington,	Patrick Reddy,
C. J. Beerstecher,	G. W. Hunter,	Jno. M. Rhodes,
Isaac S. Belcher,	V. E. Howard,	Charles F. Reed,
J. Berry,	William P. Hughey,	J. Schomp,
Peter Bell,	J. P. Hoge,	C. S. Ringgold,
Marion Biggs,	S. A. Holmes,	H. C. Rolfe,
E. T. Blackmer,	J. R. W. Hitchcock,	George W. Schell,
Augustus H. Chapman,	S. G. Hilborn,	E. O. Smith,
James Caples,	P. J. Joyce,	Benj. Shurtleff,
John D. Condon,	J. M. Kelley,	J. McM. Shafter,
D. H. Cowden,	L. F. Jones,	Rufus Shoemaker,
J. M. Charles,	George A. Johnson,	E. P. Soule,
Charles W. Cross,	T. H. Laine,	H. W. Smith,
P. T. Dowling,	Charles R. Kleine,	Geo. Venable Smith,
Hamlet Davis,	James H. Keys,	John C. Stedman,
James E. Dean,	Bernard F. Kenny,	W. J. Sweasey,
Rob. Crouch,	Henry Larkin,	Geo. Steele,
Josiah Boucher,	Hugh M. Larue,	Chas. V. Stuart,
P. Dunlap,	R. M. Lampson,	F. O. Townsend,
Jonathan M. Dudley,	H. C. Boggs,	Chas. Swenson,
Luke Doyle,	John Mansfield,	R. S. Swing,
W. L. Dudley,	John F. Lindow,	W. J. Tinnin,
Morris M. Estee,	Raymond Lavigne,	P. B. Tully,
T. H. Estey,	David Lewis,	A. P. Vacquerel,
John A. Eagon,	Thomas McConnell,	Daniel Tuttle,
Henry Edgerton,	Rush McComas,	Henry K. Turner,
Edward Evey,	John G. McCallum,	Walter Van Dyke,
J. A. Filcher,	Edward Martin,	W. Van Voorhies,
Eugene Fawcett,	John F. McNutt,	Jno. Walker,
S. J. Farrell,	Thos. Bond McFarland,	Hugh Walker,
Chas. G. Finney, Jr.,	Jno. F. Miller,	Joseph R. Weller,
Eugene Casserly,	John McCoy,	P. M. Wellin,
J. Richard Freud,	Wm. S. Moffat,	J. V. Webster,
J. C. Gorman,	H. Mills,	Byron Waters,
W. P. Grace,	Lucius D. Moss,	John T. Wickes,
J. B. Garvey,	W. W. Moreland,	Wm. F. White,
B. B. Glascock,	James E. Murphy,	H. C. Wilson, (Tehama)
J. E. Hale,	Henry Neunaber,	John P. West,
W. J. Graves,	Thorwald Nelson,	Samuel M. Wilson,
Jno. S. Hager,	Edmund Nason,	Jos. W. Winans,

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V. A. Gregg,	George Ohleyer,	N. G. Wyatt,
Joel W. Harvey,	Chas. C. O'Donnell,	Joseph C. Brown,
Thomas Harrison,	James O'Sullivan,	D. C. Stevenson,
J. B. Hall,	A. E. Noel,	

A RESIGNATION.

GOVERNOR IRWIN—Gentlemen of the Convention: I have a paper here which has been handed to me, which purports to be a resignation of one of the members, or a gentleman who was elected as a member of the Convention. I will read it, and it will lay upon the table until the Convention shall be organized:

SAN FRANCISCO, September 14, 1878.

To the President and Members of the Constitutional Convention of the State of California—Gentlemen: I hereby resign my position as Delegate to your Convention from the City and County of San Francisco.

THOMAS MORRIS.

Witness: CLITUS BARBOUR.

GOVERNOR IRWIN. It will lay on the table until after the organization of the Convention, when the Convention can take such action as it may deem proper.

ADJOURNMENT.

MR. DUDLEY, of San Joaquin. I move now that the Convention adjourn until Monday morning at eleven o'clock, in order that members may have an opportunity to confer with each other in regard to the organization.

GOVERNOR IRWIN. Mr. Dudley moves that the Convention now adjourn until eleven o'clock on Monday.

MR. HUESTIS. I second the motion.

MR. BEERSTECHER. I move to amend that resolution so that it will read that we do now adjourn until three o'clock this afternoon to assemble here and proceed to business.

MR. FREUD. I second the motion.

GOVERNOR IRWIN. The question comes on the amendment to the motion to adjourn until Monday at eleven o'clock. The amendment is that the Convention adjourn until three o'clock this afternoon.

The question was put, and before the Chair decided MR. BEERSTECHER demanded the ayes and noes.

GOVERNOR IRWIN. It requires three to call for the ayes and noes.

MESSRS. O'SULLIVAN and WHITE called for the ayes and noes.

GOVERNOR IRWIN. Do you understand the question? The original motion was that the Convention adjourn to meet at eleven o'clock on Monday. To this an amendment is offered to adjourn until three o'clock this afternoon. The question now is on the adoption of the amendment. Those in favor of the amendment will say "aye" as their names are called, and those opposed "no."

MR. HAGER. I move to amend the amendment by substituting twelve o'clock on Monday.

GOVERNOR IRWIN. It is the opinion of the Chair that action on the adjournment to the shortest period will take precedence.

MR. HAGER. Not by any general rule we have before us. We have adopted no rule. Ordinarily in legislative bodies they have such a rule that a motion to adjourn to the shortest period shall be put first, but that is by an express rule of that body, not by any general parliamentary rule.

MR. BEERSTECHER. Mr. President: I rise to a point of order. The Chair has decided, and if he desires to take an appeal he has got the privilege of appealing from the decision of the Chair.

GOVERNOR IRWIN. The Chair has not finally decided. The Chair will decide in due time.

MR. HAGER. Then I might reply that the gentleman himself is out of order, as there is no rule that applies to him. I presume that the correct rule would be to put the propositions as they regularly come up. If I should offer a substitute which would be allowed by parliamentary rule, I might offer as a substitute that we adjourn to another period. My object is merely to test the sense of the Convention in the shortest and most expeditious way.

GOVERNOR IRWIN. If the Convention does not see proper to adopt the amendment they will vote it down, and the question will then come on the motion to adjourn until eleven o'clock on Monday. The question is now on the amendment offered by the gentleman from San Francisco, Mr. Beerstecher, to adjourn until three o'clock this afternoon. The members in favor of the amendment will answer "aye" as their names are called; those opposed will answer "no." The Secretary will call the roll. I beg that members will maintain perfect silence during the call of the roll, otherwise it will be impossible to hear the responses.

THE SECRETARY called the first name.

MR. HERRINGTON. I rise to a point of order, and object to the calling of the roll.

GOVERNOR IRWIN. The roll is being called. The gentleman will take his seat. The roll call will proceed.

The roll was then called, with the following result:

AYES.

Andrews,	Doyle,	Joyce,
Ayers,	Evey,	Kenny,
Barbour,	Farrell,	Kleine,
Barton,	Filcher,	Larkin,
Beerstecher,	Finney,	Lavigne,
Bell,	Freud,	Lindow,
Blackmer,	Gorman,	McCoy,
Brown,	Grace,	Morse,
Condon,	Harrison,	Nason,
Cross,	Herold,	Nelson,
Davis,	Howard,	Neunaber,
Dean,	Hughey,	O'Donnell,
Dowling,	Hunter,	O'Sullivan,
Reynolds,	Sweasey,	Wellin,
Rhodes,	Swenson,	West,
Ringgold,	Tuttle,	Wickes,
Smith, of San Francisco,	Vacquerel,	White,
Soule,	Walker, of Tuolumne,	Wilson, of Tehama,
Stedman,	Webster,	Wyatt—57.

NOES.

Barnes,	Hall,	Ohleyer,
Barry,	Harvey,	Overton,
Belcher,	Heiskell,	Porter,
Berry,	Herrington,	Prouty,
Biggs,	Huestis,	Pulliam,
Boggs,	Hilborn,	Reddy,
Boucher,	Hitchcock,	Reed,
Burt,	Hoge,	Rolfe,
Caples,	Holmes,	Schell,
Casserly,	Johnson,	Schomp,
Chapman,	Jones,	Shafter,
Charles,	Kelley,	Shoemaker,
Cowden,	Keyes,	Shurtleff,
Crouch,	Laine,	Smith, of Santa Clara,
Dudley, of Solano,	Lampson,	Smith, of 4th District,
Dudley, of San Joaquin and Amador,	Larue,	Steele,
	Lewis,	Stevenson,
Dunlap,	Mansfield,	Stuart,
Eagon,	Martin,	Swing,
Edgerton,	McCallum,	Tinnin,
Estee,	McComas,	Townsend,
Estey,	McConnell,	Tully,
Fawcett,	McFarland,	Turner,
Freeman,	McNutt,	Van Dyke,
Garvey,	Miller,	Van Voorhies,
Glascock,	Mills,	Walker, of Marin,
Graves,	Moffat,	Waters,
Gregg,	Moreland,	Weller,
Hager,	Murphy,	Wilson, of 1st District,
Hale,	Noel,	Winans—89.

During the call of the roll, when MR. HERRINGTON'S name was called he said:

Mr. Chairman, I believe I am now in order.

GOVERNOR IRWIN. How does the gentleman vote?

MR. HERRINGTON. I vote "no," upon the ground that I do not believe that the Chairman of this Convention has any right to adjourn this body.

GOVERNOR IRWIN. The gentleman will please take his seat. The Secretary will proceed with the roll call.

The calling of the roll was then finished.

GOVERNOR IRWIN. Ayes, 57; noes, 89. The Convention refuses to adopt the amendment. The question is now on the original motion, to adjourn until 11 o'clock on Monday.

The motion prevailed, and the Governor, at 1:40 P. M., declared the Convention adjourned until Monday at 11 A. M.

THIRD DAY.

SACRAMENTO, Monday, September 30th, 1878.

At eleven o'clock A. M., pursuant to adjournment, GOVERNOR IRWIN called the Convention to order and requested all persons not members or who had not seats assigned them on the floor, to retire outside the bar of the chamber.

The Secretary of State called the roll and the members were found in attendance as follows:

DELEGATES PRESENT.

Andrews,	Dunlap,	Howard,
Ayers,	Eagon,	Huestis,
Barbour,	Edgerton,	Hughey,
Barnes,	Estee,	Hunter,
Barry,	Estey,	Johnson,
Barton,	Evey,	Jones,
Beerstecher,	Farrell,	Joyce,
Belcher,	Fawcett,	Kelley,
Bell,	Filcher,	Kenny,
Berry,	Finney,	Keyes,
Biggs,	Freeman,	Kleine,
Blackmer,	Freud,	Laine,
Boggs,	Garvey,	Lampson,
Boucher,	Glascock,	Larkin,
Brown,	Gorman,	Larue,
Burt,	Grace,	Lavigne,
Caples,	Graves,	Lewis,
Casserly,	Gregg,	Lindon,
Chapman,	Hager,	Mansfield,
Charles,	Hale,	Martin,
Condon,	Hall,	McCallum,
Cowden,	Harrison,	McComas,
Cross,	Harvey,	McConnell,
Crouch,	Heiskell,	McCoy,
Davis,	Herold,	McFarland,
Dean,	Herrington,	McNutt,
Dowling,	Hilborn,	Miller,
Doyle,	Hitchcock,	Mills,
Dudley, of Solano,	Hoge,	Moffat,
Dudley, of San Joaquin,	Holmes,	Morse,

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Moreland,	Schell,	Turner,
Murphy,	Schomp,	Tuttle,
Nason,	Shafter,	Vacqueral,
Nelson,	Shoemaker,	Van Dyke,
Neunaber,	Shurtleff,	VanVoorhies,
Noel,	Smith, of Santa Clara,	Walker, of Marin,
O'Donnell,	Smith, of 4th District,	Walker, of Tuolumne,
Ohleyer,	Smith, of San Francisco,	Waters,
O'Sullivan,	Soule,	Webster,
Overton,	Stedman,	Weller,
Porter,	Steele,	Wellin,
Prouty,	Stevenson,	West,
Pulliam,	Stuart,	Wickes,
Reddy,	Sweasey,	White,
Reed,	Swenson,	Wilson, of Tehama,
Reynolds,	Swing,	Wilson, of San Francisco,
Rhodes,	Tinnin,	Winans,
Ringgold,	Townsend,	Wyatt—146.
Rolfe,	Tully,	

ABSENT.

Campbell,	Inman,	Terry—3.

GOVERNOR IRWIN. The next business in order will be the reading of the minutes of the meeting on Saturday. The gentleman who kept the minutes will read them.

THE SECRETARY.

MR. WHITE. Mr. President: I desire to call the attention of the Convention to a matter which several have spoken to me about. It appears to me, sir, that the law under which we are convened here has made one omission. The Legislature undertook to give us a temporary organization, but they have only gone so far as to say that the Governor shall preside until the permanent President shall have been elected, and they say nothing about the Secretary, except that he shall be present and call the roll of delegates. For the purpose of correcting that omission I move that the Secretary of State be requested to act as temporary Secretary of this Convention, and upon his acceptance that he be declared the temporary Secretary of this body until the Convention shall have elected a permanent Secretary.

GOVERNOR IRWIN. The Act does not specifically say that he shall continue to act until a permanent Secretary shall have been elected, but it is fairly implied, and is understood. That is the construction that both the Secretary of State and myself have put upon the Act, with reference to his duty, and I suppose he will continue to act.

MR. O'DONNELL. Mr. President: What is the question?

MR. ESTEE. Mr. President: I understand that the first business in order is the election of a President of this Convention, under the statute. The adoption of a resolution for the nomination of officers might be in order if we had any precedent or any authority under any known parliamentary rules. As it is, I suggest that the first business in order is the election of a President of this Convention. Let us proceed in the usual order, as the statute indicates. Let us proceed to elect a President and then a Secretary of the Convention.

MR. VAN VOORHIES. Mr. President: There are three of the members who have not as yet been sworn in. I think that should be the first order of business.

MR. McFARLAND. Mr. President: If there be any doubt as to whether the Secretary of State is entitled to act as Secretary until a permanent Secretary has been elected, it would do no harm for this Convention to declare that he shall act until we shall have elected a permanent Secretary, and I don't see how there can be any objection to it. In my opinion, the resolution should pass.

MR. O'DONNELL. Mr. President: As there seems to be a doubt about the matter, let it be put to a vote of the Convention, and that will settle the matter.

[Cries of "Question, question."]

OTHER DELEGATES.

MR. VAN VOORHIES. Mr. President: If I understand it, we cannot act upon that resolution until these other members are sworn in.

GOVERNOR IRWIN. It will be proper for them to be sworn in first. Gentlemen of the Convention, there are some two or three members, I understand, who were not present on Saturday, and have not yet been sworn in, and this matter will remain in temporary abeyance until these three members shall have been sworn in. The matter will lie on the table temporarily. The members who have not yet been sworn in will now please come forward and take the oath.

MR. BEERSTECHER. Mr. President: I object to David S. Terry being sworn in, and base my objections upon this——

GOVERNOR IRWIN. The gentleman is out of order.

MR. BEERSTECHER. Section seven of article eleven declares——

GOVERNOR IRWIN. The gentleman will take his seat—he is out of order. The law makes it my duty to swear in the persons elected to the Convention. Then any objection to the eligibility of members can be raised. The power to determine who are members rests in the Convention, and not in the Governor, who presides temporarily.

MR. O'DONNELL. Mr. President: I think we have the right to enter our objections——

GOVERNOR IRWIN. The gentleman will please take his seat, he is out of order.

MR. O'SULLIVAN. Mr. President: I think so also, and I protest against the gentleman taking his seat.

GOVERNOR IRWIN. The gentleman will take his seat; the gentleman is out of order.

[D. S. Terry, of San Joaquin, Alexander Campbell, Jr., of Alameda, and Daniel Inman, of Alameda, were sworn in and subscribed to the oath of office.]

THE SECRETARY AGAIN.

GOVERNOR IRWIN. Gentlemen of the Convention, the Chair will hold that the law providing for the meeting of this Convention has provided for a provisional organization, and one of these provisions is, according to the construction of the Chair, that the Secretary of State shall act as Secretary of the Convention during the provisional existence of the Convention. That is the ruling of the Chair. If the gentleman who made the motion desires to except to the ruling, the Chair will put the question on appeal.

MR. WHITE. Mr. President: I appeal from the decision of the Chair; not that I desire to make any factious opposition, but merely that the Convention may give an expression of opinion on it.

MR. O'DONNELL. Mr. President: According to the statutes which I have here, "the Secretary of State shall attend the Convention and call the roll of delegates."

GOVERNOR IRWIN. Has an appeal been taken from the decision of the Chair?

MR. WHITE. Mr. President: I appeal from the decision of the Chair.

MR. O'SULLIVAN. I second the appeal.

GOVERNOR IRWIN. Gentlemen: The ruling of the Chair on this point, to wit, that the Secretary of State is authorized to act without being appointed by the Convention, has been appealed from, and the question now is upon sustaining the decision of the Chair.

MR. ANDREWS. Mr. President: As I understand it, the question now is, shall the decision of the Chair stand as the decision of the Convention.

GOVERNOR IRWIN. Yes, sir.

MR. ANDREWS. Does not the Act require that the vote shall be taken by ayes and noes?

GOVERNOR IRWIN. Not on a question of that kind.

The question was put, and the Convention sustained the ruling of the Chair.

SUBORDINATE OFFICERS.

GOVERNOR IRWIN. The Chair will take occasion to announce that it has appointed the following gentlemen to act during the continuance of the provisional organization: Minute Clerk, A. J. Dobbins; Sergeant-at-Arms, J. M. Farrelly; Watchman, James Saltry; Doorkeeper, B. F. Alexander; Porter, Hiram Clock. Their terms of office will expire on the organization of the Convention. I have here, also, a communication addressed to the members of the Convention, which I will pass to the Secretary. It will lie on the table until the Convention shall have been organized.

MR. BARBOUR. I desire to ask about the appointment of these officers.

GOVERNOR IRWIN. They will continue to act until the Convention shall have been organized.

MR. BARBOUR. I wish to know if that is the decision of the Chair, so as to take my appeal and prevent——

GOVERNOR IRWIN. I will state to the gentleman that this action was taken by the Chair because it was deemed necessary that such officers should be in existence. For instance, it is desirable to have the minutes of the Convention properly kept. It was necessary to be done, and the Chair, recognizing the necessity, took the responsibility of appointing these officers.

MR. BARBOUR. I desire to know by what law or authority it is done.

GOVERNOR IRWIN. Has the gentleman any motion to make?

MR. BARBOUR. Mr. President: I desire to appeal from the ruling of the Chair.

MR. TULLY. Mr. President: I move that the Convention now proceed to ballot for President.

MR. MURPHY. I second the motion.

GOVERNOR IRWIN. It is moved and seconded that the Convention proceed—

MR. BEERSTECHER. Mr. President: I rise to a point of order. My point of order is that the election is not to be by ballot at all, as the Act says it must be viva voce.

MR. BARBOUR. Mr. President: I have a resolution which I desire to offer.

GOVERNOR IRWIN. The question is on taking a ballot for President of the Convention, or taking a vote. The motion has been seconded. Gentlemen, are you ready to proceed to vote for President of the Convention?

MR. BARTON. Gentlemen of the Convention: I trust that you will act in this matter in a channel that is proper and respectable, quietly, and not proceed to vote for candidates for President until they have been properly presented to the Convention, thereby giving the members of the Convention an opportunity of knowing who are the candidates.

GOVERNOR IRWIN. The question is on proceeding to vote. Are you ready for the question?

The motion was put by the Chair and carried.

MR. BARBOUR. Mr. President: I call for my resolution now.

MR. VAN DYKE. Mr. President: I rise to a point of order.

GOVERNOR IRWIN. The Convention has just decided to vote now for a President of the Convention. That business is now in order.

MR. VAN DYKE. Mr. President: I understand that it is to nominate candidates to be voted for.

GOVERNOR IRWIN. The Convention has just decided to vote.

MR. VAN DYKE. Mr. President: As I understand it, the only order of business now is to present names to be voted for.

GOVERNOR IRWIN. That is not strictly in order; every member can vote as he chooses.

MR. VAN DYKE. Mr. President: Would it not be a part of that order of business to present names to be voted for, if any gentleman sees proper to present them?

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GOVERNOR IRWIN. If the resolution had been put in that form, it would have been proper, but it was not. The resolution is that the Convention proceed to vote.

MR. BARBOUR. Mr. President: I call for the reading of the resolution I have sent up to the desk, which is in reference to this very matter of proposing the names of candidates.

GOVERNOR IRWIN. The gentleman is out of order.

[Cries of "Call the roll."]

MR. BARBOUR. Mr. President: I would like to have some gentleman point out wherein I am out of order.

GOVERNOR IRWIN. The Convention has decided to proceed to vote for a President of the Convention, and the gentleman will take his seat.

MR. BARBOUR. Mr. President: I call for the reading of the resolution.

GOVERNOR IRWIN. The gentleman will please take his seat.

MR. BARBOUR. Mr. President: I wish to appeal from the decision of the chair, upon the ground that I have offered a resolution in reference to this very subject-matter, requiring the candidates to come forward and define their position upon the true and only questions before this Convention, and I insist upon it before a single vote is cast. [Calls of order.] I deny your right to silence me, sir. I want to know your authority. I am elected here by the sovereign people of the State of California, and you are not. [Applause, loud and uproarious.]

GOVERNOR IRWIN. The gentleman will come to order.

MR. BARBOUR. Mr. President: I hold my seat on this floor by better authority than you do yours, and I want to know where your rules of order are. I hold my seat on this floor by virtue of the sovereign will of the people of the State of California, and I know no rule of order. [Applause.] I want to know where your officers are to enforce those rules. I hold that you have no rules; there have never been any adopted.

GOVERNOR IRWIN. The gentleman is out of order.

MR. BARBOUR. I am in order.

GOVERNOR IRWIN. The gentleman is out of order, and must take his seat.

MR. BEERSTECHER. Mr. President: I second the appeal, and indorse every sentiment the gentleman has uttered here.

MR. O'SULLIVAN. Mr. President: I also hold that he has no right to be silenced.

MR. O'DONNELL. I do the same.

GOVERNOR IRWIN. The gentlemen will take their seats; I desire the Convention to——

MR. BARBOUR. Mr. President: I call for the ayes and noes on the appeal.

MR. BEERSTECHER. I also call for the ayes and noes.

MR. O'SULLIVAN. I second the call for the ayes and noes.

GOVERNOR IRWIN. The ayes and noes have been called for by the gentleman from San Francisco, Mr. O'Sullivan, the gentleman from San Francisco, Mr. Beerstecher, and the gentleman from San Francisco, Mr. Barbour. I wish to make a remark to the Convention. It is necessary to preserve order in order to proceed with business, and there must be no applause. It is not the proper thing to either express approbation or disapproval by persons in the lobby, nor is it, strictly speaking, by members of the Convention. Gentlemen who are members of the Convention shall have their rights respected. I desire now, before this vote is taken, to state the position of the question. The gentleman from Santa Clara, Mr. Tully, moved that the Convention now proceed to vote for a President of the Convention. That question was put. The gentleman from San Francisco, Mr. Barbour, sent up some resolutions to be read. The Chair ruled that the resolutions at this time were out of order, and from that ruling the gentleman from San Francisco, Mr. Barbour, takes an appeal. The question now is: Shall the decision of the Chair stand as the decision of the Convention?

MR. WATERS. Mr. President: I ask that the resolutions be read for information. I would like to know what we are voting on.

MR. O'DONNELL. Mr. President: I second that motion.

GOVERNOR IRWIN. The question is properly upon——

MR. INMAN. Mr. President: The gentleman is out of order. The question is now whether the decision of the Chair shall stand as the decision of the Convention.

GOVERNOR IRWIN. The decision of the Chair is based on this: After the Convention had decided to proceed to vote these resolutions are introduced, and the decision is that they could not be read at that stage of the proceedings, after the Convention had determined to proceed with the ballot. After getting through with the ballot if the gentleman chooses to call up the resolutions they will then be in order. [Cries of "Call the roll."]

The Secretary proceeded to call the roll, with the following result:

AYES.

Andrews,	Cowden,	Hall,
Ayers,	Crouch,	Harvey,
Barnes,	Davis,	Heiskell,
Belcher,	Dean,	Huestis,
Berry,	Dudley, of Solano,	Hilborn,
Biggs,	Dunlap,	Hitchcock,
Blackmer,	Eagon,	Hoge,
Boggs,	Edgerton,	Holmes,
Boucher,	Estee,	Howard,
Brown,	Estey,	Inman,
Burt,	Evey,	Johnson,
Campbell,	Fawcett,	Jones,
Caples,	Filcher,	Kelley,
Casserly,	Garvey,	Keyes,
Chapman,	Graves,	Laine,
Charles,	Gregg,	Lampson,
Larue,	Porter,	Stuart,
Lewis,	Prouty,	Swing,
Mansfield,	Pulliam,	Terry,
Martin,	Reddy,	Tinnin,
McCallum,	Reed,	Townsend,
McComas,	Reynolds,	Tully,
McConnell,	Rhodes,	Turner,
McFarland,	Rolfe,	Van Dyke,
McNutt,	Schell,	Van Voorhies,
Miller,	Schomp,	Walker, of Tuolumne,
Mills,	Shafter,	Waters,
Moreland,	Shoemaker,	Webster,
Murphy,	Shurtleff,	Weller,
Nason,	Smith, of Santa Clara,	West,
Noel,	Smith, of 4th District,	Wilson, of Tehama,
Ohleyer,	Steele,	Wilson, of San Francisco,
Overton,	Stevenson,	Winans—99.

NOES.

Barbour,	Herold,	O'Donnell,
Barton,	Herrington,	O'Sullivan,
Beerstecher,	Hughey,	Ringold,
Bell,	Hunter,	Smith, of San Francisco,
Condon,	Joyce,	Soule,
Cross,	Kenny,	Stedman,
Dowling,	Kleine,	Sweasey,
Doyle,	Larkin,	Swenson,
Farrell,	Lavigne,	Tuttle,
Finney,	Lindow,	Vacquerel,
Freeman,	McCoy,	Walker, of Marin,
Freud,	Moffat,	Wellin,
Gorman,	Morse,	Wickes,
Grace,	Nelson,	White,
Harrison,	Neunaber,	Wyatt—45.

GOVERNOR IRWIN. Ayes, 99; noes, 45. The decision of the Chair stands as the decision of the Convention.

ORGANIZATION.

MR. LAINE. Mr. President: I desire to ask the Chair whether it is now in order to make any nominations or whether there is anything in order, except to proceed to vote?

GOVERNOR IRWIN. Nothing is in order but to proceed to vote.

MR. LAINE. Then, Mr. President, it seems to me that we should proceed decently and in order. We are occupying no ordinary position here. It is not an ordinary Convention, but it is a Convention called by the sovereign will of the people of the State of California, and the eyes of the whole State are upon us here. We should allow no haste or anything to control us in this matter. We should remember that upon the floor of this Convention we are all children of the State of California—called together by her behest—not to represent any branch of her family or any particular interest or ism. But the sovereign State has determined in her wisdom to reconstruct, so to speak, the political fabric in which we have been dwelling for over a quarter of a century. And in order that this matter may proceed decently, in order, it would be highly proper that we have regular nominations in this Convention, that all may be advised how to vote and for whom they desire to vote. Many of us are strangers to each other; all from distant parts of a State that has a very large territory. In order that this matter may get properly before the House, in my judgment it would be proper that we have nominations. But we seem to have arrived at a position where we can only proceed to a vote. I think that perhaps the House did not vote understandingly upon this question. I did not vote at all, because when the question was voted on I believed that it would place us in some confusion, and I did not desire to spring up and make any noise in the Convention, or to say anything. I am satisfied that the House did not vote understandingly, and in order that we may do so, I now move to reconsider the vote by which we determined to proceed to an immediate vote.

GOVERNOR IRWIN. I understood the gentleman to say that he did not vote. If any gentleman who voted in the affirmative on that proposition will move to reconsider it will be in order.

MR. LAINE. I believe the rule is different in the case of a viva voce vote.

GOVERNOR IRWIN. That is so.

MR. MCCALLIUM. I second the motion to reconsider.

MR. ESTEE. It strikes me that no member will object to knowing who the nominees before this Convention are to be.

GOVERNOR IRWIN. The question is on the motion to reconsider the vote by which the Convention decided to proceed to a vote.

MR. MURPHY. I move that the order of business be temporarily suspended in order to give gentlemen a chance to put candidates in nomination.

GOVERNOR IRWIN. If there be no objection to that suggestion it will be done. If there is any objection, however, we can only proceed to a vote.

MR. BEERSTECHER. I object to it. I desire to have the motion reconsidered.

MR. WEST. Mr. President: The law clearly defines the whole procedure in the organization of this House, and I believe, sir, in the interest of order, it is best to follow the letter of the law as nearly as possible. It provides that we shall vote viva voce. The provision requiring the vote to be taken viva voce supposes that each member in this Convention shall nominate his own candidate. A nomination would be entirely superfluous. It is not established by any precedent of parliamentary usage whatever, and would only occupy time. Each gentleman of the Convention is sovereign in regard to the individual

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for whom he may vote and to make his own choice. I hope the motion to reconsider will not prevail.

MR. HILBORN. Mr. President: I hope we shall not reconsider this vote. It is true, as has been stated by the gentleman from Santa Clara, Mr. Laine, that we come here as the children of the State to revise our Constitution. Let us not then adopt any of the ways of the politician; let us go at it and take a vote without any nominations at all. Let the vote of each member be his individual preference for President. I shall vote for some gentleman as presiding officer, not because he is the nominee of any particular party or clique, but I shall vote for him because I believe he is the best man to preside over us in this Convention. I believe that this is not the place to make nominations, and that we should go on and vote, and vote for the best man.

MR. BEERSTECHER. Mr. President: My position is that the vote ought to be reconsidered. And when the gentleman who has just preceded me stated that he objected to the reconsideration of this vote, and that we ought not to adopt the ways of the politician—which are the exact words that he used—I clearly and emphatically say that that is just the reason why I desire to have this vote reconsidered. If we go into nominations we know who the men are, and we can vote intelligently. If we vote in the dark, we vote a cut and dried ticket, made and manufactured by the political tricksters and wire-pullers who have seats in this Convention. And therefore, Mr. President——

MR. ESTEE. Mr. President: I beg to call the gentleman to order. My point of order is, that he says that political tricksters and wire-pullers have seats in this Convention. No gentleman in any deliberative body has a right to use any such language.

MR. HILBORN. Mr. President: I desire also to enter my protest. Everything that has been done here, except by the particular party with which the gentleman is associated, has been done openly and aboveboard.

GOVERNOR IRWIN. The gentleman will take his seat. The gentleman from San Francisco, Mr. Beerstecher, will keep himself within the bounds of parliamentary usage so far as language is concerned.

MR. BEERSTECHER. Mr. President: I did not intend to bring that remark of mine to bear upon any individual at all. I made it as a general remark, and I am sorry that the coat fits some persons. As I said before, I am in favor of having the vote reconsidered and the nominations brought to the attention of this Convention.

MR. BIGGS. Mr. President: I rise to a point of order. There never has been a vote taken upon the question. The question was to sustain the decision of the Chair.

GOVERNOR IRWIN. The gentleman's point of order is not well taken. The vote was taken, and a motion has been made and seconded to reconsider the vote, and upon that question the gentleman is speaking. The gentleman will proceed with his remarks.

MR. BEERSTECHER. For my part, I cannot see what the objection would be. I do not see that any gentleman can urge any tangible objection to our knowing exactly who are advanced here for the Presidency of this Convention. I hope that the motion will be sustained and that the persons may be publicly nominated here, and that we may know exactly what we are voting for on the very first ballot, and that we may clearly and distinctly know the different aspirants. I am free to say that I do not know the different aspirants, and I should like to vote intelligently. I desire to have the candidates brought up here publicly, that I may vote in daylight and not in darkness.

MR. WICKES. Mr. President: I believe that the decision of this matter is of great importance. The President of this Convention holds an office of great importance, in the appointment of committees, and we should know the status of those who aspire to that position. The eyes of the people of California are upon us, and if there is any attempt to gag the minority of this Convention, the people will know it.

MR. O'DONNELL. Mr. President and fellow delegates: This Convention constitutes an important event in the history of the world. The circumstances which brought it into existence are well known to the world. The people were suffering great social and political wrongs. There was sloth in the mart and schism in the temple; corruption in office and out of it. Murmurs of discontent arose among the people. In Pennsylvania and other Eastern States these murmurs ripened into deeds——

MR. INMAN. Mr. President: I rise to a point of order. The gentleman is not talking to the question at all.

MR. O'DONNELL. I am.

GOVERNOR IRWIN. I do not think the gentleman's point of order is well taken. The gentleman from San Francisco will proceed with his remarks.

MR. O'DONNELL. I was about to say that two years ago the people, without leaders and without organization, arose and wreaked vengeance upon the overshadowing monopolies which they truly regarded as the authors of their calamities. It is therefore certain that this sentiment of popular distrust and discontent is not local nor peculiar to California. It is widespread and pervades the entire nation. Mr. President, you and I will be able to see the party of the people take the reins of power. I assert that they are at this moment in a vast majority, not only in this State, but in all the States of the Union. The circumstance that their delegates are nominally in a minority in this Convention is due solely to a want of organization in the counties remote from the metropolis. In many counties the Workingmen had no tickets printed for the voters, and they were perforce compelled to select from the candidates on the opposition tickets in the field. San Francisco is true to the core—true to the principle of popular liberty. She is the great center from which our organization takes its impulse, and its grand forward movement in this political revolution.

MR. INMAN. I rise to a point of order, that the gentleman is not talking to the question before the house. As the gentleman has his speech written I would suggest that he send his manuscript up to the Secretary and have it read. It is certainly not to the question.

GOVERNOR IRWIN. The Chair cannot undertake to prescribe just what latitude a member may take. He may intend to bear upon the question. [Laughter.] It is left to the judgment of each individual. I rule that the point of order is not well taken, and the gentleman will proceed with his remarks.

MR. O'DONNELL. If it be conceded that the Workingmen's party represents the popular sentiment, and that it is numerically in the majority, then it will be well for this Convention to respect it. And we ask all delegates who sympathize with the mass in striking a blow for liberty and justice to unite with us in sustaining the measures which we propose to incorporate into the new Constitution. We demand a popular government—not in theory, but in practice. We demand that the mudsill of society shall be respected as much as the pillars of the edifice which the mudsill supports. I ask that the party we have the honor to represent, though nominally in a minority on this floor, be allowed to divide with the majority the honors in organizing this Convention. Let us consider, sir, that the eyes of the country are upon us; let us consider that this Convention is the initial movement of the great Presidential campaign of 1880. Every word uttered on this floor will be re-echoed and——

MR. REYNOLDS. If the gentleman will allow me a suggestion, I would move that the further reading of his speech be dispensed with, and that fifty copies be printed. [Cries of "Second the motion."]

GOVERNOR IRWIN. The gentleman will proceed with his remarks.

MR. O'DONNELL. I do not wish to detain this Convention one moment, but I want a fair deal. That is all I ask. I say that every word uttered on this floor will be re-echoed and reproduced in the distant East, and from this body the revolutionary party will take its cue. Our battle hymn will be their battle cry. And if we intend to lead in the revolution we must engrave upon our flag thoughts that breathe and words that burn, and they will find an echo in the hearts of the people. Mr. President, all I ask is a fair deal in this Convention. We want to make our nominations, and put these candidates upon that platform, and know exactly how they stand before the people. We bring a candidate before the people on popular principles—on anti-monopoly; and I understand that the Non-Partisans will put up one that is a monopoly man. And for that reason I want these candidates to get upon the floor, so that we may see precisely how they stand. We have got to make our record right here.

MR. ESTEE. I want to call the gentleman's attention to the fact that when the question was first raised the Non-Partisan element were in favor of making nominations. I suggested myself to the Chair that undoubtedly no gentleman would object to placing candidates in nomination for the Presidency. Instead of that the gentleman from San Francisco, Mr. Beerstecher, objected, and for that reason the gentlemen have made speeches and attempted to show that there was opposition to it on the part of the Non-Partisans, when there was none. The Non-Partisans do not object to that measure. We are anxious and more than anxious that the fullest investigation should be made as to every man's character who shall be brought forward on this occasion. They have nothing to conceal or hide. We are not here to make speeches, but to work. And now, if the gentlemen desire to put their names before the Convention, in God's name let them do it. There can be no objection, and I am sure none will be made.

MR. HERRINGTON. Mr. President: It occurs to me that if the gentleman's advice is followed, who has just taken his seat, that the parliamentary tactics he has endeavored to enforce would be simply carried out. Instead, therefore, of arriving at the opinions and views of the candidates presented before the Convention, it would be simply held by the Chair that this Convention has no particular business but to proceed with the ballot, and the very object and purpose of such reconsideration would be cut off. Now, if it is possible to get at the views and opinions of these candidates in reference to measures which are to be introduced in this Convention and embodied in the Constitution—if that idea can be reached as easily by the suggestion of the gentleman from San Francisco, Mr. Estee, as by a reconsideration—I can see no possible objection to it. But if the parliamentary tactics which are sought to be engrafted on this motion to defeat a reconsideration are carried out, the precise order of business which the Chair has held to be in order will be re-inaugurated, and the Chair will decide that nothing is in order but to proceed with the vote, and we shall hear nothing more from the candidates on this floor; and we would not understand a single solitary measure that he would endeavor to enforce, and it would be said to us, "It is not to be presumed that any gentleman occupying the high position of Chairman of this Convention would do anything wrong; it is not to be presumed that he would treat any portion of the Convention unfairly, or that he would be biased in making up the committees," and I know it would be high presumption in me to say that any distinguished gentleman occupying the position of President of this body would descend to favor the majority and oppress the minority. That is the way that business is usually conducted. It is always so exceedingly on the square that no man can object. When a distinguished gentleman occupies the high position of President he can do nothing wrong; he cannot stoop to appoint committees that would do anything unfair. But unfortunately it so happens that in carrying out their views they generally appoint their particular friends on committees, and by that means strangle the very best measures that are put forward in the Convention. Now, it is simply a fair deal that we want. We do not ask for anything more. We want to understand what the gentlemen's views are who are put forward for President of the Convention. When we have their views we will understand distinctly what we are to expect when they occupy that chair. There are many distinguished men in this Convention who are more or less warped by party prejudices. They are all more or less affected by it. They are all more or less striped in that

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regard, and I don't pretend that I am wholly devoid of party prejudice, and I admit that if I should happen to occupy a position of that kind—and God forbid that I ever should aspire to it—I admit that I have some party feeling, as far as my own party measures are concerned, that would affect the Constitution. I would like to see my friends upon the committees, and I believe the gentleman from San Francisco would likewise. That is the only question. We simply want to know what these candidates think; what their views are; what their feelings are; what they intend to do as to measures that shall be sought to be engrafted on the Constitution. If they will voluntarily get up and state clearly what their views are—if they will do this, I will consent that the motion shall be reconsidered. Otherwise, I want to know, before I vote, the changes they propose to make in the old instrument, or what ideas they have in reference to the revision of it.

MR. RINGGOLD made some remarks, but owing to the noise and confusion, it was utterly impossible to hear them at the reporter's desk.

MR. BEERSTECHER. Mr. President: I move the previous question.

MR. MCCALLUM. Mr. President: I have no doubt, sir, that a large majority of this Convention, by whomsoever they may have been elected, desire to arrive at a speedy result upon the pending question. I respectfully submit that there are only two ways to get out of it, in view of the objection raised by the gentleman from San Francisco, Mr. Beerstecher, to have the candidates come forward and express their views, and have them nominated. I submit, with all deference, that the difficulty arises on the misconstruction of the motion adopted. In all cases, when a Convention resolves to proceed to elect, in legislative bodies as well as elsewhere, it is parliamentary usage to make nominations. It is true that the general resolutions read: "That we now proceed to vote." If the author had left out the word "now," it would mean the same—that we proceed to vote. But the rule has been in all bodies of this kind to proceed and nominate, without objection from anybody. But as the Chair has ruled the other way, unless the Chair sees proper, with the unanimous consent of the Convention, or with a majority consent, to change that unusual construction, the only way out of the difficulty is to reconsider, in which case we must also vote down the original resolution, and then proceed to put some final resolution which will express what is evidently the desire of the other members on this one point; that gentlemen may be nominated in the usual manner, and that they be presented and allowed to speak to the Convention before being voted for.

The motion to reconsider was put and carried.

GOVERNOR IRWIN. The question is now upon the adoption of the original resolution. If there is no objection the candidates will now be placed in nomination. The Chair hears no objections.

NOMINATIONS.

MR. JOHNSON. Mr. President: I nominate for President of this Convention W. J. Tinnin, of Trinity County.

MR. BROWN. I do not think it necessary to speak in extraordinary high terms of any gentleman I may nominate before this Convention, or to say that he is superior to any other man, or to say that this Convention cannot succeed without his services as Chairman of it; nothing of that kind. But I would present before the Convention a gentleman that I consider, in parliamentary tact and good judgment, at least the equal of any man that may be named in this illustrious body. I therefore present the name of Volney E. Howard, of Los Angeles.

MR. BARBOUR. Mr. Chairman: I have the honor to place in nomination for the position of President of this Convention a gentleman long a resident of this State, having occupied official position by the choice of the people; a farmer connected with the agricultural industries of the country, whose record we submit in detail and as a whole to the consideration and the most careful scrutiny of this Convention. We challenge the fullest, fairest investigation into each and every of his actions, and into his opinions. We ask the same right as to all the other candidates. The issues, I may say, the issue, that is depending upon this event, sir, has been perverted, and is being industriously perverted all over this State. It is not the issue, now at least, between the so-called Workingmen, Republicans, Democrats, Independents, or Non-Partisans, but the line of demarcation is now drawn, and we draw it between monopoly on the one hand and anti-monopoly upon the other. We mean it, sir, in its broadest sense. When I say "monopoly," I mean any and all of those means whereby one man, or one combination of men, protected and governed by laws, or by the constructions that are placed upon laws, appropriate to themselves and hold as against the balance of mankind that common stock given by the Creator for the preservation of their lives, their comfort, and the support of those that are dependent upon them. By "monopoly," in its broadest sense, we mean every and any form of special legislation. By "monopoly," we mean the denial in any form, and in every form, to the people, in their sovereign capacity, of the entire and absolute control of each and every of their creations. By "monopoly" we mean that system whereby, in the State of California especially, a wall is being raised up higher and higher between the different classes of the community; on the one side luxury, magnificence, and wealth, governing and controlling legislation, warping the judgments of Courts, corrupting conventions and undermining the very foundations of society, and thus carrying devastation to the fair fields of labor, prostrating all the industries of the country, creating paupers where there never should be paupers, and creating destitution and misery where there never should be destitution and misery. We present a candidate who is devoted to the rights of labor, who respects the rights of capital, and against whom no taint or suspicion can justly be maintained at all. We present a candidate who, like Cæsar's wife, is above suspicion. There is his record, sir, made in the legislative halls. Scrutinize every vote; scrutinize every declaration; scrutinize every act. We invite it; we invite it fully, and we ask gentlemen upon the opposite side if they are willing to do us equal justice. We say, I repeat it again, that the line here is not between the Workingmen, the Democrats, the Republicans, the Non-Partisans, or what not, but monopoly on the one hand and anti-monopoly upon the other. When I took my seat in this Convention, when I became qualified as a member of the Convention, the mantle of party falls from me, sir, and I undertake to represent the people of the State of California and my constituency of the City of San Francisco. Thirty-three thousand voters of this State have expressed by distinct and positive and written propositions what they want us to do here. Now, sir, on behalf of the people, on behalf of those electors, I demand that this Convention be organized in the interest of what I understand to be the wishes of a majority of the people of the State of California; which are, that the power of corporations shall be restrained; which are, that monopolies shall be broken up; which are, that the Chinese nuisance shall be abated; which are, that political corruption shall be expelled from our public places. These, sir, are the great propositions which we are to embody, or which ought to be embodied, in the new Constitution. All the others are secondary. These are the main propositions. They tell you that the Workingmen's party is revolutionary; they tell you that it entertains wild and Communistic ideas; that it proposes to break the foundations of society; that it proposes to level and to disorganize. But I assure you, sir, it is untrue. It is that system of misrepresentation whereby the public mind has been poisoned with regard to the spirit and purposes of this people. They are men, sir, in rebellion I admit, but as righteous a rebellion as ever was sanctified by the blood and tears of a suffering people. They are rebels, I admit it; but they have rebelled, sir, against the oppressions of those very things that we are here to restrain; this corrupt greed, these monopolies, the Chinese curse, and political corruption. It is a rebellion that we are engaged in, and that rebellion will go on until it is triumphant, and then it may become revolution. If we are revolutionary that way I am willing to concede it; no further. Now, Mr. Chairman, I don't propose to trespass upon the time of this Convention, but I will say this to the gentlemen here: I have no desire and no design to go one quarter of an inch outside the Constitution of my country. I entertain no un-American ideas; I have no desire to root out the foundations of society or throw down the social structure, or to impair any of the well known interests of our country. What I want to do, sir, is to restrict and reconstruct the fabric which has been eaten into, and whose usefulness has been impaired by reason of the causes I have stated. That, sir, is our purpose, and that is all our purpose. In order, now, that justice may be done, in order that the truth and the light may be let in upon this whole proceeding, and, as one gentleman stated, the eyes of the State are upon us, which I admit, let us act in view of that fact, concealing nothing, suppressing nothing, voting openly and fairly after full consideration and reflection. Then the people will be satisfied, otherwise not. If gentlemen are prepared here with a cut and dried programme, to rush it through whether or no, it will be done, and the victim, I suppose, may be prepared for the sacrifice; but, sir, it shall not be done without my protest, which shall go upon the record along with the act. But I hope better things, and when I state objections, or any gentleman states objections, to any candidate here to-day, or when I propose a question, I hope no gentleman will raise a single objection to that question being answered and to that gentleman being satisfied. He shall be as to my candidate or I will withdraw him. That is all I ask upon that. And in conclusion, sir, I have the honor to place in nomination a gentleman who concurs with the views I have just stated; one who is distinguished, competent, experienced, and who fills the bill, as I claim he will fill the bill completely, and that man is Henry Larkin, of El Dorado. [Applause.]

MR. BEERSTECHER. Mr. Chairman: I rise to second the nomination of Mr. Larkin; and in seconding the nomination of Mr. Larkin, as one of the delegates from San Francisco, I desire to say that I recognize Mr. Larkin as being the exponent of those principles that we came here to represent. We have been basely and grossly misrepresented. We are not agrarians, and we are not barn burners, and we are not disorganizers, and we are not levelers, but we came here for the single and solitary purpose of reconstructing the laws of this State, and to give the people of this State a better organic law than they possess to-day. If the people of this State were satisfied with the organic law that they have, they certainly would not have voted to have another one substituted in its place. But it is because the people are not satisfied that this Convention has been called, and the delegates from San Francisco, who recognize Mr. Larkin, the gentleman just nominated, as the exponent of their position in this Convention, came here for the purpose of giving to the people of the State of California an organic law that will be an improvement upon the present one. We have not come here to create dissention; we have not come here for the purpose of jumping upon the floor at every motion, and to occupy the time of this Convention, and I hope I may be excused if, in the preliminary organization of this Convention, I have risen more frequently than some gentlemen have thought necessary. But I hope that hereafter such will not be the case. Yet, the matter of electing a President of this Convention is an important matter in every sense. The President of this Convention will be the figurehead of the Convention, and we desire to stamp this Convention as the Convention of the people, and not as the Convention of monopoly. We desire, and we came here for the purpose of restricting monopoly, but not for the purpose of disorganizing. We can see that corporations have rights, and we are willing to give them rights, but we also desire to have the rights of the people recognized. We came here for the purpose of joining with members from all portions of the country, from all parts of the State of California, for the purpose of making a crusade against the aspirations of railroad companies and land monopolies, gas and water monopolies, and the lottery called stock gambling. We came here for the purpose of making a crusade against the Chinese, and for the purpose of reforming the taxation system, and the interest system, but we do not come here for the purpose of taking away any property that any man has honestly acquired. We do not come here for the purpose of confis-

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cating the property of any man, but we come here for the purpose of stopping the legalized system of confiscation, namely: by exorbitant rates of interest, by which men's property is being confiscated every day. We come here for the purpose of organizing a right system of taxation; we come here offering to the country members to join them in their fight against their oppressors. We recognize that the Granger element in this State has exactly the same fight to make that the honest artisan and mechanic in the City of San Francisco is making. And, gentlemen, I wish to make a prophecy before this Convention, and that is this: Before ten days have gone by, the sheep and the goats will be divided in this Convention, and you will see that the Workingmen's party, as represented here from San Francisco, will belong among the sheep, and not among the goats; you will see that the Workingmen's party are honestly opposed to these oppressions and burdens that now rest upon the people, and you will see these very men who came here with fair promises and fair pledges, will be pitted against the interests of the people, as they always have been pitted against the interests of the people. Now, gentlemen, a man's record ought to have something to do with the vote you are casting here to-day, and perhaps to-morrow. There are gentlemen who will be offered, who have had it in their power for the last thirty years to make this the most prosperous State in the Union. There are gentlemen who will be offered here for your indorsement or your rejection, who have had it in their power to prevent the oppression of the monopoly and the misuse of corporation powers, but they have not done it. They have not lifted their fingers against anything of that kind. The hard times that are upon us, and the oppression of the people, could been arrested by these men, and they have not been willing to arrest them. We offer Mr. Larkin's record as the exponent against oppression and against monopolies in all its forms. We challenge any gentleman to come up here and say aught against Mr. Larkin's public life. And in conclusion, let me say that the record that will be made by this Convention is a record for life and for political death to every member here. We may put a Constitution in the field that the people will reject, and if they do reject the definitions or provisions contained in that new Constitution they will be repudiated and rejected by the people. The people have reasoned, and they have said there must be a revision of the laws of this State, and the same people who have called this Convention here will repudiate the men who stand upon this floor in favor of monopolies and corporations, and oppressions generally. Gentlemen, I call your attention to the fact that it is important that we place a figure-head here, right upon the first day, whom the people can indorse. If we do not do this, if we oppose the will of the people, we are opposed to the current of a Niagara, and it is sure to swamp us in the end. This will be our political life or death in this Convention, and I hope that, as we offer Mr. Larkin to you, you will accept Mr. Larkin. I am confident you will find us from San Francisco standing side by side with you, fighting against all the monopolies that I have enumerated. I repel and repudiate the idea that I am a communist and disorganizer. I came here to vote for the interests of all the people of this State. I came here representing the poor man, and I came here representing the rich man; I came here for the purpose of protecting the poor man's interest, and also for the purpose of protecting the rich man's interest. I do not desire the confiscation of property, and therefore let us, in our first act, stamp this Convention as the Convention of the people. Let us not put up some old fossil, who has been in the interest of corporations and monopolies ever since he was born, some time when this century was first commenced. Let us place a live, sterling, energetic man here, a man whom the people have sent here with a handsome majority, and don't place any gentleman who is better known abroad than he is in his own home, who has been repudiated by the people in his own home, and is obliged to be elected by the people on the outside, who don't know his ways.

MR. DOWLING. Mr. President: I rise to indorse the nomination of Mr. Larkin. From what I have heard regarding him, why he certainly must be a saint, and Mr. President, I certainly cannot help voting for a saint as President of this Convention. I am wedded to no clan. I know no friends, I have no enemies in this vote. I came here to deal out justice to my constituents, as near as I can interpret what justice means. And, Mr. President, in dealing out justice, I am only trying to carry out the will and the wishes and the dictates of my constituents. I came here representing my constituents in their sovereign right. I came here, not to indorse anything that will ruffle their prosperity, or that will cast a shade of gloom over the community.

My position in this fight is simply to look from the Sierras to the sea; is simply to look from San Diego to Siskiyou and try and throw the mantle over my constituents—because I hold that I am representing the people of the State of California at large—to throw a mantle over them that will be impervious to monopoly and political chicanery. We claim that the people of the State of California have been robbed of their rights, robbed of everything that God Almighty provided for the comfort of man. We come here not to represent any clique or clan, but we come here to represent the people. The people demand that we shall do right. The people demand that these abominations that to-day govern California and are dragging her down into the depths of misery and ruin, that they must be eradicated and that the people have the power to clean them out and preserve themselves and their sacred institutions. Mr. President, all I demand of this Convention I demand in the name of the imperial people of San Francisco. I demand that every man in this Convention get up on this floor and state his views on all questions that now agitate the public mind. By so doing, Mr. President, I will know for whom I am voting. But if you don't grant us this privilege, if this Convention tries to curb our rights here, Mr. President, we will cripple the Constitution when it goes before the people for ratification.

MR. LAINE. Mr. President: I assume, in the very beginning, that all gentlemen who occupy seats upon this floor are the representatives of the people of the State of California, not of any ism, not of any party, not of any creed, but represent the people of the State in their organized capacity, embracing every man, woman and child, and interest, within the State. I should not feel it to be entirely manly—and it would be a species of egotism on my part—to undertake to drill and instruct them here. They are answerable to the whole people of this State for whatever course of conduct they may take while in this august body. And I assume further, that all the men who are here, whether they be young men in the vigor of life, with all those promptings of ambition that are just enough to make them firmly believe that their conceptions are the brightest, the purest, and the noblest of all, for that is the fault of young men, and I can hardly say that it is a fault, because, without the spring of ambition and some inspiration even of egotism they will not accomplish much—but, while tolerating that, I have been taught to reverence the wisdom that age brings; I have learned, from the very earliest periods of my life, that it is only age and experience that brings cultivated wisdom. It was said, in olden times, of that great commonwealth: "Young men for war, and old men for council." We should have a President of this Convention, allow me to say, in my judgment, whose age and experience we should reverence, and whose learning and ability should challenge our admiration, because I have seen, in the short exhibition that we have had here, that there will be storms and whirlwinds in this Convention; that there are many here who imagine that they are crusaders, with lance in rest, against the crescent, or something else. I have no doubt that in these feelings they are as honest as I am. I do not desire to impugn anybody's motives. It is not the language of parliamentary debate or discussion, nor is it the feeling of a heart prompted only for the public good; and in these matters I beg you, now, gentlemen, to create no parties and no factions. I care not from what country a man may come, what constituency sent him here. Put it in good old English; let me know your proposition, and then, if it be wrong, I will be able to reason with him and point out to him the errors of it, or he me. But we are not to judge of a man or measures until we have heard them fairly discussed; and it is a wrong conviction, in my judgment, to imagine that we represent any particular ism or constituency. I come from the good old County of Santa Clara. My election there was unsolicited. I am not sent here to work for the County of Santa Clara, but, to the best of my ability, to watch over the interests of the entire State. They will not be satisfied with any speeches of mine; they will point to my works, and will say, "Where is the work of your hands? Show me what you have created." The candidate that I shall propose in this Convention, I shall wait until his labors are performed, and then point to those labors. Without further prolonging what I have to say—because I find frequently that long talk does no good—I desire to bring to the attention of this Convention a gentleman ripe with age, decision, and fitness of character. I need not tell you that I refer to Colonel Hoge, of San Francisco, that I now nominate for President of this Convention.

GOVERNOR IRWIN. Are there any other nominations?

MR. BARBOUR then called up his resolutions, which were read by the Secretary, for information, as follows:

Resolved, That all persons proposed as candidates for President, and President pro tem, of this Convention, shall be required, before being voted for, to come forward and define their position on the following propositions: First—Whether the State has the power to control railroad corporations, in the regulation of fares and freights; in preventing and prohibiting discriminations; in prohibiting the consolidation of parallel or competing lines, directly or indirectly; in preventing the watering of their stock; in requiring frequent sworn public reports of the proceedings of their Directors or Trustees and of their business; in requiring them to allow the agents of the State appointed for that purpose, and the stockholders, to inspect their books; in requiring all intending corporations to file an executed acceptance of such provisions of a Constitution prior to granting them any charter, and in debarring all existing corporations from all future privileges or legislation unless they also file such acceptance; and whether the candidate is in favor of the exercise of such or similar power? Second—Whether he is opposed to land monopoly, and in favor of using the power of the State to wipe it out? Third—Whether he is in favor of subjecting all incorporated companies furnishing water or gas to incorporated cities or towns, to the control of such cities or towns, in respect to the rates they shall be allowed to charge for these necessaries of life? Fourth—Whether he is in favor of prohibiting all lotteries, and declaring stock dealing on "margins," "puts and calls," and similar devices, lotteries? Fifth—Whether he is in favor of abating the Chinese nuisance, and using the whole power of the State to do so? Sixth—Whether he is in favor of taxing mortgages and reducing the rate of interest?

The Chair ruled that the resolutions were not in order for action, but that any gentleman could express his views if he desired.

No one appearing desirous of speaking, the roll was called with the following result:

FIRST BALLOT—FOR TINNIN.

Andrews,	Kelley,	Nason,
Berry,	Larkin,	Ohleyer,
Burt,	Martin,	Smith, of Santa Clara,
Filcher,	McComas,	Townsend,
Hale,	McConnell,	Webster—17.
Johnson,	Moreland,	

FOR HOWARD.

Ayers,	Heiskell,	Tinnin,
Blackmer,	Mansfield,	Walker, of Tuolumne,
Brown,	Rolfe,	Waters—11.
Glascock,	Swing,	

FOR LARKIN.

Barbour,	Dean,	Grace,
Barry,	Dowling,	Harrison,
Barton,	Doyle,	Herold,
Beerstecher,	Evey,	Herrington,
Bell,	Farrell,	Hughey,
Condon,	Finney,	Hunter,
Cross,	Freud,	Joyce,
Davis,	Gorman,	Kenny,

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Kleine, O'Sullivan, Tuttle,
Lavigne, Reynolds, Vacquerel,
Lindow, Ringgold, Walker, of Marin,
McCoy, Smith, of San Francisco, Wellin,
Moffat, Soule, West,
Morse, Stedman, Wickes,
Nelson, Sweasey, White,
Neunaber, Swenson, Wyatt—49.
O'Donnell,

FOR HOGE.

Barnes, Hager, Reddy,
Belcher, Hall, Reed,
Biggs, Harvey, Rhodes,
Boggs, Heustis, Schell,
Boucher, Hilborn, Schomp,
Campbell, Hitchcock, Shafter,
Caples, Holmes, Shoemaker,
Casserly, Inman, Shurtleff,
Chapman, Jones, Smith, of 4th Dist.
Charles, Laine, Steele,
Crouch, Lampson, Stevenson,
Dudley, of Solano, Larue, Stuart,
Dudley, of San Joaquin, Lewis, Terry,
Dunlap, McCallum, Tully,
Eagon, McFarland, Turner,
Edgerton, Miller, Van Dyke,
Estee, Mills, Van Voorhies,
Estey, Murphy, Weller,
Fawcett, Noel, Wilson, of Tehama,
Freeman, Overton, Wilson, of 1st Dist.
Garvey, Porter, Winans—67.
Graves, Prouty,
Gregg, Pulliam,

FOR REED.

Cowden, Keyes, McNutt—3.

Whole number of votes cast 147
Necessary to a choice 74
Mr. Hoge received 67
Mr. Larkin received 49
Mr. Howard received 11
Mr. Tinnin received 17
Mr. Reed received 3

SECOND BALLOT.

No choice being had, the roll was again called with the following result:

FOR HOGE.

Barnes, Hall, Reddy,
Belcher, Harvey, Reed,
Biggs, Heustis, Rhodes,
Boggs, Hilborn, Schell,
Boucher, Hitchcock, Schomp,
Campbell, Holmes, Shafter,
Caples, Inman, Shoemaker,
Casserly, Jones, Shurtleff,
Chapman, Laine, Smith, of 4th Dist.
Charles, Lampson, Steele,
Crouch, Larue, Stevenson,
Dudley, of Solano, Lewis, Stuart,
Dudley, of San Joaquin, McCallum, Terry,
Dunlap, McFarland, Tully,
Eagon, McNutt, Turner,
Edgerton, Miller, Van Dyke,
Estee, Mills, Van Voorhies,
Estey, Murphy, Walker, of Tuolumne,
Fawcett, Noel, Weller,
Freeman, Ohleyer, Wilson, of Tehama,
Garvey, Overton, Wilson, of 1st Dist.
Graves, Porter, Winans—70.
Gregg, Prouty,
Hager, Pulliam,

FOR LARKIN.

Barbour, Harrison, Reynolds,
Barry, Herold, Ringgold,
Barton, Herrington, Smith, of San Francisco,
Beerstecher, Hughey, Soule,
Bell, Hunter, Stedman,
Condon, Joyce, Sweasey,
Cross, Kenny, Swenson,
Davis, Kleine, Tuttle,
Dean, Lavigne, Vacquerel,
Dowling, Lindow, Walker, of Marin,
Doyle, McCoy, Wellin,
Evey, Moffat, West,
Farrell, Morse, Wickes,
Finney, Nelson, White,
Freud, Neunaber, Wyatt—49.
Gorman, O'Donnell,
Grace, O'Sullivan,

FOR TINNIN.

Andrews, Johnson, Moreland,
Berry, Kelley, Nason,
Burt, Larkin, Smith, of Santa Clara,
Filcher, Martin, Townsend,
Glascock, McComas, Webster—17.
Hale, McConnell,

FOR HOWARD.

Ayers, Heiskell, Swing,
Blackmer, Mansfield, Tinnin,
Brown, Ringgold, Waters—9.

FOR REED.

Cowden, Keyes—2.

Whole number of votes cast 147
Necessary to a choice 74
Mr. Hoge received 70
Mr. Larkin received 49
Mr. Tinnin received 17
Mr. Howard received 9
Mr. Reed received 2

At one o'clock and thirty-five minutes P. M. Mr. Waters moved to take a recess for one hour.
Lost.

THIRD BALLOT.

No choice being had on the second ballot for President, the roll was again called, with the following result:

FOR HOGE.

Barnes, Hall, Pulliam,
Belcher, Harvey, Reddy,
Biggs, Heustis, Reed,
Boggs, Hilborn, Rhodes,
Boucher, Hitchcock, Schell,
Campbell, Holmes, Schomp,
Caples, Inman, Shafter,
Casserly, Jones, Shoemaker,
Chapman, Laine, Shurtleff,
Charles, Lampson, Smith, of 4th Dist.
Crouch, Lewis, Steele,
Dudley, of Solano, Larue, Stevenson,
Dudley, of San Joaq'n, Martin, Stuart,
Dunlap, McCallum, Terry,
Eagon, McFarland, Tulley,
Edgerton, McNutt, Turner,
Estee, Miller, Van Dyke,
Estey, Mills, Van Voorhies,
Fawcett, Murphy, Walker, of Tuolumne,
Freeman, Noel, Weller,
Garvey, Ohleyer, Wilson, of Tehama,
Graves, Overton, Wilson, of 1st Dist.,
Gregg, Porter, Winans—71.
Hager, Prouty,

FOR HOWARD.

Ayers, Heiskell, Swing,
Blackmer, Mansfield, Tinnin,
Brown, Rolfe, Waters—9.

FOR LARKIN.

Barbour, Harrison, O'Sullivan,
Barry, Herold, Reynolds,
Barton, Herrington, Ringgold,
Beerstecher, Hughey, Smith, of San Francisco,
Bell, Hunter, Soule,
Condon, Joyce, Stedman,
Cross, Kenny, Sweasey,
Davis, Kleine, Swenson,
Dean, Lavigne, Tuttle,
Dowling, Lindow, Vacquerel,
Doyle, McCoy, Walker, of Marin,
Evey, Moffat, Wellin,
Farrell, Morse, West,
Finney, Nelson, Wickes,
Freud, Neunaber, White—49.
Gorman, O'Donnell,
Grace,

FOR TINNIN.

Andrews, Johnson, Moreland,
Berry, Kelley, Nason,
Burt, Larkin, Smith, of Santa Clara,
Filcher, McComas, Townsend,
Glascock, McConnell, Webster—16.
Hale,

FOR REED.

Cowden, Keyes—2.

Whole number of votes cast 147
Necessary to a choice 74
Mr. Hoge received 71
Mr. Larkin received 49
Mr. Tinnin received 16
Mr. Howard received 9
Mr. Reed received 2

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No choice. At one o'clock and fifty minutes P. M. Mr. Ayers moved to take a recess till four P. M.

Lost.

FOURTH BALLOT.

The roll was again called on nomination for President with the following result:

FOR HOGE.

Barnes,	Hager,	Prouty,
Belcher,	Hall,	Pulliam,
Berry,	Harvey,	Reddy,
Biggs,	Heustis,	Reed,
Boggs,	Hilborn,	Rhodes,
Boucher,	Hitchcock,	Schell,
Campbell,	Holmes,	Schomp,
Caples,	Inman,	Shafter,
Casserly,	Jones,	Shoemaker,
Chapman,	Laine,	Shurtleff,
Charles,	Lampson,	Smith, of 4th District,
Crouch,	Larue,	Steele,
Dudley, of Solano,	Lewis,	Stevenson,
Dudley, of San Joaquin,	Martin,	Stuart,
Dunlap,	McCallum,	Terry,
Eagon,	McFarland,	Tully,
Edgerton,	McNutt,	Turner,
Estee,	Miller,	Van Dyke,
Estey,	Mills,	Van Voorhies,
Fawcett,	Murphy,	Walker, of Tuolumne,
Freeman,	Noel,	Weller,
Garvey,	Ohleyer,	Wilson, of Tehama,
Graves,	Overton,	Wilson, of 1st District,
Gregg,	Porter,	Winans—72.

FOR LARKIN.

Barbour,	Harrison,	O'Sullivan,
Barry,	Herold,	Reynolds,
Barton,	Herrington,	Ringgold,
Beerstecher,	Hughey,	Smith, of San Francisco,
Bell,	Hunter,	Soule,
Condon,	Joyce,	Stedman,
Cross,	Kenny,	Sweasey,
Davis,	Kleine,	Swenson,
Dean,	Lavigne,	Tuttle,
Dowling,	Lindow,	Vacquerel,
Doyle,	McCoy,	Walker, of Marin,
Evey,	Moffat,	Wellin,
Farrell,	Morse,	West,
Finney,	Nason,	Wickes,
Freud,	Neunaber,	White,
Gorman,	O'Donnell,	Wyatt—49.
Grace,		

FOR TINNIN.

Andrews,	Johnson,	Nason,
Burt,	Kelley,	Smith, of Santa Clara,
Filcher,	Larkin,	Swing,
Glascock,	McComas,	Townsend,
Hale,	McConnell,	Webster—17.
Howard,	Moreland,	

FOR HOWARD.

Ayers,	Heiskell,	Tinnin,
Biggs,	Mansfield,	Waters—8.
Brown,	Rolfe,	

FOR REED.

Cowden,	Keyes—2.

Whole number of votes cast	148
Necessary to a choice	74
Mr. Hoge received	72
Mr. Larkin received	49
Mr. Tinnin received	17
Mr. Howard received	8
Mr. Reed received	2

No choice.

At two o'clock and five minutes P. M. Mr. Waters moved to take a recess till four P. M., upon which motion the ayes and noes were demanded by Messrs. Barbour, Waters, and Larkin.

The roll was called and the motion lost by the following vote:

AYES.

Andrews,	Doyle,	Hughey,
Ayers,	Evey,	Johnson,
Barbour,	Farrell,	Kelley,
Barry,	Filcher,	Kenny,
Barton,	Finney,	Kleine,
Beerstecher,	Freud,	Lavigne,
Bell,	Glascock,	Lindow,
Blackmer,	Gorman,	Mansfield,
Brown,	Grace,	McComas,
Burt,	Hale,	McConnell,
Condon,	Harrison,	McCoy,
Cross,	Heiskell,	Moffat,
Davis,	Herold,	Moreland,
Dean,	Herrington,	Morse,
Dowling,	Howard,	Nason,
Nelson,	Soule,	Walker, of Marin,
Neunaber,	Stedman,	Waters,
O'Donnell,	Sweasey,	Webster,
O'Sullivan,	Swenson,	Wellin,
Reynolds,	Swing,	West,
Ringgold,	Tinnin,	Wickes,
Rolfe,	Tuttle,	White,
Smith, of San Francisco,	Vacquerel,	Wyatt—69.

NOES.

Barnes,	Harvey,	Prouty,
Belcher,	Heustis,	Pulliam,
Berry,	Hilborn,	Reddy,
Biggs,	Hitchcock,	Reed,
Boggs,	Hoge,	Rhodes,
Boucher,	Holmes,	Schell,
Campbell,	Hunter,	Schomp,
Caples,	Inman,	Shafter,
Casserly,	Jones,	Shoemaker,
Chapman,	Joyce,	Shurtleff,
Charles,	Keyes,	Smith, of Santa Clara,
Cowden,	Laine,	Smith, of 4th Dist.
Crouch,	Lampson,	Steele,
Dudley, of San Joaquin,	Larkin,	Stevenson,
Dudley, of Solano,	Larue,	Stuart,
Dunlap,	Lewis,	Terry,
Eagon,	Martin,	Townsend,
Edgerton,	McCallum,	Tully,
Estee,	McFarland,	Turner,
Estey,	McNutt,	Van Dyke,
Fawcett,	Miller,	Van Voorhies,
Freeman,	Mills,	Walker, of Tuolumne,
Garvey,	Murphy,	Wellin,
Graves,	Noel,	Wilson, of Tehama,
Gregg,	Ohleyer,	Wilson, of 1st Dist.
Hager,	Overton,	Winans—80.
Hall,	Porter,	

MR. BARBOUR. I withdraw, by request, the name of Henry Larkin, and vote for W. J. Tinnin.

FIFTH BALLOT.

The roll was again called upon the nominations for President with the following result:

FOR HOGE.

Barnes,	Hall,	Pulliam,
Belcher,	Harvey,	Reddy,
Biggs,	Heustis,	Reed,
Boggs,	Hilborn,	Rhodes,
Boucher,	Hitchcock,	Schell,
Campbell,	Holmes,	Schomp,
Caples,	Inman,	Shafter,
Casserly,	Jones,	Shoemaker,
Chapman,	Keyes,	Shurtleff,
Charles,	Laine,	Smith, of Santa Clara,
Cowden,	Lampson,	Smith, of 4th District,
Crouch,	Larue,	Steele,
Dudley, of San Joaquin,	Lewis,	Stevenson,
Dudley, of Solano,	McCallum,	Stuart,
Dunlap,	McComas,	Terry,
Eagon,	McFarland,	Tully,
Edgerton,	McNutt,	Turner,
Estee,	Miller,	Van Dyke,
Estey,	Mills,	Van Voorhies,
Fawcett,	Murphy,	Walker, of Tuolumne,
Freeman,	Noel,	Weller,
Garvey,	Ohleyer,	Wilson, of Tehama,
Graves,	Overton,	Wilson, of 1st District,
Gregg,	Porter,	Winans—74.
Hager,	Prouty,	

FOR TINNIN.

Andrews,	Hale,	Nelson,
Ayers,	Harrison,	Neunaber,
Barbour,	Heiskell,	O'Donnell,
Barry,	Herold,	O'Sullivan,
Barton,	Herrington,	Reynolds,
Beerstecher,	Howard,	Ringgold,
Bell,	Hughey,	Rolfe,
Berry,	Hunter,	Smith, of San Francisco,
Blackmer,	Johnson,	Soule,
Brown,	Joyce,	Stedman,
Burt,	Kelley,	Sweasey,
Condon,	Kenny,	Swenson,
Cross,	Kleine,	Swing,
Davis,	Larkin,	Townsend,
Dean,	Lavigne,	Tuttle,
Dowling,	Lindow,	Vacquerel,
Doyle,	Mansfield,	Walker, of Marin,
Evey,	Martin,	Waters,
Farrell,	McConnell,	Webster,
Filcher,	McCoy,	Wellin,
Finney,	Moffat,	West,
Freud,	Moreland,	Wickes,
Glascock,	Morse,	White,
Gorman,	Nason,	Wyatt—73.
Grace,		

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Whole number of votes cast 147
Necessary to a choice 74
Mr. Hoge received 74
Mr. Tinnin received 73

Mr. Hoge having received a majority of all the votes cast, was declared duly elected President of the Convention.

Before the announcement of the above vote MR. BARBOUR said:

Mr. President: I challenge the vote of Eugene Fawcett, on the ground that he is presumed not to be here, as he is District Judge of one of the Judicial Districts of this State.

MR. O'SULLIVAN. I also challenge Judge Fawcett's vote.

MR. BEERSTECHER. I challenge the vote of Judge Terry.

The Chair then announced the result of the vote, which was received with applause.

MR. EDGERTON. I move that a committee of three be appointed by the Chair to escort Colonel Hoge to the chair.

Carried.

The Chair appointed Messrs. Edgerton, Tinnin, and Larkin.

Colonel Hoge was conducted to the Speaker's desk between Messrs. Tinnin and Larkin.

GOVERNOR IRWIN. Gentlemen of the Convention: Allow me to introduce to you Colonel Hoge, who has just been elected President of this Convention. [Applause.]

THE PRESIDENT'S REMARKS.

COLONEL HOGE. Gentlemen of the Convention: It would be affectation in me not to admit that I feel very highly honored by the distinction which you have conferred upon me. I return those gentlemen who have stood by me during the whole of this contest, my thanks. I certainly have no unkind feeling as against any gentleman who voted against me—not the slightest; and you will all find that I shall do everybody justice in the performance of the duties of this office which you have conferred upon me. I shall know no section, no party, no creed. I shall endeavor to perform the duties of this office with entire impartiality—with complete justice. I shall recognize the interests of every section upon this floor. This is not an ordinary convention. We have been sent here from every section of the State for the very great purpose of framing a new system of government for this glorious young State of ours—a Constitution which shall protect every interest of every section of the State. Justice to all; favors to none. [Applause.] We are all standing upon the plane of the Constitution with equal rights, with equal responsibilities. Such, I have no doubt, will be the opinion of this body, and I say, as it is my duty, so will it be my pleasure to coöperate with you for these great ends in the performance of all your duties. We have met, gentlemen, at not the most favorable time for making a Constitution. For many causes there seems to be very great depression in the business and industrial enterprises of the country. To some extent we have fallen upon evil times, but, gentlemen, the energies of this country and of our people I think already begin to open the chances for relief, and while I do not believe that Constitutions will make men rich, or that laws will prevent men from becoming poor, yet, with a Constitution which is based upon justice, and which bears equally upon all interests throughout the entire State, with the recuperative energies of our people, with the vast resources at our command, with the integrity of our people, with their faithfulness to principle, I think we may safely—in the language of a statesman, now no more, delivered on a former occasion—commend our country and our State to the common parent of us all. Gentlemen, I do not deem it proper to detain you longer with any remarks, and will proceed now to the further organization of this Convention.

MR. HILBORN. I move that the Convention do now adjourn until to-morrow morning at ten o'clock.

The motion prevailed, and at three o'clock and twenty minutes P. M. the Convention adjourned.

FOURTH DAY.

SACRAMENTO, Tuesday, October 1, 1878.

The Convention assembled at ten o'clock A. M., pursuant to adjournment, President Hoge in the chair.

The roll was called and the following members present:

Andrews,	Cowden,	Freud,
Ayers,	Cross,	Garvey,
Barbour,	Crouch,	Glascock,
Barnes,	Davis,	Gorman,
Barry,	Dean,	Grace,
Barton,	Dowling,	Graves,
Beerstecher,	Doyle,	Gregg,
Belcher,	Dudley, of San Joaquin	Hager,
Bell,	and Amador,	Hale,
Berry,	Dudley, of Solano,	Hall,
Biggs,	Dunlap,	Harrison,
Blackmer,	Eagon,	Harvey,
Boggs,	Edgerton,	Heiskell,
Boucher,	Estey, of Contra Costa	Herold,
Brown,	and Marin,	Herrington,
Burt,	Estey, of 1st District,	Hilborn,
Campbell,	Evey,	Hitchcock,
Caples,	Farrell,	Holmes,
Casserly,	Fawcett,	Howard,
Chapman,	Filcher,	Huestis,
Charles,	Finney,	Hughey,
Condon,	Freeman,	Hunter,
Inman,	Nason,	Stevenson,
Johnson,	Nelson,	Stuart,
Jones,	Neunaber,	Sweasey,
Joyce,	Noel,	Swenson,
Kelley,	O'Donnell,	Swing,
Kenny,	Ohleyer,	Terry,
Keyes,	O'Sullivan,	Tinnin,
Kleine,	Overton,	Townsend,
Laine,	Porter,	Tully,
Lampson,	Prouty.	Turner,
Larkin,	Pulliam,	Tuttle,
Larue,	Reddy,	Vacquerel,
Lavigne,	Reed,	Van Dyke,
Lewis,	Reynolds,	Van Voorhies,
Lindow,	Rhodes,	Walker, of Marin,
Mansfield,	Ringgold,	Walker, of Tuolumne,
Martin, of Santa Cruz,	Rolfe,	Waters,
McCallum,	Schell,	Webster,
McComas,	Schomp,	Weller,
McConnell,	Shafter,	Wellin,
McCoy,	Shoemaker,	West,
McFarland,	Shurtleff,	Wickes,
McNutt,	Smith, of Santa Clara,	White,
Miller,	Smith, of 4th District,	Wilson, of Tehama,
Mills,	Smith, of San Francisco,	Wilson, of 1st District,
Moffat,	Soule,	Winans,
Moreland,	Stedman,	Wyatt,
Morse,	Steele,	Mr. President.
Murphy,		

The minutes of yesterday's proceedings were read and approved.

MR. O'SULLIVAN. Mr. President: There is no record of the objections which I made to Judge David S. Terry taking his seat on this floor, and also the objections to Judge Fawcett. Objections were made in both cases.

THE PRESIDENT. The Secretary informs me that the Chair failed to recognize these objections.

MR. ROLFE. Mr. President: I desire to call attention to the fact that the proceedings of Saturday have not been read yet, I believe.

THE PRESIDENT. The Secretary will read the minutes of Saturday. The Chair will state to the members of the Convention that, for the convenience of the reporters and of the Secretary at the desk, any gentleman rising will please give his name and the county until the Chair becomes familiar with the members, so that the Secretary and reporters may get them down correctly.

The minutes of Saturday's proceedings were read.

THE PRESIDENT. Is there any objection to the approval of the minutes? If not they will stand approved. The Chair hearing no objection the minutes are approved.

FURTHER ORGANIZATION.

MR. TINNIN. Mr. President: I desire to offer a resolution:

Resolved, That the Convention do now proceed to its further permanent organization and elect the following officers in the order named: First, a Vice-President; second, a Chief Secretary; third, a Phonographic Reporter; fourth, an Assistant Secretary; fifth, a Minute Clerk at the desk; sixth, a Journal Clerk; seventh, a Sergeant-at Arms.

MR. HERRINGTON. Mr. President: I rise to a point of order. The minutes have not been approved, and I desire to have placed upon the record the objection that was made at the time of calling the roll by myself to the making of a record by the Clerk, that he had no right at the time in this Convention either to make or to certify. Whereupon the Chair ruled that I was out of order. I desire that it should be made to appear upon the record that I entered my protest at the time against the ruling of the Chair.

THE PRESIDENT. The Chair stated, when the minutes were read, that if there was no objection to them they would stand approved. There being no objection the minutes were approved. The gentleman is too late.

MR. HERRINGTON. Mr. President: I rose in my place at that time—the minutes were not approved at that time. I was still standing when the gentleman, Mr. Tinnin, obtained the floor.

THE PRESIDENT. The Chair overrules the gentleman's point of order. The gentleman was not recognized by the Chair. The minutes are approved, and of course the gentleman is too late.

MR. HERRINGTON. I rose in my place before the minutes were approved.

THE PRESIDENT. The Chair has decided the gentleman's point of order not well taken.

MR. FILCHER. Mr. President: I would like to suggest an amendment to the resolution offered by the gentleman from Trinity, that it be made to read: Eighth, the nomination and election of an Assistant Sergeant-at-Arms.

MR. TINNIN. I accept the amendment offered by the gentleman from Placer.

MR. LARKIN. Mr. President: I would offer an amendment to the resolution by substituting "Secretary" instead of "Vice-President." We will then have completed the organization contemplated by the Constitution. My amendment will stand to all the officers. The office of Vice-President is not named in this Act. I move this amendment, and, if the gentleman will accept it, I think it will expedite business.

MR. TINNIN. Mr. President: In order to obviate the difficulty we are now in, I move to strike out the words "Vice-President" in the resolution I offered, which will comply with the request of the gentleman from El Dorado.

MR. LARKIN. I withdraw my amendment in consideration of that motion.

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Mr. WATERS. Mr. President: I would like to hear the resolution read.

The resolution was read, as follows:

Resolved, That the Convention do now proceed to its further permanent organization and elect the following officers: First, a Chief Secretary; second, a Phonographic Reporter; third, an Assistant Secretary; fourth, a Minute Clerk at the desk; fifth, a Journal Clerk; sixth, a Sergeant-at-Arms; seventh, an Assistant Sergeant-at-Arms.

Mr. McFARLAND. Mr. President: I move to amend the resolution by inserting the words "Sergeant-at-Arms" immediately after the words "Chief Secretary." It seems to me that we should first elect a Secretary and then a Sergeant-at-Arms. Then you have the heads of your departments. We should elect a Secretary and then a Sergeant-at-Arms. I move to amend by inserting the words "Sergeant-at-Arms" immediately after the word "Secretary."

Mr. TINNIN. Mr. President: That seems to me to be out of the order of business heretofore practiced by legislative bodies. The Sergeant-at-Arms comes after these officers. I have named them in the usual order of legislative bodies.

Mr. REYNOLDS. Mr. President: I move a further amendment by striking out the words "Phonographic Reporter," for the reason that there is no provision in the law whereby the compensation of a phonographic reporter is to be fixed. I want to understand, Mr. Chairman, what is to be the contract or compensation for reporting the debates of this Convention, before I can vote understandingly upon the appointment of reporters. I move that a committee be appointed, to whom shall be referred the matter of phonographic reporting for the Convention, and I think that the Convention can act understandingly upon such a report as shall show what it will cost, and who the different candidates for the position are, and what their different bids are. I am in favor of this matter of reporting being conned well, and I want to see it done as cheaply and economically as possible. These are my reasons for moving the amendment.

Mr. TINNIN. Mr. President: I think all the trouble of the gentleman can be obviated with this understanding—and I have no doubt that the Convention will take that course—that is, to appoint a committee who shall have the power, with the concurrence of this body, to fix the pay of all these elective officers. This is the action that is always taken, and I think this body will take the same course. I have an idea that many of these salaries will be fixed, some of them lower than is now anticipated, but it can all be done by committee.

Mr. BARBOUR. Mr. President: I think that the objection as to now going into the election of Phonographic Reporter is well taken. The subject is not well understood by the delegates to the Convention, and gentlemen can only be posted upon it by experts. The compensation to the other officers is fixed—that is, the amount allowed to similar officers of the Legislature. The Act provides that the Convention shall fix the amount of their compensation. The correct method to have the reporting done is to have those who are competent to judge of the work of phonographic reporters appointed to examine those gentlemen and then to make a contract. That is the proper way to protect the treasury, giving the work out to those who will do it right and take it on the most favorable terms. Therefore I support the amendment.

The PRESIDENT. The Secretary will read the resolution.

The Secretary again read the resolution.

The PRESIDENT. This is the original resolution, gentlemen. Mr. McFarland moves to amend the resolution by striking out the seventh provision as to the election of a Sergeant-at-Arms and inserting it as the third provision, following that in reference to the Chief Secretary. The first question is on the amendment offered by the gentleman from Sacramento.

Mr. HAGER. Mr. President: It is, perhaps, not a matter of very much consequence how we elect these officers, but I think the statute provides the manner in which the selection shall be made. As the statute reads, the Convention shall meet and organize, as I understand it, by the selection of a President and Secretary. After that organization is completed, then the Convention is open for other business, such as the election of a Sergeant-at-Arms, a Phonographic Reporter, and the like. They shall elect one of their number President, and "such Secretaries and other officers as they may deem necessary." That is the first provision. Then it proceeds to say that "after the said Convention has met and organized"—and I say that the organization is by the election of a President and Secretary; a presiding officer, and a Secretary, to record what is afterwards done; that should be done preliminary to any other work. After the Convention is organized "it shall have power to adjourn and hold its meetings at any place in said City of Sacramento other than the said Assembly Chamber, and all the committee rooms of the State Capitol building shall be under the control of said Convention. The President of the Convention may appoint not exceeding one Doorkeeper and four Pages." And then this clause: "The Convention may select Phonographic Reporters and fix the amount of their compensation; also, a Sergeant-at-Arms and an Assistant." The interpretation, sir, that I think is the correct one to be put upon that statute is to select our President and Secretary as preliminary to any other business, that the acts of the Convention may be recorded upon the Journal. After we have organized by the selection of a President and Secretary, then we proceed to the election of other officers. I move to amend this resolution to confine it for the present to the selection of a Secretary.

Mr. CROSS. Mr. President: Judge Hager has read the statute of the Legislature of the State passed in reference to this Constitutional Convention. The statute is good until the Convention is organized. When this Convention is organized by the election of a Chairman and Secretary, the power of that legislative body to say what this Convention should do is at an end, and if they did not understand it when they made the law, they should understand it when this Convention acts: that when this Convention is organized it is not to be controlled by any Act of the Legislature as to what minor officers it shall appoint, or what shall be the order in which it shall appoint them. Judge McFarland makes a proposition in which the order proposed is different from that suggested by the law. I take the ground that this Convention is, in no manner, bound by the provisions of that Act. [Cries of "Question," "Question."]

The PRESIDENT. The first question is on the amendment of the gentleman from Sacramento.

A VOICE. What is that?

The PRESIDENT. To strike out "Sergeant-at-Arms" from the seventh provision and insert it so as to make it the third.

The amendment was lost.

The PRESIDENT. The next question is on the motion by the gentleman from San Francisco, Judge Hager, to strike out all after the word "Secretary."

Mr. HAGER. Mr. President, I move, as a substitute, that we proceed now, first in the order of business, to the election of a Secretary, in order to perfect our organization.

The PRESIDENT. The question is on the adoption of the substitute offered by the gentleman from San Francisco.

The substitute was adopted.

The PRESIDENT. Under this resolution we now proceed to the election of a Secretary for this Convention. Are there any nominations?

NOMINATIONS FOR SECRETARY.

Mr. BIGGS. Mr. President: I place before this Convention the name of a gentleman who has not a superior on this coast as Secretary. We want a good Secretary. The gentleman I have the honor to name is known to every member of this Convention, Marcus D. Boruck, of San Francisco.

Mr. EAGON. Mr. President: I rise to second the nomination of Marcus D. Boruck. I do not wish to be understood as doing so on any personal grounds, or friendship, or on account of any political or other sentiments which that gentleman has. I do so, sir, merely on the ground of his peculiar fitness for the distinguished position to which he has been nominated. I care not what his sentiments may be upon politics; I care not what his opinions may be as to the great questions coming before this Convention; I care not whether he is Democrat or Republican, Workingman or Non-Partisan; I care not whether he quite coincides with me on the great question of taxation; I care not whether he agrees with Kearney or not on the great question of Chinese immigration and Chinese cheap labor. These things make no difference to me. I see around me a number of gentlemen who have occupied positions in the Legislature of this State time and time again, and, like myself, they all readily see that a great deal depends upon the efficiency and the ability of the Secretary. In fact, sir, it will be almost impossible for a body of this kind to get along without one who thoroughly understands the business, whose voice can fill this very poor chamber for persons to hear in, one who knows the duties of the position, and if we have such a man for the position the duties of the members will be greatly relieved and the interest of the State will be looked to more than if we had a man in that position who did not understand it. I do not wish to speak, sir, in a derogatory manner of any gentleman who has been nominated before this Convention here for that position, because I believe there are many men who can fill it ably; but I am satisfied that none have been tried so thoroughly as Mr. Boruck. His voice is such that the delegate in the most remote seat from the Secretary's desk can hear everything that is read from the desk; and members will take notice that is a very important thing, in order that they may properly discharge their duties, and vote intelligently upon questions coming up in this body. This seems to me a good reason why we should vote for him. In regard to the gentleman's views, as I have already taken occasion to state, I care not what his political convictions may be, because I do not intend that any gentleman at that desk, or on this floor, shall control my action on anything coming before this Convention; and I would be grieved to think that there is a single gentleman on this floor who would be so controlled. All we have to look to is, will he efficiently and faithfully discharge the duties at the desk? and if we do that, my impression is he will be the unanimous choice of the Convention.

Mr. SHOEMAKER. Mr. President: I place in nomination for the office of Chief Secretary, A. M. S. Carpenter, who was Reading Clerk in the Assembly during the last Legislature. He is the peer of any man in this State as a Secretary.

Mr. TINNIN. Mr. President: It is essentially necessary that in all deliberative bodies their proceedings should be kept with fidelity and ability. It is a matter that every member of this body is interested in; it is a matter in which the people of the whole State have an interest. They desire to have a gentleman placed in that position who will perform these duties faithfully, and to the satisfaction of the people of the entire State, whom they serve. I am very well aware, Mr. President, that it is a most important position, and requires a peculiar fitness to discharge the duties of the office; and, Mr. President, while I do not desire to detract in the least from the honor, integrity, or ability of any gentlemen named as candidates for that office, I do not believe, sir, that an All-wise Providence has been so illiberal in His dispensations as to confine these qualities to only a few persons. I believe, sir, that they have been distributed around. I believe that the gentleman whom I have the honor of nominating is fully competent, and that he can discharge the duties with ability; and I believe that he will do it in the interest of this body, that he will do it to your entire satisfaction, advancing the interests and convenience of the members of this body. I nominate for the position of Chief Secretary, W. S. Redding, of San Francisco.

Mr. LARKIN. I rise to place in nomination another gentleman. Agreeing with the gentleman from Trinity, that there is more than one man in this State capable of discharging the duties satisfactorily and intelligently at that desk, I desire to place a man there who has had

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experience in legislative departments, whose qualifications no man can doubt. While I believe that candidates should have all these qualifications, it is not so much what kind of a voice he has; but what we want to know is, that the man will not be governed by any private interests; that he will not turn the leaves for the benefit of you or me, or this man or that man. This man comes here untrammeled, and will stand there and discharge the duties without fear or favor. I desire to place such a man in nomination, and many of you already know to whom I allude—F. J. Clark, of Alameda.

MR. FILCHER. Mr. President: I desire also to place before this Convention a gentleman for the office of Secretary; one who, I have every reason to believe, is fully competent to fill the position, and without taking up the time of this Convention I shall simply state that the gentleman I refer to is Mr. J. A. Johnson, of Alameda. He comes here substantially the representative of the southern portion of California—a place where he has been residing some years—and it seems to be but fair, though I am from the northern portion of the State, that the southern portion of the State should be considered in the distribution of these positions; and it seems no more than fair that San Francisco should not come here, like Alexander, taking all there is and weeping because there is no more.

MR. McCALLUM. Mr. President: I rise for the purpose of seconding the nomination of Mr. Johnson, announced by the gentleman from Placer. He is now from Alameda, though, more strictly speaking, he is identified with the southern portion of the State, having been a resident of Santa Barbara County. He has resided in Alameda County about one year, where he is engaged in the business of journalist, where he is well and favorably known as a gentleman of high character, and I am sure that I think I can say that he is well qualified for the position he seeks. He is affable and able, and has had large experience as a Secretary in bodies of this kind. I cannot speak from personal knowledge as to that, but I have heard him as a public speaker, and I know that he has a clear and distinct voice, and I am informed by those who have heard him that he is an able reader, which is a very important thing in a Secretary. That, Mr. President, is all that I deem it proper to say at this time. I rose not for the purpose of indulging in any fulsome eulogy of the candidate, but simply to say that he is able, affable, and honest.

MR. BARBOUR. Mr. President: I second the nomination of Mr. Clark. He has never solicited the appointment; he is not here now log-rolling and wirepulling for the election. For that reason I support him.

Nominations closed.

FIRST BALLOT.

The roll was then call on the nomination for Chief Secretary, with the following result:

FOR BORUCK.

Barnes,	Hale,	Reddy,
Belcher,	Hall,	Reed,
Biggs,	Harvey,	Rhodes,
Boucher,	Huestis,	Rolfe,
Campbell,	Hilborn,	Schell,
Caples,	Hitchcock,	Schomp,
Casserly,	Hoge,	Shafter,
Chapman,	Johnson,	Shurtleff,
Charles,	Jones,	Smith, of 4th District,
Cowden,	Keyes,	Steele,
Crouch,	Lampson,	Stevenson,
Dudley, of Solano,	Lewis,	Stuart,
Dudley, of San Joaquin,	Martin,	Terry,
Dunlap,	McComas,	Townsend,
Eagon,	McFarland,	Tully,
Edgerton,	McNutt,	Turner,
Estee,	Miller,	Van Dyke,
Estey,	Mills,	Van Voorhies,
Fawcett,	Moreland,	Walker, of Tuolumne,
Freeman,	Murphy,	Weller,
Garvey,	Overton,	Wilson, of Tehama,
Graves,	Porter,	Wilson, of 1st District,
Gregg,	Pulliam,	Winans—69.

FOR CARPENTER.

Blackmer,	Kelley,	Shoemaker—4.
Heiskell,		

FOR REDDING.

Andrews,	Hager,	Prouty,
Ayers,	Mansfield,	Swing,
Berry,	McConnell,	Tinnin,
Boggs,	Noel,	Waters—13.
Glascock,		

FOR CLARK.

Barbour,	Freud,	McCoy,
Barry,	Gorman,	Moffat,
Barton,	Grace,	Morse,
Beerstecher,	Harrison,	Nelson,
Bell,	Herold,	Neunaber,
Condon,	Herrington,	O'Donnell,
Cross,	Hughey,	O'Sullivan,
Davis,	Hunter,	Reynolds,
Dean,	Joyce,	Ringgold,
Dowling,	Kenny,	Smith, of San Francisco,
Doyle,	Kleine,	Soule,
Evey,	Larkin,	Stedman,
Farrell,	Lavigne,	Sweasey,
Finney,	Lindow,	Swenson,
Tuttle,	Wellin,	White,
Vacquerel,	West,	Wyatt—50.
Walker, of Marin,	Wickes,	

FOR JOHNSON.

Burt,	Laine,	Ohleyer,
Filcher,	Larue,	Smith, of Santa Clara,
Howard,	McMcCallum,	Webster—11.
Inman,	Nason,	

FOR THORNTON.

Brown,	Holmes—2.

Whole number of votes cast	149
Necessary to a choice	75
Mr. Boruck received	69
Mr. Carpenter received	4
Mr. Redding received	13
Mr. Clark received	50
Mr. Johnson received	11
Mr. Thornton received	2

No choice.

MR. BARBOUR. Before a vote is taken I would ask that persons not members of this Convention repair without the bar. I think it is a shame that a candidate should be on the floor.

THE PRESIDENT. Gentlemen not members of the Convention will please retire beyond the rail.

MR. RINGGOLD. I protest against Mr. Terry being allowed to vote for officers of this Convention.

THE PRESIDENT. The gentleman is out of order, and will take his seat. The Secretary will call the roll.

SECOND BALLOT.

The roll was again called, with the following result:

FOR BORUCK.

Barnes,	Harvey,	Reed,
Belcher,	Heustis,	Rhodes,
Biggs,	Hilborn,	Rolfe,
Boucher,	Hitchcock,	Schell,
Campbell,	Hoge,	Schomp,
Caples,	Johnson,	Shafter,
Casserly,	Jones,	Shurtleff,
Chapman,	Keyes,	Smith, of 4th Dist.
Charles,	Lampson,	Steele,
Cowden,	Lewis,	Stevenson,
Crouch,	Martin,	Stuart,
Dudley, of Solano,	McComas,	Terry,
Dudley, of San Josq'n,	McFarland,	Townsend,
Dunlap,	McNutt,	Tully,
Edgerton,	Miller,	Turner,
Estee,	Mills,	Van Dyke,
Estey,	Moreland,	Van Voorhies,
Freeman,	Murphy,	Walker, of Tuolumne,
Garvey,	Overton,	Weller,
Graves,	Porter,	Wilson, of Tehama,
Gregg,	Pulliam,	Wilson, of 1st Dist.
Hale,	Reddy,	Winans—67.
Hall,		

FOR CARPENTER.

Brown,	Heiskell,	Shoemaker—3.

FOR REDDING.

Andrews,	Glascock,	Noel,
Berry,	Hager,	Swing,
Blackmer,	Mansfield,	Tinnin,
Boggs,	McConnell,	Waters—12.

FOR JOHNSON.

Ayers,	Inman,	Nason,
Burt,	Kelley,	Ohleyer,
Fawcett,	Laine,	Prouty,
Filcher,	Larue,	Smith, of Santa Clara,
Holmes,	McCallum,	Webster—16.
Howard,		

FOR CLARK.

Barbour,	Harrison,	O'Donnell,
Barry,	Herold,	O'Sullivan,
Barton,	Herrington,	Reynolds,
Beerstecher,	Hughey,	Ringgold,
Bell,	Hunter,	Smith, of San Francisco,
Condon,	Joyce,	Soule,
Cross,	Kenny,	Stedman,
Davis,	Kleine,	Sweasey,
Dean,	Larkin,	Swenson,
Dowling,	Lavigne,	Tuttle,
Doyle,	Lindow,	Vacquerel,
Evey,	McCoy,	Walker, of Marin,
Farrell,	Moffat,	Wellin,
Finney,	Morse,	West,
Freud,	Nelson,	Wickes,
Gorman,	Neunaber,	Wyatt—49.
Grace,		

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Whole number of votes cast 149
Necessary to a choice 75
Mr. Boruck received 68
Mr. Carpenter received 3
Mr. Redding received 12
Mr. Johnson received 16
Mr. Clark received 50

No choice.

MR. BARBOUR. Mr. President: Before proceeding to take another vote, I desire to make the point of order that the presiding officer of this Convention is not entitled to vote for these candidates, with all due deference to the Chair. This is my understanding, except in cases of a tie, and where the roll is called by ayes and noes. It is not a matter to my taste, but it seems to me I am correct.

THE PRESIDENT. Does the gentleman raise that as a point of order?

MR. BARBOUR. Yes, sir.

THE PRESIDENT. The Chair overrules it as not being well taken. The Secretary will call the roll. [Laughter.]

THIRD BALLOT.

The roll was again called, with the following result:

FOR BORUCK.

Barnes,	Harvey,	Reed,
Belcher,	Heustis,	Rhodes,
Biggs,	Hilborn,	Rolfe,
Boucher,	Hitchcock,	Schell,
Campbell,	Hoge,	Schomp,
Caples,	Johnson,	Shafter,
Casserly,	Jones,	Shurtleff,
Chapman,	Keyes,	Smith, of 4th Dist.
Charles,	Lampson,	Steele,
Cowden,	Lewis,	Stevenson,
Crouch,	Martin,	Stuart,
Dudley, of Solano,	McComas,	Terry,
Dudley, of San Joaquin,	McFarland,	Townsend,
Eagon,	McNutt,	Tully,
Edgerton,	Miller,	Turner,
Estee,	Mills,	Van Dyke,
Estey,	Moreland,	Van Voorhies,
Freeman,	Murphy,	Walker, of Tuolumne,
Garvey,	Overton,	Weller,
Graves,	Porter,	Wilson, of Tehama,
Gregg,	Pulliam,	Wilson, of 1st Dist.
Hale,	Reddy,	Winans—68.
Hall,		

FOR REDDING.

Andrews,	Mansfield,	Swing,
Blackmer,	McConnell,	Tinnin,
Boggs,	Noel,	Waters—10.
Glascock,		

FOR CLARK.

Barbour,	Grace,	O'Donnell,
Barry,	Harrison,	O'Sullivan,
Barton,	Herold,	Reynolds,
Beerstecher,	Herrington,	Ringgold,
Bell,	Hughey,	Smith, of San Francisco,
Berry,	Hunter,	Soule,
Charles,	Joyce,	Stedman,
Condon,	Kenny,	Sweasey,
Cross,	Kleine,	Swenson,
Davis,	Larkin,	Tuttle,
Dean,	Lavigne,	Vacquerel,
Dowling,	Lindow,	Walker, of Marin,
Doyle,	McCoy,	Wellin,
Evey,	Moffat,	West,
Farrell,	Morse,	Wickes,
Finney,	Nelson,	White,
Freud,	Neunaber,	Wyatt—52.
Gorman,		

FOR JOHNSON.

Ayers,	Howard,	Nason,
Brown,	Inman,	Ohleyer,
Burt,	Kelley,	Prouty,
Fawcett,	Laine,	Smith, of Santa Clara,
Filcher,	Larue,	Webster—17.
Heiskell,	McCallum,	

FOR CARPENTER—Shoemaker.

Whole number of votes cast 148
Necessary to a choice 75
Mr. Boruck received 68
Mr. Clark received 51
Mr. Johnson received 17
Mr. Redding received 10
Mr. Carpenter received 1

No choice.

FOURTH BALLOT.

The roll was again called, with the following result:

FOR BORUCK.

Barnes,	Hale,	Reddy,
Belcher,	Hall,	Reed,
Biggs,	Harvey,	Rhodes,
Boggs,	Huestis,	Rolfe,
Boucher,	Hilborn,	Schell,
Campbell,	Hitchcock,	Schomp,
Caples,	Hoge,	Shafter,
Casserly,	Johnson,	Shurtleff,
Chapman,	Jones,	Smith, of 4th District,
Charles,	Keyes,	Steele,
Cowden,	Lampson,	Stevenson,
Crouch,	Lewis,	Stuart,
Dudley, of Solano,	Martin,	Terry,
Dudley, of San Joaquin,	McComas,	Townsend,
Dunlap,	McFarland,	Tully,
Eagon,	McNutt,	Turner,
Edgerton,	Miller,	Van Dyke,
Estee,	Mills,	Van Voorhies,
Estey,	Moreland,	Walker, of Tuolumne,
Freeman,	Murphy,	Weller,
Garvey,	Overton,	Wilson, of Tehama,
Graves,	Porter,	Wilson, of 1st District,
Gregg,	Pulliam,	Winans—69.

FOR CLARK.

Barbour,	Harrison,	O'Sullivan,
Barry,	Herold,	Reynolds,
Barton,	Herrington,	Ringgold,
Beerstecher,	Hughey,	Smith, of San Francisco,
Bell,	Hunter,	Soule,
Condon,	Joyce,	Stedman,
Cross,	Kenny,	Sweasey,
Davis,	Kleine,	Swenson,
Dean,	Larkin,	Tuttle,
Dowling,	Lavigne,	Vacquerel,
Doyle,	Lindow,	Walker, of Marin,
Evey,	McCoy,	Wellin,
Farrell,	Moffat,	West,
Finney,	Morse,	Wickes,
Freud,	Nelson,	White,
Gorman,	Neunaber,	Wyatt—50.
Grace,	O'Donnell,	

FOR JOHNSON.

Ayers,	Howard,	Ohleyer,
Berry,	Inman,	Prouty,
Brown,	Kelley,	Shoemaker,
Burt,	Laine,	Smith, of Santa Clara,
Fawcett,	Larue,	Swing,
Filcher,	McCallum,	Waters,
Glascock,	Nason,	Webster—22.
Heiskell,		

FOR REDDING.

Andrews,	Mansfield,	Noel,
Blackmer,	McConnell,	Tinnin—7.
Hager,		

Whole number of votes cast 148
Necessary to a choice 75
Mr. Boruck received 69
Mr. Clark received 50
Mr. Johnson received 22
Mr. Redding received 7

No choice.

MR. NOEL. Mr. President: I move that the Convention do now adjourn to half-past one o'clock.

The motion was lost.

At the conclusion of the fifth ballot and before the result was announced, many delegates changed their votes from Clark to Johnson. So much confusion arose in regard to the changes that it was decided by the Convention to call a new roll.

MR. REYNOLDS. Mr. President: I raise this point of order: I understand there was a roll call, and before the announcement of the vote, a motion was made to call the roll again. I suggest, sir, that this is out of order. There was a vote cast here, and it has not been announced. The gentlemen voting are entitled to an announcement of that vote, whatever it is. It may be that a candidate was elected, and if so, he is entitled to his election, and he is entitled to an announcement before there is any further roll call. If we are to proceed in this manner of calling the roll, and then getting into confusion, and calling the roll again; and if we are to ascertain by keeping a private record, what ones are elected, and then getting into a snarl and have the roll called again before the announcement of that vote, when will we ever know that there has been an election here, and how is it to be known what candidates are elected? That is the point of order—that we are entitled to the announcement of the vote.

MR. ESTEE. Mr. President: Does there seem to be any muddle there at the desk? I rise to a point of order, and it is this: The Chair has the power at any time before the announcement of the vote, where there are many changes, to order a new vote. It is supposed that the vote is taken for the instruction of the House through the Chair. And when by any means the Chair is not informed, or there is a mistake, he has the power to direct the Secretary or Clerk to call the roll anew. Now the Chair has that power, and if he desires he can exercise it.

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FIFTH BALLOT.

The roll was again called, with the following result:

FOR BORUCK.

Barnes,	Hale,	Pulliam,
Belcher,	Hall,	Reddy,
Biggs,	Harvey,	Reed,
Boggs,	Heustis,	Rhodes,
Boucher,	Hilborn,	Rolfe,
Campbell,	Hitchcock,	Schomp,
Caples,	Hoge,	Schell,
Casserly,	Johnson,	Shafter,
Chapman,	Jones,	Shoemaker,
Charles,	Keyes,	Shurtleff,
Cowden,	Lampson,	Smith, of 4th Dist.
Crouch,	Lewis,	Steele,
Dudley, of Solano,	Martin,	Stevenson,
Dudley, of San Joaquin,	McComas,	Stuart,
Dunlap,	McFarland,	Terry,
Eagon,	McNutt,	Townsend,
Edgerton,	Miller,	Tully,
Estee,	Mills,	Turner,
Estey,	Moreland,	Walker, of Tuolumne,
Freeman,	Morse,	Weller,
Garvey,	Murphy,	Wilson, of Tehama,
Graves,	Noel,	Wilson, of 1st Dist.
Gregg,	Overton,	Winans—71.
Hager,	Prouty,	

FOR JOHNSON.

Andrews,	Harrison,	O'Donnell,
Ayers,	Heiskell,	Ohleyer,
Barbour,	Herold,	O'Sullivan,
Barry,	Herrington,	Reynolds,
Barton,	Holmes,	Ringgold,
Beerstecher,	Howard,	Smith, of Santa Clara,
Bell,	Hughey,	Smith, of San Francisco,
Berry,	Hunter,	Soule,
Blackmer,	Inman,	Stedman,
Brown,	Joyce,	Sweasey,
Burt,	Kelley,	Swenson,
Condon,	Kenny,	Swing,
Cross,	Kleine,	Tinnin,
Davis,	Laine,	Tuttle,
Dean,	Larkin,	Vacquerel,
Dowling,	Larue,	Van Dyke,
Doyle,	Lavigne,	Van Voorhies,
Evey,	Lindow,	Walker, of Marin,
Farrell,	Mansfield,	Waters,
Fawcett,	McCallum,	Webster,
Filcher,	McConnell,	Wellin,
Finney,	McCoy,	West,
Freud,	Moffat,	Wickes,
Glascock,	Nason,	White,
Gorman,	Nelson,	Wyatt—77.
Grace,	Neunaber,	

Whole number of votes cast.....148
Necessary to a choice 75
Mr. Boruck received..... 71
Mr. Johnson received..... 77

THE PRESIDENT. Mr. Johnson having received the majority of all the votes cast, I pronounce him the Secretary of this Convention. [Applause.]

At twelve o'clock and fifty-five minutes P. M., on motion of Mr. Smith, of Santa Clara, the Convention adjourned to three o'clock this afternoon.

AFTERNOON SESSION.

The Convention reassembled at three o'clock P. M., President HOGE in the Chair. Roll called and one hundred and forty-two members present.

J. A. JOHNSON, Secretary elect of the Convention, came forward to the President's desk and took the oath of office, the same being administered by President HOGE.

FURTHER OFFICERS.

MR. WILSON, of San Francisco. Mr. President: I have a resolution which I desire to offer.

THE PRESIDENT. The gentleman will send up his resolution.

The Secretary read the resolution, as follows:

Resolved, That the President appoint a committee of seven, to report the designation and number of officers other than President, Secretary, and Sergeant-at-Arms, as, in their opinion, are necessary for the transaction of the business of this Convention, and the compensation to be paid to each where not fixed by law.

MR. WILSON. Mr. President: I offer that resolution because the law authorizes this Convention to appoint such suitable officers as it may deem necessary for the transaction of its business, and I understand from gentlemen of greater legislative experience than I have, that we need certain specific officers; and, to have it clearly before the Convention, I think it would be better to have a committee to report what officers would be necessary, and their compensation, where that is not fixed by law. For instance, I understand that we shall need a Journal Clerk. Some other gentleman thinks we shall need an assistant or assistants; that we shall have a number of doorkeepers, and gentlemen differ as to how many. Some think that we should have two Phonographic Reporters; others think that one will be enough. The resolution I have offered is simply to bring the matter intelligibly before the Convention, and I move its adoption.

MR. BEERSTECHER. Mr. President: I second the resolution of Mr. Wilson. I believe, sir, that such a committee ought to be appointed. Of course, the action of the committee will not be binding upon the House unless adopted. I second the resolution.

MR. BARBOUR. Mr. President: I move to amend the resolution by inserting at the end thereof the words "except a Phonographic Reporter." I do so, because I believe that the committee who has in charge that matter ought to be experts. They should take the matter into consideration, and decide whether the work should be done by contract or a reporter elected.

MR. O'SULLIVAN. Mr. President: I second the amendment.

MR. WILSON. Mr. President: Under the resolution which I offer, the committee can only recommend how many would be proper. This committee is only to recommend what officers, in their opinion, are necessary for the proper working of the Convention, and their compensation.

MR. FILCHER. Mr. President: I offer as a substitute for the whole matter the following resolution:

Resolved, That this Convention now proceed to the election, first, of a Phonographic Reporter; second, a Sergeant-at-Arms; third, an Assistant Sergeant-at-Arms; fourth, Minute Clerk.

MR. FILCHER. Mr. President: While I agree with the sentiments of the original resolution, as offered by the gentleman from San Francisco, I take it for granted that the officers named in the substitute are positively essential to the organization. While the officers I have mentioned are necessary, it is more than likely that if we go on blindly, and elect all the officers, we will elect officers which are not essential. I know there are candidates here for most of the offices of which it is usual to fill in legislative bodies, and having their friends they will be placed in nomination, and the Convention will likely proceed to elect them without stopping to consider whether we really need them or not. My idea is—or I take it for granted—that we need the officers I have mentioned, and I am in favor of proceeding at once to the election of these officers, and then provide for this committee asked for in the original resolution. In other words, I would go as far as the election of these officers that we know that we need, and then have this committee appointed to see what further officers we need.

MR. JOHNSON. Mr. President: I understand that the resolution was this morning that we proceed to the election of Secretaries. That resolution has not been reconsidered.

THE PRESIDENT. That resolution has been carried out and the Secretary elected.

MR. MCFARLAND. Mr. President: I call your attention to the fact that the resolution specifies Secretaries in the Journal. The word used was Secretaries.

MR. WILSON, of First District. In one portion of the law it says Secretaries, and in another place it says Secretary. I think we had better have the report of a committee on the officers needed, and have their compensation fixed, and then we can go ahead.

THE PRESIDENT. The original resolution will be read again.

The Secretary read the resolution.

MR. BARBOUR. Mr. President: I move to amend by adding "except the Phonographic Reporters."

THE PRESIDENT. The question is now upon the amendment offered by the gentleman from San Francisco, Mr. Barbour.

MR. WATERS. Do I understand the Chair that the question will be upon the amendment?

THE PRESIDENT. The original resolution was offered by the gentleman from San Francisco, Mr. Wilson. Mr. Barbour moves to amend by adding the words "except the Phonographic Reporters." Mr. Filcher has also offered a substitute, and the Chair rules that the question is now on the amendment.

MR. WATERS. Mr. President: I then appeal from the decision of the Chair.

THE PRESIDENT. The gentleman from San Francisco offered the original resolution. The gentleman from Placer, Mr. Filcher, offers a substitute, and the gentleman from San Francisco, Mr. Barbour, offered an amendment to the resolution. The Chair decided to put the question on the amendment first, from which the gentleman from San Bernardino appeals. The question now is, Shall the decision of the Chair stand as the decision of the Convention?

MR. ESTEE. I hope the appeal will be withdrawn, and that the Chair will change his views, because, according to all parliamentary usages, a substitute takes precedence—takes the place of the whole matter, including the original resolution.

THE PRESIDENT. The Chair does not change his opinion on the question.

MR. HAGER. Mr. President: I concur with the views of Mr. Estee. A substitute is in the nature of an amendment—of a second amendment—and that comes first. If the substitute is adopted, that takes the place of the whole matter. There will be no necessity of amending the first proposition if the substitute is adopted.

MR. WATERS. Mr. President: I take the appeal with no feelings of captiousness, but from the fact that I have seen that ruling made here three or four times in as many days, and it appeared wrong to me. I am firmly of the opinion that the ruling is wrong. Now, in order that we may not settle down into error in the very beginning, I raise this question now, and I think it behooves us to change that ruling. If we go wrong in a matter as trivial as this, if we start in in error we must follow it up. It is clearly the fact that the substitute offered by the gentleman from Placer is in the nature of an amendment; the substitute in reality is an amendment to the amendment. Now, the question is upon the amendment to the amendment, or the substitute. We had better right ourselves now, and refuse to sustain the Chair.

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Mr. McFARLAND. I will ask that the substitute be read again. Mr. President, there is always a great deal of learning expended upon questions of order at the opening. In my opinion the substitute is out of order. The main proposition of the original resolution is that a committee be appointed for the purpose of determining what we need. Upon that an amendment was offered by the gentleman from San Francisco, Mr. Barbour, that a portion of the resolution be stricken out. That was in order. That was germane to the original proposition. And then comes the substitute. You call it a substitute, ignoring the whole proposition, and opposing any committee at all, and assuming that the Convention shall go on and elect its officers. I don't think it is a proper amendment at all. I do not think that any amendment ignoring the original proposition entirely, and saying that the Convention shall go on and elect officers, is germane to the question at all; it is out of order. If the Convention is not in favor of it, the proper way is to vote down the amendment, and then comes the proposition of Mr. Filcher, to proceed to elect officers. I do not understand that I can introduce a substitute that ignores the original subject-matter entirely. Therefore, I make the point of order, that the substitute is out of order.

The PRESIDENT. The Chair will assign his reasons for his decision. I understand that we have no rules yet and therefore we are governed by the general parliamentary law. I understand it to be well settled that the friends of a resolution have a right to put it in the shape they desire, perfect it by amendments and get it into the shape they want it. Then, if any one wants to move a substitute for it, it may be done; but the vote is first taken on the amendments to the original resolution.

Mr. EDGERTON. Mr. President: From what little experience I have had, I had arrived at the same conclusion as expressed by the Chair, that the friends of a resolution have a right to perfect it before a substitute can be considered; and I will state to the other gentlemen, Mr. Waters and Mr. Estee, that their impressions are derived from a rule of the Assembly and Senate, that is always understood to be a modification of the general principles of parliamentary law. It is a special rule of California.

Mr. FILCHER. Mr. President: In order to facilitate matters, and to prevent this tangle, as the object can be obtained in another way, and I had no further object in view than to elect the officers we know we have to have now, I will withdraw the substitute.

Mr. WATERS. In that case, I will withdraw my appeal.

The PRESIDENT. The question is now on the amendment as offered by the gentleman from San Francisco, Mr. Barbour, to add the words, "except the Phonographic Reporters."

The amendment was lost.

The PRESIDENT. The question now comes on the original resolution of the gentleman from San Francisco, Mr. Wilson.

Mr. HALE. Mr. President: I move to amend the resolution by adding after the words "Sergeant-at-Arms," the words "Assistant Sergeant-at-Arms."

Mr. WILSON. Mr. President: The reason I put it in that shape is, that we may want more than one Assistant Sergeant-at-Arms. This resolution does not change the power of the Convention at all.

Mr. HALE. In that case I will withdraw my amendment.

The PRESIDENT. The question is now on the original resolution.

The resolution was adopted.

The PRESIDENT. I will appoint as such committee S. M. Wilson, J. E. Murphy, Volney E. Howard, Henry Larkin, Joseph C. Brown, Walter Van Dyke, and Patrick Reddy.

TO FILL VACANCIES.

Mr. REYNOLDS. Mr. President: I desire to offer a resolution:

Resolved, That the President appoint a committee of five, whose duty it shall be to inquire into, and to whom shall be referred all matters concerning the eligibility of members and the filling of vacancies, and that such committee shall be required to report at the morning session on Thursday next.

Mr. BARNES. Mr. President: I move to lay the resolution temporarily on the table.

Mr. REYNOLDS. Mr. President: That resolution refers to a matter of considerable importance, and to questions that should be settled at as early a day as possible. I do not wish to precipitate it with any undue haste, but merely introduce the resolution that the subject to which it refers may be referred to a committee appointed for that purpose, and the matters referred to the committee, so that such action may be taken as the Convention may deem necessary, in order that they may report to the Convention as early as possible. This Convention, Mr. President, seems to me to be organized in a very informal and unusual manner; but we will let that matter rest for the present. We have never had any Committee on Credentials; there never has been a report to this body, nor in any manner have we officially ascertained who are members of this Convention. It has been conceded that there are some vacancies, and I am sorry to say, by the hand of death, but there is no official knowledge of that fact, and I know of no way to arrive at it, other than the way I have indicated. It has been conceded since we met, that there were questions of the eligibility of the sitting members. Now let us have a committee appointed to whom the whole thing may be referred, with instructions to report at as early a day as possible. I think that is the best way to come at it.

Mr. VAN DYKE. Mr. President: It strikes me that the gentleman's motion is entirely premature. He suggests as a reason for offering it that we do not know who are the members of the Convention. The law designates that those who are proclaimed members by the Governor are entitled to be sworn in and take their seats and exercise their duties until inquired into, usually by the Committee on Privileges and Elections, which I presume this body will in due time appoint. That generally follows after a body is organized. Therefore, I think that the resolutions are premature now. In reference to the appointment of it, he said he did not know that we have any evidences of vacancies here. It is a universal rule that the suggestion to a Court is sufficient in reference to the death of any party. It is sufficient in this Convention, and a single suggestion on the part of any member here is enough to establish that fact. That is the custom of Courts, and therefore it is not necessary that a committee shall be appointed for that purpose. As I remarked, we will evidently have a Committee on Privileges and Elections.

Mr. BARNES. Mr. President: I quite agree with the gentleman from Alameda, Mr. Van Dyke, on this matter, that we do not need to appoint any committee for the purpose of ascertaining that which, if it needs to be made known officially to the Convention, can be made by the suggestions of the delegates from those Congressional Districts where those vacancies exist. It is enough, it seems to me, to state that in the Second Congressional District there is a vacancy created by the death of a delegate at large, the Hon. H. H. Haight; that in the Counties of Merced and Mariposa there is also a vacancy created by the death of G. M. Hardwick. As to the vacancy caused by the absence of the member from San Francisco, the Convention has had that information communicated through a letter signed by Thomas Morris, who was elected at the recent election, and the signature to it was witnessed by one of his colleagues from San Francisco, Mr. Barbour. As far as that matter is concerned, sir, it seems to me that the resolution is out of order. Perhaps at the proper time, when the Convention shall have been fully organized, when these vacant districts shall have been represented and shall be represented here, it will be proper to make inquiries as suggested by the gentleman from San Francisco as to the eligibility of all gentlemen claiming seats in this Convention, but so far as vacancies to which I have alluded are concerned, I think we have now got to that point when these vacancies should be filled, and, therefore, preliminary to introducing a resolution on that subject, I move to lay the resolution temporarily on the table.

Mr. ESTEE. Mr. President: I second the motion. Such a motion as that I never before heard of in any legislative body. The idea of a Committee on Credentials I never heard before.

The PRESIDENT. This is a motion to lay on the table, and is not debatable.

The motion was put and carried.

Mr. BARNES. Mr. President: I desire to offer a resolution:

Resolved, That this Convention do forthwith proceed to fill the vacancies in this body, created by reason of the death of the Hon. H. H. Haight, of the Second Congressional District, and the death of the Hon. G. M. Hardwick, in the Counties of Merced and Mariposa, and by the resignation of Thomas Morris, of San Francisco.

Resolved, That the nominations for candidates to fill that vacancy be named and made in the order named in this resolution.

Mr. HOWARD. I rise to a point of order. The organic Act fixes the order of business until the officers mentioned therein are elected. We cannot proceed to any other business. That is the only rule under which we can proceed; it is the only rule that we have now in force. It seems to me very clear that no other business of the Convention on any of these matters can be proceeded with until that order of business shall have been executed.

Mr. BARNES. Mr. President: In respect to the resolution I will say my reasons are these: the Convention is now sufficiently organized to fill vacancies existing in this body—known vacancies. Each of the Congressional Districts have a right to representation on this floor. Matters are coming up now on further organization of the Convention, upon which Congressional delegates are entitled to represent their constituency here. For that reason I suggest that before any further business is done we proceed to fill these vacancies. That is the object of the resolution.

The PRESIDENT. The Chair is of the opinion that the Convention is now sufficiently organized by the election of a President and Secretary; that it has power to go on now and fill any vacancies in the body. The Chair overrules the point of order taken by the gentleman from Los Angeles. The question now is on the resolution offered by the gentleman from San Francisco, Mr. Barnes.

Mr. REYNOLDS. Mr. President: I desire to pay the gentleman the same compliment that he paid me. I therefore move to lay the resolution temporarily on the table. My reasons for so doing——

The PRESIDENT. A motion to lay on the table is not debatable; the gentleman will please take his seat.

On the motion to lie on the table, the ayes and noes were demanded by Messrs. Howard, Ayers, and Huestis. On the call of the roll the motion was lost by the following vote:

AYES.

Andrews,	Gorman,	Noel,
Ayers,	Grace,	O'Donnell,
Barbour,	Hale,	O'Sullivan,
Barry,	Hall,	Reynolds,
Barton,	Harrison,	Ringgold,
Beerstecher,	Heiskell,	Smith, of San Francisco,
Bell,	Herold,	Soule,
Brown,	Herrington,	Stedman,
Burt,	Howard,	Stevenson,
Condon,	Hughey,	Sweasey,
Cowden,	Hunter,	Swenson,
Cross,	Joyce,	Swing,
Davis,	Kenny,	Tuttle,
Dean,	Kleine,	Vacquerel,
Dowling,	Larkin,	Walker, of Marin,
Doyle,	Lavigne,	Waters,
Dudley, of Solano,	Mansfield,	Wellin,
Evey,	McCoy,	West,
Farrell,	Moffat,	Wickes,
Filcher,	Morse,	White,
Freeman,	Nelson,	Wilson, of Tehama,
Freud,	Neunaber,	Wyatt—66.

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NOES.

Barnes,	Huestis,	Prouty,
Belcher,	Hilborn,	Pulliam,
Berry,	Hitchcock,	Reddy,
Biggs,	Hoge,	Reed,
Blackmer,	Holmes,	Rhodes,
Boggs,	Inman,	Rolfe,
Boucher,	Johnson,	Schell,
Campbell,	Jones,	Shoemaker,
Caples,	Kelley,	Shurtleff,
Chapman,	Keyes,	Smith, of Santa Clara,
Charles,	Laine,	Smith, of 4th District,
Crouch,	Lampson,	Steele,
Dudley, of San Joaquin,	Larue,	Stuart,
Dunlap,	Lewis,	Terry,
Eagon,	Martin,	Tinnin,
Edgerton,	McCallum,	Townsend,
Estee,	McComas,	Tully,
Estey,	McFarland,	Turner,
Fawcett,	McNutt,	Van Dyke,
Finney,	Mills,	Van Voorhies,
Garvey,	Moreland,	Walker, of Tuolumne,
Glascock,	Murphy,	Webster,
Graves,	Nason,	Weller,
Gregg,	Ohleyer,	Wilson, of 1st District,
Hager,	Overton,	Winans—77.
Harvey,	Porter,	

THE PRESIDENT. The Convention refuses to lay the resolution on the table. The question is now on the resolution.

MR. ANDREWS. Mr. President: I hope that resolution will not be adopted at this stage of the proceedings. It seems to me rather soon to go into that matter. This Convention is vested with the power to act in behalf of the people represented by these delegates. It seems to me that we should not exercise that power in the midst of the confusion consequent upon organization. It seems to me that we should have an assistant at that desk, and a Sergeant-at-Arms elected by this Convention. It seems to me that we should have a Minute Clerk. And I hope that the resolution will not be adopted at this stage of our proceedings.

THE PRESIDENT. The question is on the adoption of the resolution.

The ayes and noes were demanded, and the resolution lost, by the following vote:

AYES.

Barnes,	Hoge,	Pulliam,
Belcher,	Holmes,	Reddy,
Berry,	Huestis,	Reed,
Biggs,	Inman,	Rhodes,
Boggs,	Johnson,	Rolfe,
Campbell,	Jones,	Schell,
Caples,	Kelley,	Shoemaker,
Charles,	Laine,	Shurtleff,
Crouch,	Lampson,	Smith, of Santa Clara,
Dudley, of San Joaquin,	Larue,	Steele,
Dunlap,	Lewis,	Stevenson,
Eagon,	Martin,	Stuart,
Edgerton,	McCallum,	Terry,
Estee,	McComas,	Townsend,
Estey,	McConnell,	Tully,
Fawcett,	McFarland,	Turner,
Finney,	NcNutt,	Van Dyke,
Garvey,	Mills,	Van Voorhies,
Graves,	Moreland,	Walker, of Tuolumne,
Gregg,	Murphy,	Webster,
Hager,	Nason,	Weller,
Harvey,	Overton,	Wilson, of Tehama,
Hilborn,	Porter,	Wilson, of 1st District,
Hitchcock,	Prouty,	Winans—72.

NOES.

Andrews,	Glascock,	Neunaber,
Ayers,	Gorman,	Noel,
Barbour,	Grace,	O'Donnell,
Barry,	Hale,	Ohleyer,
Barton,	Hall,	O'Sullivan,
Beerstecher,	Harrison,	Reynolds,
Bell,	Heiskell,	Ringgold,
Blackmer,	Herold,	Smith, of 4th District,
Boucher,	Herrington,	Smith, of San Francisco,
Brown,	Howard,	Soule,
Burt,	Hughey,	Stedman,
Chapman,	Hunter,	Sweasey,
Condon,	Joyce,	Swenson,
Cowden,	Kenny,	Swing,
Cross,	Keyes,	Tinnin,
Davis,	Kleine,	Tuttle,
Dean,	Larkin,	Vacquerel,
Dowling,	Lavigne,	Walker, of Marin,
Doyle,	Lindow,	Waters,
Dudley, of Solano,	Mansfield,	Wellin,
Evey,	McCoy,	West,
Farrell,	Moffat,	Wickes,
Filcher,	Morse,	White,
Freeman,	Nelson,	Wyatt—73.
Freud,		

PHONOGRAPHIC REPORTERS.

MR. O'SULLIVAN. Mr. President: I have a resolution to offer:

Resolved, That a committee of five be appointed to examine, as experts, into the qualifications of the candidates for Phonographic Reporters of this body; also, as to the probable cost of the reports, to report to-morrow.

MR. O'SULLIVAN. Mr. President: I offer this resolution, sir, because I wish to have competent reporters appointed for this body; and I want a committee of gentlemen who are capable of judging as to their qualifications, and also because I have heard on the streets that there is a job in this—twenty-four thousand or twenty-five thousand dollars is to be made out of it. If there is any such sum in it, it must be a steal, and I want to see no stealing.

MR. EDGERTON. Mr. President: I move to lay the resolution on the table, for the reason that in my judgment the subject-matter is covered by the resolution of the gentleman from San Francisco, Mr. Wilson, passed by this body.

Carried.

RULES AND ORDER OF BUSINESS.

MR. ESTEE. Mr. President: I offer the following resolution:

Resolved, That a committee of nine be appointed by the Chair to draft rules and an order of business, and report the same to this Convention for its consideration.

MR. FREEMAN. Mr. President: I move to amend by adding, "and that the committee report what standing committees shall be formed."

MR. EDGERTON. I rise to a point of order. As I understand parliamentary law, the duty of designating committees always falls upon the Committee on Rules. That is the rule in the Senate and Assembly in this State, in the House of Representatives, and in the United States Senate, and as far as I am advised, of every State in the Union. It is universally the custom for the Committee on Rules to designate the committees.

MR. FREEMAN. Mr. President: I think it is a perfectly proper amendment and makes the matter perfectly clear.

MR. EDGERTON. Mr. President: I withdraw my point of order; it is a very small matter.

MR. ESTEE. Mr. President: The amendment does not do any harm, though it is not necessary; I accept the amendment.

THE PRESIDENT. The question is now on the resolution as amended.

MR. WEST. Mr. President: I would offer a resolution as a substitute to that resolution: That the following standing committees be appointed by the Chair—First, on rules; second, privileges and elections; third, printing; fourth, accounts and expenditures; fifth, preamble and bill of rights; sixth, legislative department; seventh, executive department; eighth, judicial department; ninth, elective franchise; tenth, education; eleventh, public institutions; twelfth, public debt and public works; thirteenth, militia; fourteenth, county and township organization; fifteenth, apportionment of representation; sixteenth, revenue and taxation; seventeenth, municipal corporations; eighteenth, corporations other than municipal; nineteenth, miscellaneous subjects; twentieth, amendments to the Constitution; twenty-first, schedule; twenty-second, intoxicating liquors; twenty-third, enrollment; twenty-fourth, revision; twenty-fifth, agriculture.

MR. WEST. Mr. President: I offer the resolution at this time as a substitute, and I believe that the Committee on Rules should be a standing committee. I am not particular about the adoption of the substitute at the present time, but I think the experience of this Convention is that the Committee on Rules should be one of the standing committees of this Convention, and I move the adoption of the substitute.

MR. ESTEE. Mr. President: It is entirely unusual to adopt a resolution in that way; it is the universal custom with resolutions of that character that they be referred to the Committee on Rules, because it is necessary for us to fix the number, and it is one of the most important duties of this Convention. I would ask the gentleman to let the original resolution be adopted, and then refer his resolution to that committee for its consideration.

MR. WEST. Mr. President: I accept the suggestion of the gentleman.

MR. McFARLAND. Mr. President: I rise to a point of order that I would like to have decided at the commencement; it is, that the substitute is entirely out of order.

THE PRESIDENT. The substitute is withdrawn, sir.

MR. EDGERTON. Mr. President: I move to amend the resolution of the gentleman from San Francisco by inserting the word "fifteen" instead of "nine," so that the committee may consist of fifteen members instead of nine.

MR. ESTEE. Mr. President: I accept the amendment.

The resolution was adopted.

MR. SMITH, of Santa Clara. Mr. President: I offer the following resolution:

Resolved, That the thanks of the Convention are tendered to his Excellency, Governor Irwin, for the very able, impartial, and courteous manner in which he has discharged the duties of presiding officer of this Convention; also, that the thanks of this Convention be tendered to Secretary of State Beck, and the other officers who have rendered services during the organization of the Convention.

The resolution was adopted.

MR. WEST. Mr. President: I now move that that resolution which I offered be referred to the Committee on Rules.

Carried.

MR. EDGERTON. Mr. President: I move that the Convention do now adjourn until ten o'clock to-morrow.

Division was called for, and the Convention, at four o'clock and forty-five minutes P. M., adjourned until to-morrow morning at ten o'clock.

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FIFTH DAY.

WEDNESDAY, October 2d, 1878.

The Convention reassembled at ten o'clock A. M., President Hoge in the chair.

Roll called, and members found in attendance as follows:

DELEGATES PRESENT.

Andrews,	Hale,	Overton,
Ayers,	Hall,	Porter,
Barbour,	Harrison,	Prouty,
Barnes,	Harvey,	Pulliam,
Barry,	Heiskell,	Reddy,
Barton,	Herold,	Reed,
Beerstecher,	Herrington,	Reynolds,
Belcher,	Hilborn,	Rhodes,
Bell,	Hitchcock,	Ringgold,
Berry,	Holmes,	Rolfe,
Biggs,	Howard,	Schell,
Blackmer,	Huestis,	Schomp,
Boggs,	Hughey,	Shafter,
Boucher,	Hunter,	Shoemaker,
Brown,	Inman,	Shurtleff,
Burt,	Johnson,	Smith, of Santa Clara,
Campbell,	Jones,	Smith, of 4th District,
Caples,	Joyce,	Smith, of San Francisco,
Casserly,	Kelley,	Soule,
Chapman,	Kenny,	Stedman,
Charles,	Keyes,	Steele,
Condon,	Kleine,	Stevenson,
Cowden,	Laine,	Stuart,
Cross,	Lampson,	Sweasey,
Crouch,	Larkin,	Swenson,
Davis,	Larue,	Swing,
Dean,	Lavigne,	Terry,
Dowling,	Lewis,	Tinnin,
Doyle,	Lindow,	Townsend,
Dudley, of San Joaquin,	Mansfield,	Tully,
Dudley, of Solano,	Martin, of Santa Cruz,	Turner,
Dunlap,	McCallum,	Tuttle,
Eagon,	McComas,	Vacquerel,
Edgerton,	McConnell,	Van Dyke,
Estey, of Contra Costa,	McCoy,	Van Voorhies,
Estee, of 1st District,	McFarland,	Walker, of Marin,
Evey,	McNutt,	Walker, of Tuolumne,
Farrell,	Miller,	Waters,
Fawcett,	Mills,	Webster,
Filcher,	Moffat,	Weller,
Finney,	Moreland,	Wellin,
Freeman,	Morse,	West,
Freud,	Murphy,	Wickes,
Garvey,	Nason,	White,
Glascock,	Nelson,	Wilson, of Tehama,
Gorman,	Neunaber,	Wilson, of 1st District,
Grace,	Noel,	Winans,
Graves,	O'Donnell,	Wyatt,
Gregg,	Ohleyer,	Mr. President.
Hager,	O'Sullivan,	

The minutes of yesterday's proceedings were read and approved.

MR. SMITH, of Santa Clara, asked two days' leave of absence for Mr. Laine. Leave granted.

TO FILL VACANCIES.

MR. BARBOUR. Mr. President: I desire to offer a resolution:

Resolved, First—That the delegates at large from the Second Congressional District, and the delegates from the City and County of San Francisco be, and they are hereby authorized and empowered to name the persons to fill the vacancies in their respective delegations, caused by the death of H. H. Haight and the resignation of Thomas Morris, and that the persons thus proposed be considered the choice of this Convention.

Second—That the vacancy in the representation from the Counties of Mariposa and Merced be filled by an election to be had therefor by this Convention.

Third—That the Convention reserves its right to reject any person proposed as above provided, who may be found ineligible or deemed unworthy.

MR. DUDLEY. Mr. President: I move that we lay the resolution on the table.

MR. BARBOUR. I call for the ayes and noes.

The ayes and noes were also called for by Messrs. Beerstecher and White.

MR. HILBORN. Mr. President: I think the resolution cannot be entertained, because it is delegating to a member of the Convention a duty that can only be performed by the whole Convention, namely, the election of persons to fill vacancies.

THE PRESIDENT. The law provides that all vacancies shall be filled by the Convention. The Chair therefore decides that the point of order made by the gentleman from Solano is well taken, and that the resolution is out of order.

MR. BARBOUR. Is it not the action of the Convention to authorize a committee to fill vacancies?

THE PRESIDENT. The Chair has decided the question; does the gentleman take an appeal?

MR. BARBOUR. Yes, sir.

THE PRESIDENT. The resolution that has just been offered to the Convention has been read. The decision of the Chair is that the resolution is out of order, inasmuch as the law provides that the Convention itself shall fill all vacancies. The Chair decides the point well taken, from which decision the gentleman from San Francisco takes an appeal. The question is, Shall the decision of the Chair stand as the judgment of the House?

MR. HILBORN. Mr. President: By permission of the House, I would like to read Section 11 of the Act of the Legislature which provides for this Convention: "In case any vacancy occurs by reason of the death, resignation, or otherwise, of any delegate elected to said Convention, the same shall be filled by the Convention."

THE PRESIDENT. The Chair has stated the question and the ayes and noes have been ordered.

MR. EDGERTON. Mr. President: Before this vote is taken I wish the Chair would read that portion of the law for the information of the House.

THE PRESIDENT. "In case any vacancy occurs by death, resignation, or otherwise, of any delegate elected to said Convention, the same shall be filled by the Convention."

MR. AYERS. Mr. President: I do not consider that that resolution would make it incumbent upon this Convention to vote for the candidates who are to be presented. It is merely a mode to get those candidates before the Convention. It is not final, nor would that nomination be binding upon this Convention.

MR. BARNES. Mr. President: Those who sit in the rear of this assembly would respectfully request of those who enjoy proximity to the Chair, to bear in mind that what they say is of as much interest to us as him, and therefore would respectfully request that whatever is observed to the President be spoken in such a tone of voice that we may be able to hear at least an occasional word.

MR. BROWN. Mr. President: It appears to me from the reading of that resolution, that the matter would be final, and that what some of those interested in this matter decide upon and report to this House, the report is final in the case.

MR. AYERS called for the reading of the resolution, and it was again read by the Secretary.

MR. BARBOUR. Mr. President: If gentlemen had not been so anxious to suppress debate, I would explain the resolution. I think I understand this law. It does not point out any particular mode in which the Convention shall fill vacancies. As to the Counties of Mariposa and Merced, the death of their representative, I believe, leaves no delegation from those counties except jointly with some other counties. I think the resolution does not confine the Convention to the nominee of this committee filling these vacancies, for they have a reserved right to pass on the member after he is nominated by this delegation. In the first place the proviso is that they shall name the person to fill the vacancy, and report the choice to the Convention. My object in making this proposition is to take that struggle out of this Convention. I believe it is conceded on all hands, at least by a majority of this Convention, that this is a proper mode to proceed to fill those vacancies. If that be the case, my resolution is only to obtain the sense of the Convention upon this proposition; and if they nominate persons acceptable to the Convention they can be notified of their nomination and come here and take their seats. I think it is the first and proper order of business that we should do so. There is no intention to bind the Convention. If they have already agreed upon the candidates, well and good; if not, let these delegates get together and name persons acceptable to their constituency. That is my object in presenting the resolutions. I have nothing to conceal. The San Francisco delegation have agreed unanimously on the man they propose to present; his name is John R. Sharpstein, who received the highest vote of any man in San Francisco. We claim that it is our privilege, and if the other delegates are ready we are willing to concede to them the same right. If they are not ready we will wait for them to present a candidate. We claim that the person called upon to fill a vacancy of this kind ought to correspond in sentiment, in political affiliation, as near as may be, with the person whose death has caused the vacancy. I see nothing, sir, wrong in that. It seems to be a matter of justice, and we place it on the grounds of justice, and we ask it of this Convention as a matter of justice.

MR. ESTEE. Mr. President: As I understand this question, this resolution, divested of all circumlocution, means simply this: that the San Francisco delegation of thirty members shall elect a delegate representing that district. That is all it means, and just what it means, because the only power it leaves in the Convention is to reconsider their action if the member they recommend is ineligible. Now, sir, of course the thirty representatives from San Francisco, known as representing the workingmen of that city, so-called, will not present anybody here who is not qualified under the Constitution. Second, there is no power left in this Convention if the resolution should be adopted that the San Francisco delegation of thirty shall elect a delegate in the place of Mr. Morris, who has resigned. Now, that should be the resolution, and the question comes squarely before us. I hope it will not be adopted. I believe that this whole Convention should pass upon the qualifications of every member who is placed before the Convention.

MR. BROWN. Mr. President: I agree with the gentleman who has just occupied the floor. It appears to me that in this case the matter to be considered is, whether or not this body, according to the law under which we are acting, has a right to commission the delegates from San Francisco, or from any other portion of this State, to elect to fill vacancies that have occurred. This appears to me to be a plain proposition that is before us. If we find the men that they have elected, set forth, to fill these vacancies are ineligible, or that there are constitutional objections to their filling this place, we can expel them afterwards. But it does appear to me that the principle is plain in the law with regard to this matter, that it is the duty of this Convention not to set the San Francisco members, or any other members, to the transacting of business which this body is responsible for according to the law, but that this Convention itself should attend to this, as the law itself plainly requires.

[Cries of "Question, question."]

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MR. CROSS. Mr. President: In this matter I shall vote to sustain the Chair and for this reason: I believe that the law which provides how this Constitutional Convention shall be composed, plainly provides that all vacancies shall be filled by the Convention, and that that takes away from this Convention the power to say that the presiding officer shall fill vacancies, or that Governor Irwin shall fill vacancies, or that the San Francisco delegation shall fill vacancies, and I trust, sir, that the right feelings that exist in a majority of this Convention, that their feelings of justice and their disposition to require the law to be complied with—I say I trust to the right feelings of this Convention to elect men who will be satisfactory to the men who elected Mr. Morris.

MR. BARBOUR. Mr. President: I withdraw my appeal.

THE PRESIDENT. The resolution is ruled out of order.

MR. SMITH, of Santa Clara. Mr. President: I desire to offer a resolution:

Resolved, That the Secretary of State be requested to distribute to each member of the Convention a copy of the Statutes of 1877–8, if he has a sufficient number.

JUDGE HAGER stated that any member could obtain the Statutes from the Secretary of State or State Librarian, on application, and Mr. Smith thereupon withdrew his resolution.

COMMITTEE APPOINTED.

THE PRESIDENT here announced the following Committee on Rules and Order of Business: Messrs. Estee, Edgerton, Overton, Mansfield, Schell, Berry, Fawcett, Reynolds, West, Holmes, Murphy, Dudley, Pulliam, Tinnin, and Waters.

ABOUT PAY.

MR. WYATT. I desire to offer a resolution:

Resolved, That the President of the Convention be instructed to appoint a committee of five, whose duty it shall be to ascertain and report to this Convention on Saturday, at the forenoon session thereof, the amount due each member of the Convention for mileage and per diem to date of report.

MR. WYATT. Mr. President: I hope that the resolution will meet with the unanimous vote of this Convention, and I have but little question but that it will. I was induced to offer it myself because I was aware of the known timidity of the members of the Convention on that subject, and, therefore, in order to relieve them, I took the responsibility of offering it myself. I believe that the committee proposed by the resolution adopted yesterday and appointed this morning do not contemplate the duties mentioned in the committee which I propose, and it is for that purpose, to supply that omission, that I offer the resolution.

MR. VAN DYKE. Is there really any necessity for that resolution? The law fixes the compensation and mileage of every member here; it is simply a matter of computation. I don't see the necessity of the resolution.

MR. EDGERTON. I move to lay the resolution temporarily on the table, for the reason that the Code fixes the mileage and per diem of members of the Convention at the same rates as of members of the Legislature, and also fixes the distance from each county seat to the City of Sacramento.

MR. WYATT. Mr. President: If the gentlemen know the fact that a member can step into the Treasurer's office, or into the Controller's office, or into the office of the Secretary of State, or into the office of some other authorized State official, and draw his money, then I am satisfied that the resolution lay upon the table. But unless he can answer that that is a fact, then I want some way that this Convention can unlock the strong box of the State and get at some of that one hundred and fifty thousand dollars that is lying there rusting; and, as I understand it, Mr. President, there must be some authority from this Convention as a basis for those officers to act upon. I do not understand that I can step into the Controller's and say, "My name is Wyatt. I am a member of the Constitutional Convention. I am from Monterey County; my legal distance is one hundred and ninety-six miles. I have been here ten days, and I want a warrant for one hundred and thirty dollars, or one hundred and ninety dollars, or one hundred and seventy-five dollars, as the case may be." I understand that this Convention is to certify to what I am entitled to receive from time to time.

MR. HAGER. It is well enough to understand this question at this time. I will inform the Convention that the statute provides how this money shall be drawn from the treasury. The amount of pay shall be certified by the President, and shall be paid by the Treasurer, on the warrant of the Controller, in the same manner as members of the Legislature are paid. The President may now certify that there is so much due any member, if he sees fit to do that. The mileage question is generally ascertained by a Committee on Mileage and Expenses, which is generally a standing committee. When the Committee on Rules make their report, there will be a provision for a Committee on Mileage or Pay, or a committee that will control that question, and then they make a general report in regard to all the members. The per diem allowance that may be due, can be drawn upon the certificate of the President. I would therefore suggest to the gentleman to let the matter rest until the Committee on Rules make their report, when the proper committee will be named that will have the power to regulate this matter.

MR. CAPLES. Mr. President: I second the motion to lay on the table, for the reason that it appears to me that this knocking at the doors of the treasury before we are organized is in bad taste.

The motion to lay on the table prevailed.

A motion by Mr. Noel, to grant an indefinite leave of absence to Mr. Campbell, was lost.

REPORT ON ORGANIZATION.

MR. WILSON, of First District. Mr. President: The Committee on Further Organization desires to report:

MR. PRESIDENT: Your committee, to whom was referred the following resolution:

Resolved, That the President appoint a committee of seven to report the designation and number of officers other than President, Secretary, and Sergeant-at-Arms, as in their opinion are necessary for the transaction of the business of the Convention, and the compensation to be paid to each when not fixed by law—

Beg leave to report that they have found the following additional officers necessary: First, a President pro tem.; second, two Assistant Secretaries; third, one Minute Clerk; fourth, one Journal Clerk; fifth, one Assistant Sergeant-at-Arms; sixth, three Doorkeepers; seventh, two Porters; eighth, eight Pages; ninth, one Postmaster; tenth, one Mail Carrier; eleventh, one Phonographic Reporter and one assistant. We recommend that the following compensation be allowed to the officers: First, to the Assistant Secretaries and Journal Clerk, $6 per day; second, to the Minute Clerk, $8 per day; third, Doorkeeper, $5 per day; fourth, to the Porters, $4 per day; fifth, to the Pages, $3 per day; sixth, to the Postmaster, $4 per day; seventh, to the Mail Carrier, $100 per month; eighth, to the Reporters, $10 per day and 20 cents per folio for transcribing. We also recommend the election by the Convention of the following officers: President pro tem., one Reporter, two Assistant Secretaries, one Minute Clerk, one Journal Clerk, one Assistant Sergeant-at-Arms; the other officers named to be appointed by the President of the Convention. All of which we respectfully submit. S. M. WILSON, Chairman.

October 2, 1878.

MR. AYERS. Mr. President: Before that report is adopted I would like, if it is not out of order, to move that the price be reduced from twenty cents to fifteen cents per folio for transcribing.

THE PRESIDENT. The first question is upon the reception of the report.

MR. BEERSTECHER. Mr. President: I move that the report be received.

The motion prevailed and the report was received.

MR. HILBORN. Mr. President: I did not observe that there was any provision for a Night Watchman. That is one of the most important offices about the building. It is essentially necessary. I move that the report be amended so as to include a Night Watchman, with a salary of three dollars per day.

MR. LEWIS. Mr. President: I would ask for information, what is the duty of the Night Watchman?

MR. SHOEMAKER. Mr. President: The Night Watchman provided by the Secretary of State occupies the corridor below. It is very necessary that there should be somebody here to look after our desks, because any key will unlock our desks, and there should be some protection for our papers.

MR. HILBORN. Mr. President: I understand that the per diem heretofore paid to the Night Watchman has been five dollars, and I ask to amend so that the compensation shall be five dollars instead of three dollars.

MR. BIGGS. Mr. President: It has been the rule to have a Watchman for the day as well as for the night, and I therefore move to amend by having a Day Watchman also.

THE PRESIDENT. The gentleman from Butte can make the motion as soon as the present one for a Night Watchman has been decided.

The motion prevailed.

MR. BIGGS. Mr. President: I now move that we have a Day Watchman at four dollars per day.

MR. VAN DYKE. Mr. President: The Door-keeper can keep charge of the hall during the daytime when not in session.

MR. BEERSTECHER. Mr. President: I would like to know why we intend to employ three Door-keepers, a Sergeant-at-Arms, and an Assistant Sergeant-at-Arms, if they are not to perform these duties in the daytime at the salary they are to receive.

MR. BIGGS. I withdraw the motion to save discussion.

THE PRESIDENT. The question now recurs upon the adoption of the report.

PHONOGRAPHIC REPORTERS.

MR. AYERS. Mr. President: I shall renew my motion, that the figure for reporters' transcripts be reduced from twenty cents per folio to fifteen cents per folio. The figure now allowed by the State for the Reporter of the Supreme Court is twenty cents per folio, and the work there is not constant, but occasional. In this case we shall have a very large and important piece of work that will last perhaps for a hundred days, and I think that the compensation of fifteen cents per folio will amply repay the gentlemen who may be chosen as Phonographic Reporters.

MR. FREUD. I second the motion.

MR. WILSON, of First District. Mr. President: The committee, in fixing the compensation for reporters, made some inquiries upon that subject, and the price fixed is the price allowed by Courts for making reports of judicial proceedings. It seems to me that the labors of reporting the proceedings of a legislative body are much more difficult and arduous, and this is only the same rate allowed for Court reporting. The difference is very small between fifteen and twenty cents per folio. We thought on fixing it at the ordinary rate because it was more arduous than Court reporting; that it would be fair to the Convention and economical to the State. We made inquiries and learned that to be the fact. I think, therefore, that it ought to remain in the report as it is. We require them to be in constant attendance, we require the best skill, and I believe every gentleman will want the proceedings written up very particularly. Under these circumstances, it seems to me that the compensation should remain as it is in the report.

MR. AYERS. Mr. President: I will merely state, in reply to the gentleman, that there certainly cannot be any difference in the labor of transcribing the proceedings of this Convention and in transcribing judicial proceedings. It is a mere mechanical process. The fact that there will be a great deal of work will only make it necessary to have more men to do the work. I think the price paid to amanuenses throughout the State is ten cents per folio for like service. That will leave the persons who are going to be stenographers a clear gain of five cents per folio. If the proceedings should be printed in octavo form, there would be seven folios on a page. The debates of the Pennsylvania Convention occupied nine octavo volumes. The difference between the charges of twenty cents per folio and fifteen cents would save to this

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State from two to three thousand dollars, perhaps, and I think we would have the work just as well performed for fifteen cents as for twenty cents.

MR. ESTEE. Mr. President: Much depends upon what these reporters are to report. If it is intended to make a verbatim report, including all the speeches that are made, the expense will be something enormous, and twenty cents a folio would be too much, and I hope that the fifteen cent proposition of the gentleman from Los Angeles will be adopted. Why, I find here that if our reports will be as large and voluminous as they have been, the reporting and transcribing for this Convention will cost over thirty thousand dollars, according to a careful estimate. I do not think it is wise to make such a disbursement. I am aware that to transcribe from a reporter's notes requires professional skill; an ordinary scribe cannot do it. I think fifteen cents a folio, where the work is so large, is most ample.

MR. WILSON, of First District. We accept the amendment.

MR. FILCHER. Mr. President: I move to amend the report of the committee by striking out the words "and one assistant." One competent reporter can take the notes of this Convention, and if he is allowed fifteen cents per folio for transcribing those notes he will come under bonds as a responsible party, and thus make this Convention secure.

MR. GRACE. Mr. President: I now move that ten cents per folio be the compensation.

MR. WILSON, of First District. Mr. President: I will state I understand that the reporters will not accept fifteen cents, and also that two will be necessary. The Convention would not like to elect two in conflict with each other. We, therefore, proposed that one should be elected, who should select his assistant, and that would be necessary, in order to prepare the reports that we intend to have. It will require two.

MR. FILCHER. Do you allow the reporter's assistant ten dollars per day?

MR. WILSON, of First District. Undoubtedly, the reporters will each receive ten dollars per day; each will receive the per diem. It will require two reporters to do the work.

MR. LARKIN. Mr. President: I will go as far as any gentleman on this floor, where the best interests of the people and this Convention are subserved, and I desire to say that this committee considered this matter. We want a report that will be reliable, and we desire a reliable man to make it. I think that fifteen cents per folio is none too much, and I hope there will be no change in the report of the committee, and that, as amended, it will be adopted by this Convention.

MR. HAGER. Mr. President: This, sir, is a very important question, and I do not know how we can, at this time, act very intelligently upon the subject. Those who are acquainted with bodies where the proceedings are reported, know what an enormous job the reporter has before him. Now, take the proceedings of Congress, which are reported verbatim, every morning following the debates, filling a quarto volume of one hundred pages, and sometimes more, being a full report of everything that occurs. For this work the reporter's compensation ought to be adequate. When the report of the debates of this Convention are taken, as it is too great a labor for one man, they have to be written out in longhand by stenographers who can read the notes. In other words, the persons that have to write out the shorthand should be just as competent as those who take the notes. I think there ought to be a committee appointed to ascertain in advance what portion of the proceedings we wish to report. Certainly we don't want them to report the committees, or to report resolutions every time they are read by the Secretary. In that way the volume would be swelled to enormous dimensions. I do not think myself that twenty cents per folio is too much. The most important parts to be reported, perhaps, are the debates, because they illustrate the opinions of those who speak upon the propositions that come before the Convention. The proposition itself will be embodied in the reports, and the debates will be an illustration of what the views of the members were on the subject debated. And as for the writing out, I will move that for the time being we elect the reporters, and do not undertake to fix the compensation until we first ascertain, through the committee, what the stenographers are to report.

MR. BARBOUR. Mr. President: The Convention perceives now the very difficulty which I pointed out yesterday. So far as the per diem compensation is concerned I have no objection; it is not too much. But the important question for this Convention to determine is what shall be reported and what the compensation shall be for transcribing in longhand those shorthand notes. It will make a very great difference to the treasury of this State what action is taken upon this matter. If everything is taken down and the proceedings reported in full there will be an immense amount to transcribe. That ought to be regulated. I, therefore, second the amendment for the appointment of a committee skilled in the business, if you can find them.

MR. HAGER. Mr. President: I move not to appoint the committee at this time, and to strike out the compensation to be allowed for transcribing into longhand.

MR. WILSON. Mr. President: It seems to me that we had better adopt this report. Let the committee then undertake, deliberately, to ascertain how far the debates shall be reported, whether there shall be any limit at all, or report the entire proceedings.

MR. HALE. Mr. President: I observe, in looking over the proceedings of the Constitutional Convention of the State of Illinois, held in eighteen hundred and seventy, that the Convention provides, first, for a phonographic report of the debates. Likewise the Convention provides for the publication of those debates, furnishing to the members of the Convention, each morning, so many copies, such a number to be filed with the State officers, and also providing for the publication, in the form of Congressional debates, all the debates in the Convention. A Committee was finally raised to receive propositions to make such reports and to publish them. The whole matter was finally concluded, and the final result of their efforts in that behalf, by common consent and common understanding, was that they had saved a large amount of money to the State, and at the same time secured a faithful report of the debates of the Convention published officially in the manner that I have indicated. Each member was furnished a copy, so many was furnished to the library, and the balance was deposited with the Secretary of State; copies were likewise provided to be furnished to the various States in the Union. It seems to me to be the part of wisdom that we shall take some action here that shall look to the accomplishment of a like result. As I have not heard the report on this matter, I would ask the Secretary to read so much of the report as applies to it.

The Secretary read the eighth clause of the report.

MR. HERRINGTON. Mr. President: It seems to me that by the adoption of the suggestion of the gentleman from San Francisco, the most important feature in that resolution and the most important action on the part of this body will be lost sight of. If the report taken by the reporters of the proceedings of this Convention be taken down in phonographic character it will remain as Greek to this Convention and to the world. When that reporter is called upon for his longhand report of his transcription of the record, he will say to this Convention, "Gentlemen, it is under lock and key; pay me one hundred thousand dollars for what is on that paper, and I will take it." Now I don't pretend to say that the reporters would say that; they are all gentlemen, these reporters, every one of them; but, Mr. President, I do not choose to accept the will of any gentleman to a contract after he has performed a portion, and left it in a condition where it is utterly useless to us unless it is transcribed, and he then fix the price. The proposition is now that we make a contract with these reporters to take the notes, not knowing at what rate it will be transcribed, and then to trust to what figures they may choose to place upon it after that is done. This is not the wisdom that should characterize this Convention—to make contracts in that way. I submit that this Convention will not act the part of wisdom to make any such agreement. If we intend to make any arrangements with these reporters, let us make a definite, certain arrangement, whereby the transcription of these reports shall be made out at a certain fixed price, and not trust to what may be done afterwards after the report has been made up.

MR. STEDMAN. Mr. President: I move that we strike out all relating to reporters—and, as an amendment thereto, I desire to offer a resolution:

Resolved, That there be employed by the Convention a competent reporter, whose duty it shall be to make an accurate and faithful report of the debates and daily proceedings of the Convention. That a Committee on Reporting be appointed, who shall be authorized to invite and receive proposals from gentlemen qualified to discharge the duties of reporter as to the terms upon which they will undertake to perform said duties, and that said committee report to the Convention the proposals received, with such recommendations in respect thereto as may be deemed expedient

MR. HAGER. The amendment that I offered is before the Convention. I think it has precedence.

MR. ESTEE. I hold in my hand a report of the proceedings and debates of the Constitutional Convention of the State of Illinois. Their expenses were fifty-seven thousand five hundred and fifty-two dollars and fifty cents; so you can see how necessary it is to take this matter into serious consideration.

THE PRESIDENT. The amendment that is offered is to the eleventh clause, which reads "one Phonographic Reporter and one assistant." The gentleman from Placer moves to strike out "and one assistant."

MR. REYNOLDS. I hardly understand the intention of the question at present. I hope that amendment will not prevail. I speak from some experience, and I know that it is physically impossible for one man to report the proceedings of this entire Convention. The reporter must attend the morning session. It is as much as that man can do during the remaining part of the day to transcribe, or read to amanuenses, his notes. His assistant must come in at the afternoon session and do the same thing. We must therefore have two competent shorthand reporters; certainly not less, perhaps more. As to the compensation. There is no question about the per diem. The only question is about the cost of transcribing. Now it will cost ten cents per folio to hire the writing done. There remains but five cents per folio to compensate the reporter for reading notes, for writing his portion of it, and for overseeing the whole matter, and that is certainly not much. We do not want any second class work done. We cannot peddle it out to the lowest bidder. This Convention must choose the best workmen, and then pay them their price. I hope these amendments to cut down prices or let it out to the lowest bidder will not prevail, but that the report, with the amendment which the committee accepted, will be adopted.

MR. LARKIN. I have an idea that it is not necessary to perpetuate all the discussions in this body, but only such matters as pertain to the debates or propositions to amend the Constitution. The reasons why we adopt the Constitution is the only matter that should be reported—only just matters that are necessary to show to the future generations the reasons why this or that amendment was adopted, is all that should be paid for by the State, or declared by this Convention proper to be paid for as a record of this Convention. All this trifling debate, all these idle matters, are not necessary to be perpetuated.

MR. DUDLEY, of San Joaquin. It is evident that this question is one of great importance, and it is also manifest that the members of this Convention do not thoroughly understand it; therefore I move that the subject-matter be referred back to the committee with instructions to report to-morrow, and that it be made the special order for to-morrow at two o'clock P. M.

MR. WHITE. We do not understand how this question stands now. We are anxious that the Stedman resolution be read and referred to that committee with them.

MR. PRESIDENT. Regularly this report would be read clause by

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clause, and would be open to amendment upon each clause. No amendment being offered to the first clauses, the first amendment was by the gentleman from Placer, Mr. Filcher, to amend the eleventh clause by striking out "and one assistant." That is the first question in order, originally.

MR. HAGER. I move that we adopt all that portion of the report with the exception of that relating to Phonographic Reporters and their compensation.

MR. DUDLEY, of San Joaquin. I suspend my motion.

MR. FREEMAN. I think that twelve Pages are more than is necessary. The report provides for eight additional. That is too many. The statute provides for four.

MR. HAGER. By the statute the President has the power to appoint four Pages, and if the committee report four additional that would make eight. As it now stands we would have twelve.

MR. FREEMAN. I move that the word "eight" be stricken out and "four" inserted.

MR. VAN DYKE. There seems to be some misapprehension in reference to that word "additional." It means additional to the President, Secretary, and Sergeant-at-Arms, with those specified in the statute. It does not mean eight additional Pages added to the four specified in the Act. That is not what the report means. It means eight Pages in all. It is additional to the President, Secretary, and Sergeant-at-Arms. That is what the resolution was that was referred to the committee. It was to report what officers, other than President, Secretary, and Sergeant-at-Arms, would be necessary. So in reference to Porters, Doorkeepers, etc. It is not in addition to those specified in the Act.

MR. PRESIDENT. The chair has so understood it. It provides for the entire number of officers of the Convention other than President, Secretary, and Sergeant-at-Arms.

MR. WINANS. Mr. President: It was the obvious intention of the committee to have eight Pages in the aggregate, and three Doorkeepers. At most it can be only a clerical error. It is not necessary to reach by resolution that which can be met by a simple correction of their report.

MR. WILSON, of San Francisco. The entire number was the intention of the committee, in addition to the President, Secretary, and Sergeant-at-Arms.

MR. BEERSTECHER. I move that the report be taken up seriatim.

MR. EDGERTON. This subject has already occupied the attention of the committee for a long time. It seems to me that the most judicious disposition to make of it is to sustain the motion to recommit the whole subject-matter to the committee.

THE PRESIDENT. There was no such motion. The motion was simply to refer the matter of Phonographic Reporters.

MR. EDGERTON. I move to amend by recommitting the whole subject-matter to the committee, with instructions to report this afternoon by three o'clock.

MR. HUESTIS. This is a question that the Convention will have to meet, and they are probably as well qualified to meet the question and deal with it justly and intelligently now as at any future time. Many of the objections that have arisen here if it is deferred will come up again, and the result will be much more consumption of time. I hope this matter will be disposed of now.

MR. DUDLEY, of San Joaquin. I accept the amendment of the gentleman from Sacramento, Mr. Edgerton.

MR. McCALLUM. I would suggest that instead of three o'clock it be amended so that the committee can report before three o'clock.

MR. EDGERTON. I move to amend so that the committee be instructed to report as soon as practicable.

THE PRESIDENT. The motion is that the report be recommitted to the committee, with instructions to report at the earliest practicable moment.

The motion prevailed.

MR. BARTON. Pending the deliberations of the committee I move that the Convention now proceed to the election of a President pro tem.

Mr. Graves offered the following resolution:

Resolved, That the Secretary of the Convention have printed for the use of the members of the Convention, five hundred sheet copies of the Act entitled "An Act to provide for a Convention to frame a new Constitution for the State of California," approved March 30th, 1878.

MR. AYERS. I believe that is the most economical way to place every member in possession of a copy of the law.

The resolution was adopted.

MR. BLACKMER. I move that this Convention do now adjourn until two o'clock.

The motion prevailed.

AFTERNOON SESSION.

The Convention reassembled at two o'clock; President Hoge in the chair. Roll called and one hundred and forty-two members found to be present.

On request of Mr. Van Dyke, Mr. Campbell was granted leave of absence for the balance of the week.

REPORT.

Mr. Wilson submitted the following report of the Committee on Attachés:

MR. PRESIDENT: Your committee, appointed under a resolution of the Convention, to report the designation, the number of officers other than President and Secretary and Sergeant-at-Arms, as in their opinion are necessary for the transaction of the business of this Convention, and the compensation to be paid to each where not fixed by law, beg leave to report that they have found the following officers, other than President, Secretary, and Sergeant-at-Arms, necessary: First, President pro tem.; second, two Assistant Secretaries; third, one Minute Clerk, fourth, Journal Clerk; fifth, Assistant Sergeant-at-Arms; sixth, three Doorkeepers; seventh, two Porters; eighth, eight Pages (two of whom shall be detailed from time to time by the President as paper-folders); ninth, Postmaster; tenth, Mail Carrier; eleventh, one Phonographic Reporter and his assistant, to be by him selected. We recommend that the following compensation be allowed to said officers respectively, viz.: To Assistant Secretaries, each six dollars per day; to the Minute Clerk and Journal Clerk, eight dollars per day; to the Assistant Sergeant-at Arms, eight dollars per day; to the Doorkeepers, each, five dollars per day; to the Pages, each, three dollars per day; to the Postmaster, four dollars per day; to the Mail Carrier, one hundred dollars per month; to the Phonographic Reporter and his assistant, each, ten dollars per day and such additional sum for transcribing into longhand as the standing Committee of the Convention, to whom the same shall be referred, may determine. The matter to be transcribed to be also determined by such Committee. The officers above named include as well those specified in the statute as the additional ones deemed necessary, and only the President, Secretary, and Sergeant-at-Arms. We also recommend that of the foregoing, the following be elected by the Convention, viz: First, the President pro tem.; second, Assistant Secretaries; third, one Minute Clerk; fourth, one Journal Clerk; fifth, one Assistant Sergeant-at-Arms; sixth, one Phonographic Reporter; and that all the others named above be appointed by the President of the Convention, except the Phonographic Reporter, who shall appoint his own assistant. All of which is respectfully submitted.

S. M. WILSON, Chairman.

October 2d, 1878.

MR. HOWARD. I move that the report be received.

Carried.

PHONOGRAPHIC REPORTERS.

MR. BIGGS. I desire to detain this Convention but a few minutes. As we have come here for retrenchment and reform I propose to offer amendments to that report. And the reason I propose to is this: the people of this State are oppressed by taxation now beyond endurance, and I want to strike out the Phonographic Reporter, notwithstanding gentlemen may say it is an old fogy and exploded idea. Now, I ask this Convention if they want to pay forty thousand dollars or fifty thousand dollars for these debates when they would be published in the papers and sent all over the world. I undertake to say that you may have these debates published at the expense of the State, and you may send them out, and there is not one man in twenty that will ever read them. If the members want their speeches printed and sent broadcast to the world, I ask them to pay for it out of their own pockets. I am for retrenchment and reform, and I don't propose to saddle a burden upon the people of this State, when we can obviate it by striking out that portion of the report of the committee.

MR. WHITE. I rise to second the motion.

THE PRESIDENT. The Chair will state that it proposes to take up this report in the regular parliamentary way. I shall state each clause of it, and shall await any motion to amend. We will reach the proposition that the member from Butte desires to amend in due course, and I will then receive his motion.

MR. BIGGS. Then I understand the report will be taken up seriatim.

THE PRESIDENT. Yes; clause by clause. The first clause proposes to elect a President pro tem.

The President read each clause. When the sixth clause was reached.

DOORKEEPERS.

MR. BEERSTECHER. I move to amend that by saying two Doorkeepers, instead of three.

MR. O'SULLIVAN. I second the amendment.

MR. FILCHER. I move to amend the amendment by striking out "Doorkeepers," and I would say that I understand, from probably as good authority as there is in the State, that under the arrangement of the report of the committee we are likely to need absolutely no Doorkeepers. A gentleman who has been here for two terms asked me if we proposed to appoint Doorkeepers; and if so, what we proposed to do with the Porters. He said that the gate at this central aisle was the proper position of the Assistant Sergeant-at-Arms, and that the Porters might take their positions at the other entrances to this floor. Although I was thoroughly imbued with the idea that we needed Doorkeepers, and took strong ground with him, he made it plain to my mind that the necessity for these Doorkeepers does not exist.

MR. BEERSTECHER. I accept the amendment.

MR. EDGERTON. Mr. President: If that amendment should prevail, it will not be long before the committee will ascertain that if they would keep this hall free from all sorts of invasion, from the importuning of members for all sorts of things, that it is necessary to have a Doorkeeper at each of these gates. Such has been the experience of everybody who has been in the Legislature of this State, both in the Senate and Assembly. That disposition to come in and see members has been carried so far, even when they have had Doorkeepers, that it has been necessary, repeatedly, to pass resolutions that nobody be permitted to come upon the floor without leave obtained from the Chair.

MR. BEERSTECHER. It seems to me that if the necessity arises, and it becomes apparent that we must have three Doorkeepers, that we can place them here at any time; but until that necessity becomes apparent, it seems to me that this clause ought to be stricken out of the report as a matter of economy. As far as invasion of the hall is concerned, if a member rises in his seat and states that gentlemen are requested to leave the floor, I am sure that they will retire beyond the bar. If we have a Sergeant-at-Arms and an Assistant Sergeant-at-Arms, we want them for practical purposes, and not as ornaments. I am in favor of striking out this clause entirely.

MR. BARBOUR. I shall support the amendment, and I do so upon the ground that I believe there is no necessity for more than the one Doorkeeper authorized by law. I intend to propose, when the organization of this Convention is completed and we are ready for business, that, inasmuch as the space is all occupied, that the space outside of the railing shall be kept clear. Then it will take but one Doorkeeper at the center door. I think that is the wish of members, on account of the size of this Convention. If that is true there is no use for three Doorkeepers here; one Doorkeeper will be enough.

MR. WILSON, of San Francisco. I can only say that upon the committee I had associated with me five gentlemen of very large legislative

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experience, one of them in the Federal halls, and all of the others in the different State Legislatures—Messrs. Larkin, Murphy, Brown, Van Dyke, and Howard. The different officers we have selected as necessary were the combined judgment and unanimous opinion of the entire committee. I think that any economy upon this subject will be very poor economy in the end. We require this entire hall, and you will not get it unless you have a Doorkeeper at each gate. We will be annoyed with persons and messengers constantly coming into the Convention. I think, and the committee unanimously think, that three Doorkeepers will be necessary. Two Porters are required, and their duties, as understood by every person, will be quite sufficient for the pay they receive. I think the officers recommended will be found to facilitate the business of the Convention and enable us to get to our homes sooner.

Mr. LARKIN. As a member of that committee I concur in the action of the committee, and for three reasons: We have galleries here that there will have to be order kept in; and the lobbies there, and there must be order kept in them. As soon as the Convention is organized you will have to have some ten or twelve committee rooms; and those committee rooms will have to be attended to—have to be kept clean—somebody to attend to them. My experience in this matter is, that this economy in the start, in not selecting the proper number of officers, has not worked well. I, as a member of the Senate, and acting on the Committee on Contingent Expenses, found that I had a pile of resolutions for this employé and that, offered by gentlemen of the Senate. You will find on this floor, if you do not appoint the number you want, it will be necessary within a week—you will find they will each have a friend that they want a place for, and you will find resolution after resolution; and in two weeks you will have double the number we ask for now. I am not in favor of paying one dollar here more than what is absolutely necessary; but I do not propose to make any attempt to get along without this man or that man for the purpose of getting a reputation, when I know that the necessity will arise for all these men. I think it is proper, and I think it is economy, that we proceed to elect these men.

Mr. NOEL offered the following resolution, which was read for information:

Resolved, That the hearing of speeches of members pertaining to the organization of this body be made the special order of business for Sunday, the sixth instant, and that all speeches be deferred until that time, and that the Convention do now proceed to effect the organization and the transaction of legitimate business. [Laughter.]

PHONOGRAPHIC REPORTERS.

Mr. FREEMAN. I move to strike out the eleventh clause. It has already been shown, by reading from the report of the Constitutional Convention of Illinois, that the report of the proceedings of that Convention cost about sixty thousand dollars. Let us assume, for the sake of argument, that the report of the proceedings of this body will cost only half that sum. The question now being upon the appointment of a reporter, we come down to the proposition whether it is desirable to have this great amount of expenditure. I will remind members, in the first instance, that the appropriation made for this Convention is less than enough to pay the per diem and mileage of the members for the time that we shall probably be in session; therefore, the incurring of any great expenditure would leave us without sufficient means to go on with this Convention to the end. This is a large expenditure to incur; and I would ask what there is that will justify so great an expenditure? We do not propose to publish these proceedings; we do not propose to establish a newspaper; we do not propose to distribute them among our constituents. The only useful object which they can answer is, that other persons desiring to investigate constitutional questions may be able to read the debates which here occur, and gain what wisdom they can from them. This may be a good purpose, but I do not think it is warranted. So far as the proceedings of the Convention are concerned, we have no need of such an officer. There is no such an office in connection with the sessions of the Legislature, where the debates are of a greater variety than they will be likely to be here. We have a Journal of our proceedings, which will at all times show all that was actually done here. The most that these reports can do is simply to flatter the personal vanity of the members in connection with these proceedings.

Mr. BARNES. I hope the motion made by the gentleman from Sacramento will not prevail. It seems to me, sir, that if there is one expense more than another that ought to be incurred, it is this; and if it costs even more than the amount estimated by the gentleman, who appears to have investigated the subject, I shall still be in favor of it. Bear in mind, Mr. President, we are about to consider some hitherto untried experiments in government, and some are threatened which have been tried and rejected elsewhere, and their incorporation in the organic law of this State will be urged and earnestly pressed. The construction of our present Constitution has occupied the attention of the Courts of this State for many years. It is not unlikely that the Constitution which will be adopted will be subjected to similar judicial criticism and discussion. In view of the important subjects to be here discussed, in view of the laws we propose to establish for municipal government, with reference to corporations, with reference to the tenure of land and of other multitudinous reforms, none of which I need mention, it will be most useful to preserve in the records of this Convention, not merely a bare skeleton that shall indicate what was transacted here, not merely the Constitution as it shall go forth to the people, but what was the thought and the reasoning of this Convention upon these propositions. It is of course absurd to say that the swarm of speechlets made upon microscopic points of order and other immaterial subjects should go upon this journal to be kept for us by the Phonographic Reporters and be published. Such a consummation is to be devoutly deplored. If I understand the proposition of this committee it is to have such portion of the debates preserved as shall be directed by the Convention or a committee appointed for that purpose. For myself I desire that every vote I shall give here upon these important questions shall have a reason behind it. If I shall vote contrary to the prejudices of my constituents, I desire that the reasons which have controlled me shall be photographed. Let our records be crystallized in these reports, that we and all men may see not only what we have done but the reasons for our action. Lawyers, I am sure, are aware that when we seek the construction of a clause in a Constitution it is of great assistance to resort to the debates of the Convention which adopted it. What does it amount to? Suppose it cost fifty thousand dollars to enable the Courts and those who come after us to understand the reasons which brought us to the conclusions to which we shall arrive, and preserve forever a record of all the views and opinions of those who shall take part in this great work? This subject might be greatly enlarged upon, but for the present I respectfully urge upon gentlemen that they should preserve not merely the fact that we voted so and so, but the whole record, plain and clear. If there is anything to be done by the gentlemen who proposed to establish these promised radical reforms, I desire that others who may wish to adopt Constitutions, perhaps like this, may have the benefit of these debates, and that they shall remain in the great libraries of every State, and be to them what the proceedings and debates of the States of Massachusetts, New York, Pennsylvania, Ohio, Illinois, and Michigan have been to us in the preparation for our work, and that our record shall stand side by side with theirs.

Mr. McFARLAND. I believe there is some misunderstanding here. I understand that by adopting the report of the committee we only say that we will employ two reporters at a certain salary per day. That costs but twenty dollars per day. They record in shorthand all the proceedings of this Convention. Now, when you come to transcribing it we come to a matter that is not determined by this resolution. That is left to the future judgment and action of this Convention. I certainly would be opposed to transcribing into longhand and keeping a journal of everything that occurs here, although I think a great many things ought to be so kept. The report simply provides for taking down the proceedings in shorthand. If we want them written out hereafter it can be done. If you adopt the motion of the gentleman from Sacramento and strike this out of the report, you simply determine now that there shall not be any shorthand reporter. I do not think the Convention is now ready to take so decided an action as that. Let us adopt this report, elect the reporter, and hereafter, by means of a committee appointed for that purpose, or if you choose to change that by the judgment of the Convention in some other shape, determine how much we want transcribed.

Mr. BIGGS. I would ask if the reports were taken down and transcribed into longhand, who upon this floor would read them? It is a waste of that much time and public money. I want to deal with plain facts. I am for retrenchment and reform, notwithstanding my friend here says I am the watch-dog of the treasury. Gentlemen, God knows, that from the way we have been progressing since we have commenced here last Monday, I think it will need a little closer watching than I am able to do.

Mr. HEISKELL. I am a producer. I represent a producing constituency. I heartily concur in the ideas of the gentleman from San Francisco, Mr. Barnes. I have no fears that the expenditure of this money will ever meet with the disapprobation of the people of this State. I will say to the gentleman from Butte, Mr. Biggs, let him join in this Convention in producing a Constitution that will do justice to the producer and put some restraint upon the money powers, and he will never hear a word from the people against him for this appropriation, even if fifty thousand dollars should be necessary to publish the debates of this Convention.

Mr. WHITE. I wish to say that I also represent a producing constituency, and I am satisfied that not one man in a hundred will sanction an appropriation of fifty or sixty thousand dollars for this business. I am satisfied that they want men that will oppose it. They know that the Supreme Court of the State of California decides these questions without any reference to the debates of the members on the floor. Do you suppose they rule in this way: "Mr. So-and-so proposed such and such a thing in this Convention?" I had no idea that it would cost more than seven or eight thousand dollars; but it may come up to one hundred thousand dollars, and it can't be less than thirty or forty thousand dollars. I trust and hope that every man that is opposed to this taxation which is breaking us all down and ruining the country, will stand by us and vote down that proposition.

Mr. HUESTIS offered the following resolution:

Resolved, That the Convention elect one Phonographic Reporter, and that he be allowed such assistants as he may deem necessary; that the reporter of this Convention be required to furnish verbatim reports of its proceedings, and that he receive five thousand dollars in full compensation for his services as such reporter.

Mr. ESTEE. I would suggest that the question of Phonographic Reporters be made the special order for to-morrow, at eleven o'clock. My reason, if I may be allowed to give the reason, is that the last resolution introduced is too indefinite. If the Convention should proceed upon that theory it ought to prescribe when these reports are to be written out. If they are to be written out it should be done so that they could be laid on the desks of members the next morning. I move that the eleventh clause of that report be made the special order for to-morrow, at eleven o'clock.

Mr. REYNOLDS. Mr. President: I wish to make a little calculation in regard to the cost of reporting the debates of this Convention. If the gentlemen who have been talking about forty and fifty and sixty thousand dollars will look at this morning's issue of the Record-Union they will find a full and complete report of yesterday's proceedings, which makes five solid columns of solid nonpareil. Now let us look at that and see what that cost. I have made an actual count and find it amounts to ninety-four folios, which, at twenty cents per folio, would be eighteen dollars and ninety cents; add to that a per diem of twenty dollars would

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make thirty-eight dollars and ninety cents for reporting yesterday's proceedings. To-day we have spent the entire session in talking about it. Perhaps a full report of to-day's debates would amount to ten columns, making the total cost of reporting to-day's proceedings about eighty dollars. There seems to be a great misapprehension in regard to the expense of this reporting. The gentlemen have quoted with interest from the Illinois debates to show that it will cost fifty or sixty thousand dollars. Let us come right down to the figures. Here is an actual example of what it will cost a day, and we will base our calculations upon that. I concur in the remarks of the gentleman from San Francisco, Mr. Barnes, in regard to the propriety of publishing these debates; and it seems to me that we should publish a verbatim report or none at all. This idea of garbling a report, cutting out and putting in this thing and that, of this member or of that, will create great confusion, and in the end lead to difficulties. Let us have a verbatim report. The State of California can afford to pay for it at these rates. Here we are talking away two thousand dollars a day, while the total cost in the difference we are contending about will only amount to a few hundred dollars in the end. Let us adopt the report as it came from the committee, to appoint a reporter and one assistant, pay him a fair price for good work, stop this talk and get to business. [Applause.]

MR. HARVEY. I desire to add a proviso to the resolution:

Resolved, that the notes shall not be written out unless the Constitution framed by this Convention be adopted by the people and the transcribing and printing thereof provided for by an Act of the Legislature.

MR. HERRINGTON offered the following resolution as a substitute:

Resolved, That one reporter and assistant, to be selected by the reporter, be employed at a per diem of ten dollars each, for taking the proceedings of this Convention in shorthand, with the understanding and agreement that each day's proceedings are to be transcribed at a cost to the State of not exceeding six thousand dollars transcribing the entire proceedings of the Convention.

MR. HERRINGTON. I am satisfied of the importance of preserving the proceedings of this Convention, but I am unwilling that the cost attending its preservation shall be uncertain and left to contingencies in the future. I am satisfied that the work can be done for that price. If I am correctly informed a party who is reporting the proceedings of this Convention says, that if that amount is set apart to secure the pay that it will be done for that amount or less, and that is why I offer this resolution, so that we may fix a limit.

MR. AYERS. I am afraid, judging from the range which this discussion has taken, that the gentlemen of this Convention have become somewhat confused on the topic. They have, it seems to me, mixed the printing of the report of the debates with the reporting of the debates. This question does not reach to the length to which the gentlemen seem to believe it does. If this Convention should make matter to the extent of ten solid columns of nonpariel every day, the transcription at twenty cents per folio would amount, in the one hundred days, to exactly five thousand dollars. It is impossible that the reporting of this Convention can reach any such sum as has been suggested by Mr. Estee, after looking at the Illinois reports.

MR. ESTEE. That was for paper, printing, and reporting.

MR. AYERS. We have a State Printing Office here which takes charge of the printing, and the expenses of that printing will not come out of the appropriation which belongs legitimately to the expenses of this Convention. Hence, if you appoint reporters at the regular per diem, and you place the charge per folio at twenty cents or fifteen cents, there can be no great extravagance in the matter, because I do not believe if we talked all the time we could possibly talk more than ten columns.

MR. MURPHY. I move that we adopt all of the report except that portion of it in relation to Phonographic Reporters.

The motion prevailed.

MR. MURPHY. I move that the question in regard to Phonographic Reporters be referred to a committee of five to be appointed by the Chair. It is understood that I do not want to be on that committee, although I make the motion.

MR. NOEL. It seems to me that we might settle the question in regard to these reporters without any further delay. We have been discussing that question all day. We want a proposition that we can understand, like that of the gentleman from Santa Clara, Mr. Herrington; one that is reasonable in its terms; a proposition by which the work is to be done in gross. Gentlemen of the Convention will then distinctly understand what compensation the reporters are to receive. If it can be done for any sum lower than that, I will vote for that. We certainly need a reporter.

MR. HERRINGTON. It seems to me that we will be in the same position after the appointment of the committee that we are in now.

Mr. Murphy's motion prevailed.

MR. BEERSTECHER offered the following resolution:

Resolved, That this committee of five upon reporters be appointed by the Chair, also draw and submit a contract to this Convention for its approval, whereby the reporters will be bound in a certain penal sum to perform their duties according to the wishes of this Convention, and which will secure such reports written out in longhand for the use of the State.

MR. BEERSTECHER. I offer this resolution for the purpose of protecting the State. If we merely appoint a Phonographic Reporter, and he takes the reports in shorthand, of course we have not got the advantage of the reports so taken, and after the reports are all taken these gentlemen can turn around and say, "Here are the phonographic reports and I desire to have my compensation for the work that I have done;" or, "If you desire to have the reports made intelligible you have got to pay." It is a well known fact that each reporter has a peculiar way of his own. In a matter of this kind a question might arise, and after we had expended the sum of five or six thousand dollars we would not have anything but a hieroglyphic document that no one could read but the man who wrote it. But the moment that it is written out in longhand the State can have a copyright of that longhand report. In other words, I desire that this report of the official reporter be in longhand copies, and let the title to it be in the State, and the work in an intelligent form.

MR. FREEMAN. That resolution is premature. The Convention has just provided for a committee. If they recommend that we have a Phonographic Reporter, and we decide to have one, then the resolution will be material. Therefore I move that the resolution be laid on the table.

MR. BARNES. I understand that this whole subject matter has been referred to a committee. I submit that the discussion is out of order.

MR. O'DONNELL. I move that the resolution be referred to the committee.

The motion prevailed.

FURTHER ORGANIZATION.

MR. MURPHY. I move that we proceed to the further organization of this body by the election of a Sergeant-at-Arms.

The Chair announced that nominations were then in order.

MR. FREEMAN nominated Mr. B. F. Stewart, of Sacramento.

MR. DUDLEY nominated Mr. A. J. Ross.

MR. REDDY nominated J. M. Farrelly, of San Francisco.

MR. MASON nominated C. J. Mosely, of Vallejo.

MR. McCOMAS nominated Albert French, of Santa Clara.

MR. BELCHER nominated T. J. Sherwood, of Marysville.

MR. BARBOUR nominated M. H. O'Connor, of San Francisco.

MR. WATERS nominated J. T. Knox, of San Bernardino.

MR. BOUCHER nominated D. B. Hayes, of Butte County.

MR. TINNIN nominated Harrison Jones, of San Francisco.

FIRST BALLOT.

The roll was called, with the following result:

FOR STEWART.

Ayers,	Howard,	Moreland,
Caples,	Kelley,	Noel,
Dunlap,	Larue,	Reed,
Edgerton,	McCallum,	Van Dyke,
Estee,	McConnell,	Walker, of Tuolumne,
Freeman,	McFarland,	Wilson, of Tehama—18.

FOR ROSS.

Dudley, of San Joaquin,	Hitchcock,	Prouty,
Garvey,	Lampson,	Schell,
Hall,	Lewis,	Schomp—9.

FOR FARRELLY.

Barnes,	Murphy,	Van Voorhies,
Gregg,	Reddy,	Winans—8.
Hager,	Stuart,	

FOR MOSELY.

Charles,	Harvey,	Rhodes,
Crouch,	Hilborn,	Steele,
Dudley, of Solano,	Mills,	Waters,
Estey,	Nason,	Webster—12.

FOR FRENCH.

Boggs,	Martin,	Smith, of 4th District,
Hoge,	McComas,	Townsend,
Inman,	Shoemaker,	Tully,
Jones,	Smith, of Santa Clara,	Weller—12.

FOR SHERWOOD.

Belcher,	Heustis,	Porter,
Cowden,	Keyes,	Shurtleff,
Glascock,	McNutt,	Turner—11.
Hale,	Ohleyer,	

FOR O'CONNOR.

Barber,	Harrison,	O'Sullivan,
Barry,	Herold,	Reynolds,
Barton,	Hughey,	Ringgold,
Beerstecher,	Hunter,	Smith, of San Francisco,
Bell,	Joyce,	Soule,
Condon,	Kenny,	Stedman,
Cross,	Kleine,	Sweasey,
Davis,	Larkin,	Swenson,
Dean,	Lavigne,	Tuttle,
Dowling,	Lindow,	Vacquerel,
Doyle,	McCoy,	Walker, of Marin,
Evey,	Moffat,	Wellin,
Farrell,	Morse,	West,
Freud,	Nelson,	Wickes,
Gorman,	Neunaber,	White,
Grace,	O'Donnell,	Wyatt—50.

FOR KNOX.

Berry,	Holmes,	Rolfe,
Graves,	Mansfield,	Swing,
Heiskell,	Overton,	Waters—9.

FOR HAYES.

Andrews,	Brown,	Filcher,
Biggs,	Burt,	Pulliam,
Blackmer,	Chapman,	Stevenson—11.
Boucher,	Fawcett,	

FOR JONES.

Tinnin,	Wilson, of 1st District—2.

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Whole number of votes cast 142
Necessary to a choice 72
Mr. Hayes received 11
Mr. Stewart received 18
Mr. O'Connor received 50
Mr. Farrelly received 8
Mr. Sherwood received 11
Mr. Knox received 10
Mr. French received 12
Mr. Mosely received 12
Mr. Ross received 8
Mr. Jones received 2

No choice.

SECOND BALLOT.

The roll was called, with the following result:

FOR STEWART.

Ayers,	Howard,	Moreland,
Caples,	Kelley,	Noel,
Dunlap,	Larue,	Reed,
Edgerton,	McCallum,	Van Dyke,
Estee,	McConnell,	Walker, of Tuolumne,
Estey,	McFarland,	Wilson, of Tehama.—18.
Freeman,		

FOR ROSS.

Dudley, of San Joaquin,	Hitchcock,	Prouty,
Garvey,	Lampson,	Schell,
Hall,	Lewis,	Schomp—9.

FOR FARRELLY.

Barnes,	Murphy,	Wilson, of 1st District,
Gregg,	Reddy,	Winans—7.
Inman,	Stewart,	

FOR MOSELY.

Charles,	Hilborn,	Rhodes,
Davis,	Johnson,	Steele,
Dudley, of Solano,	Mills,	Webster—12.
Harvey,	Nason,	

FOR FRENCH.

Boggs,	McComas,	Townsend,
Hoge,	Shoemaker,	Tully,
Jones,	Smith, of Santa Clara,	Van Voorhies,
Martin,	Smith, of 4th District,	Weller—13.

FOR SHERWOOD.

Belcher,	Heustis,	Porter,
Cowden,	Keyes,	Shurtleff,
Glascock,	McNutt,	Turner—11.
Hale,	Ohleyer,	

FOR O'CONNOR.

Barber,	Grace,	O'Donnell,
Barry,	Harrison,	O'Sullivan,
Barton,	Herold,	Reynolds,
Beerstecher,	Herrington,	Ringgold,
Bell,	Hunter,	Smith, of San Francisco,
Condon,	Inman,	Soule,
Cross,	Joyce,	Stedman,
Davis,	Kenny,	Sweasey,
Dean,	Kleine,	Swenson,
Dowling,	Larkin,	Tuttle,
Doyle,	Lavigne,	Vacquerel,
Evey,	Lindow,	Walker, of Marin,
Farrell,	Moffat,	West,
Finney,	Morse,	White,
Freud,	Nelson,	Wyatt—47.
Gorman,	Neunaber	

FOR KNOX.

Berry,	Fawcett,	Rolfe,
Blackmer,	Mansfield,	Swing,
Brown,	Overton,	Waters—9.

FOR HAYES.

Andrews,	Filcher,	McCoy,
Biggs,	Graves,	Pulliam,
Boucher,	Hager,	Stevenson,
Burt,	Heiskell,	Tinnin,
Chapman,	Holmes,	Wickes—15.

Whole number of votes cast 141
Necessary to a choice 71
Mr. Hayes received 15
Mr. Stewart received 18
Mr. O'Connor received 47
Mr. Farrelly received 7
Mr. Sherwood received 11
Mr. Knox received 9
Mr. French received 13
Mr. Mosely received 12
Mr. Ross received 9

No choice.

At four o'clock and thirty minutes P. M., Mr. Barnes moved to adjourn till to-morrow at ten o'clock A. M.

Lost.

THIRD BALLOT.

The roll was called, with the following result:

FOR STEWART.

Ayers,	Howard,	Moreland,
Caples,	Kelley,	Reed,
Dunlap,	Larue,	Van Dyke,
Edgerton,	McCallum,	Walker, of Tuolumne,
Freeman,	McFarland,	Wilson, of Tehama—16.
Garvey,		

FOR ROSS.

Dudley, of San Joaquin,	Lampson,	Prouty,
Hall,	Lewis,	Schomp—7.
Hitchcock,		

FOR FARRELLY.

Barnes,	Martin,	Stuart,
Gregg,	Murphy,	Wilson, of 1st Dist.
Hager,	Reddy,	Winans—9.

FOR MOSELY.

Charles,	Johnson,	Rhodes,
Estey,	McConnell,	Steele,
Harvey,	Mills,	Webster—11.
Hilborn,	Nason,	

FOR FRENCH.

Boggs,	McComas,	Townsend,
Crouch,	Shoemaker,	Tully,
Hoge,	Smith, of Santa Clara,	Van Voorhies,
Inman,	Smith, of 4th Dist.	Weller—13.
Jones,		

FOR SHERWOOD.

Belcher,	Heustis,	Porter,
Cowden,	Keyes,	Schell,
Estee,	McNutt,	Shurtleff,
Glascock,	Ohleyer,	Turner—13.
Hale,		

FOR O'CONNOR.

Barber,	Herold,	Reynolds,
Barry,	Herrington,	Ringgold,
Barton,	Hughey,	Smith, of San Francisco,
Beerstecher,	Hunter,	Soule,
Bell,	Joyce,	Stedman,
Condon,	Kenny,	Sweasey,
Davis,	Kleine,	Swenson,
Dean,	Larkin,	Tuttle,
Dowling,	Lavigne,	Vacquerel,
Doyle,	Lindow,	Walker, of Marin,
Farrell,	Morse,	Wellin,
Finney,	Nelson,	West,
Freud,	Neunaber,	Wickes,
Gorman,	O'Donnell,	White,
Grace,	O'Sullivan,	Wyatt—47.
Harrison,		

FOR KNOX.

Berry,	Graves,	Overton,
Blackmer,	Heiskell,	Rolfe,
Brown,	Holmes,	Swing,
Burt,	Mansfield,	Waters—13.
Fawcett,		

FOR HAYES.

Andrews,	Cross,	Pulliam,
Biggs,	Filcher,	Stevenson,
Boucher,	McCoy,	Tinnin—10.
Chapman,		

Whole number of votes cast 140
Necessary to a choice 71
Mr. Hayes received 10
Mr. Stewart received 16
Mr. O'Connor received 47
Mr. Farrelly received 9
Mr. Sherwood received 13
Mr. Knox received 13
Mr. French received 13
Mr. Mosely received 11
Mr. Ross received 7

No choice.

At five o'clock P. M. Mr. McCallum moved to adjourn till to-morrow at ten o'clock A. M.

The President announced the appointment of the following committee in accordance with the motion this day adopted, to appoint a special committee of five to consider the eleventh clause of the report of the committee appointed to determine the number and designation of officers of this Convention: Messrs. Murphy, Filcher, O'Sullivan, Shoemaker, and Ayers.

The Convention then adjourned, to meet to-morrow at ten o'clock A. M.

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SIXTH DAY.

SACRAMENTO, Thursday, October 3d, 1878.

The Convention reassembled at ten o'clock A. M., pursuant to adjournment, President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hall,	Overton,
Ayers,	Harrison,	Porter,
Barbour,	Harvey,	Prouty,
Barnes,	Heiskell,	Pulliam,
Barry,	Herold,	Reddy,
Barton,	Herrington,	Reed,
Beerstecher,	Hilborn,	Reynolds,
Belcher,	Hitchcock,	Rhodes,
Bell,	Holmes,	Ringgold,
Berry,	Howard,	Rolfe,
Biggs,	Huestis,	Schell,
Blackmer,	Hughey,	Schomp,
Boggs,	Hunter,	Shafter,
Boucher,	Inman,	Shoemaker,
Brown,	Johnson,	Shurtleff,
Burt,	Jones,	Smith, of Santa Clara,
Caples,	Joyce,	Smith, of 4th District,
Chapman,	Kelley,	Smith, of San Francisco,
Charles,	Kenny,	Soule,
Condon,	Keyes,	Stedman,
Cowden,	Kleine,	Steele,
Cross,	Lampson,	Stevenson,
Crouch,	Larkin,	Stuart,
Davis,	Larue,	Sweasey,
Dean,	Lavigne,	Swenson,
Dowling,	Lewis,	Swing,
Doyle,	Lindow,	Tinnin,
Dudley, of San Joaquin,	Mansfield,	Townsend,
Dudley, of Solano,	Martin, of Santa Cruz,	Tully.
Dunlap,	McCallum,	Turner,
Edgerton,	McComas,	Tuttle,
Estey, of Contra Costa,	McConnell,	Vacquerel,
Estee, of 1st District,	McCoy,	Van Dyke,
Evey,	McFarland,	Van Voorhies,
Farrell,	McNutt,	Walker, of Marin,
Fawcett,	Miller,	Walker, of Tuolumne,
Filcher,	Mills,	Waters,
Finney,	Moffat,	Webster,
Freeman,	Moreland,	Weller,
Freud,	Morse,	Wellin,
Garvey,	Murphy,	West,
Glascock,	Nason,	Wickes,
Gorman,	Nelson,	White,
Grace,	Neunaber,	Wilson, of Tehama,
Graves,	Noel,	Wilson, of 1st District,
Gregg,	O'Donnell,	Winans,
Hager,	Ohleyer,	Wyatt,
Hale,	O'Sullivan,	Mr. President.

ABSENT.

Campbell,	Eagon,	Terry.
Casserly,	Laine,	

THE PRESIDENT. The Chief Secretary being ill, I will request Mr. Marcus D. Boruck to read the Journal of yesterday.

MR. RINGGOLD. I move that the reading of the Journal be dispensed with.

Lost.

MR. BORUCK proceeded to read the Journal.

MR. HEISKELL. I desire to know by what authority and in what capacity the gentleman is reading.

The PRESIDENT. He was requested to read the Journal by the Chair.

The Journal was read and approved.

SUBORDINATE OFFICERS.

These persons were appointed to subordinate positions by the Chair: Postmaster, Michael Barnes; Mail Carrier, Frank Laine; Doorkeepers, M. F. Maloney, W. H. H. Fellows, and William Fleming; Pages, J. D. Ricks, H. D. Durner, August Rose, Mark Shipley, William Campbell, J. E. Doak, Cary Goods, and E. H. Morris; Porters, Henry Jones and William Galt.

PHONOGRAPHIC REPORTERS.

Mr. MURPHY presented the following report from the Committee on phonographic reporting:

To the President and members of the Convention:

Your committee appointed to examine into the subject of reporting the proceedings and debates of this Convention, beg leave to submit the following report: That the Convention elect a Phonographic Reporter, who shall be empowered to select his assistant, and the two to be the shorthand reporters of this Convention, and to be entitled to the per diem fixed by law for their services. That the reporters so selected be required to furnish a longhand verbatim report of the proceedings of this Convention, on the following terms, to wit: at the rate of twenty cents per folio, with the further provision, that if the Convention last one hundred days, the entire compensation said reporters shall receive for transcribing their notes into longhand shall not exceed six thousand dollars. That the reporter who may be elected by this Convention shall enter into good and sufficient bonds, in the sum of ten thousand dollars, for the efficient and faithful performance of his duty, and guarantee the State against recovery by him of any compensation for his services in this connection, exceeding the gross sum of eight thousand dollars, including the per diem of himself and assistant, and cost of transcribing, for the entire session, should it last one hundred days, or twenty cents per folio for transcribing into longhand their notes, should the session not last one hundred days.

JAMES E. MURPHY, Chairman.

The report was received.

Mr. BEERSTECHER offered the following resolution:

Resolved, That this Convention, recognizing the fact that the people of this State are groaning under the burden of grievous t xation, hereby determine to dispense with paid phonographic reports of its proceedings, and with the services of paid Phonographic Reporters.

Mr. BEERSTECHER. I move its adoption.

MR. HAGER. We could not hear the resolution at this end of the hall.

MR. LARKIN. This was made the special order for eleven o'clock, I believe.

The PRESIDENT. It is moved and seconded that this whole subject be made the special order for eleven o'clock. If there be no objection, the whole question will stand over until eleven o'clock.

So ordered.

STANDING COMMITTEES.

MR. ESTEE, from the Committee on Rules and Order of Business, made the following report:

Mr. President: Your Committee on Rules, Order of Business, and Standing Committees, beg leave to report the following committees, and number of each, to consider the several parts of the Constitution which relate to those subjects respectively, which may be referred to such committees: First, on Preamble and Bill of Rights, to consist of nine members; second, on the Right of Suffrage, eleven members; third, on Legislative Department, fifteen members; fourth, on Executive Department, nine members; fifth, on Judicial Department, nineteen members; sixth, on Military Affairs, eleven members; seventh, State and Municipal Indebtedness, fifteen members; eighth, on Education, nine members; ninth, State Institutions and Public Buildings, seven members; tenth, on City, County, and Township organization, fifteen members; eleventh, on Apportionment and Representation, eleven members; twelfth, on Revenue and Taxation, fifteen members; thirteenth, on Corporations other than Municipal, fifteen members; fourteenth, on Miscellaneous Subjects, nine members; fifteenth, on Future Amendments, nine members; sixteenth, on Schedule, eleven members; seventeenth, on Revision and Adjustment, nine members: eighteenth, on Water and Water Rights, fifteen members; nineteenth, on Agriculture, Mining, Manufactures, and Commerce, fifteen members; twentieth, on Immigration, fifteen members; twenty-first, on Reporting and Printing, five members; twenty-second, on Privileges and Election, fifteen members; twenty-third, on Mileage and Contingent Expenses, nine members. The appointment of said committees shall be made by the President. Respectfully submitted.

M. M. ESTEE, Chairman.

The report was received.

MR. HAGER. I move that there be another standing committee, to be composed of the Chairmen of all the other committees, to be called the Committee on Schedule.

MR. ESTEE. The report provides for one now.

MR. EDGERTON. That report is only a partial report. The committee agreed upon the designation and number of these so far. Two or three committees have just occurred to me that are not provided for there, for example, a Committee on Engrossment and Enrollment. The committee report these in order that the President may go to work, and I hope that the report, so far as it goes, will be adopted.

THE PRESIDENT. This is a partial report from the committee.

MR. HERRINGTON. I move that a committee, consisting of fifteen members, be added, to be called the Committee on Federal Relations.

MR. TINNIN. That subject is included in the Committee on Immigration, which includes also the Chinese question, and is so understood.

MR. KEYES. I think it would be well to make one Committee on Agriculture and one on Mining.

MR. ESTEE. There is very little that can be put in a Constitution on these subjects, while a great deal can be put in a statute. We found by examining the proceedings of other Constitutional Conventions that they were usually in one committee, and then they had very little to do. We examined it with a good deal of care. This is only a partial report, but it was made this morning so that it could be printed, and so that the President could go on with the work of forming the committees. It will be found by examining the proceedings of Conventions in other States that where there were only eighty or ninety members they usually fixed the number of members on each committee at seven or nine. Here there are one hundred and fifty-two members, and the committees range from seven to fifteen. On the most important questions there are fifteen members.

MR. DUDLEY, of Solano. It is well known that there is a serious conflict, real or apparent, between the agricultural and mining interests, and it strikes me that it would be well that there be different committees, and that the Committee on Agriculture should not include the Committee on Mining. They should be separate and distinct.

MR. BLACKMER. I would ask the Secretary to read the section regarding the Committee on Agriculture and Mining. Does it include agriculture, mining, and commerce?

MR. ESTEE. That is what it includes.

MR. BLACKMER. There is no objection to combining the subjects of agriculture and commerce, but the subject of mining should be delegated to a separate committee. It is very true that in other States, where they have made Constitutions, these subjects have been put into the hands of one committee, but we have a State here in which the mining interest is larger than in any State where they have made a Constitution. As the gentleman has said who preceded me, there is a real or apparent conflict of interest between these two industries of mining and agriculture. I move that a separate committee be appointed on the subject of mining.

MR. ESTEE. It was understood that there would be a conflict of interest, or that there was a conflict of interest, and for that reason the committee decided to do as they did in Pennsylvania, where the mining interest is six times as much as it is here in California, so that the provisions of the Constitution should harmonize. It was supposed that by making

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the committee large, these questions could be discussed in the committee, and the differences settled and adjusted in the amendments reported by them. We found that in Pennsylvania, New York, and in other leading States in the Union, they adopted this rule. The committee thought it well to follow well established precedents in arranging the committees, and we say to you, this is what other Conventions have done upon this subject, but if the Convention desires, this portion can be recommitted and the balance of the report adopted.

Mr. BLACKMER. The point I made was that the mining interest was of vital importance and that it came in conflict with the agricultural interest. I supposed the gentleman would take into consideration the character of the mining here. If they mine gold in Pennsylvania upon the plan we do here, then it is a parallel case. I do believe that this question ought to be separated.

Mr. DUDLEY, of Solano. I move to amend the nineteenth clause by striking out the words "mining, manufactures, and commerce."

Mr. O'SULLIVAN. I move that we consider the whole report seriatim.

Mr. EDGERTON. I do not see any particular affinity between the subjects of mining and manufacturing. The Chairman of the committee, when he says that it was supposed that it would be judicious to bring the friends of the mining interest and the friends of the agricultural interest together in consultation upon this subject, that by a comparison of views they might arrive at some solution of the question, has touched upon a point worthy of careful consideration, and I hope that the gentleman from Solano will withdraw his motion for the purpose of having this clause recommitted and considered further. There is certainly an affinity between these subjects, but if it is deemed advisable to separate them and have a standing committee on mining alone, they can make that report.

Mr. DUDLEY, of Solano. With the understanding that that part of the report is to be recommitted, I withdraw my motion.

Mr. EDGERTON. I now move that that part of the report be recommitted to the Committee on Rules, and that the remainder of the report be adopted.

Mr. WICKES. The action of other States on this important question in their Constitutional Conventions could not be a precedent for us. Mining is a large and important interest in this State, and would seem to call for a special Committee on Mining. I do not see that there ought to be any conflict between the mining and agricultural interests, and we should endeavor to harmonize them as much as possible; therefore, I second the motion to recommit.

The motion of Mr. Edgerton prevailed, and the President announced the report adopted, with the exception of the nineteenth clause.

The PRESIDENT. The question now recurs on the motion to recommit the nineteenth clause to the Committee on Rules.

Mr. BARBOUR. I did not understand the motion to be to adopt the report.

The PRESIDENT. The motion was regularly made and has been carried by the Convention. The question now is on recommitting the nineteenth clause to the Committee on Rules.

The motion prevailed.

Mr. BARNES offered the following resolution:

Resolved, That when the rules and order of business for the regulation of this body are adopted and the standing committees appointed, five hundred copies thereof be printed for the convenience of members, and that the names and residence in Sacramento of the members be also printed therewith; that the cost of such printing be paid out of the money appropriated by law for the expense of the Convention.

Mr. HAGER. The law provides that the printing shall be done at the State Printing Office.

Mr. BARNES. I withdraw the last part of it.

Mr. TINNIN. I move that the resolution be referred to the committee on contingent expenses. That is a portion of the contingent expenses.

The motion prevailed.

FURTHER ORGANIZATION.

Mr. WATERS. I move that we proceed to the election of Assistant Secretaries.

Mr. BARNES. There is a special order for eleven o'clock.

The PRESIDENT. It is moved and seconded that the Convention proceed to the election of two Assistant Secretaries.

Carried.

Mr. EDGERTON. I place in nomination E. F. Smith, of Sacramento.

Mr. WYATT. I desire to place in nomination for the position of First Assistant Secretary, the name of R. D. Pitt, of Los Angeles County.

Mr. HOWARD. I second that nomination. I have known Mr. Pitt for some time, and I regard him as every way competent and worthy of the place.

Mr. HITCHCOCK. I nominate George A. Thornton, of Sonoma.

Mr. VAN DYKE. I move that both Secretaries be voted for at the same time.

Mr. FREUD. I would ask if these two Secretaries are to be voted for together.

The PRESIDENT. Not unless the Convention so orders.

Mr. HUESTIS. I offer a resolution.

Mr. EDGERTON. I understand they are designated in the law as Assistant Secretaries. I move that each gentleman voting vote for two at a time.

Mr. HUESTIS. I have introduced a resolution on that subject.

The Secretary read the resolution, as follows:

Resolved, That in the election of Assistant Secretaries of this Convention, two candidates be voted for at the same time.

Mr. LARKIN. That will produce confusion, and delay this Convention more than double the time it would take otherwise, unless there has been a caucus and the matter is cut and dried by our friends on the opposite side of this contest. I hope this Convention will proceed to elect one at a time.

Mr. EDGERTON. It is quite refreshing to hear the gentleman talk about caucuses, but my object is to secure an organization of this Convention at the earliest practical moment. We have been here four days in securing two officers. By a mathematical calculation it will take about a month longer to organize, voting in the way we have heretofore. My experience teaches me that voting for two at a time greatly facilitates business, when it takes the Secretary three quarters of an hour to call the roll once.

Mr. LARKIN. We are not responsible for the delay. We have not come here for the spoils, and we do not ask for any of them. We wish to organize this Convention and proceed to business.

Mr. McCALLUM. I ask to have the list of candidates read.

The Secretary read the list.

Mr. Huestis' resolution was adopted.

Mr. BEERSTECHER. I would ask whether, under this resolution, it is necessary to put them all in nomination now.

The PRESIDENT. Put them all in nomination before the vote commences.

Mr. FREUD. By request, I have the honor to nominate for Assistant Secretary of this Convention Jas. J. Flynn, of San Francisco. Mr. Flynn is a young man of exceptional ability and integrity and a native of California. I hope this nomination will receive your generous consideration.

Mr. AYERS. I rise for the purpose of placing in nomination John McComb, Jr., of San Francisco, a young man who has had experience in public clerical office, and is well qualified to perform the duties of Assistant Secretary.

On motion of Mr. Estee, the special order for eleven o'clock was postponed until after the election of officers.

At the request of the President, Mr. Boruck came forward and called the roll.

Mr. O'DONNELL. I do not think the gentleman has a right to call that roll. He is not an elected officer of this Convention.

The PRESIDENT. The gentleman is out of order.

The result of the ballot was as follows:

FOR SMITH AND THORNTON.

Andrews, Barnes, Belcher, Biggs, Blackmer, Boggs, Boucher, Burt, Caples, Chapman, Charles, Cowden, Crouch, Dudley, of Solano, Dudley, of San Joaquin, Edgerton, Estee, Estey, Fawcett, Freeman, Garvey, Glascock, Graves, Gregg, Hager, Hale, Hall, Hilborn, Hitchcock, Hoge, Holmes, Heustis, Inman, Johnson, Jones, Kelley, Keyes, Lampson, Larue, Lewis, Mansfield, Martin, McCallum, McComas, McConnell, McFarland, McNutt, Mills, Moreland, Nason, Noel, Ohleyer, Overton, Porter, Prouty, Pulliam, Reddy, Reed, Rhodes, Rolfe, Schell, Schomp, Shoemaker, Shurtleff, Smith, of Santa Clara, Smith, of 4th District, Steele, Stevenson, Stuart, Townsend, Tully, Turner, Van Dyke, Van Voorhies, Walker, of Tuolumne, Webster, Weller, Wilson, of Tehama, Wilson, of 1st District, Winans—80.

FOR PITT AND FLYNN.

Barry, Barton, Beerstecher, Bell, Condon, Cross, Davis, Dean, Dowling, Doyle, Evey, Farrell, Finney, Freud, Gorman, Grace, Harrison, Herold, Herrington, Hughey, Hunter, Joyce, Kenny, Kleine, Larkin, Lavigne, Lindow, McCoy, Morse, Nelson, Neunaber, O'Donnell, O'Sullivan, Reynolds, Ringgold, Smith, of San Francisco, Soule, Stedman, Sweasey, Swenson, Tuttle, Vacquerel, Walker, of Marin, Wilson, West, Wickes, White, Wyatt—48.

FOR PITT AND THORNTON.

Barbour, Berry, Brown, Heiskell, Murphy, Swing, Tinnin, Waters—8.

FOR SMITH AND MCCOMB.

Ayers—1.

FOR THORNTON AND MCCOMB.

Filcher—1.

FOR SMITH AND FLYNN.

Harvey—1.

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FOR PITT AND MCCOMB.

Howard—1.

Whole number of votes cast ..... 143.
Necessary to a choice ..... 72.
Mr. Smith received ..... 83.
Mr. Thornton received ..... 92.
Mr. Pitt received ..... 59.
Mr. Flynn received ..... 62.
Mr. McComb received ..... 3.

Smith and Thornton were declared elected.

MR. ESTEE. I move that we proceed with the next regular order of business—the election of a Sergeant-at-Arms.

MR. MCCOMAS. I withdraw the name of Mr. French, and tender his thanks to the gentlemen who supported him yesterday.

MR. TULLY. I withdraw the name of Mr. Farrelly.

MR. O'DONNELL. I move to take a recess until two o'clock this afternoon.

Lost.

The roll was called on nominations for Sergeant-at-Arms, with the following result:

FOR STEWART.

Ayers, Heiskell, Walker, of Tuolumne—3.

FOR MOSELY.

Harvey, Hilborn, Nason—3.

FOR SHERWOOD.

Andrews, Hitchcock, Prouty,
Barnes, Hoge, Pulliam,
Belcher, Holmes, Reddy,
Biggs, Huestis, Reed,
Boggs, Inman, Rhodes,
Boucher, Johnson, Rolfe,
Burt, Jones, Schell,
Caples, Kelley, Schomp,
Chapman, Keyes, Shoemaker,
Charles, Lampson, Shurtleff,
Cowden, Larue, Smith, of Santa Clara,
Crouch, Lewis, Smith, of 4th District,
Dudley, of Solano, Mansfield, Steele,
Dudley, of San Joaquin, Martin, Stevenson,
Dunlap, McCallum, Stuart,
Edgerton, McComas, Tinnin,
Estee, McConnell, Townsend,
Estey, McFarland, Turner,
Freeman, McNutt, Van Dyke,
Garvey, Mills, Van Voorhies,
Glascock, Moreland, Webster,
Graves, Murphy, Weller,
Gregg, Noel, Wilson, of Tehama,
Hager, Ohleyer, Wilson, of 1st District,
Hale, Overton, Winans—77.
Hall, Porter,

FOR KNOX.

Berry, Filcher, Tully,
Blackmer, Howard, Waters—8.
Brown, Swing,

FOR O'CONNOR.

Barbour, Harrison, O'Sullivan,
Barry, Herold, Reynolds,
Barton, Herrington, Ringgold,
Beerstecher, Hughey, Smith, of San Francisco,
Bell, Hunter, Soule,
Condon, Joyce, Stedman,
Cross, Kenny, Sweasey,
Davis, Kleine, Swenson,
Dean, Larkin, Tuttle,
Dowling, Lavigne, Vacquerel,
Doyle, Lindow, Walker, of Marin,
Evey, McCoy, Wellin,
Farrell, Morse, West,
Finney, Nelson, Wickes,
Freud, Neunaber, White,
Gorman, O'Donnell, Wyatt—49.
Grace,

Whole number of votes cast 143
Necessary to a choice 72
Mr. Stewart received 3
Mr. Mosely received 3
Mr. Sherwood received 77
Mr. Knox received 8
Mr. O'Connor received 49

Mr. SHERWOOD was declared to be duly elected Sergeant-at-Arms.

MR. O'DONNELL. I now move that these clerks that were elected walk forward and take their seats at the desk.

MR. EDGERTON. The law requires that these gentlemen shall execute a bond before entering upon the discharge of their duties, and that bond has to be executed.

THE PRESIDENT. The Convention will proceed to the election of a President pro tem.

MR. BARNES. I would suggest, as the Secretary has a very bad cold, that until the balloting is over Mr. Boruck continue at the desk.

THE PRESIDENT. It is so ordered.

MR. WILSON, of San Francisco. I have the honor to place in nomination for the position of President pro tem., a gentleman so well known throughout the State of California, and to all of us here, that any eulogy upon him seems to be entirely a matter of supererogation. I refer to the Hon. Isaac S. Belcher, of Yuba County. His character is so well known for probity, honor, fairness, and impartiality, that he cannot but make us an excellent President pro tem. I therefore place him in nomination before this body for that position.

MR. LARKIN. I rise for the purpose of placing in nomination for this position a gentleman from the southern portion of the State, who has been an old resident of the State, and if elected to that position I believe will make an excellent officer. I believe that he is a representative man of the interests of the State, a true man in all the walks of life. I nominate N. G. Wyatt, of Monterey.

The roll was called, with the following result:

FOR BELCHER.

Andrews, Harvey, Porter,
Ayers, Hilborn, Prouty,
Barnes, Hitchcock, Pulliam,
Biggs, Hoge, Reddy,
Blackmer, Heustis, Reed,
Boggs, Inman, Rhodes,
Boucher, Johnson, Rolfe,
Burt, Jones, Schell,
Caples, Kelley, Schomp,
Chapman, Keyes, Shoemaker,
Charles, Lampson, Shurtleff,
Cowden, Larue, Smith, of Santa Clara,
Crouch, Lewis, Smith, of 4th Dist.,
Dudley, of Solano, Mansfield, Steele,
Dudley, of San Joaq'n, Martin, Stevenson,
Dunlap, McCallum, Stuart,
Edgerton, McComas, Swing,
Estee, McConnell, Tinnin,
Estey, McFarland, Townsend,
Fawcett, McNutt, Tully,
Filcher, Mills, Turner,
Freeman, Moffat, Van Dyke,
Glascock, Moreland, Van Voorhies,
Graves, Murphy, Walker, of Tuolumne,
Gregg, Nason, Webster,
Hager, Noel, Wilson, of Tehama,
Hale, Ohleyer, Wilson, of 1st Dist.,
Hall, Overton, Winans—84.

FOR HOWARD.

Brown, Holmes, Wyatt—4.
Heiskell,

FOR WYATT.

Barbour, Grace, O'Donnell,
Barry, Harrison, O'Sullivan,
Barton, Herold, Reynolds,
Beerstecher, Herrington, Ringgold,
Bell, Howard, Smith, of San Francisco,
Berry, Hughey, Soule,
Condon, Hunter, Stedman,
Cross, Joyce, Sweasey,
Davis, Kenny, Swenson,
Dean, Kleine, Tuttle,
Dowling, Larkin, Vacquerel,
Doyle, Lavigne, Walker, of Marin,
Evey, Lindow, Waters,
Farrell, McCoy, Wellin,
Finney, Morse, West,
Freud, Nelson, Wickes,
Garvey, Neunaber, White—52.
Gorman,

Whole number of votes cast 144
Necessary to a choice 73
Mr. Belcher received 84
Mr. Wyatt received 52
Mr. Howard received 4

MR. BELCHER was declared to be duly elected President pro tem.

THE PRESIDENT. Nominations are in order for Minute Clerk.

MR. CAPLES. I rise, Mr. President, to place in nomination for the position of Minute Clerk, E. L. Crawford, of El Dorado County. I believe I may be permitted to say, Mr. President, that Mr. Crawford is eminently qualified to fill the duties expected of him in this position. He has served several terms in a similar capacity in this chamber, and I believe that gentlemen who are conversant with his record and his ability will bear me out in the assertion that he is eminently qualified to discharge the duties of that position.

MR. BEERSTECHER. I present the name of J. C. Leonard, of San Francisco.

MR. O'DONNELL. I move that we adjourn until two o'clock P. M.

Lost.

The roll was called, with the following result:

FOR CRAWFORD.

Andrews, Biggs, Caples,
Ayers, Blackmer, Chapman,
Barnes, Boggs, Charles,
Belcher, Boucher, Cowden,
Berry, Burt, Crouch,

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Dudley, of San Joaquin, Dunlap, Edgerton, Estee, Estey, Fawcett, Filcher, Garvey, Glascock, Graves, Gregg, Hager, Hale, Hall, Hitchcock, Hoge, Holmes, Heustis, Inman, Johnson, Jones, Kelley, Keyes, Lampson, Larue, Lewis, Mansfield, Martin, McCallum, McComas, McConnell, McFarland, McNutt, Mills, Moreland, Murphy, Nason, Noel, Ohleyer, Overton, Porter, Prouty, Pulliam, Reddy, Reed, Rhodes, Rolfe, Schell, Schomp, Shoemaker, Shurtleff, Smith, of Santa Clara, Smith, of 4th District, Steele, Stevenson, Stuart, Swing, Tinnin, Townsend, Tully, Turner, Van Dyke, Van Voorhies, Walker, of Tuolumne, Waters, Webster, Weller, Wilson, of 1st District, Winans—84.

FOR LEONARD.

Barbour, Barry, Barton, Beerstecher, Bell, Brown, Condon, Cross, Davis, Dean, Dowling, Doyle, Evey, Farrell, Finney, Freud, Gorman, Grace, Harrison, Herold, Herrington, Hughey, Hunter, Joyce, Kenny, Kleine, Larkin, Lavigne, Lindow, McCoy, Morse, Nelson, Neunaber, O'Donnell, O'Sullivan, Reynolds, Ringgold, Smith, of San Francisco, Stedman, Sweasey, Swenson, Tuttle, Vacquerel, Walker, of Marin, Wellin, West, Wickes, White, Wyatt—49.

Whole number of votes cast ---- 140
Necessary to a choice ---- 71
Mr. Crawford received ---- 84
Mr. Leonard received ---- 50
Scattering ---- 6

Mr. CRAWFORD was declared duly elected Minute Clerk.

Mr. HALL. I beg leave, sir, to present to the consideration of this Convention, for the office of Journal Clerk, the name of George E. McStay, a resident of the County of San Joaquin. I can vouch for him myself, personally, as being a man of honor and probity, and one that, in my judgment, is altogether qualified to discharge the duties of this position. He is not widely known, sir, but he is favorably known where to be favorably known is the highest honor—among his friends and neighbors at home. I believe, sir, that if George E. McStay shall be the choice of this Convention you will find in him an honest, painstaking, faithful, and efficient officer. I ask for him the favorable consideration of this Convention.

Mr. BARRY. It would seem like a waste of time for any gentleman upon our side to mention any one for a position in this Convention, but at the same time I have a gentleman who is eminently fitted for this position by nature, education, and experience. For several years prior to coming to this State he filled the position of Assistant Secretary in the Nebraska State Senate, and discharged the duties of that position with credit to himself and that body. The gentleman I place in nomination is J. R. Patrick, of Sierra County. He is a gentleman in every sense of the word, and I am satisfied that if he were selected by the members of this Convention as Journal Clerk, he would discharge the duties in an efficient and able manner.

The roll was called, with the following result:

FOR MCSTAY.

Andrews, Ayers, Barnes, Belcher, Biggs, Blackmer, Boggs, Boucher, Burt, Caples, Chapman, Charles, Cowden, Crouch, Dudley, of Solano, Dudley, of San Joaquin, Dunlap, Edgerton, Estee, Estey, Fawcett, Freeman, Glascock, Graves, Gregg, Hager, Hale, Hall, Harvey, Hilborn, Hitchcock, Hoge, Holmes, Heustis, Inman, Johnson, Jones, Kelley, Keyes, Lampson, Larue, Lewis, Mansfield, Martin, McCallum, McComas, McConnell, McFarland, McNutt, Mills, Moreland, Murphy, Nason, Noel, Ohleyer, Overton, Porter, Prouty, Pulliam, Reddy, Reed, Rhodes, Rolfe, Schell, Schomp, Shoemaker, Shurtleff, Smith, of Santa Clara, Smith, of 4th District, Steele, Stevenson, Stuart, Swing, Townsend, Tully, Turner, Van Dyke, Van Voorhies, Walker, of Tuolumne, Webster, Weller, Wilson, of Tehama, Wilson, of 1st District, Winans—84.

FOR PATRICK.

Barbour, Barry, Barton, Beerstecher, Bell, Berry, Brown, Condon, Cross, Davis, Dean, Dowling, Doyle, Evey, Farrell, Filcher, Finney, Freud, Garvey, Gorman, Grace, Harrison, Heiskell, Herold, Herrington, Howard, Hughey, Hunter, Joyce, Kenny, Kleine, Larkin, Lavigne, Lindow, McCoy, Morse, Nelson, Neunaber, O'Donnell, O'Sullivan, Reynolds, Ringgold, Smith, of San Francisco, Soule, Stedman, Sweasey, Swenson, Tinnin, Tuttle, Vacquerel, Walker, of Marin, Waters, Wellin, West, Wickes, White, Wyatt—57.

Whole number of votes cast ---- 141
Necessary to a choice ---- 71
Mr. McStay received ---- 84
Mr. Patrick received ---- 57

Mr. McSTAY was declared to be duly elected Journal Clerk.

Mr. CONDON. I desire to place in nomination for the position of Assistant Sergeant-at-Arms, a gentleman who is competent, and I am confident, if elected to this position, will do credit to himself and this Convention—Thomas Donnelly, of San Francisco.

Mr. AYERS. I nominate A. H. Miller, of Los Angeles; a gentleman fully qualified to fill the position, and who will reflect honor upon this Convention if elected.

Mr. GARVEY. I nominate P. H. Keene, of Calaveras.

Mr. SHURTLEFF. I nominate Benjamin Chambers, of Stanislaus County.

The roll was called, with the following result:

FOR CHAMBERS.

Andrews, Barnes, Belcher, Berry, Biggs, Boggs, Burt, Caples, Chapman, Charles, Cowden, Crouch, Dudley, of Solano, Dudley, of San Joaquin, Dunlap, Edgerton, Estee, Estey, Fawcett, Freeman, Glascock, Graves, Gregg, Hager, Hale, Hall, Harvey, Hilborn, Hitchcock, Hoge, Heustis, Inman, Johnson, Jones, Kelley, Keyes, Lane, Lewis, Mansfield, McCallum, McConnell, McFarland, McNutt, Mills, Moreland, Murphy, Nason, Noel, Ohleyer, Overton, Porter, Prouty, Pulliam, Reddy, Reed, Rhodes, Rolfe, Schell, Schomp, Shoemaker, Shurtleff, Smith, of Santa Clara, Smith, of 4th Dist. Steele, Stevenson, Stuart, Swing, Townsend, Tully, Turner, Van Dyke, Van Voorhies, Waters, Webster, Weller, Wilson, of Tehama, Wilson, of 1st Dist. Winans—78.

FOR DONNELLY.

Barbour, Barry, Barton, Beerstecher, Bell, Condon, Cross, Davis, Dean, Dowling, Doyle, Evey, Farrell, Finney, Freud, Gorman, Grace, Harrison, Herold, Herrington, Hughey, Hunter, Joyce, Kenny, Kleine, Larkin, Lavigne, Lindow, McCoy, Morse, Nelson, Neunaber, O'Donnell, O'Sullivan, Reynolds, Ringgold, Smith, of San Francisco, Soule, Stedman, Sweasey, Swenson, Tuttle, Vacquerel, Walker, of Marin, Wellin, Wickes, White, Wyatt—48.

FOR MILLER.

Ayers, Blackmer, Brown, Filcher, Heiskell, Howard, Martin, McComas, Tinnin, West—10.

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FOR KEENE.

Garvey, Lampson, Walker, of Tuolumne–5.
Holmes, Reddy,

Whole number of votes cast 143
Necessary to a choice 72
Mr. Chambers received 78
Mr. Donnelly received 48
Mr. Miller received 10
Mr. Keene received 5

MR. CHAMBERS was declared to be duly elected Assistant Sergeant-at-Arms.

ON ADJOURNMENT.

MR. ESTEE. I move that when we adjourn to-day we adjourn to meet on Monday, at one P. M. The reason for my motion is this, that the Chair has had no opportunity to appoint committees. There would be no reason for sitting here; there is nothing that could be done. I hope that the motion will prevail, as it will take at least a couple of days to complete the rules. The rules that govern a body of this kind are very different from the rules that have been adopted by the Assembly, and therefore I hope that this action will be taken by this Convention.

MR. BEERSTECHER. I would call attention, sir, to the provision in the clause, namely, section five of the Act calling this Constitutional Convention: "Provided no compensation shall be allowed delegates after the expiration of one hundred days. No pay shall be allowed for any recess longer than three days at one time." I desire to oppose this motion, and call for the ayes and noes.

MR. ESTEE. I wish to state, first, that there are only three days; and, second, that I do not know as anybody wants any compensation if they do not do anything. It is only three days from now until Monday.

MR. HAGER. The rule that has been adopted heretofore in the Legislature, with the same clause in the statute, has been that an adjournment for more than three days could only be had by a concurrent vote of the Senate and Assembly, but in the other case it requires a mere vote of either chamber. It was held there, on various occasions, that we could adjourn from Friday until Monday; but if we adjourn to-day, it is beyond the three days. Sunday counts as a day. I would therefore move to amend so that when we adjourn to-morrow morning at recess, we adjourn until Monday. We may probably not get through with this Phonographic Reporter matter until to-morrow morning; and if it is late this afternoon, nobody could go down to the city. I propose that we adjourn to-morrow, after the morning hour, until Monday.

MR. BARBOUR. I shall vote against this proposition to take this recess until I see a better reason assigned than want of time to prepare rules. I presume there is not a gentleman in this Convention that cannot in an hour's time prepare, from the innumerable rules already in the State Library, a set of rules sufficient for the government of this Convention. I maintain, sir, that we have no right, unless for a more potent reason than that of our own business, to adjourn over, and to draw the pay from the treasury for being here, there, and everywhere, when we are expected to be here performing the duties we have been called to perform, and that is, preparing a Constitution. I further object, sir, to this adjournment, because this Convention is not yet properly or sufficiently organized. There are vacancies here to be filled, which ought to be filled. Portions of the people of this State are unrepresented. I insist that these vacancies ought to be filled. Therefore I shall oppose this motion. I cannot see any reason for this adjournment that is worthy of consideration.

MR. WINANS. The language of the Act is, that members shall draw no pay for an adjournment of more than three days. If we adjourn on Thursday afternoon until Monday, the recess is during Friday, Saturday, and Sunday, because we meet again on Monday. By no possible interpretation that I can comprehend, can that be construed into a four days adjournment—from Thursday afternoon until Monday morning. There are but three intervening days. If we leave here on Thursday, or cease work here on Thursday afternoon and resume on Monday, we have a recess of more than three days. It is certainly very important that there should be an opportunity for completing our organization, and the reason for the adjournment is as much on account of giving the President time to arrange his appointments as for the Committee on Rules. Three days would be none too long. I shall therefore support the resolution, and I think that every member, on reflection upon the subject, when he considers how much there is to be thought of outside of the action of this body, will see that three days is not too long for us to consider what to do and take steps to complete our organization by getting a full report of this committee, and the action of the Chair in reference to the appointment of committee.

MR. ESTEE. I will withdraw my motion.

THE PRESIDENT. The gentleman cannot withdraw a motion without consent of the Convention. The question is, on the adoption of the resolution offered by the gentleman from San Francisco, Mr. Estee.

MR. MCCALLUM. I cannot agree at all with the idea that there is not work enough for the balance of this week, however pleasant it may be for us who live in the neighborhood of the Bay to visit our homes. With such a presiding officer as we have, we can, in fact, proceed without special rules until the work of the Convention is laid out. And, sir, the special rules—if there is always parliamentary law for all parliamentary bodies—these special rules can be adopted, I undertake to say, in a session of two hours of the Committee on Rules; my idea is that that committee ought to report to-morrow. These rules will perhaps involve some discussion. That will take some time. That ought to be settled this week. I think, further, that these important committees ought to be appointed before the adjournment this week. I believe further, sir, that these vacancies ought to be filled before these important committees are appointed. So it cannot be that the adjournment is wanted for want of business to do, if we want to do it.

MR. WILSON, of San Francisco. I find that in some cases we make haste by moving slowly. I am satisfied that this adjournment embraces but three days; we are here to-day, Thursday; we will be away on Friday, Saturday, and Sunday; we will be here again on Monday. It will not be an adjournment for more than three days. It is really a question of only Friday and Saturday, because we would not work on Sunday. I have obtained from the Chairman of the committee on standing committees a memorandum as to the number of appointments the President has to make upon these committees. There are some twenty-two committees, involving the appointment of two hundred and seventy-three members. Now, if anybody thinks the Chair has not got quite an arduous duty to perform, he is mistaken. The Chair will desire to select men of experience as Chairmen of these several committees. He wants to distribute the labor among these several gentlemen that are here. For Chairman of the Committee on Agriculture he wants a gentleman experienced in that line of business, and so with the other committees. I should not myself like, in two days, to arrange the organization of these committees, and who would announce himself as able to fill properly these committees within two days time? Besides that we have the rules and regulations. The law does not require us to work nights and Sundays, but we worked pretty faithfully since last Saturday. We have been here days and nights and I think we will save time by taking the adjournment. I think we will save money by it, and we will be in a better condition on Monday to facilitate business than if we proceed to-day.

MR. LARKIN. The position the gentleman takes as to the duties imposed upon the President, is obviated by the fact that we have a distinguished gentleman as President pro tem. The Chair can turn over the duties of that position to him, and then we can proceed; and the main reason why we should proceed, is to fill these vacancies. These vacancies should be filled before these committees are made up. We should proceed to that work of filling the vacancies. The Chair, during the time, can prepare the committees, and the President pro tem. can fill the chair.

MR. REYNOLDS. It seems to me that there is no need of adjourning over until Monday. There is a vast amount of business on our hands here that can just as well be disposed of now as any other time. Here is not only the question of filling vacancies in the Convention, but also the matter of reporting and printing the debates. That is a question which will require, perhaps, one, or two, or three days to settle, if the experience of yesterday is any guide to go by. We have to determine first, whether we will have a reporter or not; whether he will report the debates verbatim or not; and then we have to make provision for printing them. That is another question.

MR. DUDLEY, of Solano. I move we now take a recess until two o'clock.

MR. HAGER. A motion to adjourn itself is a privileged question. A motion to adjourn to a fixed time is not, and we have a question pending.

MR. EDGERTON. I move that the matter under consideration be made the special order for half-past two o'clock this afternoon.

MR. WILSON, of San Francisco. We had better make it two.

MR. MURPHY. Make it two o'clock.

MR. EDGERTON. I accept the amendment.

The motion prevailed.

On motion of MR. LARKIN, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock and fifteen minutes P. M., President Hoge in the chair. Roll called and a quorum present.

A QUESTION OF PRIVILEGE.

MR. WHITE. Mr. President: I desire to ask for a privilege, and to take your attention for a moment. A gentleman on this floor is reported in the morning papers of San Francisco to have made a most unwarrantable attack upon about one third of the members of the Convention, and I desire to say a word in reply.

MR. BARNES. Mr. President: I rise to a point of order. It is not his privilege to make a speech, but to state the matter of complaint, or submit it in writing.

MR. WHITE. I ask the Secretary to read the passage of which complaint is made.

THE PRESIDENT. The gentleman will please state his question briefly, without any remarks.

MR. WHITE. I ask the Secretary to read the remarks, and then I will say a few words.

The Secretary read the following, being a quotation from the San Francisco Call's report of last night's Non-Partisan caucus:

"S M. Wilson said that members of all the different parties had been elected in opposition to the Workingmen's party, and they had fifty-one solid votes on every question, being well organized. Thus, every day, two thirds of the Convention are beaten by one third, and the reason is they did not know one another. All have a common cause against Socialists and Communists, who are endeavoring to undermine the State. Do we know what is taking place among those Communists who are meeting in other chambers? Of course not, because they are in private. The small number wields for good or evil the destinies of the Convention. It is proposed to harmonize views, and see if we cannot elect the best men, without wrangling."

THE PRESIDENT. The Chair decides that this is not a question of privilege, having been spoken outside of the Convention.

MR. WHITE. Very well, sir, I appeal from the decision to the house on that question.

MR. WYATT. I second the appeal.

The ayes and noes were demanded by Messrs. Beerstecher, O'Sullivan, and Wyatt.

MR. HALE. Is the question debatable?

THE PRESIDENT. I will state the question. The gentleman from Santa Cruz rises to a question of privilege, and has read an extract from

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a public journal, purporting to be a report of remarks made by a certain gentleman outside of this Convention. The Chair decides that it is not a question of privilege, and from that decision the gentleman takes an appeal to the Convention. The question is whether the decision of the Chair shall stand as the judgment of the Convention, and upon that the ayes and noes are demanded.

Mr. HOWARD. Is the appeal debatable?

The PRESIDENT. I think it is, sir.

Mr. WHITE. My object is, sir, to set a portion of this Convention in good feeling and harmony with the others, and my only object is to produce harmony. If we were what we are described in that paragraph we would be unworthy of positions on this floor.

The PRESIDENT. The gentleman is out of order. The question is upon sustaining the decision of the Chair. You will confine yourself to that question.

Mr. WHITE. I presume this ought to be a subject for consideration here. We ought to be allowed to relieve ourselves from accusations coming from individuals as well as from public journals. In Congress, members frequently rise to questions of privilege, on account of articles appearing in the public journals. It is done in Congress constantly, and I hope, gentlemen, you will stand up and allow us to have the privilege of explaining. We mean nothing unfair. All we ask is a fair show, and to be treated as equals.

Mr. McFARLAND. It seems to me that the Chair should be sustained, for this reason: I suppose we are likely to be pestered with questions of personal privilege. Now, I understand that question arises when some charge or statement is made about some individual member of the body. I don't understand that any gentlemen here has a right to rise to a question of personal privilege because some political party of which he is a member has been assailed. I might say I belong to the Republican party, and that certain gentlemen in this house had called that party a set of thieves, but we certainly could not hold that to be a question of personal privilege. If these are to be considered questions of privilege, you might spent the whole of the session here in that way. If there had been any allusion to the gentleman from Santa Cruz, Mr. White, I would have no objection. But it is not about the gentleman, but about his political party, and that certainly is not a question of personal privilege.

Mr. WHITE. It is about fifty-one of the members of this Convention, and they are individually alluded to as the fifty-one members from the other side of the room.

Mr. INMAN. I think this whole thing is out of order, and to settle the thing right here I move to lay the appeal on the table.

The ayes and noes were demanded by Messrs. Beerstecher, O'Sullivan, and White, and the motion to lie on the table prevailed by the following vote:

AYES.

Barnes,	Hager,	Noel,
Barry,	Hale,	Ohleyer,
Belcher,	Hall,	Overton,
Berry,	Harvey,	Porter,
Biggs,	Hilborn,	Prouty,
Blackmer,	Hitchcock,	Pulliam,
Boggs,	Holmes,	Reed,
Boucher,	Huestis,	Rhodes,
Burt,	Inman,	Rolfe,
Caples,	Johnson,	Schell,
Chapman,	Jones,	Schomp,
Charles,	Kelley,	Schafter,
Cowden,	Keyes,	Shoemaker,
Crouch,	Larue,	Shurtleff,
Dudley, of San Joaquin,	Lewis,	Steele,
Dudley, of Solano,	Martin,	Stuart,
Edgerton,	McConnell,	Townsend,
Estee,	McFarland,	Tully,
Estey,	McNutt,	Turner,
Fawcett,	Mills,	Van Dyke,
Garvey,	Moreland,	Van Voorhies,
Glascock,	Murphy,	Wilson, of Tehama,
Graves,	Nason,	Winans—70.
Gregg,		

NOES.

Andrews,	Heiskell,	Reddy,
Ayers,	Herold,	Reynolds,
Barbour,	Herrington,	Ringgold,
Barton,	Howard,	Smith, of 4th District,
Beerstecher,	Hughey,	Smith, of San Francisco,
Bell,	Hunter,	Soule,
Condon,	Joyce,	Stedman,
Cross,	Kenny,	Stevenson,
Davis,	Kleine,	Sweasey,
Dean,	Lampson,	Swenson,
Dowling,	Larkin,	Swing,
Doyle,	Lavigne,	Tuttle,
Dunlap,	Lindow,	Vacquerel,
Evey,	Mansfield,	Walker, of Marin,
Farrell,	McCallum,	Walker, of Tuolumne,
Filcher,	McComas,	Webster,
Finney,	McCoy,	Weller,
Freeman,	Morse,	Wellin,
Freud,	Nelson,	West,
Gorman,	Neunaber,	Wickes,
Grace,	O'Donnell,	White,
Harrison,	O'Sullivan,	Wyatt—66.

Mr. BEERSTECHER. There must be a mistake in the count, as I have kept it myself, and it does not tally with that of the Secretary.

PHONOGRAPHIC REPORTERS.

The PRESIDENT. The next thing in order is the special order in relation to an official short-hand reporter, and his compensation. The report of the committee is before the body for their action.

Mr. AYERS. I call for the reading of the report.

The report was read as follows:

To the President and members of the Convention: Your committee appointed to examine into the subject of reporting the proceedings and debates of this Convention, beg leave to submit the following report: That the Convention elect a Phonographic Reporter, who shall be empowered to select his assistant, the two to be the shorthand reporters of this Convention, and to be entitled to the per diem fixed by law for their services. That the reporters so selected be required to furnish a longhand verbatim report of the proceedings of this Convention on the following terms, to wit: at the rate of twenty cents per folio, with the further provision that if the Convention last one hundred days, the entire compensation said reporters shall receive for transcribing their notes into longhand shall not exceed six thousand dollars. That the reporter who may be elected by this Convention shall enter into good and sufficient bonds, in the sum of ten thousand dollars, for the efficient and faithful performance of his duty, and guarantee the State against recovery by him of any compensation for his services in this connection, exceeding the gross sum of eight thousand dollars, including the per diem of himself and assistant and cost of transcribing, for the entire session, should it last one hundred days, or twenty cents per folio for transcribing into longhand their notes should the session not last one hundred days.

JAMES E. MURPHY, Chairman.

Mr. ESTEE. At the request of several members, I move that Colonel Barnes be added to the Committee on Rules, as he has had experience in that line.

The motion prevailed.

Mr. ESTEE. The first thing in order is the motion of the gentleman from San Francisco, that when this Convention adjourns to-day, it adjourn until Monday, at one o'clock P. M.

Mr. VAN DYKE. I move that it be postponed.

Mr. McCALLUM. I move that it be laid on the table—the motion that when we adjourn we adjourn to meet on Monday.

The motion prevailed, and the motion laid on the table.

Mr. AYERS. Mr. President: In explanation of this report I will state to the members of the Convention that under this arrangement by no possibility could the expense of reporting and transcribing the proceedings of this Convention exceed the sum of eight thousand dollars. That would be the limit that it could reach for a session of one hundred days. If, however, the session should be shorter, the State would have the advantage of the economy in the amount of matter that would have to be handled. The committee have examined the question thoroughly, and if its report is carried out, and the bond executed, the entire expense of the Convention will not exceed that laid down. That, however, is entirely disconnected from the printing. The printing will be done at the State Printing Office, and as I understand it there is a separate appropriation to pay for it. I have made a hasty estimate of what the printing will cost. A volume of eight hundred pages, of about the same size as the Illinois and Ohio debates, in the same form and same type, will cost for one thousand copies perhaps two thousand dollars. The entire cost, therefore, of the reporting and transcribing, and the printing of the debates and proceedings, will not exceed that sum.

Mr. FAWCETT. How many volumes will this report fill if the Convention should last one hundred days.

Mr. AYERS. I hold in my hand the debates of the Ohio Convention, and they consist of two volumes: the one before me having one thousand three hundred and thirty-three pages. I don't know how long that Convention lasted, but my estimate is made on eight hundred pages, of about that size [showing], perhaps smaller type.

Mr. FAWCETT. I venture to say that it will be a physical impossibility, if this Convention remains in session one hundred days, to put the debates in what small a space. In my judgment it will require at least three volumes.

Mr. AYERS. I understand from Mr. Van Dyke that the Ohio Convention was in session for one hundred and ninety days, and the reports only fill two volumes.

Mr. EDGERTON. I hope the gentleman will allow me to answer the question as to the time covered by these reports. I see this volume covers a period intervening between the third of May and August eighth—three months—and still there is another volume.

Mr. FAWCETT. I proceed upon the theory that the debates will fill five volumes. The debates and proceedings cannot be fairly compressed into one volume, unless we lay down very stringent rules as to what shall be printed. Now, if we undertake to print these debates, I think the sentiment of the Convention will be in favor of full reports; that no committee and no reporter can be entrusted with the power to say what matters shall or shall not be printed, and I say it will be impossible to compress the debates in one or two volumes. It will not do to proceed upon that idea, so that it is safe to say that the total cost will exceed ten thousand dollars. Let that be understood. There is no question about it. The total expense will be at least as much as fifteen thousand dollars. I am desirous of getting at the facts of the case, and the cost of the work before voting upon it, and I don't desire to vote upon it under any misapprehension. The gentleman cannot point to a single instance in the United States where the reports of the debates and proceedings of a Convention of this kind have not exceeded the figures which he has made. He has had a great deal of knowledge on this kind of work, but the proposition that the composition, printing, and binding of these reports can be embraced within the sum of two thousand dollars strikes me as absurd.

Mr. AYERS. Mr. President: I merely wish to say that, in speaking of the cost of printing in connection with this report, I have done so from hasty calculations. I would suggest that if it is necessary for the

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Convention to know what the printing will cost in connection with the report, it would be well to appoint a committee for that purpose, and let them examine into the thing thoroughly, and that will make a report reliable on the subject.

MR. ROLFE. Mr. President: I have not the Ohio debates before me. My recollection is, that there were four volumes. By turning to the appendix you will see that the members received pay for about two hundred and seventy days, or a little over eight months. I may be mistaken, but I do not think I am. We are limited to one hundred days. I think if a judicious discretion is used in chopping out irrelevant matter, that the proceedings can be got in about two volumes.

MR. FILCHER. I rise to a point of order. The report of the committee only contemplated the securing of a longhand copy of the debates and proceedings. The question of printing was not mentioned in the report, and my point is, that the gentlemen who are discussing the printing are going away from the point. I insist upon my point of order.

THE PRESIDENT. The Chair cannot undertake to limit the gentlemen in their remarks. The point of order is overruled.

MR. SWING. The Ohio Convention was in session, actual session, one hundred and eighty-eight days, and the reports were published in full. The reports comprise some speeches which have no more in them than a great many speeches made in this Convention, and the actual cost of the reporting and transcribing amounted to thirteen thousand six hundred and ninety-five dollars and seventy-eight cents. The printing amounted to a little over eight thousand dollars. That statement reached up to the eighth day of May, eighteen hundred and seventy-four, and the Convention adjourned on the eighteenth day; so that it does not comprise the last ten days, but it would give reports for one hundred and seventy-eight days. Now this Constitutional Convention cannot be in session more than seventy-five or eighty days, and I believe these reports will be contained in two volumes, and that will bring the expense within eight thousand or ten thousand dollars altogether.

MR. BEERSTECHER. I believe I offered a resolution on this subject this morning, and I desire to call it up in connection with the report of the committee. I desire to offer it as a substitute for the report of the committee.

MR. FREEMAN. There seems to be so wide a difference in regard to the probable cost of doing this printing, that I move that a committee of five be appointed to ascertain the probable cost of printing the reports of this Convention, and that the report now under consideration be deferred until we have the report of the committee to be appointed.

MR. ROLFE. I think the gentleman from Sacramento is out of order. I think I was myself the one who spoke about the printing. It is the reporting we have now before us. This matter of the printing is another thing, and can be taken up at another time. We can print it ourselves, or leave it to the Legislature, or not have it printed at all.

MR. LARKIN. I move to lay the whole subject-matter on the table until we get further information.

MR. HAGER. If this motion is debatable, I want to say that under this Act we are bound to elect a reporter. If it goes to the table the rule requires two thirds to take it up again.

MR. McCALLUM. The motion is to lie on the table until we get farther information as to this subject, and there is no proposition made to get that information officially.

THE PRESIDENT. It will only require a majority vote to take it from the table.

MR. INMAN. These gentlemen are not going to stop here for a month and report our proceedings for nothing. I would like to know the gentleman's object. I can't see no reason for such a motion. I would like to have him state the object. If it is only for delay I hope gentlemen will see the impropriety of it. Let us get down to business. This is only buncombe. For my part I have had enough of their buncombe.

MR. LARKIN. I will withdraw the motion to lie on the table, and ask to have it referred to some committee to make an estimate, or have it referred back to the same committee to get the information.

MR. DUDLEY, of Solano. If it is true, as suggested by the gentleman, that we have no authority to print these reports, but that is to be dependent on the Legislature, then I don't see that we have anything to do with that part of it. I suppose the law means that we are to report the proceedings, and leave it to the next Legislature to publish them or not. In that case the question of the cost of printing is not one for us to consider.

MR. AYERS. I would say that it will be useless for this Convention to have the proceedings reported unless they are to be printed. We cannot read the shorthand notes. We have authority under the law to print them, and it is necessary that they should be printed.

The motion to refer back to the committee prevailed.

On motion of Mr. Van Dyke, at three o'clock and nine minutes P. M., the Convention adjourned until to-morrow morning at ten o'clock.

SEVENTH DAY.

SACRAMENTO, Friday, October 4th, 1878.

The Convention reassembled at ten o'clock A. M., pursuant to adjournment, President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Beerstecher,	Blackmer,
Barbour,	Belcher,	Boggs,
Barnes,	Bell,	Boucher,
Barry,	Berry,	Brown,
Barton,	Biggs,	Burt,
Caples,	Hughey,	Rhodes,
Chapman,	Hunter,	Ringgold,
Charles,	Inman,	Rolfe,
Condon,	Johnson,	Schell,
Cowden,	Jones,	Schomp,
Cross,	Joyce,	Shafter,
Crouch,	Kelley,	Shoemaker,
Davis,	Kenny,	Shurtleff,
Dean,	Keyes,	Smith, of Santa Clara,
Dowling,	Kleine,	Smith, of 4th District,
Doyle,	Lampson,	Smith, of San Francisco,
Dudley, of San Joaquin,	Larkin,	Soule,
Dudley, of Solano,	Larue,	Stedman,
Dunlap,	Lavigne,	Steele,
Edgerton,	Lindow,	Stevenson,
Estey,	Mansfield,	Stuart,
Evey,	Martin,	Sweasey,
Farrell,	McCallum,	Swenson,
Fawcett,	McComas,	Swing,
Filcher,	McConnell,	Tinnin,
Finney,	McCoy,	Townsend,
Freeman,	McFarland,	Tully,
Freud,	McNutt,	Turner,
Garvey,	Miller,	Tuttle,
Glascock,	Mills,	Vacquerel,
Gorman,	Moreland,	Van Dyke,
Grace,	Morse,	Van Voorhies,
Gregg,	Murphy,	Walker, of Marin,
Hager,	Nason,	Walker, of Tuolumne,
Hale,	Nelson,	Waters,
Hall,	Neunaber,	Webster,
Harrison,	Noel,	Weller,
Harvey,	Ohleyer,	Wellin,
Heiskell,	O'Sullivan,	West,
Herold,	Overton,	Wickes,
Herrington,	Porter,	White,
Hilborn,	Prouty,	Wilson, of Tehama,
Hitchcock,	Pulliam,	Wilson, of 1st District,
Holmes,	Reddy,	Winans,
Howard,	Reed,	Wyatt,
Huestis,	Reynolds,	Mr. President.

ABSENT.

Ayers,	Estee,	Moffat,
Campbell,	Laine,	O'Donnell,
Casserly,	Lewis,	Terry.
Eagon,		

THE PRESIDENT. If there be no objection, the Journal will stand approved as read.

CORRECTION OF JOURNAL.

MR. BEERSTECHER. Upon the motion to lay Mr. White's motion—being Mr. White's appeal from the decision of the Chair—upon the table, I find, upon examination, that the gentleman who kept the account at that time has made a number of errors in the vote that was taken at that time, and I would like to have the ayes and noes called as he has got them.

THE PRESIDENT. The Convention has disposed of that question.

MR. BEERSTECHER. Mr. President: I am down in the ayes and noes as voting "aye"—to lay the appeal upon the table. I desire to have it corrected. I voted "no." Mr. Volney E. Howard is on the roll as not having voted at all.

THE PRESIDENT. The gentleman is out of order. The Chair has announced ——

MR. BEERSTECHER. I would like to have my vote corrected. I do not desire to change my vote. I voted not to lay the appeal upon the table. With due deference to the Chair ——

THE PRESIDENT. The question was disposed of finally.

MR. BEERSTECHER. I merely desire to have corrected ——

THE PRESIDENT. The Chair has announced that it cannot go back to what was done yesterday.

MR. HEISKELL. Do I understand that these proceedings cannot be corrected? I supposed that the proceedings were read for that purpose.

THE PRESIDENT. The gentleman is out of order.

MR. HEISKELL. I appeal from the decision of the Chair and call for the ayes and noes.

MESSRS. BEERSTECHER and O'SULLIVAN also called for the ayes and noes.

MR. McCALLUM. This gentleman had no opportunity to have his name corrected yesterday, because the names were not read as recorded. Now, I understand that any gentleman has a right to have his vote corrected. This is the first opportunity that he has to know that his vote is incorrectly recorded. I think the Chair misunderstands the gentleman. The gentleman simply desires to have his vote corrected, and this is the first opportunity he has had to correct it.

THE PRESIDENT. I understand the gentleman that he wanted to go back to the whole question. If the gentleman's vote is improperly recorded it can be corrected.

MR. JOYCE. I would like to have my vote corrected, as I understand I have been incorrectly recorded.

MR. EDGERTON. The question is whether this Journal correctly represents the vote as cast. These gentlemen may have voted under a misapprehension.

MR. JOYCE. I would say that I voted "no."

MR. EDGERTON. Then the Journal ought to be corrected.

MR. STEDMAN. I hold in my hand a tally of that vote yesterday, which I kept, and the motion to lay the appeal on the table was lost

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according to that tally. I being a young man I did not like to get up, but there is the tally, sir.

MR. BEERSTECHER. I am satisfied that there was eight errors in the voting.

THE PRESIDENT. If there is any gentleman desires his vote corrected he can apply to the Chair and have his vote corrected.

MR. SWENSON. I would desire to ask how my vote is recorded?

THE SECRETARY. Swenson, "no."

MR. SWENSON. That is all right.

MR. DOYLE. How am I recorded?

THE SECRETARY. "No."

MR. DOYLE. I wish to have it changed to "aye."

MR. JOYCE. How am I recorded?

THE SECRETARY. Recorded as voting "aye."

MR. JOYCE. I voted "no," sir; I want it so recorded.

MR. WATERS. I would like to have the Secretary announce how I voted.

THE SECRETARY. Recorded as voting "aye."

MR. WATERS. That is wrong; I voted "no."

MR. HUNTER. How am I recorded? I voted "no."

MR. KLEINE. How I am recorded?

THE SECRETARY. "No."

MR. McFARLAND. Mr. President: If upon any occasion I vote "no" and I am found to be recorded "aye," I have a right to correct that vote next morning with the consent of the body. There might be a question of fact as to how I voted. I might not vote as I intended, and then certainly I cannot change my vote next morning. If I am misrepresented, of course, with the consent of the Convention, I may have the correction made. It depends entirely upon a question of fact. I understand that some gentlemen are somewhat in doubt as to how they did vote.

THE PRESIDENT. The Chair has permitted these corrections to be made.

MR. TINNIN. That is a privileged matter with the members of this body. These votes go forth to the world, as the acts of the individual members of this body, and they have a right to be placed right on that record. A mistake of a clerk ought not to be allowed to misrepresent a member. It is a personal right and every one who has voted has a right to be placed on that record as he voted.

MR. SMITH, of San Francisco. Have it read over.

THE PRESIDENT. If any gentleman desires to correct his vote he has an opportunity to do so.

MR. SMITH, of San Francisco. It is for the reason that the men don't understand how they voted yesterday. They claim, sir, that it is a mistake of the Secretary. I claim that the motion yesterday to lay on the table was lost.

MR. EDGERTON. I rise to a point of order. There is nothing before this House for discussion. The Chair has announced that if any gentleman's name is not recorded correctly, that it may be corrected. All he has got to do is to say so.

THE PRESIDENT. Does the gentleman from San Francisco desire to have his vote corrected?

MR. SMITH, of San Francisco. I don't know whether my vote is recorded properly or not.

THE SECRETARY. Mr. Smith is recorded as voting "no."

MR. SMITH, of San Francisco. That is correct.

MR. WICKES. I move that the vote as recorded be read.

THE PRESIDENT. If there is no objection the Chair will allow the vote to be read.

The Secretary read the roll call.

MR. STEDMAN. For the information of this house I would like to hear the result of that corrected vote.

MR. VAN DYKE. This is simply to correct the vote of each gentleman. Now this proceeding shows the danger that we are liable to fall into by following this plan. I understood some gentlemen distinctly to vote as recorded by the Secretary. Afterwards it is called to their attention that they inadvertently voted different from what they intended, and then, of course, it is thrown on the clerk. Of course every man has a right to be on the record as he votes, but he has not the right to come here the next morning and vote as he intended to vote but did not vote.

THE PRESIDENT. If there are no more corrections the Journal will stand approved.

PHONOGRAPHIC REPORTERS.

MR. MURPHY, from the Committee on Phonographic Reporting and Printing, presented the following report:

To the President of the Convention:

SIR: Your committee on reporting the proceedings of the Convention, having had its powers enlarged so as to take in the subject of printing the reports, beg leave to make the following report on the whole subject: That the cost of reporting the proceedings and debates in shorthand, and transcribing them into longhand, ready for the printer, will not exceed eight thousand dollars for the session, if it last one hundred days, and this sum includes the per diem of the reporters; that if the session does not last one hundred days, the cost of transcribing will not exceed the sum of six thousand dollars, and the State will have the advantage in such less cost as may be incurred in case of a short session, by only paying for the transcribing by the folio at the rate of twenty cents per folio. That the cost of printing the proceedings and debates in the form of the Illinois reports will amount to four thousand six hundred and forty-three dollars and sixty cents per volume of nine hundred and fifty pages; this for one thousand copies, bound and complete. That the cost of printing five hundred copies of five hundred pages of the Journal will reach one thousand and thirty-nine dollars. That the cost of printing the daily Journal for the use of the members will amount to about two hundred dollars for the session.

JAMES E. MURPHY, Chairman.

THE PRESIDENT. If there is no objection the report will be received and be before the Convention for action. So ordered.

MR. WYATT. For the purpose of disposing of this question and ecting the sense of this Convention upon this subject, I move the indefinite postponement of the report of the committee. I do this because I am opposed to a reporter. I am opposed to employing this Phonographic Reporter with the expense that it is thought will be incident to it. I was astonished the other day when it was announced in the Convention that reporting the proceedings of the Illinois Convention had cost that State fifty-seven thousand dollars. We, sir, in the point of expense, exceed Illinois as much as we do in the size of our trees. If to report the Illinois Convention cost that State fifty-seven thousand dollars, in my opinion, before the State of California gets through with the reporting and publication in bound volumes of the debates of this Convention, the treasury of this State will have been depleted to the extent of one hundred thousand dollars. I know that my remarks seem extravagant as compared with the statement of the committee upon that subject. It seems absurd, as it were, but without being a prophet or the son of a prophet, I am willing to offer that suggestion to this Convention. We are not going to cut down upon the cost of the Illinois Convention. We are not going to cut down upon the cost of the Eastern States upon that subject. It will cost us in the proportion as the expenses of the Pacific Coast exceed the expenses of the Eastern States in all the cost of things of this character. But when we employ Phonographic Reporters to report this Convention, if they are employed, I want it reported as the Ohio reports are, that everything shall be reported, even to the prayers of this Convention, if we have prayers. Sometimes the very smallest thing either points a moral or adorns a tale, and I don't want it left to a select four, or five, or six of this Convention to say what shall go into the reports and what shall not. If the proceedings are reported let it be verbatim. If it is intended to show to posterity how able we are as statesmen, it should all be in there; if it is intended to show that we were able to frame and mould a new form of government that is to be the admiration of the world, all should go in there; if it is proposed that it shall stand as a warning beacon for future generations, then all should go in there. I do not want it clipped one line. I do not want the crossing of one "t" or the dotting of one "i." I do not believe, sir, that the reporting of this Convention will be worth the cost of it. I do not believe that my constituents care to have the money expended that it will cost to do it; hence, for the purpose of making it a test question, I have made the motion that I have.

MR. AYERS. There may, perhaps, be some force in the parallel drawn by the gentleman from Monterey. It has been asserted in this Convention that the reports of the debates and proceedings in the State of Illinois cost in the vicinity of fifty-seven thousand dollars, I believe. How two volumes like that (holding up the book to the view of the Convention) reported and printed, and printed to the extent of one thousand copies, could have cost that sum I cannot divine. There must have been a great steal in it. Legitimate work could not have cost that sum. Your committee, with the aid of the State Printer, and I will here remark in parenthesis that no job is possible, so far as printing is concerned, in this State, because we have a State Printing Office here of which this Convention, by statute, has the control; the use of the material is at our service; the presses, the type, and whatever is in that establishment is at the service of this Convention. It is, therefore, only necessary in estimating upon this work to find out what will be the cost of the material upon which the work shall be printed; what shall be the cost of the labor connected with the press-work; what shall be the cost of the composition. All of these items are easily arrived at. The cost, per page, of the composition (I am speaking now to the printing), cannot exceed three dollars. The measure is there, and it cannot be enlarged or contracted. The cost of nine hundred and fifty pages which that volume contains (the reports of the Illinois Convention are contained in two such volumes) would be two thousand eight hundred and fifty dollars. The cost of the press-work for one thousand copies would be two hundred and eighty-five dollars and sixty cents. The cost of paper for one thousand copies—one hundred and thirty reams—eight hundred and fifty-eight dollars. The cost of binding one thousand copies, at sixty-five cents per copy, six hundred and fifty dollars, and I defy any man, with the State Printing Office at our command, to enlarge these figures. Therefore the whole matter would resolve itself into this: if the session of the Convention should last long enough so that we should make matter that would fill two such volumes as that, the entire cost of printing, including a daily Journal and the bound Journal at the end of the session, would be as follows: four thousand six hundred and forty-three dollars and sixty cents per volume for two volumes of the reports; one thousand and thirty-nine dollars for the Journal; two hundred dollars for the daily Journal, to be printed and laid on our desks, making a total cost of printing amount to ten thousand five hundred and twenty-six dollars and twenty cents. That is the extreme limit, providing we only make two such volumes of matter in this session. The reporting and reproducing the notes into longhand can only cost eight thousand dollars; the whole extent of this entire work would be eighteen thousand five hundred and twenty-six dollars and twenty cents, for reporting and printing everything connected with this Convention, so far as regards the matter in hand as reported by the committee. Now, if any gentleman here is afraid that this expenditure may reach to any colossal sum, as it was reached in the State of Illinois, I would like to have him point out to me where is the leak; where is that India rubber flexibility that will enlarge eighteen thousand dollars up to fifty-seven thousand dollars. It could only be if we had the power, and we have it not, to let this matter out by contract; then the stealing might come in—then the favoritism might come in—but as long as we have control of that establishment over there, and have our work done there, there can be no such thing.

MR. FREEMAN. We might as well understand as clearly as we can the limits of this thing at once. Yesterday the computations, as made by a member of the committee, suggested, I believe, the sum of two thousand dollars.

MR. AYERS. I beg leave to make a correction. The gentleman will

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recollect that, at the suggestion of Judge Fawcett, I estimated that an octavo volume of eight hundred pages would not cost over two thousand dollars, or about two thousand dollars. It was a hasty calculation. I said I had not made that estimate in relation to this sized volume, neither in form or matter.

MR. FREEMAN. That is just about what it was; the computations were hasty. What is the use of talking about the proceedings being reported in a volume of nine hundred and fifty pages? The Illinois Convention, to which reference has been made, consisted of eighty-five members, and was in session ninety-five days. Now, I do not believe that these one hundred and fifty-two men here will allow any eighty-five Illinois men to do more talking in ninety-five days than they can do in one hundred days. I believe, sir, that the reports of our Convention will be as much larger than the reports of the Illinois Convention as one hundred and fifty is larger than eighty-five. Now, in making the computation made by the State Printer, the committee saw proper to select less than one half of the Illinois report for their estimate. They have selected the smallest volume, which contains nine hundred and fifty pages, instead of the first volume, which contains one thousand and seventy-seven pages. Now, these Illinois reports, it must be admitted, is the very smallest limit with which our reports can be put, contain over two thousand pages; all three columns; each column contains eighty-four lines; each line about seven words; making thirty-five thousand two hundred and eighty folios, at least, to be transcribed at twenty cents per folio would cost seven thousand and fifty-six dollars. I wish to say this, in regard to the computations that are now made, that it rarely happens that the estimates at the beginning of any job realize what it amounts to at the end. I desire here to call the attention of this body to work that has already been done in the State Printing Office, for the purpose of making an estimate. Now, in the report of eighteen hundred and seventy-eight, we have the cost of printing the statutes of eighteen hundred and seventy-five-six, and it is stated to be six thousand three hundred and eighty dollars. By an actual estimate, I find that these statutes contain just one fifth of the matter contained in these volumes of the Illinois reports; hence it would require about thirty thousand dollars to put forth a volume containing as much as the two Illinois reports. I will ask again what I asked the other day, why do we want a Phonographic Reporter? Gentlemen have alluded to the fact that there were questions of importance to be discussed here. I will admit that, and that they will be ably discussed; but the substance of these discussions will be sent out to the world and read by the people carefully long before any official reports of the proceedings of this Convention can be made. Why, we propose to print a thousand copies. That is not for public information. Why, if we print at all, if we want this as a matter of publicity, we should go into the newspaper business, and send them abroad to the State and to the world. If the real object of this be to give people information upon constitutional questions, then they should be like a newspaper, sent broadcast. But the very newspaper which this morning tells us to proceed to the election of a reporter, tells us in the same article that whether we elect one or not it will give a full report of our proceedings, and we have no occasion for a reporter. The question is now to indefinitely postpone this report. This seems to me not the proper way to act upon the report of the committee. Upon the indefinite postponement I shall vote "no," but when the question comes whether we shall employ any Phonographic Reporter, I shall vote against it.

MR. SHAFTER. Do I understand the gentleman that the question now is upon the indefinite postponement of this report? There is no proposition in this report of any kind to be acted upon; none whatever. They simply report that certain services will cost a certain sum of money. They recommend no action of any kind. I submit as a question of order that there is nothing in the report that recommends any action.

MR. MURPHY. I move to take up the resolution upon which this resolution is based—the resolution providing for a Phonographic Reporter—and have the matter disposed of.

MR. AYERS. I would suggest that the report of the committee yesterday and the report to-day are connected; that this is a subsidiary report to that. In that there is a clear proposition made.

MR. MURPHY. I move that this report be adopted and then we will vote upon the resolution.

MR. FILCHER. Mr. President, I desire to offer this resolution, for the purpose of presenting the matter in a shape that will disclose the sense of the Convention on the substance of the report:

Resolved, That this Convention do now proceed to the election of a Phonographic Reporter, whose duties and pay shall be governed by the provisions of the reports of the Committee on Reporting and Printing.

MR. McFARLAND. Mr. President: When the question of phonographic reporting first came up before this body, I was in grave doubt about the propriety of the action of this body in regard to it. I certainly think that we ought to have a report of the proceedings of this body. Nearly every other State of the Union which has had a Constitutional Convention, has submitted in a permanent form to the world its deliberations, and I have only been deterred from advocating the matter myself by a consideration of cost. I knew nothing about it myself, and have been waiting for information from those better informed. Now, it seems to me that we have come to a fair calculation of one portion of the cost, and we certainly know, if we adopt this resolution, the bounds which the reporter shall not exceed. It says that the whole cost of reporting and transcribing shall not exceed eight thousand dollars, and that the gentleman we shall select shall give bonds that he will present no bill exceeding eight thousand dollars. We know, therefore, how much that will cost at the outside. Now, the only additional cost is the cost of printing. It seems to me we ought to consider, to some extent, where that money is going. I understand that the expenditure of public money, when it goes to an individual on a claim that is doubtful, is a very different thing from the expenditure of the same amount of money when it is distributed through a large class of persons. Political economy is composed of two great departments—first, the creation of wealth; second, its distribution. One party now seems to be greatly exercised about the distribution of wealth. I, sir, am not in favor at all of any of those wild schemes that have been lately agitated and presented, such as that the State and municipal corporations should expend money merely for the purpose of giving employment. Some have gone so far as to say that it would be right to employ men to wheel stones from one part of the city and back again, simply for the purpose of giving employment to labor. But, sir, in estimating the cost of printing, it is certainly fair to consider that nearly every dollar of it, all of it, in fact, except the mere price of the paper on which it is printed, goes to a set of as worthy and industrious and as hard-working workingmen as there are in this State. [Applause.] There is no set of men in the State of California, I don't care who they are, that do more hard work for the same amount of money, than the printers of this State. They are workingmen in the truest sense of the word—men who do more work, do harder work, do work at the most unseasonable hours, do work that tends more to the destruction of the faculties, both of the body and mind, than any other class of workingmen in the State of California. Now, sir, every dollar of the expense of printing will go to that class of workingmen of the State. But, sir, when we come to consider the cost of printing, I do not see how it is going to be very great; I do not see how it can be. The gentleman from Alameda presented this matter fully. According to his calculations, I cannot understand how the amount of money to be paid out to these printers is going to amount to any very large sum. I certainly think that we can obtain the proceedings at a cost not exceeding eight thousand dollars for the reporting and transcribing, and the cost of the whole at fifteen thousand dollars, which is seven thousand dollars for the printing, and that money going to a worthy class of workingmen of the country. I do not believe, sir, that the people will object to the printing of these debates in this way.

MR. LAINE offered the following resolution:

Resolved, That the Phonographic Reporter be allowed fifty dollars per day, and no more, for his per diem and that of his assistant, for reporting the proceedings of the Convention, and transcribing the same into longhand, ready for the printer.

MR. FREEMAN. First, let us determine whether we will have a shorthand reporter. I think the first question that we ought to decide is whether we will have Phonographic Reporters. We can then get the sense of the House upon that question. Then we had better take a little time before the contract is let. I would like the question to be divided, so as to first put the question as to whether we shall elect a Phonographic Reporter.

THE PRESIDENT. The resolution of the gentleman from Placer covers the point and brings the Convention to a direct vote.

MR. FREEMAN. If I remember it, that would make the arrangement according to the report of the committee. That is the part I object to. Let the first part be put, that is, whether we employ or do not employ a Phonographic Reporter. If it should be carried, then I will call attention to the defects in the report of the committee and we will have it obviated. Perhaps the gentlemen on the left will consent to have the proposition divided in that manner.

MR. HAGER. Will the Secretary please read that resolution.

The Secretary read:

Resolved, That this Convention do now proceed to the election of a Phonographic Reporter whose duties and pay shall be governed by the provisions of the reports of the Committee on Reporting and Printing.

THE PRESIDENT. The resolution is not capable of division.

MR. FREEMAN. I desire to call attention then to the fact that the report says that the reporter shall be entitled to the per diem fixed by law for their services. There is no law fixing their per diem. There is no per diem fixed by law for Phonographic Reporters of this Convention. The next proposition yesterday was that the reporter be required to furnish longhand reports.

MR. EDGERTON. I would inquire if the reference in this resolution is to the report of yesterday or to-day.

MR. FILCHER. Both reports. It says "reports." I see in looking over the report yesterday, which was written very hastily as the Convention was being called to order, that it is a little ambiguous.

MR. FREEMAN. That is the reason I asked for a division of the question.

MR. FILCHER. This point, however, was made clearly in the subsequent report this morning, and it will be seen that in no possible event shall the cost for reporting and transcribing exceed the sum of eight thousand dollars.

MR. HOWARD. I move to amend the resolution by striking out all after the words "Phonographic Reporter."

MR. EDGERTON. I did not know until this moment that the report contained the proviso that in no event should the cost of printing——

MR. FILCHER. The reporting and transcribing shall not exceed eight thousand dollars.

MR. PRESIDENT. The question is on the motion of the gentleman from Los Angeles, Mr. Howard, to strike out the words "whose duties and pay shall be governed by the provisions of the reports of the Committee on Reporting and Printing." The resolution would then stand:

Resolved, "That this Convention do now proceed to the election of a Phonographic Reporter"

MR. HAGER. I have said heretofore that I thought by the Act of the Legislature we were substantially instructed to appoint Phonographic Reporters. The Act reads: "The Convention may select Phonographic Reporters and fix the amount of their compensation; also, a Sergeant-at-Arms and one assistant." Now it is true that perhaps we may not select Phonographic Reporters under a fair construction of this Act, but

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I look upon it as equivalent to an instruction so far as the Legislature is concerned, they having evidently thought that we ought to select Phonographic Reporters to make a report of the proceedings and debates of this Convention. That is the view that I take of it, that it is an instruction from the Legislature, and so far as any one feels bound to follow that instruction, I think it is his duty to obey it in voting to have these proceedings reported.

MR. AYERS. In order to place the whole subject more clearly——

MR. HAGER. Mr. President: I am not done. Now, in regard to the printing. We are not instructed in regard to the printing one way or the other. If we simply conclude to have the reports made they will be placed on file, and a future Legislature may order them printed or not. Now the Convention may take that view of it, to have the proceedings reported and to allow them to be placed among the archives, to be published hereafter if they see fit. I presume that by the Act we are authorized to order the printing, inasmuch as it provides for the printing of any other matter that may be necessary for the Convention. I should say that they should be printed so that they could be placed upon our desks the morning after the debates occur. That can be done. That is the course in Congress. If they are printed at all during the session they should be placed on the desks of members on the following day. I have no desire to perpetuate my name through the printed debates of this Convention. Let it be printed or not, it is immaterial to me. I do not know that I would vote for the printing. Men can be immortalized in books, and I understand there is a gentleman getting up the biographies of members here so that they can acquire immortality in that way. It is not necessary that we have these proceedings published, but the question is whether it is most desirable. I think, perhaps in most views it is desirable, but so far as personal considerations are concerned I do not care a snap of my finger whether they are published or not. I would wish now to make an amendment to the proposition of the member from Los Angeles, Mr. Howard. I offer this amendment: "That in the opinion of this Convention Phonographic Reporters should be appointed to report the proceedings of this Convention." That will bring the question directly before the Convention. If this resolution should pass, I should then be in favor of appointing a committee to interview the different reporters and then report the names of those who are competent and the price for which it can be done. I would like to have the question first decided whether we will have Phonographic Reporters. I offer this resolution:

Resolved, That, in the opinion of this Convention, Phonographic Reporters should be appointed to report the proceedings of this Convention.

MR. MCCALLUM. I rise simply for information. I heard the report of the committee, but there have been some amendments offered since that I did not hear.

THE PRESIDENT. The amendment of the gentleman from Los Angeles is to strike out the latter clause of the resolution, so that it will simply proceed to the election of a Phonographic Reporter.

MR. MCFARLAND. We do not know, from the resolution, what the reporter is going to do, or what pay he will receive. It does seem to me that the fairest way is to vote upon the original resolution.

MR. BIGGS. I want to see the gentlemen come right square up to the question, whether they are in favor of reporting their speeches. The resolution offered by Mr. Filcher brings that question to a direct issue. And I want it understood that I am opposed to the election of a Phonographic Reporter; and I must say, that I am very much surprised at the delegate from San Francisco, Judge Hager, to come here and advocate the taxation of the downtrodden people of this State. The law says we may have a reporter; he says that it is implied that we should have one. Then he goes on and says, so far as he is concerned, he don't care whether the proceedings are reported or not. He cares not whether his name is handed down to posterity with the last declaration; he don't care whether he cinches the people of this State thirty or forty thousand dollars.

MR. HAGER. If my friend will allow me, I said that, so far as I was personally concerned, I did not care a snap of my finger whether the debates were printed or not; but so far as the expenses are concerned, I care just as much about them as the old watchdog of the treasury. [Laughter.]

MR. BIGGS. I accept the appellation. I came here pledged to the people of California, of the whole State, that I will coöperate with the men of this Convention that they shall not be taxed to death. I propose to notice the remark of the distinguished gentleman from Sacramento, Judge McFarland. He says every dollar is paid to the printers, and goes to the working men. Who pays the money into the treasury? Who puts it there to be paid out? It aint the bondholders and mortgageholders. It is the working men that puts this money into the treasury, and I want it to remain there and go out to legitimate purposes. This will amount to more than eighteen thousand dollars. I tell you, you go on and it will soon come up. Before you have spent such an amount for the purpose of having these reports—the debates reported—and they will all be lost, unless you make a further appropriation. I want the Constitution so plain that you don't need to spend fifty-seven thousand dollars, like the Illinois Convention. And I ask this Convention to place themselves on the record for retrenchment and reform, and against robbing the State of twenty or thirty thousand dollars; and I ask my friends to stand by me, and stand by the State, and save the State that large amount of money.

MR. DOWLING. I would like to understand if that resolution determines first, that we have a reporter, or that we are going to determine about the salary, or what the reporter will get. Now, Mr. President, if that is so, the proper way is, to determine what the whole thing will cost, and then let us have a reporter afterwards. But it seems to me, Mr. President, that California, ever since she was admitted into the Union, was never in a condition that she was better able to dispense with the services of a Phonographic Reporter than she is at this date. I think, sir, that she trembles from San Bernardino to Siskiyou from the amount of taxation that is already piled upon her, and I, for one, will positively, first, last, and all the time, vote against piling any more taxation upon this State. I do it, sir, because jobs of this kind have been attempted many a time before, and were carried out very successfully, in order to defraud the public. Now if we get started in this reporting business it is only an entering wedge. We cannot tell where it will stop. This reporting will cost, the lowest sum is eighteen thousand dollars.

MR. AYERS. Including the printing.

MR. DOWLING. I say eighteen thousand five hundred and twenty. Is it not paying for the shadow of the substance? Is not the Constitution going to be the substance, and these debates and deliberations are to be the shadow. It is simply throwing money out of the treasury to immortalize a few eloquent men on this floor, who will have speeches in there to transmit to posterity. I hanker after no such notoriety, though I will help to build a Constitution that will protect that posterity and keep them from being robbed even now. I want to build it so strong, so compact, that it will be like a stone wall; and then, Mr. President, when it is built I want it plastered over, so that there won't be a crack in it, because these corporations and monopolies would run a locomotive or steamboat through a keyhole. When I hear these men advocate in this House, I hear it from the great buglers of corporations; and anything I hear from them, I will object and protest, first, last, and all the time against them. Now, Mr. President, I contend that the minutes of this meeting are sufficient for us to refer to in future years. My vote is my record. When I leave this Convention I go back to the obscurity from whence I came. I don't want to deify any man. I vote against this thing first, last, and all the time.

MR. SHOEMAKER. The question of printing the debates is an entirely different one from that of the reporting. It has nothing to do with it whatever.

MR. BARTON. Inasmuch as the Chair has decided that the report of the committee is not subject to division, I hope that the amendment of the gentleman from Los Angeles, Mr. Howard, will prevail. I think that this is a useless waste of time. I do not rise for the purpose of making a speech. We will have ample time for that when the matter comes before this body in its proper light. I hope the motion of the gentleman from Los Angeles, or the amendment of the gentleman from Los Angeles, will prevail, and that we will bring this matter squarely before this body.

MR. FILCHER. Mr. President: While I do not come here to make any buncombe speeches on matters of reform, economy, etc., yet, if any member of this Convention can point out to me clearly where I can save to the people of California a dollar, without restricting their rights, I stand here ready and willing to do so. At the same time, since the economical feature of this matter is being discussed, I rise to state that it presents itself to my mind in a different light than it seems to have done to some of the members. As I understand it, one hundred and fifty thousand dollars have been appropriated by the Legislature of the State of California to defray the expenses of this Convention. And it would seem to me that if we expend that money in simply wasting our time here in debating and wrangling, and then the result of our action should be repudiated by the people, then the people whom we represent have not one solitary dot to show as a return for the expenditure of their money. On the other hand, if we extend our liberality and manifest a little more generosity, we can devote this money, or a portion of it at least, to handing down to the people the ideas we have suggested, if, perchance, they may be of any use to them in the future in considering important constitutional matters. To my economical friends, the Workingmen, and my distinguished friend from Butte, who would save to this State every dollar they can—and I believe that they are honest in their convictions—it would seem at a glance that they want to gobble up all of it to pay salaries and not let a dollar of it go to the poor printer.

MR. BIGGS. I call the gentleman to order.

MR. FILCHER. I do say that it seems that these gentlemen who are opposing this proposition on the ground of economy, it would seem to me, that their motives must be that they wish to exclude the printers and reporters and all outsiders from getting their hands on any of this money in order that it may be retained in toto among the members in their per diem. Now, for my part, Mr. President, I repeat that I want to save every dollar possible to the people of the State of California, but since it is possible that we may expend this money and have nothing left to show for it, it seems to me that we should let the people know what is said upon this floor, and place them in a position that they can use our words here, and put them in a shape that will be of some service, and I offer the resolution, knowing what I do, in order to bring this matter to a head. I know that the State Printer is now sitting on the anxious seat to know what the Convention is going to do—whether we are going to print these reports or not. The reporters are also on the anxious seat waiting to know whether or not they are going to work. They are waiting here on time and expense. I know that there are a large number of printers in Sacramento anxious to know if the reports are to be printed. It is definitely understood from the most liberal calculations that the reports—the verbatim longhand reports—of the proceedings shall not in any event, cost the State over eight thousand dollars, if the outside limit is attained, and if the session does not last one hundred days, the reports cannot cost more than six thousand five hundred dollars.

MR. CAPLES. I desire merely to make a suggestion. There has been talk enough upon this subject in its present shape, and I merely desire to suggest to the members that before we consume any more valuable time in discussing this question, we had better decide whether we want a reporter. If it be a fact, and probably it is, that a majority of this Convention have predetermined against the employment of an official reporter—have predetermined that they will save the State this

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expense, why, then, it must be apparent to every member that this is a waste of time. My suggestion is simply this: let us first determine whether we want an official reporter. If we determine that we do want an official reporter, then let us discuss the details; but if we don't desire an official reporter, it is, as I remarked, a waste of time. Therefore, I think we should first determine whether we want an official reporter. Having so determined, then let us go into the details.

MR. TULLY. This is a subject that I know but little about. I listened to the statement of Colonel Ayers, who, I am informed, is a practical printer and newspaper man, and he assures this Convention that the whole proceeding would not cost the State over eighteen thousand dollars in round numbers. The Hon. Mr. Edgerton, the gentleman from Sacramento, I believe is a gentleman of large experience in these matters, rises and says that it would be about eight thousand dollars. Another distinguished gentleman from Sacramento, Mr. Freeman, who I am sure is a sound, practical, and safe man, assures us that these proceedings involve an expenditure of about thirty thousand dollars. Now, I am not willing to vote upon such an uncertainty as that, and I think gentlemen of this Convention should know what they are voting upon. Another gentleman from Sacramento, Mr. McFarland, desires making this appropriation for the benefit of his constituents—hard-working printers and such. I, for one, am not disposed to be niggardly on any of these questions. I think that there should be a decent record made of the proceedings and of the debates of this Convention, and I for one am willing to vote for the proposition, provided I can be assured with some degree of certainty what the proceedings are going to cost. Some gentlemen have argued that we should first elect a reporter, and then ascertain what it is to cost. It seems to me that we should first ascertain what the cost of the proceeding will be. I think that, in a very great degree, will determine the fact of whether we elect a reporter or not. It seems to me that the friends of this report are taking the very measures to defeat themselves, because I shall certainly vote against this resolution with the light I now have, and I will rely upon the newspapers to report all that I may wish to say upon this floor. I will make me a scrap-book and have my children set down at nights and read what I had to say in this Convention. I presume some of the gentlemen desire to have the debates printed and bound in leather, that their grandchildren may read the grand speeches that their grandfathers made here. I certainly shall vote against the proposition as it now stands.

MR. AYERS. I merely wish to call the attention of this Convention to one feature of this debate. Gentlemen rise in their seats and speak about fastening upon the people of this State a heavy debt for this printing. I will say that as far as I have learned, this expense has to come out of the one hundred and fifty thousand dollars appropriated for this Convention. The one hundred and fifty thousand dollars will be used up in any event, and if a portion of it is used for printing, I do not see that any further taxation will be placed upon the people for that purpose.

MR. BARBOUR. I agree, sir, with the suggestion of the gentleman from Sacramento; that we should come to a direct vote upon the question whether we will have Phonographic Reporters or not. That disposes of all the rest of the matters that have been discussed here this morning. Of course, if the Convention decides against having Phonographic Reporters, that settles it. I am opposed, in the present attitude of this Convention, to the employment of Phonographic Reporters; and now that I have the floor, I will state my reasons. I do not believe it to be a useless expense, but I do believe it is not worth it. It is an expense that will not repay the people of this State an equivalent. Gentlemen have presented to us figures here in regard to the expense; but, Mr. President, these figures will come out exactly as the estimates did in the Illinois Convention, and fall about one half to two thirds short of the estimate. That committee was composed of practical printers. The chief of the committee was Mr. Joseph Medill, against whom no man could suggest anything; Mr. Cameron was another, both of them men whom, to say, in the West, that they would countenance any jobbery, would excite ridicule. They presented an estimate to that committee that the reporting, transcribing, and printing would cost in the neighborhood of twenty thousand dollars. It is said that the gentlemen are practical printers, and have presented a report that the cost will be about eighteen thousand dollars. But it turns out, the event shows, that in that State the cost was fifty-seven thousand dollars; and I have no doubt that if we undertake this business here we will find that it will approximate that, perhaps more, and I will tell you why. In Illinois it was let by contract. The contractors were bound to the contract in bonds. They could not go behind it. Here the work is given out to the State Printer. I say, therefore, that the responsibility for this thing, if any loss arises to the State, should be placed where it belongs—that is, upon the Legislature, which crippled this Convention. We cannot abandon our labors in the middle, for the want of anything in the treasury to go on with them. We cannot. We must go through. We must have the means to go through. Gentlemen talk about giving employment to working men. That is all buncombe and claptrap. If that is not buncombe politics as a motive here, I know of none such. You cannot catch Workingmen with propositions of that sort. The only question is, whether it is a proper expenditure. Is it a right expenditure? Now, sir, I would not have the great State of California practice an absurd economy or be niggardly. I would not have it to be behind other States in employing all the arts and improvements of modern invention to make its labors complete, but I see that other States have dispensed with this thing. Only half have their debates all printed. They are useless unless they are printed. The great argument offered here in support of the proposition to have shorthand reporters, is that the questions that may arise after the Constitution is adopted may be illustrated and exemplified by an examination of the debates. I know that the Courts examine custom, tradition, and everything else, but I do not know that Judges go into constitutional debates for the true intent of a constitutional provision. I undertake to say it would be a bold Judge who would go in there to find what the sense of this Constitution would be. I know that this proposition to dispense with this work is rough on the orators of this Convention, and I should like to gratify these gentlemen in that manner, and hand them down to my posterity in good shape, but I beg them to remember that Demosthenes and Cicero had no reporters. They did not even have the benefit of the press. I suggest to our orators to write their great speeches out on buckskin, and file them in the archives of the State. Now, I want to call attention—I am a sort of printer myself. They have spoken about the cost of composition, and I find in the report of this Committee of the Constitutional Convention of Illinois a suggestion that is very important to consider, and that is, that the printing of these reports is altogether different matter—estimated altogether different from ordinary composition. I will refer to the report: "It was further agreed that the debates should be printed and placed in newspaper form on the desks of the members of the Convention at twelve M. of each succeeding day, punctually; that two proofs of all speeches, resolutions, etc., should be furnished to members for correction and revision; and that all corrections, alterations, and revisions of 'copy,' should be done at the expense of the contractors; that after the debates have been printed in the newspaper form and furnished to members, all further corrections that may be made by members of the Convention for the Globe form shall be made at the cost of the contractor." This is an additional expense, as there will be everlasting revisions and alterations, which will multiply the work of the State Printer and increase the expense.

But, sir, I oppose this resolution upon other grounds. I have a very serious apprehension in my mind that the work of this Convention will be an abortion. It seems so to me now, sir. The inharmonious elements here, it seems to me, will be unable to agree upon and present to the people of this State a Constitution which they will adopt, and for that reason I wish to be upon the safe side, and save to the treasury every dollar that we can possibly avoid the expense of. We are reported sufficiently, I believe, by a newspaper published in this city, which has announced that it proposes to furnish full reports of this Convention. I refer to the hippodrome paper—the dead-alive paper called the Sacramento Record-Union. It is true, sir, that nobody reads it if he can avoid it, but the debates will be there, and that is enough for me. Any gentleman can order a thousand copies, if he wants to. They can put an antidote in the poison, and it is all right. Therefore I shall vote for the resolution to divide the question.

MR. SMITH, of Santa Clara. I move the previous question.

THE PRESIDENT. The effect of the previous question will be to bring the Convention to a vote upon the amendment, and then upon the resolution offered by the gentleman from Placer, Mr. Filcher. The first question is on the amendment offered by General Howard.

MR. JOYCE. I would like to have the motion again read before the previous question is put, so that the people will know what they are going to do.

MR. HAGER. The original proposition is the report of the committee, as I understand it. The next proposition is the amendment of the member from Los Angeles. To that is another amendment which I offered. If the previous question is ordered, the first vote will be upon the proposition which I have offered as an amendment. The next vote will be upon the amendment offered by the gentleman from Los Angeles; after that upon the original proposition of the committee.

THE PRESIDENT. The first vote will be upon the amendment of the gentleman from Los Angeles.

MR. HAGER. It is contrary to all rules I ever heard.

THE PRESIDENT. The Chair is very sorry to differ with the gentleman. The motion of the gentleman from Los Angeles is to strike out a portion of the resolution. The motion of the gentleman from San Francisco is to strike out the whole of it and insert something else.

MR. HAGER. My motion is to amend the clause left standing. If the proposition is adopted, my amendment fails, because then by a vote of the House the first proposition has carried.

THE PRESIDENT. The Chair differs with the gentleman.

MR. HAGER. Here I have the law: "All amendments of which a proposition is susceptible, so far as form is concerned, must be effected in one of three ways, namely, by inserting or adding certain words; or by leaving out certain words; or by leaving out certain words and inserting or adding others. These several forms of amendment are subject to certain general rules, which are equally applicable to them all." One of these rules is: "Whatever is disagreed to by the Assembly cannot be afterwards moved again. This rule is the converse of the preceding. Thus, if it is moved to amend A B by inserting C, and the amendment is rejected, C cannot be moved again; or, if it is moved to amend A B by leaving out B, and the amendment prevails, B cannot be restored; because in the first case C, and, in the other B, have been disagreed to." That is the case here. That is, the authors of a measure may perfect what is left standing by a motion to strike out before the motion is put, otherwise if we vote to strike out they have no opportunity to perfect it. We cannot recede from it unless we reconsider.

THE PRESIDENT. The gentleman has not moved to strike out anything. The gentleman from San Francisco moves this resolution: "That in the opinion of this Convention Phonographic Reporters should be appointed to report the proceedings of this Convention." The gentleman has not moved to strike out anything.

MR. HAGER. The Chair does not understand the point I make. I only wish the Chair to correct what he has already stated.

THE PRESIDENT. I think I have corrected it already. The gentleman from Placer, Mr. Filcher, offered a resolution. The gentleman from Los Angeles, Mr. Howard, moves to amend by striking out the latter clause. The gentleman from San Francisco makes this motion: "That in the opinion of this Convention Phonographic Reporters should be appointed to report the proceedings of this Convention."

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Mr. HAGER. My proposition——

The PRESIDENT. The gentleman will wait until the Chair has finished. Now, after the motion of the gentleman from Los Angeles, the gentleman's motion will be put. He offered it as a substitute. If the motion of the gentleman from Los Angeles does prevail, still the gentleman from San Francisco is in order to move to strike out the balance of it and insert, so that his vote is after that of the gentleman from Los Angeles, and the third vote is upon the original resolution. The previous question will bring the Convention to a vote in the order I have stated it.

Mr. HAGER. Now, Mr. President——

The PRESIDENT. All debate is out of order.

Mr. HAGER. The point I raised was as to the correctness of the statement.

The PRESIDENT. The gentleman is out of order.

Mr. HAGER. I merely wish to state that the Chair has not correctly stated the proposition that I made. The effect of the amendment offered by the gentleman from Los Angeles, as I understand it——

The PRESIDENT. The gentleman is now discussing the point——

Mr. HAGER. No. But——

The PRESIDENT. The question is—is there a second to the call for the previous question?

Mr. WATERS. I second the call for the previous question.

Mr. McCALLUM. I second the call.

The PRESIDENT. The gentlemen who second the call will rise to their feet. The main question is ordered. The question is on the amendment offered by the gentleman from Los Angeles, to strike out the latter clause of the original resolution. If that vote prevails the resolution will stand:

Resolved, "That this Convention do now proceed to the election of a Phonographic Reporter."

The amendment was adopted.

The PRESIDENT. The question now recurs on the amendment offered by the gentleman from San Francisco, as either a substitute or a motion, to strike out and insert: "That in the opinion of this Convention Phonographic Reporters should be appointed to report the proceedings of this Convention."

The ayes and noes were demanded, and the amendment lost by the following vote:

AYES.

Andrews,	Hale,	Ohleyer,
Barnes,	Heiskell,	Overton,
Belcher,	Holmes,	Porter,
Blackmer,	Howard,	Prouty,
Boggs,	Inman,	Pulliam,
Boucher,	Jones,	Reed,
Cowden,	Keyes,	Reynolds,
Crouch,	Lampson,	Schell,
Dudley, of Solano,	Larue,	Smith, of 4th Dist.
Dudley, of San Joaquin,	Mansfield,	Swing,
Dunlap,	Martin,	Tinnin,
Eagon,	McCallum,	Townsend,
Edgerton,	McComas,	Van Voorhies,
Estee,	McFarland,	Walker, of Tuolumne,
Graves,	McNutt,	Wilson, of 1st Dist.
Gregg,	Mills,	Winans—50.
Hager,	Moreland,	

NOES.

Ayers,	Grace,	Rolfe,
Barbour,	Hall,	Schomp,
Barry,	Harrison,	Shafter,
Barton,	Harvey,	Shoemaker,
Beerstecher,	Herold,	Shurtleff,
Bell,	Herrington,	Smith, of Santa Clara,
Berry,	Hilborn,	Smith, of San Francisco,
Biggs,	Hitchcock,	Soule,
Brown,	Hughey,	Stedman,
Burt,	Hunter,	Steele,
Caples,	Johnson,	Stevenson,
Chapman,	Joyce,	Stuart,
Charles,	Kelley,	Sweasey,
Condon,	Kenny,	Swenson,
Cross,	Kleine,	Tully,
Davis,	Larkin,	Turner,
Dean,	Lavigne,	Tuttle,
Dowling,	Lewis,	Vacquerel,
Doyle,	Lindow,	Van Dyke,
Estey,	McConnell,	Walker, of Marin,
Evey,	McCoy,	Waters,
Farrell,	Murphy,	Webster,
Fawcett,	Nason,	Weller,
Filcher,	Nelson,	Wellin,
Finney,	Neunaber,	West,
Freeman,	Noel,	Wickes,
Freud,	O'Sullivan,	White,
Garvey,	Reddy,	Wilson, of Tehama,
Glascock,	Rhodes,	Wyatt—87.
Gorman,	Ringgold,	

Mr. WILSON, of San Francisco. There is a misapprehension here as to the condition of the resolution. I suggest that the resolution be read as amended.

The PRESIDENT. The resolution as amended is:

Resolved, That this Convention do now proceed to the election of a Phonographic Reporter."

Mr. EDGERTON. I desire to ask a question. I desire to know, if this resolution is defeated and no notice of reconsideration is given, whether a similar or like resolution would be admissible on the next meeting?

The PRESIDENT. On another day the motion would be admissible.

The ayes and noes were demanded, and the resolution was lost by the following vote:

AYES.

Andrews,	Hoge,	Porter,
Blackmer,	Howard,	Pulliam,
Boggs,	Inman,	Rolfe,
Cowden,	Jones,	Smith, of 4th District,
Edgerton,	Lampson,	Swing,
Filcher,	Mansfield,	Tinnin,
Finney,	McFarland,	Townsend,
Graves,	Mills,	Van Voorhies,
Hale,	Noel,	Walker, of Tuolumne,
Heiskell,	Overton,	Waters—30.

NOES.

Ayers,	Hager,	Prouty,
Barbour,	Hall,	Reddy,
Barnes,	Harrison,	Reed,
Barry,	Harvey,	Reynolds,
Barton,	Herold,	Rhodes,
Beerstecher,	Herrington,	Ringgold,
Belcher,	Hilborn,	Schell,
Bell,	Hitchcock,	Schomp,
Berry,	Holmes,	Shafter,
Biggs,	Huestis,	Shoemaker,
Boucher,	Hughey,	Shurtleff,
Brown,	Hunter,	Smith, of Santa Clara,
Burt,	Johnson,	Smith, of San Francisco,
Caples,	Joyce,	Soule,
Chapman,	Kelley,	Stedman,
Charles,	Kenny,	Steele,
Condon,	Keyes,	Stevenson,
Cross,	Kleine,	Stuart,
Crouch,	Larkin,	Sweasey,
Davis,	Larue,	Swenson,
Dean,	Lavigne,	Tully,
Dowling,	Lewis,	Turner,
Doyle,	Lindow,	Tuttle,
Dudley, of Solano,	Martin,	Vacquerel,
Dudley, of San Joaquin,	McCallum,	Van Dyke,
Dunlap,	McComas,	Walker, of Marin,
Eagon,	McConnell,	Webster,
Estey,	McCoy,	Weller,
Evey,	McNutt,	Wellin,
Farrell,	Moreland,	West,
Fawcett,	Morse,	Wickes,
Freeman,	Murphy,	White,
Freud,	Nason,	Wilson, of Tehama,
Garvey,	Nelson,	Wilson, of 1st District,
Glascock,	Neunaber,	Winans,
Gorman,	Ohleyer,	Wyatt—110.
Grace,	O'Sullivan,	

Mr. McCOMAS, at twelve o'clock and forty minutes P. M., moved to take a recess until two o'clock.

Lost.

Mr. SHOEMAKER offered the following resolution:

Resolved, That the Sergeant-at-Arms of this Convention be and he is hereby authorized and directed to receive from the Controller of State, and to receipt therefor, all warrants due to the members, officers, and employes of this Convention for per diem and mileage.

Adopted.

Mr. MURPHY offered the following resolution:

Resolved, That the Controller of State be and he is authorized to draw his warrant in favor of the following persons in the amounts set opposite their names, payable out of the appropriation for the expenses of this Convention, for services rendered during its organization: A. J. Dobbins, Minute Clerk, $18; J. M. Farrelly, Sergeant-at-Arms, $56; B. F. Alexander, Doorkeeper, $20; Hiram Clock, Porter, $24.

Adopted.

Mr. WILSON, of San Francisco. I move that when this Convention adjourns to-day, it adjourn until Monday at one o'clock.

Mr. WHITE. I move that we adjourn until to-morrow morning at ten o'clock.

Mr. Wilson's motion was lost by a standing vote of seventy ayes to seventy-one noes.

Mr. EDGERTON, at twelve o'clock and forty-five minutes P. M., moved that we now take a recess until two o'clock.

Carried.

AFTERNOON SESSION.

The Convention reassembled at two o'clock, President Hoge in the Chair.

Roll called and quorum present.

On motion of Mr. TULLY, Mr. Laine's leave of absence was extended until Tuesday next.

On motion of Mr. EDGERTON, to correct a mistake, the Convention reconsidered its action in regard to the per diem of the Assistant Sergeant-at-Arms, and fixed it at six dollars instead of eight dollars, so as to comply with the law.

Mr. HEUSTIS offered the following resolution:

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Resolved, That the Controller of State be and is hereby authorized to draw warrants in favor of W. T. Beveridge and Aaron Wilson in the sum of eighteen dollars each, for services rendered as Pages, pending the organization of this Convention, payable out of the appropriation for the expenses of this Convention, and that the State Treasurer is hereby authorized to pay the same as above provided.

Adopted.

FILLING OF VACANCIES.

MR. TINNIN offered the following resolution:

Resolved, That the Convention now proceed to elections to fill the vacancies in the following order: First, to fill the vacancy caused by the resignation of Thomas Morris, of San Francisco; second, to fill the vacancy caused by the death of H. H. Haight, from the Second Congressional District; third, to fill the vacancy caused by the death of G M. Hardwick, from the Counties of Merced and Mariposa.

MR. McCALLUM. I move to amend that by making the election for the delegate at large first; by filling the vacancy caused by the death of Governor Haight first.

MR. EDGERTON. I move to amend the resolution by striking out the word "now" in the first line, after the word "Convention," and insert "at two o'clock P. M. on Tuesday next."

MR. TINNIN. I offered that resolution in good faith and for the purpose of advancing the labors of this Convention. In drawing the resolution I had no preference for any individual, and if other parties here have made agreements about which election shall come first, I have no knowledge of them. Now, sir, in answer to the last motion made, we have been here for three or four days simply doing nothing. It has been a contest here without seemingly accomplishing anything, and it is essentially necessary that this election be had in order to fill the vacancies, that the President in making up his committees may know the individuals he is to place on the committees. The President does not know who is elected. He does not know what peculiar capacities these persons have who will be elected. It is essentially necessary that he should know before he makes up his committees, and for this reason I contend that we should immediately go into this election. If gentlemen desire to go to San Francisco on private business I see no reason why this Convention should delay its labors.

MR. VAN DYKE. I hope this body will take this matter into consideration and force this election at the present time. I hope the mover of the resolution will accept the amendment offered by the gentleman from Alameda. It seems a matter of propriety that a delegate at large should be elected first to fill the vacancy caused by the death of Governor Haight.

MR. EDGERTON. I withdraw my motion.

MR. McFARLAND. If we are going to pass this resolution I do not see any reason for changing it. There is no particular object in it. I do not see why the delegate from San Francisco should not be elected first as well as the one from the Second Congressional District.

MR. CAPLES. It appears to me that there is a misnomer, perhaps unintentional, in the original resolution. The word "resignation" is used instead of "ineligibility."

MR. TINNIN. I see no point in that. That gentleman did resign. His resignation was read from the President's desk, and there can be no object in this only to hold forth certain ideas concerning the individual.

MR. CAPLES. I think that no man can resign what he does not possess. It is a misnomer, an abuse of language or terms. I therefore insist on my amendment.

MR. TINNIN. I do not care to enter into any debate, but I wish to say that the Governor of the State of California, by his certificate, declared that Thomas Morris was a member of this Convention, and considering that fact his resignation was in order. It was legal under the circumstances, and was a fact that we all know, and I see no reason for debating it here.

MR. HALL. The member from Sacramento proposes to amend the resolution by substituting "ineligibility" for "resignation." I suggest, Mr. President, that if the word "ineligibility" is substituted for the word "resignation" it would seem to me, in the present state of the law, that the resolution would show upon its face that there is no vacancy whatever. If Mr. Morris, who is prima facia a delegate by the proclamation of the Governor, was, by reason of not being a citizen of the United States at the time of the election, ineligible, then it seems to me that there was no election. The election would be void, and he has not become an incumbent of the office. Never having become an incumbent of the office he has not resigned the office, of course. The provisions of the law in our Political Code provides for cases of this kind. It declares what shall be deemed a vacancy in office. It goes on to say that vacancies shall be created by the death of the incumbent, by the resignation of the incumbent, and so on. But in this case he has never become the incumbent of the office, because it appears this resignation was presented to the temporary President prior to the organization of the Convention. Hence he has never been admitted to a seat in this body. He has never become an incumbent of the office. Now, sir, the question has arisen before the Supreme Court of this State in a case in which I was personally connected, in a case decided not very long since, and I presume will be reported in the next volume. It was the case of Carver vs. Dunbar, and it is with respect to the office of County Superintendent of Public Schools in the county. Mr. Dunbar received the highest number of votes, Mr. Carver having received the next highest number. But Mr. Dunbar, at the time of election, held the office of Inspector of Customs of the United States, at the city of Stockton, and the question arose whether or not he was eligible. The Supreme Court decided he was not eligible, and the result of his ineligibility was that the election was void—entirely void. So, the election being void, Carver was not entitled to it, and the Board of Supervisors proceeded, under the direction of the Supreme Court, to declare a vacancy, but the declaration of the vacancy preceded the action of the Board. After the office was declared vacant the Board of Supervisors proceeded, as by law directed, to fill that vacancy. Now, sir, applying that principle here, it would seem, upon the facts before this Convention, that Mr. Morris was not eligible to the office at the time of the election.

MR. BARBOUR. What provision of the law prescribes that?

MR. HALL. A general provision of the Political Code.

MR. BARBOUR. What section?

MR. HALL. I cannot say what section; but there is a general provision in the Political Code, and a qualification which requires citizenship as one of those qualifications required to hold office by this law. That being a qualification necessary, and he not having that qualification, it would seem to me that he was ineligible, and I respectfully submit to the Convention that he never did become an incumbent of the office. He never was elected to the office. It was absolutely null and void. Again, sir, in this Convention, I may be permitted to say, inasmuch as we are on the question, that some action should be taken, if we do not want to cast a cloud upon the title of the successor of this gentleman. It would seem that his resignation has not come before this body. It was addressed to the President and members of this Convention. Now it would seem, sir, to me, that he ought to pursue the course prescribed by another general provision describing the manner in which resignations may be made. There is a general provision covering his case, requiring him to file his written resignation with the Secretary of State. There is such a general clause existing in our Codes touching and concerning subjects of this kind. That resignation has not gone to that officer yet, so far as I am informed. He has never been admitted, and his resignation is not legal. Again, sir, a vacancy may be worked out in another way. There is a provision in our Code to this effect: that an officer elected at the hands of the people, who fails to present himself and qualify within ten days after the performance of that act is required by the law, is equivalent to abandoning the office. But these ten days have not as yet expired, sir. It strikes me, Mr. President, in the state of the law, that there is no vacancy existing in that office, but the honorable gentleman from Sacramento has proposed an amendment to the resolution by which the word "ineligibility" is substituted for "resignation," thereby setting it as a matter of record that we have proceeded to fill a vacancy where no vacancy existed at all; for, if he was ineligible, I do maintain, according to the decision of the Supreme Court, the election was null and void, and there is no vacancy.

MR. MURPHY. I think a great deal of time is being wasted here on this amendment. It is a matter of no consequence whether he is eligible or not. There is a vacancy to fill, and I move we proceed to fill it, and on that I move the previous question.

MR. CAPLES. I will withdraw the amendment.

The motion to transpose the first and second clauses was lost.

The question recurring on the adoption of the resolution, it was adopted.

THE PRESIDENT. Nominations are now in order to fill the vacancy caused by the resignation of Thomas Morris.

MR. BARBOUR. Mr. President: I have the honor to name Judge J. R. Sharpstein as a candidate to fill the vacancy in the San Francisco delegation, caused by the resignation of Thomas Morris. I present this name in obedience to the request of the San Francisco delegation as their unanimous choice, and I present him as the choice of the majority of the electors of the City and County of San Francisco, whose will was expressed at the last election. The usual course in the other States upon the happening of these vacancies appears to have been to order a special election to fill the vacancy. That is the true democratic method, because thus the will of the people is ascertained. The Legislature of this State has seen fit to clothe this Convention with power to fill these vacancies, not, as I should be sorry to believe, to be exercised arbitrarily, and reckless of the popular will, but in strict accord therewith. I have here the figures, taken from the official record, to show the votes cast and the general majorities given for each candidate. The majority given for the candidate which I present, Judge Sharpstein, is thirteen thousand nine hundred and thirteen votes out of a total of twenty-seven thousand votes. Nearly fourteen thousand out of a total of twenty-seven thousand. That of his opponent, M. M. Estee, was eight thousand three hundred and ninety-two votes, leaving a plurality in favor of Judge Sharpstein of five thousand three hundred and eighty-seven votes. Some have objected to him as a candidate because he was on the ticket at large, while Mr. Morris was on the local ticket. I would remind the people that at large or at small, it is only a difference in names. They were both on the same platform, were voted for by the same men in San Francisco, they are to sit in the same Convention, and the objections as to the difference in names I deem unworthy of consideration. It has been said that I am, as it were, presenting the name of a man who has been repudiated by the people of the State for a seat in this Convention. It is not true, sir. It is for the people of San Francisco, and not for the people of the State, to name the men to fill the vacancy. I suppose it will be next claimed that it is a man's misfortune to be popular and strong at home, and that the true test of his qualifications is to be popular abroad and weak at home. The whole question is summed up in this inquiry: Would the same vote, the same majority, have been given to Judge Sharpstein on the local ticket as on the ticket at large? That is certainly a fair, sensible construction. The question as to the eligibility or ineligibility of Mr. Morris, whose vacant seat is to be filled——

MR. EDGERTON. I raise the point of order that this is not a legitimate subject for discussion.

THE PRESIDENT. The point of order is well taken.

MR. BARBOUR. I say it is a proper matter for discussion, but I was proceeding to show, when interrupted, that we had taken the proper course in selecting a candidate. The San Francisco delegation, upon the first intimation that Morris was not a citizen of San Francisco, drew from him, after an examination, his resignation. We might have brought him here with his certificate of election under the proclamation of the Governor. We might have voted him here upon all the propositions of the organization of this Convention, as the gentlemen well

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know, and might perhaps have changed the results. We might have stood on the ground that his non-citizenship did not disqualify him from taking a seat on the floor of this Convention; his case would not have been passed upon until after the organization had been completed. But, sir, I say we stood not upon any of these technicalities. We said we went by the spirit of the law, and the spirit of the law was that this Convention should be composed of citizens of the United States. That the people voted for him thus under the impression that he was a citizen of the United States, and since it turns out that he was not, the delegation resolved not to stand by him, and we exacted a resignation from him. The delegation want the spirit of the law carried out, and hence they announced the candidate they intended to propose weeks ago in San Francisco. That name was before the people for their consideration, and I believe the universal verdict is that he ought to have the place. The people never intended by their votes to elect a non-citizen, but they did not intend to elect anybody else. Therefore, as a matter of right and justice, we demand that the seat be given to the man we present as the unanimous choice of the people of San Francisco.

Mr. CROSS. Mr. President: It is my privilege to second the nomination of Judge Sharpstein. I shall state the reasons why he is a candidate, and why he should receive the votes of this Convention. I will state them briefly. He is a man who is well able to fill this position. If the constituency which elected Mr. Morris could be heard here, they would speak in favor of Judge Sharpstein as representing their views. When they elected Mr. Morris from San Francisco they did so because he was a representative of their views. But when Mr. Morris proves to have been ineligible, by reason of not being a citizen, then it becomes a proper question whether it is not our duty as well as our privilege, to respect that sentiment. It becomes a question whether the man who is chosen to fill this position should not be a man who is able to represent the sentiments of the people of the particular locality. We claim that the Workingmen's party of San Francisco and of the State has been greatly misunderstood. That some of the gentlemen on this floor have a wrong impression in regard to the principles and purposes of the Workingmen's party.

Mr. BARNES. I call the gentleman to order. He is not speaking to the question.

Mr. CROSS. I hold that it is germane to the question, and I will come to the bearing of it. Now, to the delegates in this Convention, let me say that it is not merely for the interest of the Workingmen's party that Judge Sharpstein should hold this position, for really the results cannot be changed by Judge Sharpstein's vote, for we stand fifty-one to one hundred; but since we have, unfortunately, very few in our delegation who are able to present before this body, in a clear and plain manner, the real sentiments of the Workingmen's Party of California; and since there is standing back of Judge Sharpstein a strong public sentiment; and since that public sentiment is now misunderstood in this body; and since this candidate is a man of the kind who will be able to bring before this body, in its true light, the real views of the party, thus enabling any member of this Convention to be properly informed as to their wishes, and intentions, and purposes, before they vote—for these reasons, I say, Judge Sharpstein is the proper man for this place. He is not a Communist; he is not a Socialist; he is a man who will be able to represent the views and sentiments of this party—the Workingmen's Party, as it is called—in this Convention, in such a way that this Convention, whenever it acts upon any of the propositions which the party proposes, they will be able to know what the wish is, and know the true sentiments of the people who stand back of him. When this sentiment is clearly expressed, as Judge Sharpstein can express it, then this Convention will have that information as to the intentions and purposes of the party which will enable them to vote intelligently upon all propositions which shall be presented here. Let me say, farther, that the Workingmen's Party not only claim their right to be thus represented, but they concede the same right to the Non-Partisans, and are ready to vote for their nominee upon the same principle. The people elected Mr. Haight to represent them and their particular views, and the same people now have the right to have a man elected who will carry out those views, and faithfully represent their sentiments on the floor of this Convention. So, Mr. President, with regard to the other case; the Workingmen's Party proposes to vote for a man who will represent San Francisco. We place this case upon the same principle. Judge Sharpstein would be the choice of that people. He would be able to represent the views of the Workingmen's Party in such a way that it could not be misunderstood.

Mr. BARNES. Mr. President: It is true, as the gentleman from San Francisco, Mr. Barbour, has said, that it was determined by the local delegates from the City and County of San Francisco to insist that they and they alone had the right to be heard in this Convention, and were crowned with some immortal principle of representation that should enable them to stand here and demand from the Convention its support for Mr. Sharpstein.

Mr. REYNOLDS. Mr. President: I raise the point of order that the gentleman is not speaking to the question concerning the nominations we have made.

The PRESIDENT. The point of order is overruled; the gentleman will proceed.

Mr. BARNES. This is that same spirit of intolerance and self-assertion which has found expression sundry times upon this floor; which found expression when the delegate who named the gentleman, addressed the Governor of this State, when presiding over this Convention, in a manner to which I will not refer, but which every gentleman on this floor remembers; a spirit which found expression in the resolution which proposed, in effect, to give the power to appoint a delegate to this Convention to one portion of the delegates from the City and County of San Francisco. Now, sir, I contend—and I think the proposition is unanswerable—that if the law calling this Convention together had designed to bestow upon the delegation from San Francisco the absolute and indefeasible right to name the candidate to fill the vacancy created upon the local ticket, it would have said so. We are not to go outside of the law; we are not to stand here and argue it upon any vague or general principle, or assumed vague and general principle, that finds expression in the speech made by the gentleman who declared that wherever or whenever he heard anything coming from what, in his own expressive language, he called the corporations' jugglers or fuglers, he would vote against it. I suppose he went upon the principle which actuates gentlemen from the happy land from which he comes, at Donnybrook Fair, "Whenever you see a head hit it." I submit that it is unfair for the gentlemen from San Francisco to be forever arrogating all virtue to themselves, and denouncing in unmeasured terms everybody else. I submit that the proof of work is in the work itself. And in rising to propose a gentleman for this place I desire once for all to enter my protest against the spirit manifested here by my colleagues from San Francisco on the local ticket. I say it is unworthy of them, and unworthy of the cause which they represent. Now, sir, the proposition seems to be that one portion of the delegation from San Francisco has the sole right to be heard on this floor. There are eight gentlemen here from San Francisco, and though voted for all over the State, are equally the representatives of the people of the First Congressional District—gentlemen at least as distinguished as those who have made this demand. We have a right to be heard. We have a right to stand upon the law and to say that if this statute had intended that the local ticket in San Francisco should nominate and fill vacancies when occurring, the statute would have expressed it so. Mr. President, it does not belong to them; it belongs to you all, gentlemen. It is for you to say who shall fill these vacancies. It belongs to no locality. No man has a right to claim it. No man who ran on the ticket at large and was defeated has the right to say that because he got a plurality of votes in one portion of the State it belongs to him by sovereign right, and that the right to reign and rule, like the sacred oil poured upon the heads of kings, has made his claims indefeasible. The statute says the Convention shall determine that subject, and the members of this body, sitting in calm deliberation, have a right to look beyond the results of the upheaval that occurred in San Francisco—or, as it has been expressed, the wail of universal discontent—and select the best man. As to selecting a man for this vacancy, the Convention has a right to go to Shasta or San Bernardino. The Convention has the right, if it can obtain the services of some able, distinguished man—some one whose wisdom, experience, and ability would guide us through the difficulty—to go to San Bernardino and bring him here. If it is to be determined upon by the number of votes, then I contend, without discussing the question whether Morris was eligible or not, we have the right to present some proper person coming from San Francisco for that position. On the local ticket there was a vacancy. The gentleman claims credit for not perpetrating a fraud—credit for not perpetrating a political crime—and for demanding the resignation of a man who had been standing on bogus naturalization papers. That is not the point. The question is, who is the best man? There was no election. That is clear enough. Judge Sharpstein was not standing upon the local issues of San Francisco. As far as appears the Workingmen didn't want him as a representative at all. He was put on the ticket at large, and it is a matter of political history, pretty well understood from the outset, that the men who were put on the ticket at large were put there for the purpose of giving them something in the shape of a complimentary testimonial, but it was never intended, expected, or anticipated that they would be elected. If local votes on local candidates is to be the test, I hold in my hand a certificate of Louis Kaplan, Registrar of Voters, saying that R. H. Lloyd received the largest number of votes after Mr. Morris. As a legal proposition it may be laid down that when a candidate was voted for, at the time ineligible, the vote was thrown away, and the man having the next highest vote was entitled to the place. I don't base it on any such grounds. I am a representative at large, and a representative of a very large voice of San Francisco, so far as personal votes are concerned, and, as a representative from San Francisco, I claim that Mr. Lloyd is entitled to the suffrage of this Convention. I ask this Convention to vote for him, because I know him. I also know Judge Sharpstein. I knew his history before he came to the State. I know it now. I knew him as a Democrat. I knew him again as a red-hot Republican, when Booth came to the surface. I knew him as the Judge of the Twelfth District Court, and I know that when he came up for reëlection he was defeated.

Mr. DOWLING. I raise the point of order that the gentleman is not speaking to the question before the House.

The PRESIDENT. The point of order is not well taken. The Chair understands that the gentleman is speaking to the precise point.

Mr. CROSS. Mr. President: I rise to a point of order. Mr. Barnes objected to Mr. Barbour speaking upon this very same branch of the question, and the Chair held that Mr. Barbour was out of order when he was speaking to the eligibility of Mr. Morris.

The PRESIDENT. I don't recollect that there was any such ruling.

Mr. BARNES. My friend is mistaken about that, as he generally is. Now, Mr. President, they claim this nomination upon the ground that Judge Sharpstein has the unanimous indorsement of the people of San Francisco. I deny it. The people of San Francisco know, and every lawyer knows, that while on the bench in San Francisco, he gave universal dissatisfaction. He was caught up like a chip upon the surface of this great wave of popular discontent, and was put upon the ticket at large, where he had no possible hope of being elected. Now the only time I know when the people of San Francisco had any opportunity to express their approval of him was in the judicial canvass. I have no charges to make, but every lawyer knows that he gave universal dissatisfaction. The gentleman speaks about his being the representative of the Workingmen's party. Now, the most remarkable decision that I ever knew Judge Sharpstein to make was made in the interest of the

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Spring Valley Water Company, and the Supreme Court reversed his decision from the bench. That is his record upon the subject of corporations. He had ridden the Democrats, he had ridden Booth, and now he jumps on top of the Workingmen's movement. For these reasons, if there was no other candidate here, I would not vote for him. So far as his record is concerned, he has favored those corporate monopolies of which complaint is made; and right here I want to say one word on that subject. The gentleman alluded to the corporation bugler, against whom he was going to vote. When we shall have finished the work of this Convention I think it will be apparent who are the men about whose necks the corporation collar stands. It is not upon mine, and I hope the gentleman will not repeat what he has said this morning. I believe in the right of the State to control every corporation in it. It has the right and should have the power, and such a provision should be put in this Constitution that shall hold them with a grasp of iron, so that never again in this State shall there be any unjust discriminations, any outrage or wrong inflicted upon persons or communities from the day this Constitution takes its place as the organic law of the State, until time shall be no more. [Applause.] I am not going to be put down as a corporation bugler. The charge is not correct, as the result will eventually prove. Mr. Lloyd has been a resident of San Francisco since boyhood. He was an errand boy in the office of Sharp & McDougall, and did the work of the office from day to day, and month to month, and year to year, and educated and trained himself. No university has put its degree upon his head, but he has honest manhood and self-culture, and is as good and careful a lawyer as there is in San Francisco. He has the approval of every lawyer who ever knew him. No human being can say a word against him. If you take the best man, I know he will be elected. He was a candidate on the Non-Partisan ticket, and had the support of all classes of men, Germans, French, and Americans—thank God there are a few left. [Applause.] Mr. Lloyd has always had their sanction and indorsement. No man can lay charges at his door, and I commend him to you, gentlemen of the Non-Partisan party. And I ask you whether you are going to be dictated to and controlled because the representatives from San Francisco represent one political party, or whether you will in your consciences and on your oaths select the man who shall seem to be the best qualified for the place? I know of no indorsement that could be given higher than to Mr. Lloyd. Nothing better could be said of him than that he is an honest man, a self-educated and trained lawyer, of thorough good sense, of perfect capacity, of perfect honesty, and even in this time he ran far ahead of the Non-Partisan ticket, and was the next in order to the gentleman whose seat has been relinquished. I ask you, gentlemen of the Non-Partisan party, to give him your suffrages, that you will not entertain the idea that because there is a large delegation here from San Francisco, that the minority from that city and county have no right to be heard. The law puts the power in your hands; that if it had designed to give it to the gentlemen on the other side of the House, it would have said that the vacancy should have been filled by the gentlemen from that locality. I think it is fair and just to take the best men. I know both candidates, and I think there is not a delegate on the ticket at large who does not know both. There is no comparison between the fitness of the two. It is altogether and in every way in favor of Mr. Lloyd, and I hope he will be elected.

MR. BROWN, of Tulare. Mr. President: I think in so important a matter as this there should be a great deal of latitude given to members who make nominations, so that the character and standing of the gentlemen presented before this body may be known, so that we may be able to vote intelligently. I rise before you to present before this body the name of a gentleman that you all know, and with whose family you are all well acquainted; it is a family whose name is connected with the early history of California, and for such every old settler in this State, at least, must have some degree of respect. I refer to Major José R. Pico as a representative native Californian.

MR. BARNES. I would inquire if Mr. Pico was not also a candidate as delegate at large on the Workingmen's ticket?

MR. BARBOUR. Mr. Pico was repudiated by the delegation. [Applause.]

MR. BROWN. I will proceed further. I know that party sentiments are in conflict here. Men are in favor of certain men. It is not for me to say to you whether or not this feeling runs so high as to endanger justice and right. That is a matter for this body to take into consideration. As range has been given to some extent, I presume it will not be out of the way for me to refer to some extent to the Pico family and their ancestors. Now, I don't intend to take up as much time as has already been taken up here. I shall be brief in my remarks; and if I am not too frequently interrupted, shall soon bring my remarks to a close. Mr. Pico's father was in the Constitutional Convention—that great Convention which brought forth the Constitution under which we have been living for so many years. He took a prominent part in the proceedings of that body, and all of us remember his name with some degree of reverence. We all remember him as a philanthropic man, whose donations to the State mark him as a liberal as well as a wealthy man and most worthy citizen, one to be admired and loved by every person. Now, for instance, we find that he had donated to this State a site for a State Capitol, in San José. We find that this illustrious man, almost forgotten in the heat and strife of political contests, presented the grounds for the State Prison at San Quentin. Is this all he has done? Had he stopped at that he would have been worthy the honor of being a member of this Constitutional Convention; but he went farther, and gave to this State the grounds for the Insane Asylum at Stockton. This has been the manner of this illustrious man from that time down. Here, to the Capitol of this State, he gave stone worth five hundred dollars. Now, these are acts which show the intentions and good feelings of the man. Now we have before us Major José R. Pico. He is a gentleman of refinement and a scholar. I shall not advert to the lands given by this gentleman to the State, which lands are now worth one thousand dollars an acre. Mr. President, I would say that it is a matter of some consequence that the members of this Convention take into consideration the claims of this gentleman. I believe he is the only man of that race, that once possessed this whole country, that is on hand here, and I believe none of the representative Californians are here in this House; and I would state that the Spanish and Mexican population amounts to twenty-three thousand. They are in that respect without representation; and I think they should be allowed a representative on this floor. Now, it does appear to me that in all justice and fair dealing, that a family that has done so much for this State, so much for the welfare of this State, should be recognized, and that one of the family at least should occupy a position upon this floor in the councils of the State. It seems to me to be reasonable that we should consider the matter in this light. I am fully convinced that in this case it is proper that we should give this office to this honorable gentleman. He is a gentleman of refinement. He is a gentleman of ability and learning. His name is now before you, and I hope his claims may be fairly considered.

MR. BARBOUR. Mr. President: I would not again trespass upon the time of the Convention, but I should feel myself recreant to my trust if I did not rise to defend the name of the candidate presented by me. In presenting my candidate, sir, I never felt it incumbent upon me to assail the candidates of any other party. The gentleman I have named for this position has been attacked. It is an outrage upon the delegates here, and upon the candidate himself, who is not here. He has stayed at home, tending to his business, relying on his friends here. The other has been here and his friends have been digging into the records and laboring to find some way by which his repudiation by the people of San Francisco could be transformed into an indorsement. Not finding that, he has gone back home and left the gentlemen here to assail our candidate here by making statements to this Convention which we are not prepared to deny and which we had no reason to anticipate. How does it appear to this Convention? Certainly it is unjust. It is disgraceful, and I stand upon that statement. Judge Sharpstein is known, and respected and honored by the people of San Francisco, and that ought to be enough. The vote shows it. The vote is a complete refutation of the statements made by the gentleman from San Francisco, and I state now to him that it would have been in far better taste to have allowed that statement to have come from somebody who could bring a better indorsement than that.

Now I have a word to say, and I did not intend to have said it, and should not have said it, but the gentleman's own candidate, I have no doubt, is an attorney for the Spring Valley Water Company to-day. He is a partner and relation—a son-in-law—of Senator Sharon, and they have all that business, and know all about the monopolies of the deepest and blackest dye. I don't wish to go into his character, or to know anything about it; I don't care anything about it, or to make any statement here in regard to this matter, and if the gentleman had left our candidate alone, I would never have said anything about it. I admire his spunk, but it was not necessary for him to assail the absent.

MR. BEERSTECHER. Mr. President: We don't make this nomination in the spirit of intolerance. We don't make this nomination for the purpose of forcing upon this Convention the person of Judge Sharpstein, nor the purpose of any other man. If we did come here with any such object it would be ridiculous and absurd in the extreme. We come here simply naming this man. Simply presenting the claims of Judge Sharpstein for your consideration, nothing further. We don't deny the right of this Convention to choose a man to fill this vacancy, one that they believe to be the best qualified and the most proper person for the place. But we do come here presenting the name of Judge Sharpstein, not in any partisan spirit, but because he is a gentleman who has the indorsement of a majority of the voters of the City and County of San Francisco. Judge Sharpstein received thirteen thousand nine hundred and thirteen votes in the last campaign. Mr. Lloyd received eight thousand five hundred and twenty-six votes. Judge Sharpstein has a majority over Lloyd of five thousand three hundred and eighty-seven votes. The total vote cast in the City and County of San Francisco was about twenty-seven thousand, and Judge Sharpstein has received, not a plurality vote, but he has received a majority, an absolute, positive majority. We come here appealing to you, and saying to you that we recognize these grand principles which underlie this system of government, which is that the will of the people must be respected; that the people are the source of all power, and that when they indicate through the medium of the ballot their choice, their choice ought to be respected. Gentlemen, we don't come here saying to you that you must take Judge Sharpstein. We don't desire to be understood that we are attempting to force any solitary man upon you, for that would be an absurdity. We simply present the claims of this gentleman, saying that he received five thousand three hundred and eighty-seven more votes than were received by the other candidate, Mr. Lloyd. I have nothing, gentlemen, to say against the character or reputation of Mr. Lloyd. Nothing at all. Absolutely nothing. That is a matter for your consideration and inquiry. Nor do we come here presenting the name of any one who would be unfit to sit in this Convention along with us. Nor do I think Col. Barnes would present any one here who was not qualified and worthy to sit here. I urge nothing against the candidate he has presented. The San Francisco delegation urges nothing against him. But we do say that Judge Sharpstein is the choice of the people of San Francisco, and the man who has received a majority of all the votes cast should be chosen. With all due deference to the gentleman from San Francisco, Col. Barnes, I do say that the express indorsement of the people of San Francisco is better than the charges that the gentleman has brought against Judge Sharpstein, and we ask that Judge Sharpstein be elected to fill this vacancy. I ask it as a matter of justice. We appeal to you, representing the

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majority of the people of San Francisco; and, gentlemen, the vote here will determine whether we respect the voice of the people as the voice of God, or whether we expect to vote from a partisan spirit in this campaign. I am free to say that if Mr. Lloyd had received the indorsement of the people of San Francisco, as Judge Sharpstein has received that indorsement, I should vote for Mr. Lloyd. Though I was elected on a partisan ticket, I am prepared to vote for your choice from the County of Merced, as I am prepared to vote for your choice in the other case, because these vacancies belong to you. You received an express indorsement of the people in that part of the country, and we respect and honor that indorsement, and we ask you, as a matter of simple justice, as a matter of right, involving the democratic principle upon which our system of government is based, that Judge Sharpstein receive your indorsement.

Mr. WINANS. Mr. President: I do not intend to participate in any of the altercations or eulogies of this debate. But when one member says that Judge Sharpstein is the choice of the people, meaning the people of San Francisco, he himself forgets to tell you that the voice of the people of San Francisco has no expression on the floor of this Convention. The old political parties were divided and split among themselves. The result was brought about by unhappy dissensions among the old parties. The present local delegation does not represent a majority of the voters of San Francisco. We divided among ourselves and fell a victim to our own dissensions. Had it not been so this local delegation would never have been here. They do not by any means represent the majority of the people of San Francisco.

Mr. SHAFTER. Mr. President: I would take great pleasure in supporting Mr. Pico, the nominee of the gentleman from Tulare, if I could do so with propriety and safety. I am a man of exceeding timidity, and am apprehensive that I should be exposed to considerable personal danger from Mr. Pico, were he a member of this Convention. In his canvass, Mr. Pico declared his intention to bring his lasso here, and with it, subject all the thieves and rascals in the State and Convention to the discipline of that instrument. As he includes me in his inculpatory terms, I think I have a right to increase my chances for security by excluding him, if possible, from this Convention. In republican governments, there seems to be a propriety in not bestowing too much honor upon one family. Those familiar with the public life and conduct of Pio Pico will, I think, all agree that he has given sufficient distinction to his family, at least for this generation. It is said, however, that Mr. Pico gave lands to the State for the purposes of our State Prison, and that we owe him some return for such generosity. I am quite familiar with the State title to its prison property. The title to the lands in question never was in any of the Pico family, and the State paid to its grantor all such land was worth.

The nomination of Judge Sharpstein is of somewhat different character. I have known this gentleman for twenty-six years. In eighteen hundred and fifty-two, he was in the State Senate of Wisconsin, while I was Speaker of the Assembly. He was subsequently District Attorney of the United States. I have known him since his residence in San Francisco. First a Democrat, he became a Republican, when that party became dominant, and he has returned to his wallowing at the earliest opportunity. He was assailed for malpractice in Wisconsin, as shown by its law reports, though it is but fair to say that it is claimed his conduct was fully explained at the time he was appointed Judge by Governor Booth. Nothing that I have seen or heard, however, has created with me confidence in him. Leaving doubtful objections, there are some which put him beyond the pale of favorable consideration. After the termination of his appointment, the people preferred another candidate for Judge. Neglected by both Democrats and Republicans, Judge Sharpstein turned with great celerity to the sand lots. In a speech made on that classic ground, in language somewhat different in form from the coarseness of Kearney, though the same in virulence, he attributed to the Government of this State, and the influences controlling our people, to the Executive, to the Judiciary, and to the profession of which he was a member, every wickedness and villainy. These charges and assertions were unaccompanied by any explanation or specification; they were simply examples of vindictive vituperation. This violent and vile language was used by this man (long engaged in judicial business), and was uttered to a mob, utterly incapable of reason, already heated to the point of threatening the lives and property of quiet men and good citizens, and was apparently used for the sole purpose of still further exciting the mob to riot, violence, and bloodshed. Every gentleman must use his own judgment as to these nominations; mine forbids me to vote for a man who casts dishonor upon himself, his profession, and the institutions created for the purpose of securing the public peace. It is said we ought not to attack Judge Sharpstein in his absence. It is difficult, at least for me, to see a more proper time and place to investigate the character and claims of a candidate for office than the time when, and the place where, they are submitted to, and are to be acted upon, by those who have the power of election or refusal. It seems to me that a man who makes such assaults upon the character and conduct of those occupying the highest official positions in the State, and upon the whole legal profession, to a mob where an attempt at defense would be met by howling insult, if not with personal assault, is a very poor case to challenge decent and quiet discussion here. I beg to suggest to the gentlemen from San Francisco that they instruct their candidate, that if he is to give blows, he might expect blows in return, and that they earnestly endeavor to reform the sand lots, of which they are the fruit, so as to entitle them to the courteous treatment they claim, and which they have hitherto refused to all with whom they have disagreed.

Mr. MURPHY. Mr. President: I don't rise, sir, for the purpose of seconding the nomination of any of the gentlemen who have been placed in nomination here. Neither do I intend to make a lengthy speech, but simply to give to the delegates in this Convention the reasons for the vote which I intend to cast. I occupy a position probably different from most of the members on this floor, having been elected as an Independent. Not having received my nomination from any party, whether Non-Partisan, Democratic, or Republican, or Workingmen, but being supported by the great majority of the district which I have the honor to represent here. Now, sir, I claim it to be the duty of the members on this floor to throw aside all partisan prejudice and vote according to the dictates and will of the majority. The question presented here for our consideration at the present time, is to fill the vacancy caused by the resignation of Thomas Morris, of San Francisco. The question whether he was eligible or not does not enter into the contest at the present time. I claim, sir, that the seat should be filled by a representative of the same constituency which he represents. I don't claim that any body of men upon the floor of this house—the Workingmen—have the right exclusively to name the man to fill this position, but I do claim that the wishes of these gentlemen should be respected. I understand that the people of San Francisco, at the last election, indorsed the principles and the platform upon which this man Thomas Morris was elected, and I intend, as far as I am concerned, to act independently of all parties, and cast my vote for Sharpstein. [Great applause on the Workingmen's side.]

Mr. JOYCE. Mr. President: I rise to indorse the nomination of Judge Sharpstein. I don't intend to occupy your attention for any long length of time, by any long speeches. It is a well known fact that this famous sand lot that the gentleman speaks about is the declared enemy of all forms of monopolies, bank rings, railroad monopolies, land monopolies. [Applause.] That is the reason, Mr. President, that these men are not going to sit still and allow the name of Judge Sharpstein to come up without a fight. That is the reason they bring it up.

Mr. SMITH, of Kern. Mr. President: I do not rise for the purpose of seconding any nomination, but for the purpose of explaining my vote. I was elected as a Non-Partisan delegate at large, and I deem it necessary for me to explain the vote I shall cast for Sharpstein. I believe that this Convention has the legal right to choose any man it sees fit to fill this vacancy, but I do not believe the Convention has the moral right to ignore the expressed will of the majority of the voters of San Francisco. I believe that I have never met Judge Sharpstein. I know I do not know him personally. I am personally acquainted with the other gentleman nominated here, and I have all confidence in him, and all respect for him. If I but consulted my own wishes and opinions in this matter, I would cast my vote for the other gentleman; but respecting the will of the majority of the voters of San Francisco, I shall cast my vote for Sharpstein. [Applause.]

Mr. HAGER. Mr. President: I rise, sir, to place in nomination another candidate for this position, and in performing this pleasant duty I have nothing to say regarding the other gentlemen who have been named here. I have known Judge Sharpstein, not intimately, and I have nothing to say against him, for I know nothing of my own knowledge. As to Mr. Lloyd, I have known him for twenty-five years, as a bright student at law. But after the eulogy pronounced upon him by Colonel Barnes, it would be unbecoming of me to say one word against him; on the contrary, I rather feel proud of him. But I desire to place another candidate before the Convention, and inasmuch as there is a lack of harmony among the San Francisco delegation, I am in hopes that I can pour oil on the troubled waters by presenting a man against whose character and qualifications nothing can be urged, as far as I know. I present the name of J. C. Burch, a gentleman who has been honored by the people with a seat in the Legislature of this State, and a position in the Congress of the United States; a gentleman who was appointed by Governor Haight a member of the Code Commission, which position he filled with peculiar ability. He is particularly well qualified for the duties which he will be required to perform if elected to a seat in this body. I am not inclined to indulge in words of praise, or to pass any eulogy upon Judge Burch, but his name is associated with the early political history of the State. It has been said—I have heard it reported—that Judge Burch sought a nomination in the Non-Partisan Convention in San Francisco. He informs me that such is not the fact. He did not seek the nomination of the Non-Partisan Convention; did not seek the nomination of any Convention. He was placed upon one of the local tickets—the ticket of the party to which he belongs—and defeated. But he did not seek that or any other nomination.

Mr. TINNIN. Mr. President: Nothing short of a public duty would induce me to inflict a speech upon this Convention, for I am satisfied that they have been sufficiently talked to. But I shall claim a few moments indulgence to state the reasons why I second the nomination, and will support Mr. Burch for the position to which he has been nominated. I have known the gentleman, and been almost constantly associated with him, for twenty-six years in this State. I knew him first as County Clerk of Trinity County; afterwards as District Attorney of the same county; afterwards as a member of the Assembly, then as a member of Congress from the northern part of the State, and afterwards as a member of the Code Commission, which office he filled for about four years. In all these positions in which he has been intrusted, he discharged his duties honestly and faithfully, and with marked ability; and I am satisfied that from his long experience and long association with the people of this State, he will fully comprehend what is wanted in the organic law. I think in the discharge of that arduous duty he will give satisfaction to the people of this State.

Mr. HEISKELL. Mr. President: It gives me great pleasure to second the nomination of Mr. Burch. He is a life-long Democrat, and has held high and responsible positions, and has filled them with ability. He does not come here with long petitions in his behalf, but his spotless record is his shield, and on that he rests.

Mr. HARVEY. Mr. President: It may seem preposterous, in view of all that has been said, and the eloquence that has been expended in behalf of the several candidates, for me to name another gentleman for the position of delegate to fill this vacancy. But I shall do so, never-

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theless. I have the honor and the pleasure to nominate for this position Mr. Smith B. Thompson, of San Francisco; and in placing this gentleman in nomination, with all due deference to the legal gentlemen on this floor, allow me to say that the legal fraternity is well enough represented, and in nominating Mr. Thompson I will say that he is a carpenter by occupation, and is known as such throughout the City of San Francisco; and I will say further, that he has received the indorsement of a large number of the business men of San Francisco, as well as of members of the Bar; and in connection with his occupation I will state that I believe him to be a true working man, and he is in all respects well qualified to fill the position. It is an old saying, but a true one, that too many cooks spoil the broth. I intend no reflection upon the legal fraternity here, but as long as they are so ably represented, and as their marks will appear so frequently in the Constitution, let us have a carpenter to plane down these little technicalities.

FIRST BALLOT.

The roll was called, with the following result:

FOR SHARPSTEIN.

Ayers,	Harrison,	Reddy,
Barbour,	Herold,	Reynolds,
Barry,	Herrington,	Ringgold,
Barton,	Hughey,	Rolfe,
Beerstecher,	Hunter,	Smith, of 4th District,
Bell,	Joyce,	Smith, of San Francisco,
Burt,	Kenny,	Soule,
Condon,	Kleine,	Stedman,
Cross,	Larkin,	Sweasey,
Davis,	Lavigne,	Swenson,
Dean,	Lindow,	Tuttle,
Dowling,	Mansfield,	Vacquerel,
Doyle,	McCoy,	Walker, of Marin,
Evey,	Morse,	Wellin,
Farrell,	Murphy,	West,
Finney,	Nason,	Wickes,
Freud,	Nelson,	White,
Gorman,	Neunaber,	Wyatt—56.
Grace,	O'Sullivan,	

FOR LLOYD.

Barnes,	Graves,	Schell,
Belcher,	Gregg,	Shafter,
Biggs,	Hale,	Shoemaker,
Boucher,	Hoge,	Shurtleff,
Caples,	Jones,	Stuart,
Chapman,	Larue,	Townsend,
Charles,	McCallum,	Tully,
Cowden,	McComas,	Turner,
Dudley, of San Joaquin,	McConnell,	Van Dyke,
Dunlap,	McFarland,	Van Voorhies,
Eagon,	McNutt,	Walker, of Tuolumne,
Edgerton,	Mills,	Waters,
Estey,	Porter,	Wilson, of San Francisco,
Freeman,	Pulliam,	Winans—44.
Glascock,	Reed,	

FOR THOMPSON.

Andrews,	Inman,	Schomp,
Blackmer,	Lampson,	Smith, of Santa Clara,
Dudley, of Solano,	Lewis,	Steele,
Hall,	Martin,	Stevenson,
Harvey,	Moreland,	Webster,
Hilborn,	Prouty,	Weller—20.
Hitchcock,	Rhodes,	

FOR BURCH.

Biggs,	Holmes,	Ohleyer,
Boggs,	Howard,	Overton,
Garvey,	Johnson,	Swing,
Hager,	Keyes,	Tinnin,
Heiskell,	Noel,	Wilson, of Tehama—15.

FOR PICO.

Brown—1.

Whole number of votes cast	136
Necessary to a choice	69
Mr. Sharpstein received	56
Mr. Lloyd received	44
Mr. Thompson received	20
Mr. Burch received	15
Mr. Pico received	1

No choice.

Mr. Filcher was paired with Mr. Huestis.

MR. WATERS. Mr. President: I wish to explain my vote. I voted for Mr. Lloyd because I believe he is the best man, and I believe it is the province of the whole Convention to fill these vacancies.

SECOND BALLOT.

The roll was called, with the following result:

FOR SHARPSTEIN.

Ayers,	Bell,	Dean,
Barbour,	Burt,	Dowling,
Barry,	Condon,	Doyle,
Barton,	Cross,	Evey,
Beerstecher,	Davis,	Farrell,
Finney,	Lindow,	Soule,
Freud,	Mansfield,	Stedman,
Gorman,	McCoy,	Sweasey,
Grace,	Murphy,	Swenson,
Harrison,	Nason,	Swing,
Herold,	Nelson,	Tuttle,
Herrington,	Neunaber,	Vacquerel,
Hughey,	O'Sullivan,	Walker, of Marin,
Hunter,	Reddy,	Wellin,
Joyce,	Reynolds,	West,
Kenny,	Ringgold,	Wickes,
Kleine,	Rolfe,	White,
Larkin,	Smith, of 4th District,	Wyatt—56.
Lavigne,	Smith, of San Francisco,	

FOR LLOYD.

Barnes,	Gregg,	Schell,
Belcher,	Hale,	Shafter,
Biggs,	Hoge,	Shoemaker,
Caples,	Jones,	Shurtleff,
Chapman,	Larue,	Stuart,
Charles,	McCallum,	Townsend,
Cowden,	McComas,	Tully,
Dudley, of San Joaq'n,	McConnell,	Turner,
Dunlap,	McFarland,	Van Dyke,
Eagon,	McNutt,	Van Voorhies,
Edgerton,	Mills,	Walker, of Tuolumne,
Estee,	Porter,	Waters,
Freeman,	Pulliam,	Wilson, of 1st District,
Glascock,	Reed,	Winans—43.
Graves,		

FOR BURCH.

Berry,	Holmes,	Ohleyer,
Boggs,	Howard,	Overton,
Brown,	Johnson,	Tinnin,
Garvey,	Kelley,	Wilson, of Tehama—16.
Hager,	Keyes,	
Heiskell,	Noel,	

FOR THOMPSON.

Andrews,	Hitchcock,	Rhodes,
Blackmer,	Inman,	Schomp,
Boucher,	Lampson,	Smith, of Santa Clara,
Crouch,	Lewis,	Steele,
Dudley, of Solano,	Martin,	Stevenson,
Hall,	Moreland,	Webster,
Harvey,	Prouty,	Weller—22.
Hilborn,		

Whole number of votes cast	137
Necessary to a choice	69
Mr. Sharpstein received	56
Mr. Lloyd received	43
Mr. Burch received	16
Mr. Thompson received	22

No choice.

THIRD BALLOT.

The roll was called, with the following result:

FOR SHARPSTEIN.

Ayers,	Herold,	Reddy,
Barbour,	Herrington,	Reynolds,
Barry,	Hughey,	Ringgold,
Barton,	Hunter,	Rolfe,
Beerstecher,	Joyce,	Smith, of 4th District,
Bell,	Kenny,	Smith, of San Francisco,
Burt,	Kleine,	Soule,
Condon,	Larkin,	Stedman,
Cross,	Lavigne,	Sweasey,
Davis,	Lindow,	Swenson,
Dean,	Mansfield,	Swing,
Dowling,	McCoy,	Tuttle,
Doyle,	Moffat,	Vacquerel,
Evey,	Morse,	Walker, of Marin,
Farrell,	Murphy,	Wellin,
Finney,	Nason,	West,
Freud,	Nelson,	Wickes,
Gorman,	Neunaber,	White,
Grace,	O'Sullivan,	Wyatt—58.
Harrison,		

FOR LLOYD.

Barnes,	Gregg,	Reed,
Belcher,	Hale,	Rhodes,
Biggs,	Hoge,	Schell,
Boucher,	Jones,	Shafter,
Caples,	Keyes,	Shoemaker,
Chapman,	Larue,	Shurtleff,
Charles,	McCallum,	Stuart,
Cowden,	McComas,	Townsend,
Dudley, of San Joaquin,	McConnell,	Tully,
Dunlap,	McFarland,	Turner,
Eagon,	McNutt,	Van Dyke,
Edgerton,	Mills,	Van Voorhies,
Estey,	Noel,	Walker, of Tuolumne,
Freeman,	Ohleyer,	Waters,
Glascock,	Porter,	Wilson, of 1st District,
Graves,	Pulliam,	Winans—48.

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FOR BURCH.

Andrews, Hager, Kelley,
Berry, Heiskell, Overton,
Boggs, Howard, Tinnin,
Brown, Johnson, Wilson, of Tehama—12.

FOR THOMPSON.

Blackmer, Hitchcock, Prouty,
Crouch, Holmes, Schomp,
Dudley, of Solano, Inman, Smith, of Santa Clara,
Garvey, Lampson, Steele,
Hall, Lewis, Stevenson,
Harvey, Martin, Webster,
Hilborn, Moreland, Weller—21.

Whole number of votes cast 139
Necessary to a choice 70
Mr. Sharpstein received 58
Mr. Lloyd received 48
Mr. Burch received 12
Mr. Thompson received 21

No choice.

MR. SHOEMAKER. I move that the Convention do now adjourn until to-morrow morning at ten o'clock.

Lost.

FOURTH BALLOT.

The roll was called, with the following result:

FOR SHARPSTEIN.

Ayers, Herold, Reddy,
Barbour, Herrington, Reynolds,
Barry, Hughey, Ringgold,
Barton, Hunter, Rolfe,
Beerstecher, Joyce, Smith, of 4th District,
Bell, Kenny, Smith, of San Francisco,
Burt, Kleine, Soule,
Condon, Larkin, Stedman,
Cross, Lavigne, Sweasey,
Davis, Lindow, Swenson,
Dean, Mansfield, Swing,
Dowling, McCoy, Tuttle,
Doyle, Moffat, Vacquerel,
Evey, Morse, Walker, of Marin,
Farrell, Murphy, Wellin,
Finney, Nason, West,
Freud, Nelson, Wickes,
Gorman, Neunaber, White,
Grace, O'Sullivan, Wyatt—58.
Harrison,

FOR LLOYD.

Barnes, Hoge, Schell,
Belcher, Jones, Shafter,
Biggs, Keyes, Shoemaker,
Boucher, Larue, Shurtleff,
Caples, McCallum, Steele,
Chapman, McComas, Stevenson,
Charles, McConnell, Stuart,
Cowden, McFarland, Townsend,
Dudley, of San Joaquin, McNutt, Tully,
Eagon, Mills, Turner,
Edgerton, Ohleyer, Van Dyke,
Estey, Overton, Van Voorhies,
Freeman, Porter, Walker, of Tuolumne,
Glascock, Pulliam, Waters,
Graves, Reed, Wilson, of 1st District.
Gregg, Rhodes, Winans—49.
Hale,

FOR BURCH.

Andrews, Garvey, Johnson,
Berry, Hager, Kelley,
Boggs, Heiskell, Noel,
Brown, Howard, Tinnin,
Dunlap, Inman, Wilson, of Tehama—15.

FOR THOMPSON.

Blackmer, Hitchcock, Prouty,
Crouch, Holmes, Schomp,
Dudley, of Solano, Lampson, Smith, of Santa Clara,
Hall, Lewis, Webster,
Harvey, Martin, Weller—17.
Hilborn, Moreland,

Whole number of votes cast 139
Necessary to a choice 70
Mr. Sharpstein received 58
Mr. Lloyd received 49
Mr. Burch received 15
Mr. Thompson received 17

No choice.

FIFTH BALLOT.

The roll was called, with the following result:

FOR SHARPSTEIN.

Ayers, Herold, Reddy,
Barbour, Herrington, Reynolds,
Barry, Hughey, Ringgold,
Barton, Hunter, Rolfe,
Beerstecher, Joyce, Smith, of 4th District,
Bell, Kenny, Smith, of San Francisco,
Burt, Kleine, Soule,
Condon, Larkin, Stedman,
Cross, Lavigne, Sweasey,
Davis, Lindow, Swenson,
Dean, Mansfield, Swing,
Dowling, McCoy, Tuttle,
Doyle, Moffat, Vacquerel,
Evey, Morse, Walker, of Marin,
Farrell, Murphy, Wellin,
Finney, Nason, West,
Freud, Nelson, Wickes,
Gorman, Neunaber, White,
Grace, O'Sullivan, Wyatt—58.
Harrison,

FOR LLOYD.

Barnes, Hale, Schell,
Belcher, Hoge, Shafter,
Biggs, Jones, Shoemaker,
Boucher, Keyes, Shurtleff,
Caples, Larue, Steele,
Chapman, McCallum, Stevenson,
Charles, McComas, Stuart,
Cowden, McConnell, Townsend,
Crouch, McFarland, Tully,
Dunlap, McNutt, Turner,
Eagon, Ohleyer, Van Dyke,
Edgerton, Overton, Van Voorhies,
Estey, Porter, Walker, of Tuolumne,
Freeman, Pulliam, Waters,
Glascock, Reed, Wilson, of 1st District,
Graves, Rhodes, Winans—49.
Gregg,

FOR BURCH.

Berry, Heiskell, Kelley,
Boggs, Howard, Noel,
Brown, Inman, Tinnin,
Hager, Johnson, Wilson, of Tehama—12.

FOR THOMPSON.

Andrews, Hitchcock, Prouty,
Blackmer, Holmes, Schomp,
Dudley, of Solano, Lampson, Smith, of Santa Clara,
Hall, Lewis, Webster,
Harvey, Martin, Weller—17.
Hilborn, Moreland,

Whole number of votes cast 136
Necessary to a choice 69
Mr. Sharpstein received 58
Mr. Lloyd received 49
Mr. Burch received 12
Mr. Thompson received 17

No choice.

At five o'clock P. M. MR. NOEL moved to adjourn until to-morrow at ten o'clock A. M.

Lost.

MR. NOEL. I move that the Convention now adjourn until to-morrow morning at eleven o'clock.

Lost.

SIXTH BALLOT.

The roll was called, with the following result:

FOR SHARPSTEIN.

Ayers, Harrison, O'Sullivan,
Barbour, Herold, Reddy,
Barry, Herrington, Reynolds,
Barton, Hughey, Ringgold,
Beerstecher, Hunter, Smith, of 4th District,
Bell, Joyce, Smith, of San Francisco,
Burt, Kenny, Soule,
Condon, Kleine, Stedman,
Cross, Larkin, Sweasey,
Davis, Lavigne, Swenson,
Dean, Lindow, Swing,
Dowling, Mansfield, Tuttle,
Doyle, McCoy, Vacquerel,
Evey, Moffat, Walker, of Marin,
Farrell, Morse, Wellin,
Finney, Murphy, West,
Freud, Nason, Wickes,
Gorman, Nelson, White,
Grace, Neunaber, Wyatt—57.

FOR BURCH.

Andrews, Hager, Johnson,
Berry, Heiskell, Kelley,
Boggs, Holmes, Overton,
Brown, Howard, Tinnin,
Garvey, Inman, Wilson, of Tehama—15.

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FOR LLOYD.

Barnes,	Hale,	Schell,
Belcher,	Hoge,	Shafter,
Biggs,	Jones,	Shoemaker,
Boucher,	Keyes,	Shurtleff,
Caples,	Larue,	Steele,
Chapman,	McCallum,	Stuart,
Charles,	McComas,	Townsend,
Cowden,	McConnell,	Tully,
Dunlap,	McFarland,	Turner,
Eagon,	McNutt,	Van Dyke,
Edgerton,	Ohleyer,	Van Voorhies,
Estey,	Porter,	Walker, of Tuolumne,
Freeman,	Pulliam,	Waters,
Glascock,	Reed,	Wilson, of 1st District,
Graves,	Rhodes,	Winans—46.
Gregg,		

FOR THOMPSON.

Blackmer,	Hitchcock,	Prouty,
Crouch,	Lampson,	Schomp,
Dudley, of Solano,	Lewis,	Stevenson,
Hall,	Martin,	Webster,
Harvey,	Moreland,	Weller—16.
Hilborn,		

Whole number of votes cast	134
Necessary to a choice	68
Mr. Sharpstein received	57
Mr. Lloyd received	46
Mr. Burch received	15
Mr. Thompson received	16

No choice.

ADJOURNMENT.

MR. EDGERTON. I offer the following resolution:

Resolved, That when the Convention adjourns it will be until Monday next at half-past twelve A. M.

MR. WHITE. I move to amend that it be until to-morrow morning at ten o'clock.

THE PRESIDENT. The question is on the resolution of the gentleman from Sacramento, Mr. Edgerton.

MR. McCALLUM. The question is on the shortest time—on the amendment.

THE PRESIDENT. According to the opinion of the Chair the question is on the adoption of the resolution. The motion of the gentleman from Santa Cruz, Mr. White, is a separate and distinct motion.

MR. EDGERTON. The question is on the longest time first. By a special rule here in the California Legislature it is the shortest time, but not so in general parliamentary law.

The ayes and noes were demanded, and the resolution lost by the following vote:

AYES.

Belcher,	Harvey,	Pulliam,
Berry,	Hilborn,	Rolfe,
Blackmer,	Hitchcock,	Schell,
Boggs,	Holmes,	Schomp,
Boucher,	Jones,	Shafter,
Cowden,	Kelley,	Shoemaker,
Eagon,	Larue,	Smith, of 4th District,
Edgerton,	Mansfield,	Stuart,
Freeman,	Martin, of Santa Cruz,	Swing,
Glascock,	McFarland,	Tully,
Graves,	McNutt,	Van Voorhies,
Gregg,	Murphy,	Waters,
Hager,	Noel,	Wilson, of 1st District,
Hale,	Overton,	Winans—43.
Hall,		

NOES.

Andrews,	Finney,	Moffat,
Ayers,	Freud,	Moreland,
Barbour,	Garvey,	Morse,
Barnes,	Gorman,	Nason,
Barry,	Grace,	Nelson,
Barton,	Harrison,	Neunaber,
Beerstecher,	Heiskell,	Ohleyer,
Bell,	Herold,	O'Sullivan,
Biggs,	Herrington,	Porter,
Brown,	Howard,	Prouty,
Burt,	Hughey,	Reddy,
Caples,	Hunter,	Reynolds,
Chapman,	Inman,	Rhodes,
Charles,	Johnson,	Ringgold,
Condon,	Joyce,	Shurtleff,
Cross,	Kenny,	Smith, of San Francisco,
Crouch,	Keyes,	Soule,
Davis,	Kleine,	Stedman,
Dean,	Lampson,	Steele,
Dowling,	Larkin,	Stevenson,
Doyle,	Lavigne,	Sweasey,
Dudley, of Solano,	Lewis,	Swenson,
Dunlap,	Lindow,	Tinnin,
Estey, of Contra Costa,	McCallum,	Townsend,
Evey,	McComas,	Tuttle,
Farrell,	McConnell,	Vacquerel,
Filcher,	McCoy,	Van Dyke,
Walker, of Marin,	Wellin,	White,
Walker, of Tuolumne,	West,	Wilson, of Tehama,
Webster,	Wickes,	Wyatt—91.
Weller,		

MR. HILBORN. I move that we do now adjourn until to-morrow morning at ten o'clock. On this I demand the ayes and noes.

MR. WHITE. I move as an amendment, that when the Convention adjourns to-day it be to meet to-morrow at ten o'clock A. M.

MR. WILSON, of San Francisco. I move as an amendment, to adjourn until eight o'clock this evening.

MR. McCALLUM. A motion to adjourn now cannot be coupled with a motion which fixes the time. It must be fixed first before we adjourn.

THE PRESIDENT. The gentleman from Santa Cruz, Mr. White, moves that when this Convention adjourns it adjourn to meet to-morrow morning at ten o'clock.

The motion prevailed.

At five o'clock and thirty minutes P. M., on motion of Mr. Hilborn, the Convention adjourned.

EIGHTH DAY.

SACRAMENTO, Saturday, October 5th, 1878.

The Convention reassembled at ten o'clock A. M., pursuant to adjournment, President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hall,	Prouty,
Ayers,	Harrison,	Pulliam,
Barbour,	Harvey,	Reddy,
Barnes,	Heiskell,	Reed,
Barry,	Herold,	Reynolds,
Barton,	Herrington,	Rhodes,
Beerstecher,	Hilborn,	Ringgold,
Belcher,	Hitchcock,	Rolfe,
Bell,	Holmes,	Schell,
Berry,	Howard,	Schomp,
Biggs,	Hughey,	Shafter,
Boggs,	Hunter,	Shoemaker,
Boucher,	Inman,	Shurtleff,
Brown,	Johnson,	Smith, of 4th District,
Burt,	Jones,	Smith, of San Francisco,
Campbell,	Joyce,	Soule,
Caples,	Kenny,	Stedman,
Chapman,	Keyes,	Steele,
Charles,	Kleine,	Stevenson,
Condon,	Lampson,	Stuart,
Cowden,	Larkin,	Sweasey,
Cross,	Larue,	Swenson,
Crouch,	Lavigne,	Swing,
Davis,	Lindow,	Tinnin,
Dean,	Mansfield,	Townsend,
Dowling,	Martin,	Tully,
Doyle,	McCallum,	Turner,
Dudley, of Solano,	McComas,	Tuttle,
Dunlap,	McConnell,	Vacquerel,
Eagon,	McCoy,	Van Dyke,
Edgerton,	McFarland,	Van Voorhies,
Estey, of Contra Costa,	McNutt,	Walker, of Marin,
Evey,	Moffat,	Walker, of Tuolumne,
Farrell,	Moreland,	Waters,
Filcher,	Morse,	Webster,
Finney,	Murphy,	Weller,
Freud,	Nason,	Wellin,
Garvey,	Nelson,	West,
Gorman,	Neunaber,	Wickes,
Grace,	Noel,	White,
Graves,	Ohleyer,	Wilson, of Tehama,
Gregg,	O'Sullivan,	Winans,
Hager,	Overton,	Wyatt,
Hale,	Porter,	Mr. President.

ABSENT.

Blackmer,	Glascock,	Mills,
Casserly,	Huestis,	O'Donnell,
Dudley, of San Joaquin,	Kelley,	Smith, of Santa Clara,
Estee, of 1st District,	Laine,	Terry,
Fawcett,	Lewis,	Wilson, of 1st District.
Freeman,	Miller,	

LEAVE OF ABSENCE.

One day's leave of absence was granted to Messrs. Lewis and Glascock, and leave of absence during the morning session was granted to Mr. Blackmer.

The Journal of yesterday was read.

THE JOURNAL.

MR. STEDMAN. I notice that we have never had a full Journal read. Now, it is evident to the minds of all this Convention, and there was conclusive proof yesterday, that mistakes will occur, and that they will disagree. I submit that it is proper, when the ayes and noes are called, that they should be read the following morning for correction. I understand that it is customary in all legislative bodies to do so. I would call for the full reading of the Journal.

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THE PRESIDENT. If the Convention desires to have the ballots read over, the Secretary will read.

MR. ROLFE. I move that the further reading of the Journal be dispensed with.

Carried.

PRINTING OF THE JOURNAL.

MR. BEERSTECHER presented the following resolution:

Resolved, That the daily Journal of this Convention be printed by the State Printing Office, and that five copies of the previous day's proceedings be placed upon each member's desk in the Assembly Chamber each morning during the session of the Convention.

MR. BEERSTECHER. It seems to be a proper thing, in view of the fact that it would show each member exactly how the ayes and noes are recorded on the previous day's Journal. He can take up the printed Journal that is upon his desk, and he can examine the previous day's proceedings, and if there is any errors in those proceedings he can call attention to the fact, and he can have it corrected. Of course the daily Journal we expect to have printed, and it is proper that it be printed and placed upon our desks the succeeding morning after the proceedings are taken. I believe that has been the regular course in the Senate and the Assembly.

MR. BARNES. Mr. President: In view of the fact that the people of this State are groaning under the burden of taxation, and that the mover of the resolution, as well as myself, is here for the purpose of preventing any public expenditure of any form or description, whether necessary or otherwise, I move that the resolution offered by my friend from San Francisco be referred to the Committee on Expenditures and Contingent Expenses, to ascertain and report the probable cost of the extravagance proposed by the gentleman from San Francisco. [Laughter and applause.]

MR. REYNOLDS. My facetious friend from San Francisco has talked away five dollars worth of time upon that point. Perhaps I will exceed him in expense to the State. The Act calling this Convention provides that the Convention shall keep a Journal, and print it. Now there are two objects in printing the Journal. One is, that it may be kept for the daily use of the members; the other is, for preservation. Now we do not incur any additional expense if we cause the Journal to be printed daily, and the proof-sheets laid on the desks of the members, to show what were the proceedings of the previous day. Afterwards the forms will be made up and a sufficient number—whatever number the Convention orders—will be struck off, and, at the end, bound for preservation. When the Secretary reads the Journal there at the desk in the morning, half of the members in this hall cannot understand a quarter of what is read. The Journal is read, and now and then a member moves to correct something, but two thirds of the members are unable to hear half that is read, and so the matter goes over and we know nothing about what is in the Journal. At my desk I could not hear a dozen words of the Journal read this morning. I am unfavorably situated, as compared to some others, it is true. If we are going to print the Journal at all, we may just as well have it printed now, and have the proof-sheets laid upon our desks every morning for our use. So far as the expense is concerned, I am sorry that the dignified gentleman from San Francisco, Mr. Barnes, should waste time in raising such a question as that.

MR. NOEL. I am opposed to the resolution for this reason: when we have appointed an official reporter, the object of the resolution will be fully attained without any additional expense to the people of the State.

MR. EDGERTON. The gentleman from San Francisco, Mr. Reynolds, is in error when he says that the law provides for the printing of this Journal. Section six provides that "a Journal of the proceedings of the said Convention shall be kept, and shall, at the final adjournment thereof, be filed in the office of the Secretary of State, and the Constitution agreed to by the Convention shall be recorded in his office." I know, sir, by experience as a member of the Legislature, that very great convenience has ensued from having a resolution adopted similar to this, and I suppose that this Convention will certainly order this Journal to be printed, or preserved in some form, and deposited in the State Library. I am in favor of the resolution, except in this particular: I do not see what necessity there is for five copies of the Journal to each member. I would like to hear from the gentleman why five copies should be printed.

MR. BEERSTECHER. I merely inserted the word five copies, and I am perfectly willing that if the Convention sees proper that two copies should be substituted for five copies. As the gentleman from Sacramento has very aptly said, this Journal, when printed and preserved by us, can be used as a matter of reference. We can turn back and see what has been done. Unless we have a Journal of this character we cannot see what resolutions have been offered here nor what business has been done. This does not necessitate the appointment of a Phonographic Reporter. It is merely the printing of the minutes that are read here every morning, and it seems to me a matter of absolute necessity that we should have a memorandum of the proceedings. It will be impossible to retain in our memory everything that has taken place here. If we have a printed Journal it shows us clearly what motions and what resolutions have been made, voted down, lost, or carried. I have examined the proceedings of a number of the Constitutional Conventions that have been held in this country during the last forty years, and in every one of them have Journals of this character been preserved and printed. Even those Conventions that have had their debates and proceedings printed in full, have also, in addition thereto, kept a Journal which has been printed and placed upon the members' tables in the morning. And, gentlemen, it is a matter of absolute economy and a matter of necessity, and I hope that the motion will prevail, and that we will have the benefit of a printed Journal.

THE PRESIDENT. If there be no objection to the amendment making it two copies, instead of five, it will be so amended.

MR. EDGERTON. I accept the amendment. I only rise to say that if any gentleman votes upon the theory that a Journal is to be published—and I suppose every gentleman is in favor of preserving the proceedings in some authentic form—that as to cost, the Journals can be laid on our tables every morning, with but little additional cost. The only additional cost will be the paper involved, and a little ink. That is all there is of it.

MR. TINNIN. I desire to sustain the resolution offered by the gentleman from San Francisco, Mr. Beerstecher. The same matter was brought forward in the State Senate two years ago. Members could find the proceedings of the day before on their desks, and see whether any mistakes had been made in the proceedings of the day before. Now, so far as the number of copies are concerned, I say that there can be no necessity for the amendment, for the reason that five copies will cost little more than two copies. I am sorry that the gentleman accepted the amendment offered by the gentleman from Sacramento.

THE PRESIDENT. The question is on the motion of the gentleman from San Francisco, Colonel Barnes, to refer the matter to the Committee on Expenditures and Contingent Expenses.

MR. EDGERTON. I hope that will be voted down.

MR. HAGER. Mr. President: This Act, sir, does not require this Journal shall be printed; that is a mistake, so far as my investigation goes. In looking at it there is no requirement in the Act for the printing of this Journal. If my friend can find any such provision I should like to have it pointed out. It says that a Journal shall be kept and certified by the proper officers of the Convention, and then filed in the Secretary of State's office, and I presume some future Legislature would have it printed if the Constitution should be adopted. At all events it will be there as a memorandum in case any person wants to refer to it. I am not very tenacious whether this Journal is printed or not; but I think that it is very important that reference should be made to a committee to ascertain what shall be printed in that Journal. In the course of time various propositions will come before this Convention, embodying the points which it is desired to incorporate in the new Constitution. They will come forward in the shape of resolutions, and all these propositions would have to be printed in the Journal. At the same time, under the rule for printing, they will have to be printed in another form for the use of the members. Therefore I think it is very important to send it to a committee, who shall judge what shall be printed, excluding all propositions that may be offered as amendments to the Constitution and that must necessarily be printed by themselves; otherwise we will have a volume of perhaps two hundred pages every morning.

MR. BARRY. Mr. President: I think the Journal should be printed, but I would not favor more than two copies. I think two copies would be sufficient. I agree with my friend Colonel Barnes that the resolution should be referred to the Committee on Contingent Expenses.

MR. BARNES. Mr. President: I wish to say, in explanation of my motion, that I quite agree with my friend from San Francisco that something of the kind should be done, and the reason I moved to refer to the committee is because I think that anything that involves an expenditure of money ought to be based upon an examination, and as it does not hurt anybody to-day, I think it ought to go there. That is all.

MR. RINGGOLD. Mr. President: I understand that this rule would require an additional clerk.

THE PRESIDENT. No additional clerk would be required. The question is on the motion to refer to the Committee on Expenditures, with instructions to examine into and report the probable cost.

The motion to refer prevailed.

PHONOGRAPHIC REPORTERS.

MR. NOEL. Mr. President: I offer a resolution:

Resolved, That a committee of five be appointed by the President, whose duty it shall be to prepare and report to the Convention, at its assembling on Monday next, a resolution for its consideration, defining the duties of the official reporter of the proceedings and debates of the Convention, and fixing definitely his compensation.

MR. NOEL. Mr. President: We have expended a very considerable portion of time here wrangling over this subject and in idle debate, and nothing has been accomplished. The object of the resolution is simply to have the matter presented to the Convention in such a shape that we can act upon it definitely, and that without delay.

MR. LARKIN. Mr. President: I think this Convention has indicated its views very clearly on this proposition. I therefore move to lay the resolution on the table.

The resolution was laid on the table.

THE CONSTITUTIONS.

MR. HOLMES presented the following resolution:

Resolved, That the State Printer be instructed to print five hundred copies of the present State Constitution, with the law passed by the last Legislature calling this Convention, and that each member be furnished with two copies.

MR. BARNES. Mr. President: There has already been laid upon the desks of the members, and I presume of the gentleman who offers the resolution, a very handsomely gotten up copy of the present Constitution of the State of California, interlined with blank leaves for the purpose of annotation, and I hardly think we require another. More than that, any person who desires a copy of the law can have it on application to the Secretary of State, who will furnish him with a copy of the statutes containing it.

MR. HOLMES. As the effect of my resolution was simply to authorize the State Printer to do what he had already done without authority, I withdraw it.

MR. EDGERTON. Mr. President: I move that five hundred copies of the Constitution of the United States be printed and distributed among the members. The copy alluded to by Colonel Barnes embraces only the

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Constitution of the State. It is important for members to have the Constitution of the United States in convenient form as well as the Constitution of the State. I move, therefore, that five hundred copies of the Constitution of the United States be printed and laid on the desks.

MR. FILCHER. Mr. President: I would state, perhaps, for the edification of the gentleman from Sacramento as well as of this body, that I have had furnished me, on requisition, by the Secretary of State, a handsomely and neatly bound volume of the Constitution.

MR. EDGERTON. Mr. President: As I am already sufficiently edified, I withdraw the motion.

FILLING VACANCIES.

THE PRESIDENT. The Convention will now proceed to the special order, which is the election to fill vacancies.

MR. HAGER. Mr. President: On behalf of Mr. Burch and at his request, I desire to return to the Convention—to those who have supported Mr. Burch—his thanks; and at his request I withdraw his name. He is under obligations to his friends for their support.

MR. BARNES. Mr. President: As my colleague from San Francisco has already so well expressed it, I desire to thank the members of this Convention for the support which they have given to the gentleman whom I nominated. It is not his desire to continue the contest here. His name was submitted more at the urgent request of others than from any ambitious sentiments of his own, and I therefore, at his request, withdraw him from this contest.

THE SECRETARY began to call the roll.

When MR. BROWN'S name was called that gentleman said: Mr. President: I wish to state some of the reasons why I shall vote in a certain way. Now, for instance, I was elected by a certain constituency holding certain political proclivities. If there had been a vacancy caused by my death, or by any other cause, I am satisfied—yes, I am thoroughly convinced—that my constituents, those that supported me, would have thought very strange if this Convention had taken into consideration the case of filling the vacancy and filled it with a man of different sentiments—with sentiments different from those of a majority of the people; those that put me in this position. And I am under the impression that the same principles will apply throughout to San Francisco, and that, as the Workingmen won there, it is, upon that principle, right and proper that we should put a man in who is of their political views. And in view of this sentiment in regard to it, as a principle which I think should prevail, I shall vote for Mr. Sharpstein.

The roll was called.

MR. BARNES. Mr. President: I ask now that before the vote is announced the roll shall be called with the statement as to how each member voted, in order that there may be no mistake.

It was so ordered, and the President announced the result of the ballot as follows:

SEVENTH BALLOT—FOR SHARPSTEIN.

Ayers,	Heiskell,	O'Sullivan,
Barbour,	Herold,	Reynolds,
Barry,	Herrington,	Ringgold,
Barton,	Howard,	Rolfe,
Beerstecher,	Hughey,	Smith, of 4th District,
Bell,	Hunter,	Smith, of San Francisco,
Brown,	Joyce,	Soule,
Condon,	Kenny,	Stedman,
Cross,	Kleine,	Sweasey,
Davis,	Larkin,	Swenson,
Dean,	Lavigne,	Swing,
Dowling,	Lindow,	Tuttle,
Doyle,	Mansfield,	Vacquerel,
Evey,	McCoy,	Walker, of Marin,
Farrell,	Moffat,	Waters,
Finney,	Morse,	Wellin,
Freud,	Murphy,	West,
Garvey,	Nason,	Wickes,
Gorman,	Nelson,	White,
Grace,	Neunaber,	Wyatt—61.
Harrison,		

FOR THOMPSON.

Andrews,	Hall,	Prouty,
Barnes,	Harvey,	Pulliam,
Belcher,	Hilborn,	Reed,
Berry,	Hitchcock,	Rhodes,
Biggs,	Hoge,	Schell,
Blackmer,	Holmes,	Schomp,
Boggs,	Inman,	Shafter,
Boucher,	Johnson,	Shoemaker,
Campbell,	Jones,	Shurtleff,
Caples,	Keyes,	Steele,
Chapman,	Lampson,	Stevenson,
Charles,	Larue,	Stuart,
Cowden,	Martin,	Tinnin,
Crouch,	McCallum,	Townsend,
Dudley, of Solano,	McComas,	Tully,
Dunlap,	McConnell,	Turner,
Eagon,	McFarland,	Van Dyke,
Edgerton,	McNutt,	Van Voorhies,
Estey,	Moreland,	Walker, of Tuolumne,
Graves,	Noel,	Webster,
Gregg,	Ohleyer,	Weller,
Hager,	Overton,	Wilson, of Tehama,
Hale,	Porter,	Winans—69.

Whole number of votes cast	131
Necessary to a choice	66
Mr. Sharpstein received	61
Mr. Thompson received	69

Mr. S. B. THOMPSON, having received a majority of all the votes cast, was declared duly elected as a delegate to fill the vacancy caused by the resignation of Thomas Morris of San Francisco.

Mr. Thompson was escorted to the bar of the Convention by Messrs. Edgerton and Shafter and took the constitutional oath of office.

THE PRESIDENT. The next order of business is the election of a member to fill the vacancy caused by the death of H. H. Haight.

MR. VAN DYKE. Mr. President: I have the honor, as it is a pleasure, to put in nomination to fill the vacancy caused by the death of ex-Governor Haight, Mr. J. West Martin, of Alameda County. It was known some time before the assembling of the Convention, in Alameda County, by a conference of the delegates from that county, that Mr. Martin would be put forward in this Convention from that county to supply that vacancy. So that we present to this Convention, so far as that part of the State is concerned, a name that is known, and the suggestion of his name for that place, I may state to the Convention, met with the entire approbation of Alameda County, as being a man in every way suitable for the place. Mr. Martin has been on the Board of Regents of the University of California from its organization to the present time, and I am informed by his associates on that Board that he has been one of the most active members of that Board. He would be a most valuable member of this Convention in matters pertaining to the educational interests of this State. Mr. President, I will state further, that in addition to having the full support of the Alameda delegation, he has a majority of the district delegates from the Second Congressional District, and, with these indorsements, I appeal to the Convention to elect him to supply the place of Governor Haight. I will state further, that Mr. Martin was in the County Convention in which Governor Haight was proposed as a candidate for delegate at large, and put Mr. Haight in nomination and indorsed the platform on which Governor Haight was nominated and elected.

MR. O'SULLIVAN. Mr. President: As we, the delegates of the Workingmen's party, have appealed in vain to the sense of justice and magnanimity of this Convention to regard the will of the people in the selection of Judge Sharpstein to fill the vacancy from that city, I feel under no obligations to pay any regard to the desires of the majority here in filling the vacancy from the Second Congressional District. I shall certainly not vote for Mr. Peachy, the author of the infamous Coolie bill of eighteen hundred and fifty-two and eighteen hundred and fifty-three.

MR. HOWARD. I call the gentleman to order.

MR. BARNES. Mr. Peachy has not been nominated before this Convention. It will be time enough for gentlemen to attack him after he is put in nomination. Until then, such remarks are out of order.

THE PRESIDENT. The point of order is well taken; it is for the Convention to say whether the gentleman shall be allowed to proceed in order.

MR. HOWARD. Mr. President: I have to say that Mr. Peachy is not only not nominated, but that his name will not be presented to this Convention.

MR. DUDLEY. I move that the gentleman be allowed to proceed in order.

MR. O'SULLIVAN. Mr. President: I nominate G. Thom for the vacancy from the Second Congressional District—a gentleman who ran as delegate at large on the Workingmen's ticket—a gentleman indorsed by the people of Alameda County and the people of the State—a Workingman, and a gentleman who is capable of filling this position as well as any of those named in opposition.

MR. VAN VOORHIES. Mr. President: I am authorized by Judge Lamar to state that he is not a candidate before this Convention for any position whatever; and he desires that his friends do not vote for him.

MR. MURPHY inquired if Mr. Peachy was a candidate, and was informed that he was not.

THE CHAIR declared the nominations closed.

THE SECRETARY began to call the roll.

MR. REYNOLDS. Mr. President: I beg leave to place in nomination the name of that inveterate foe to corporations, that life-long friend of the people, the name of that great and good man, Leland Stanford. I do this, Mr. Chairman, on the ground that I prefer to deal with principals rather than agents. The suggestion——

THE PRESIDENT. It is out of order for the gentleman to make any remarks while we are voting. The gentleman can make his nomination but not a speech.

[Cries of "Leave," "Leave."]

THE PRESIDENT. If there be no objection the gentleman may go on with his speech. The gentleman has leave to proceed.

MR. REYNOLDS did not avail himself of the privilege.

The roll was called, with the following result:

FOR MARTIN.

Andrews,	Campbell,	Evey,
Ayers,	Caples,	Filcher,
Barnes,	Chapman,	Garvey,
Belcher,	Charles,	Graves,
Berry,	Cowden,	Gregg,
Biggs,	Crouch,	Hager,
Blackmer,	Dudley, of Solano,	Hale,
Boggs,	Dunlap,	Hall,
Boucher,	Eagon,	Harvey,
Brown,	Edgerton,	Heiskell,
Burt,	Estey,	Hilborn,

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Hitchcock,	Morse,	Smith, of 4th District,
Hoge,	Murphy,	Steele,
Howard,	Nason,	Stevenson,
Hunter,	Noel,	Stuart,
Inman,	Ohleyer,	Swing,
Johnson,	Overton,	Thompson,
Jones,	Porter,	Townsend,
Keyes,	Prouty,	Tully,
Lampson,	Pulliam,	Turner,
Larue,	Reddy,	Van Dyke,
Mansfield,	Reed,	Van Voorhies,
Martin,	Rhodes,	Walker, of Tuolumne,
McCallum,	Rolfe,	Waters,
McComas,	Schell,	Webster,
McConnell,	Schomp,	Weller,
McFarland,	Shafter,	West,
McNutt,	Shoemaker,	Wilson, of Tehama,
Moreland,	Shurtleff,	Winans—87.

FOR THOM.

Herrington,	O'Sullivan,	Wyatt—3.

FOR STANFORD.

Dowling,	Reynolds—2.

Whole number of votes cast	99
Necessary to a choice	50
Mr. Martin received	87
Mr. Thom received	3
Mr. Stanford received	2
Scattering	7

J. WEST MARTIN, having received a majority of all the votes cast, was declared duly elected a member of this Convention, to fill the vacancy caused by the death of H. H. Haight.

Mr. VAN DYKE made a motion that Mr. Martin be presented to the bar of the Convention and take the oath of office, but it appearing that Mr. Martin was not in the city, the motion was withdrawn.

The PRESIDENT. The next business in order is the election of a member to fill the vacancy caused by the death of G. M. Hardwick, of Merced and Mariposa Counties.

Mr. TULLY. Mr. President: I rise to put in nomination for that position a gentleman whom I have known for many years. I do not think it necessary for me to attempt any eulogy upon his character, as I presume the minds of the members of this Convention are already made up. I therefore nominate Mr. J. M. Strong, a resident of Merced County. Mr. Strong is engaged in agricultural pursuits, a gentleman of good practical sense, and if admitted to a seat upon this floor, I think the friends of reform and good government will not find anything to regret in the course that he will pursue.

Mr. BROWN. I second the nomination.

Mr. STEDMAN. Mr. President: I desire to place in nomination, for the suffrages of the Workingmen's delegates of this Convention, at least, a good, honest, true man—Mr. S. O. Lapham, of Merced.

The roll was called.

Mr. BARRY—(When his name was called). I will say this, that I supported Judge Sharpstein yesterday and to-day on principle. I believe that the will of the people, as expressed in San Francisco, should be carried out. I believe that the Convention ought to have elected to fill the place of Mr. Morris such a man as Judge Sharpstein, who represents the same views. I believe the will of the people should be respected, but the Convention has disagreed with me, and I have no fault to find with their disagreement. I will not impugn the sincerity of their motives, believing that they have done what they believed to be right, yet at the same time I thought that the people's voice in San Francisco was favorable to Mr. Morris and Judge Sharpstein, and therefore I cast my vote for him. For the same reason, believing that Mr. Hardwick represented the intelligent people of Mariposa and Merced; that he received a majority, but was unfortunately taken away by death; I still believe in carrying out the same principle, as I propose to act upon principle from now until the very end of this Convention; to do what I believe to be right; to carry out the demands of the people on the vital questions before me; so, now, do I recognize the plea to select an Independent in the place of Mr. Hardwick. I now propose to cast my vote for Mr. Strong.

Mr. LINDOW—(When his name was called). Some gentlemen don't vote. I don't think it looks well for a member to sit here and don't cast a vote at all; either that I am very much grieved that I am defeated in my first vote in Judge Sharpstein, but I don't want to see bad feeling in this Convention; but that I make my speech as short as possible, I vote for Mr. Strong.

Mr. WICKES—(When his name was called). As my vote would not do any good either on one side or the other, I must accept the situation and be consistent. I vote for that good, patient, and long-forbearing man, Theodore Tilton. [Laughter.]

The result of the vote was announced as follows:

FOR STRONG.

Andrews,	Blackmer,	Cowden,
Ayers,	Boggs,	Crouch,
Barnes,	Boucher,	Davis,
Barry,	Brown,	Dean,
Barton,	Burt,	Dudley, of Solano,
Belcher,	Campbell,	Dunlap,
Bell,	Caples,	Eagon,
Berry,	Chapman,	Edgerton,
Biggs,	Charles,	Estey,
Evey,	Lavigne,	Shoemaker,
Filcher,	Lindow,	Shurtleff,
Finney,	Mansfield,	Smith, of 4th District,
Freud,	Martin,	Soule,
Garvey,	McCallum,	Steele,
Graves,	McComas,	Stevenson,
Gregg,	McConnell,	Stuart,
Hager,	McCoy,	Swenson,
Hale,	McFarland,	Swing,
Hall,	McNutt,	Thompson,
Harvey,	Moreland,	Tinnin,
Heiskell,	Morse,	Townsend,
Herold,	Murphy,	Tully,
Herrington,	Nason,	Turner,
Hilborn,	Noel,	Tuttle,
Hitchcock,	Ohleyer,	Vacquerel,
Hoge,	Overton,	Van Dyke,
Holmes,	Porter,	Van Voorhies,
Howard,	Prouty,	Walker, of Marin,
Hughey,	Pulliam,	Walker, of Tuolumne,
Hunter,	Reddy,	Waters,
Inman,	Reed,	Webster,
Johnson,	Rhodes,	Weller,
Keyes,	Rolfe,	West,
Lampson,	Schomp,	Wilson, of Tehama,
Larkin,	Shafter,	Winans—107.
Larue,		

FOR LAPHAM.

O'Sullivan,	Stedman,	Wyatt—3.

Whole number of votes cast	117
Necessary to a choice	59
Mr. Strong received	107
Mr. Lapham received	3
Scattering	4

Among the scattering votes were: Reynolds, for Leland Stanford; Ringgold, for M. D. Boruck; Smith, of San Francisco, for Peter Donahue; Wickes, for Theodore Tilton; Stedman, for Dr. Mary Walker; and Wellin, for Henry Ward Beecher.

Mr. STRONG was escorted to the bar of the Convention by Messrs. Tully and Brown, and took the oath of office.

On motion of Mr. MURPHY, at forty minutes past eleven A. M., the Convention adjourned to meet on Monday, at one P. M.

TENTH DAY.

SACRAMENTO, Monday, October 7th, 1878.

The Convention reassembled at one o'clock P. M., pursuant to adjournment, President Hoge in the chair.

The roll was called and members found in attendance as follows:

PRESENT.

Andrews,	Harvey,	Overton,
Ayers,	Heiskell,	Porter,
Barbour,	Herold,	Prouty,
Barry,	Herrington,	Pulliam,
Barton,	Hilborn,	Reddy,
Beerstecher,	Holmes,	Reed,
Bell,	Howard,	Reynolds,
Berry,	Huestis,	Rhodes,
Biggs,	Hughey,	Ringgold,
Blackmer,	Hunter,	Rolfe,
Boggs,	Inman,	Schell,
Boucher,	Johnson,	Shoemaker,
Brown,	Jones,	Shurtleff,
Burt,	Joyce,	Smith, of 4th District,
Campbell,	Kelley,	Smith, of San Francisco,
Caples,	Kenny,	Soule,
Charles,	Keyes,	Stedman,
Condon,	Kleine,	Steele,
Cowden,	Lampson,	Stevenson,
Cross,	Larkin,	Stuart,
Crouch,	Larue,	Sweasey,
Davis,	Lavigne,	Swenson,
Dean,	Lindow,	Swing,
Dowling,	Mansfield,	Terry,
Doyle,	Martin, of Alameda,	Thompson,
Dunlap,	Martin, of Santa Cruz,	Tinnin,
Eagon,	McCallum,	Townsend,
Edgerton,	McComas,	Tully,
Estey, of Contra Costa,	McConnell,	Turner,
Estee, of 1st District,	McCoy,	Tuttle,
Evey,	McFarland,	Vacquerel,
Fawcett,	McNutt,	VanVoorhies,
Filcher,	Miller,	Walker, of Marin,
Finney,	Moffat,	Walker, of Tuolumne,
Freeman,	Moreland,	Waters,
Freud,	Morse,	Webster,
Garvey,	Nason,	Weller,
Glascock,	Nelson,	West,
Gorman,	Neunaber,	Wickes,
Grace,	Noel,	White,
Gregg,	O'Donnell,	Wyatt,
Hale,	Ohleyer,	Mr. President—128.
Harrison,	O'Sullivan,	

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ABSENT.

Barnes,	Hager,	Shafter,
Belcher,	Hall,	Smith, of Santa Clara,
Casserly,	Hitchcock,	Strong,
Chapman,	Laine,	Van Dyke,
Dudley, of Solano,	Lewis,	Wellin,
Dudley, of San Joaquin,	Mills,	Wilson, of Tehama,
Farrell,	Murphy,	Wilson, of 1st District,
Graves,	Schomp,	Winans—24.

LEAVE OF ABSENCE.

Leave of absence for one day was granted to Messrs. Belcher, Chapman, Schomp, Winans, Hall, Farrell, Van Dyke, Shafter, and Wellin; and for two days to Mr. Dudley, of San Joaquin. Leave of absence was also granted to Mr. Barnes until Wednesday, and to Mr. Strong until Thursday.

The Journal of Saturday was read and approved.

J. WEST MARTIN, who was elected on Saturday to fill the vacancy caused by the death of ex-Governor Haight, was sworn in.

[MR. MCFARLAND in the Chair.]

MR. HILBORN sent up a resolution.

ADDITIONAL COMMITTEES, ETC.

At the same time Mr. ESTEE presented a report from the Committee on Rules and Order of Business, as follows:

Mr. President: Your Committee on Rules, Order of Business, and Standing Committees recommend that the following additional committees be appointed: On Agriculture, Manufactures, and Commerce, to consist of eleven members; on Mining, to consist of eleven members; on the Pardoning Power, nine members; on Tide Water and Navigable Streams, nine members; on Labor and Capital, nine members; on Engrossment and Enrollment, seven members. Respectfully,

M. M. ESTEE, Chairman.

The report was accepted by the Convention, and MR. ESTEE moved its adoption.

MR. CAPLES. Mr. President: I have a resolution to offer.

The resolution was laid on the Secretary's desk until after the disposal of the report of the committee.

MR. MCCALLUM. The question is on the adoption of the report of the committee. When a committee makes a report it is always understood to be moved to be adopted.

THE CHAIR. I do not understand that it has any precedence over any other motion.

MR. ESTEE. It has no precedence, but it is a very important matter for the Convention to adopt now, or reject now, so that the President can take it into consideration in making up the standing committees—a work upon which he is now engaged. I hope that the Convention will not take up other matters.

MR. BARBOUR. Mr. President: I move, as an amendment, that the consideration of the report be postponed until to-morrow morning, and that two hundred copies of the report be printed.

THE CHAIR. The Convention will understand that the report of the Committee upon the subject of Rules and Order of Business has not yet been received. The committee offer a separate report in relation to committees, and that is the motion before the Convention now.

MR. AYERS. I ask for the reading of that report.

The report was read.

MR. EDGERTON. A report was made by the Chairman of the Committee on Rules and Order of Business on Friday last or Saturday, enumerating several standing committees, and that report has been adopted and is before this House now. Now this report merely recommends to this Convention the appointment of five or six more committees. For instance, a Committee on Engrossment and Enrollment. There must be such a committee. The Convention recommitted the matter of the consolidated Committee on Agriculture and Mining to the Committee on Rules, to be further considered. They have considered it further, and they have divided that committee, so that it stands one Committee on Mining, which is a concession to the wishes of a very large majority of this Convention, and one on Agriculture, Commerce, and Manufactures. In addition, there is a committee, at the request of the party which the gentleman represents, on Labor and Capital. I do not see why this should be delayed. The President is now engaged in making up these committees, and it is necessary that this matter should be settled. I hope that the motion to postpone and print will not prevail.

MR. AYERS. The reason I asked for the reading of the report was that I understand that there is no Committee on Lands.

MR. EDGERTON. There is a Committee on Public Lands. This is an additional report, in addition to the committee established the other day.

MR. AYERS. I intended to move such a committee. If other committees should be wanted they can be appointed at any time by a motion.

MR. BARBOUR. This is the reason I wish to have the reports printed, in order that members may know what the committees are. These committees are provided for. There is no disposition to strike out of the report any of these committees, but this Convention must know what the standing committees are. Now, it is just as necessary, and then if we find it necessary to have more committees we will have before us a light with which to govern our conduct. That part of the report comes in the report of the Committee on Rules. The number of the committees is printed in the rules, and provision is made for printing five hundred copies of the whole thing.

THE CHAIR. The gentleman from San Francisco, Mr. Estee, moves that this report be adopted. The gentleman from San Francisco moves that the matter be postponed until to-morrow at eleven o'clock, and that five hundred copies, both of this report and the former report, be printed. The question is on the motion of the gentleman from San Francisco.

MR. REYNOLDS. I would suggest that the gentleman from San Francisco for the present withdraw his motion to postpone and print until the whole report of the Committee on Rules be read. And the reason is this: there is not much probability that the house will adopt the report of the Committee on Rules as a whole, or perhaps that part of it relating to standing committees, until the members have had an opportunity to examine the report. They can only do that when it has been printed, and it will doubtless be read as a whole, ordered printed, and further action delayed until to-morrow morning. I think that will be the shortest way of getting at it. More time will be consumed in members attempting to find out what the report is than it will take to print the proof sheets. It can be easily printed and laid on the tables of members.

MR. EDGERTON. I think the gentleman who last addressed the Convention is under a misapprehension in this matter. As I said, this Convention has already adopted a partial report as to what committees should be appointed. I think some twenty-five or twenty-eight committees have already been provided for in the report adopted by this Convention and is now the law of this body, and the President is now engaged in making up those committees. The question now before the Convention does not go to the rules recommended for the government of this body, but simply whether the Convention shall have the additional committees which have been recommended. That is all the question that there is now before this house. The rules are not before the house at all. The committee have recommended the appointment of six or seven additional committees, and that is all there is before the Convention.

MR. ESTEE. Mr. President: If it is necessary to have this partial report, merely suggesting five more committees, printed for the members before they can understand it, then, sir, I am in favor of having it printed; but it strikes me that a half dozen lines can be understood by all the members of this Convention, and every member in this Convention can tell right now whether we want a Committee on Engrossment, whether we want a Committee on Navigable Waters, on Tide Waters, on Harbors, on Mining, or on Agriculture, Commerce, and Manufactures. That is all the point there is in it. Now, the motion is to put off until to-morrow. I think we might as well settle it right now. If we have reported a committee there that we should not have, let it be stricken out by the vote of this body now; or, if there is any committee to be added, let it be added now. Every gentleman has the right to-morrow, or any day, to move for additional committees, as the necessity for them presents itself. That is the practice. Whenever it is found that we need a committee on any particular subject, a member will rise in his place and move for such a committee. It is not expected that your committee will understand all the possible exigencies, but by special request we have reported these, because the President is making up the committees, and because we were expected to report all the committees that we thought ought to be adopted by this Convention. We have done our duty as we understood it, and ask this Convention now to adopt that report, if right, and remedy it, if wrong. Let us not deceive ourselves with the idea that we have got to put it off until to-morrow in order to understand it. I think we all understand it now. I hope the motion to postpone and print will be voted down, for we have more time to-day than we will have to-morrow.

MR. REYNOLDS. I have no objection to the adoption of this part of the supplementary report, and I suggest to the gentleman from San Francisco, Mr. Barbour, to withdraw his motion to postpone and print, and that we adopt this part of the report solely with a view to facilitating business, for the reason that amendments may be made by the Convention afterwards.

MR. BARBOUR. It seems very difficult for me to make myself understood. I have not objected to these additional committees. I have simply asked that a list of the committees proposed up to the present time, be printed and laid on our desks to-morrow morning, and then if we want additional committees we can have them. I am willing to have the report adopted now, but I want it printed so that we can see what committees we have provided for.

THE CHAIR. I do not know whether the Convention fairly understands the question. The committee made a report the other day reporting a number of committees, and to-day they make a report suggesting additional committees. The motion of the gentleman from San Francisco, Mr. Estee, is that that report be adopted. The question as to the report on Rules and Regulations is not now involved in this motion.

MR. BARBOUR. I withdraw the part in reference to printing.

MR. HALE. Mr. President: I rise to inquire of the Chairman of the Committee on Rules if it would occasion any inconvenience to have the report printed. If it will not, I desire to renew the motion of the gentleman from San Francisco, and I desire to state why I renew it. Now, we all know, sir, from our general knowledge of the course of deliberative bodies, that the constituting of its standing committees is a matter of the greatest moment. One of our important committees here, on rules, have made two reports—a primary and a secondary one—the two ostensibly to cover or to provide for the appointment of all the standing committees which will be necessary. Now, sir, while from the reading, or rather from my hearing read this report, I see no reason to demur to it, yet I submit that it would be the part of prudence to have this report printed, showing what the committee recommend, and then when, to-morrow, that report has been examined by every member, if they desire to make amendments they can do it then. Now, I think it will be wise for us not only to have this report printed, but all the reports of our standing committees should be printed and laid upon our desks, to give us a chance to examine them before they are acted upon. I therefore renew the motion to print.

MR. EDGERTON. Does the gentleman remember that the Conven-

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tion has adopted one report fixing the number and designation of some twenty-five or twenty-six committees.

Mr. HALE. I believe I am correctly informed upon the action of the Convention. Heretofore a report has been made, which was announced to be partial in its character; that the Convention adopted that report so far as it goes; that now a report is made providing for the appointment of additional committees. The motion is to print the entire report, original and supplementary, and then when it shall come up before the Convention they will all have a better opportunity to examine it in detail, and will be able to say whether they are entirely satisfied with it.

Mr. EDGERTON. Mr. President: I repeat that as to the report of yesterday, it has already become a law of this Convention. The Convention almost unanimously adopted that partial report and fixed the mode in which these committees should be appointed. As I said before, the only question before the Convention is whether these five additional committees shall be appointed, and that is for the Convention to determine; and it is suggested by the gentleman from San Francisco, Mr. Barbour, that then his motion to print the entire report would be in order. I hope the report will be acted upon soon, because it is a very important duty in which the President is engaged.

Mr. JOYCE. It seems to me, Mr. President, if there is any one thing more than another that deserves the consideration of this Convention, that subject is the Chinese subject. It is one that there has been no political party for the last ten years that has not given it serious attention; yet it seems that the committee has lost sight of it. It seems that it was not sufficiently important for our committee to create a special committee for that one subject. Now, I believe that it is paramount to all other subjects, and I desire that there should be a special committee on that subject alone, and I would now move that the Chinese subject has a special committee for itself.

Mr. EDGERTON. The report which was adopted the other day provided for a committee that covers this case—the Committee on Immigration.

Mr. JOYCE. My point is this: I do not believe that this Committee on Immigration can deal with this. That affects the United States. We calculated to deal with its domestic relations with this State.

Mr. EDGERTON. There is in that report a provision for a Committee on Capital and Labor. These two committees cover the whole subject.

Mr. SHOEMAKER. I move the previous question.

Mr. CROSS. I second the motion for a committee on the Chinese question.

The CHAIR. It is moved and seconded that there be a Committee on Chinese.

Mr. JOHNSON. Mr. President: This Committee on Rules have reported in favor of certain standing committees. On further advising among themselves they make an additional, or supplementary report, that four or five additional standing committees are necessary, in their judgment. Now this is merely a matter of convenience. It is merely dividing out the labor of this Convention among these gentlemen who constitute these different committees. It is simply a division of labor. They have thought that by adding four or five additional committees that they can divide out the labor of the Convention more completely, so that the business of the Convention may be more properly transacted. It does not involve any principle. It does not involve any policy. Therefore I can see no possible objection at all to the addition of these four or five standing committees to the list which we have already adopted. It seems to me eminently proper that in making his appointments the President should have the names of these committees before him, so as to assign to the different committees those gentlemen who are most suitable to be on those committees. Now, I understand there is a Committee on Immigration. It occurs to me that the Chinese question can properly come before that committee. It is also suggested to have a Committee on Labor and Capital, and if the Committee on Immigration is not the proper committee, this Chinese question can be referred to the Committee on Labor and Capital. In other words, whenever there is any question as to the proper reference of any particular subject, if the title of the committee does not sufficiently specify or indicate it, the President can say, if it meets with the approval of this Convention, to which committee the subject-matter should be referred. I, too, hold that this Chinese matter should be investigated, but it seems to me there is no occasion for making supernumerary committees. There is no necessity for making more committees than are necessary. This Committee on Rules and Order of Business is not discharged, and if any gentleman in this Convention deems that an additional standing committee is necessary, that gentleman can rise here and indicate what additional committee shall be named by this Convention. But it occurs to me that there is no occasion whatever to make too many committees. We have this Committee on Rules, consisting of several gentlemen of experience, and they report to this Convention that in their judgment five additional standing committees are necessary. It occurs to me that there is no objection to them at all. It is a mere matter of routine. It does not involve a principle or policy. I am in favor of the motion of the gentleman from San Francisco, Mr. Estee.

Mr. BEERSTECHER. I have a resolution to offer.

Mr. SHOEMAKER. I call attention to the fact that I moved the previous question.

The CHAIR. Those in favor of the main question being now put will please rise.

The previous question was ordered.

The CHAIR. The original motion was to adopt the report—to that an amendment is offered that there be an additional Committee on Chinese. The first question is on the amendment to add an additional Committee on Chinese.

The ayes and noes were demanded by Messrs. Joyce, O'Sullivan, and Barton.

Mr. BARTON—(When his name was called). I shall vote for the appointment of a Committee on Chinese, and my reason for doing so is this: I believe that the Committee on Immigration has nothing to do whatever with the labors of this Convention. It is strictly and purely legislative in its bearings, and the subject of Chinese is one of local importance to us, which we are determined to handle in this Convention. Therefore I hope that there will be a Committee on Chinese appointed, and that the House will sustain the motion. I vote "aye" for the appointment of the committee.

Mr. CAPLES—(When his name was called). I am in favor of a special committee to consider this subject, but the proposition is thrust in here at an improper time, as I conceive to the confusion of legitimate business. I will say this to the gentlemen in favor of this committee, when they propose such a committee at the proper time I shall vote for it with them; but as I before remarked, it has been thrust in here before the question on the adoption of the report of the committee. The question ought to have been simply on adopting the report of the committee. Then, every gentleman on the floor will concede that the gentleman could move for an additional committee. Therefore I vote "no."

Mr. ESTEE—(When his name was called). I do not wish to explain my vote. I wish to explain to the Convention exactly how the matter stands. It stands in this way: in the Convention the committee were unanimous in permitting one of the members of that committee, from San Francisco, if he so desired and if this house so desired, to move this house to have such a committee, and then he would necessarily be Chairman of the committee. And with due respect to that gentleman he does not now appear to care about being Chairman of that committee. I make this statement to show that the committee were not opposed to having one of the standing committees of this House investigate this question. It was done as a matter of propriety and delicacy, and it should not be charged that this committee were trying to evade it. The committee were unanimous in all these questions, and were unanimous in permitting, if the house saw fit, the fullest examination of the best committee that could be made to investigate it. I vote "aye."

Mr. FREUD—(When his name was called). Mr. President: By leave of the Convention, I should like very respectfully to explain my vote. I concede a great deal that has been said by the Chairman of the committee. Undoubtedly much that pertains to the Chinese question probably will and ought to come before the Committees on Immigration, and Capital and Labor; nevertheless the question is so broad, and of such an anamolous character, that in my opinion it should have a special committee. Therefore, I shall vote "aye."

Mr. JOHNSON—(When his name was called). I think, Mr. President, that the committee's report sufficiently covers this case, but inasmuch as there is a question of doubt, and inasmuch as this question ought to be thoroughly investigated, I shall vote "aye."

Mr. WICKES—(When his name was called). I do not intend to cast any reflection on the committee when I vote "aye."

The roll being completed, the Chair announced the result of the vote as follows:

AYES.

Andrews,	Heiskell,	Overton,
Ayers,	Herold,	Porter,
Barbour,	Herrington,	Prouty,
Barry,	Hilborn,	Pulliam,
Barton,	Holmes,	Reddy,
Beerstecher,	Howard,	Reed,
Bell,	Huestis,	Reynolds,
Berry,	Hughey,	Rhodes,
Biggs,	Hunter,	Ringgold,
Blackmer,	Inman,	Schell,
Boggs,	Johnson,	Shoemaker,
Boucher,	Jones,	Shurtleff,
Brown,	Joyce,	Smith, of 4th District,
Burt,	Kelley,	Smith, of San Francisco,
Campbell,	Kenny,	Soule,
Condon,	Keyes,	Stedman,
Cowden,	Kleine,	Steele,
Crouch,	Lampson,	Stevenson,
Davis,	Larkin,	Sweasey,
Dean,	Larue,	Swenson,
Dowling,	Lavigne,	Swing,
Doyle,	Lindow,	Terry,
Dudley, of Solano,	Mansfield,	Thompson,
Dunlap,	Martin, of Alameda,	Tinnin,
Eagon,	Martin, of Santa Cruz,	Townsend,
Edgerton,	McCallum,	Tully,
Estee,	McComas,	Turner,
Estey,	McConnell,	Tuttle,
Evey,	McFarland,	Vacquerel,
Fawcett,	McNutt,	Van Voorhies,
Filcher,	Miller,	Walker, of Marin,
Finney,	Moffat,	Walker, of Tuolumne,
Freeman,	Moreland,	Waters,
Freud,	Morse,	Webster,
Garvey,	Nason,	Weller,
Glascock,	Nelson,	West,
Gorman,	Neunaber,	Wickes,
Grace,	Noel,	White,
Harrison,	Ohleyer,	Winans,
Harvey,	O'Sullivan,	Wyatt—120.

NOES.

Caples,	Gregg,	Stuart—4.
Charles,		

And the amendment was adopted.

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The question being on the adoption of the report, as amended, it was adopted.

MR. ESTEE. There is another report I think we had better have read.

THE PRESIDENT. No objection, the report of the committee will now be taken up.

REPORT OF COMMITTEE ON RULES.

Mr. President: Your Committee on Rules, Order of Business, and Standing Committees, report the following rules for the government of the Convention, and respectfully recommend their adoption. A sub-committee composed of Messrs. Edgerton, Finney, Murphy, West, Waters, and Estee, gave special attention to the laborious duty of preparing these rules, and which rules were in turn submitted to your committee of fifteen, and by them considered and unanimously adopted.

Respectfully submitted.

M. M. ESTEE, Chairman Committee.

Hour of meeting.

Rule 1.—The Convention shall meet each day of sitting at ten o'clock A. M., unless it shall adjourn to some other hour.

Recess.

Rule 2.—The Convention shall take a recess each day from twelve o'clock M. to one o'clock P. M.

Number of members to constitute a quorum.

Rule 3.—Not less than seventy-seven members shall constitute a quorum for the transaction of business.

Duties of President.

Rule 4.—The President, or in his absence the President pro tem., or in the absence of both, such Chairman as shall be selected by the members present, shall take the Chair at the hour to which the Convention shall have adjourned, and shall immediately call the members to order.

To preserve order, to decide points of order, and may speak to same.

Rule 5.—He shall preserve decorum and order; may speak to points of order in preference to other members, and shall decide all questions of order, subject to an appeal to the Convention by any five members, on which appeal no member shall speak more than once, except by leave of the Convention.

Appointment of committees.

Rule 6.—All committees shall be appointed and announced by the President, unless otherwise specially directed by the Convention.

Signing of writs, warrants, and subpœnas.

Rule 7.—All writs, warrants, and subpœnas, issued by order of the Convention, shall be under his hand and attested by the Secretary.

May call any member to the Chair.

Rule 8.—The President shall have the right to name any member to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment.

To have direction of the hall.

Rule 9.—The President shall have the general direction of the hall of the Convention and of the galleries. No persons, excepting members, officers, and attachés of the Convention, and such persons as may be invited by the Convention, or by the President, shall be admitted within the bar of the Convention. The Chairman of each Committee of the Whole, during the sitting of such committee, shall have the like power of preserving order in the hall and in the galleries.

Duties of Secretary.

Rule 10.—The Secretary must attend each day, and call the roll, read the Journal and all propositions or resolutions. He shall have the direction of the Assistant Secretaries unless otherwise ordered.

Duties of Assistant Secretaries.

Rule 11. The Assistant Secretaries must attend each day, take charge of all resolutions, propositions, petitions, memorials, and other papers presented to the Convention, file and enter the same in the books provided for that purpose, and perform such other duties as may be directed by the Secretary of the Convention.

Duties of Minute Clerk.

Rule 12.—The Minute Clerk must keep a correct record of the proceedings of the Convention.

Duties of Journal Clerk.

Rule 13.—The Journal Clerk must record each day's proceedings in the Journal, from which they must be read each day by the Secretary, and then be authenticated by the signature of the President.

Duties of Sergeant-at-Arms.

Rule 14.—The Sergeant-at-Arms must give a general supervision, under the direction of the President, to the hall of the Convention and rooms attached; attend during the sittings of the Convention, execute its commands and all process issued by its authority; keep an account of pay and mileage of members, attachés, and employés, and prepare checks for the same.

Duties of Assistant Sergeant-at-Arms.

Rule 15.—The Assistant Sergeant-at-Arms must attend the sittings of the Convention each day, prohibit all persons except members, officers, and employés, and such other persons as may have the privilege of the floor assigned them by the rules of the Convention, from entering within the bar unless upon invitation, and keep order in the halls, lobbies and galleries.

Duties of officers at the close of the session.

Rule 16.—The Secretary and Assistant Secretaries, at the close of the session of the Convention, must deliver to the Secretary of State, duly marked, labeled, and arranged, all propositions, resolutions, petitions, memorials, and other papers belonging to the Convention, and also all books belonging to the same.

Order of business.

Rule 17.—1. Roll call. 2. Reading and approval of the Journal. 3. Presentation of petitions and memorials; under which head shall be included remonstrances, communications from individuals and public bodies. 4. Communications from State officers; under which head shall be embraced, also, communications from public officers, and from corporations in response to calls for information. 5. Reports of standing committees, in the order in which they stand in the rules. 6. Reports of select committees. 7. Introduction of resolutions and propositions relating to the Constitution. 8. Unfinished business. 9. Special orders. 10. General order. 11. Miscellaneous motions and resolutions.

Precedence of motions during debate.

Rule 18.—When a question is under debate, or before the Convention, no motion shall be received but: 1. To adjourn. 2. To lay on the table. 3. For the previous question. 4. To postpone to a day certain. 5. To commit or amend. 6. To postpone indefinitely. Which several motions shall have precedence in the order in which they are named; but the first three shall be decided without debate; and no motion to postpone to a day certain, to commit, or to postpone indefinitely, being decided, shall again be allowed on the same day, and at the same stage of the proceedings.

Priority of business.

Rule 19.—All questions relating to the priority of business shall be decided without debate.

Reference of resolutions; when committees must report.

Rule 20.—When a motion is made to refer any subject, and different committees should be proposed, the question shall be taken in the following order:

1. The Committee of the whole Convention.
2. A Standing Committee.
3. A Select Committee.

Every committee of the Convention to whom a resolution or proposition has been referred, shall report the same to the Convention within fifteen days from the time it is received by the Chairman of the committee, unless further time to report is granted, unless otherwise ordered by the Convention. Every proposition or resolution shall be referred to the appropriate standing committees as indicated by its name given herein.

Motion to divide question; to strike out or insert.

Rule 21.—Any member may call for the division of a question when the sense will admit of it. A motion to strike out shall be deemed indivisible; but a motion to strike out, being lost, shall neither preclude amendment nor a motion to strike out and insert.

Call of the Convention.

Rule 22.—Upon a call of the Convention, the names of the members shall be called over by the Secretary, and the absentees noted; after which the names of the absentees shall again be called over. The doors shall then be shut, and those for whom no sufficient excuses are made may, by order of those present, be taken into custody as they appear, or may be sent for and taken into custody wherever found, by the Sergeant-at-Arms, or by a special messenger to be appointed for that purpose.

Division and count of Convention.

Rule 23.—Upon a division or count of the Convention on any question, no person without the bar shall be counted.

Calling the ayes and noes.

Rule 24.—On all questions and motions whatsoever, the President shall take the sense of the Convention by ayes and noes, provided five members present shall so require it. When the ayes and noes are taken, no member shall be allowed to vote who shall have entered the Convention after the calling of the roll is finished. The names of members shall be called in alphabetical order. Provided, further, that on all resolutions and propositions relating to the Constitution, the final vote shall be taken by ayes and noes.

Explaining or changing vote.

Rule 25.—No member shall be allowed to explain his vote or discuss the question while the ayes and noes are being called; and no member shall be allowed to change his vote after the vote is announced from the Chair.

Motion to instruct committees.

Rule 26.—It shall be the duty of each member who moves that any committee be instructed to inquire into the expediency of amending or revising the existing Constitution, to point out the amendment which he deems expedient, in writing, to accompany his motion.

Commitment and recommitment of motions and reports.

Rule 27.—Motions and reports may be committed or recommitted at the pleasure of the Convention, and with or without instructions from the Convention.

Motion, or proposition of a subject, different from that under consideration, inadmissible under color of amendment.

Rule 28.—No motion, or proposition of a subject, different from that under consideration, shall be admitted under color of amendment.

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When motion or resolution may be withdrawn.

Rule 29.—A motion may be withdrawn, by leave of the Convention, at any time before amendment or decision.

Motions to adjourn.

Rule 30.—A motion to adjourn shall always be in order. The Minute Clerk shall enter on the minutes the name of any member moving an adjournment; and, also, the hour at which the motion is made.

Motions, to be stated by the President, to be reduced to writing.

Rule 31.—No motion shall be debated until the same shall be seconded and distinctly announced by the President; and it shall be reduced to writing, if desired by the President or any member; and shall be read by the Secretary, before the same shall be debated.

Substitutes.

Rule 32.—A substitute shall be deemed an amendment, and be treated in all respects as such.

Previous question; how demanded.

Rule 33.—The previous question shall only be put when demanded by five members.

Questions of order after previous question is ordered.

Rule 34.—All incidental questions of order arising after a motion is made for the previous question, and pending such motion or previous question, shall be decided, whether on appeal or otherwise, without debate.

The previous question; how put.

Rule 35.—The previous question shall be put in the following form: "Shall the main question be now put?" And all debate upon the main question shall be suspended until the previous question shall be decided. After the adoption of the previous question, the sense of the Convention shall forthwith be taken upon original amendments reported by a committee, upon pending amendments, and then upon the main question, without debate.

Question to indefinitely postpone.

Rule 36.—When a question is indefinitely postponed, the same shall not be again introduced during the session of the Convention.

Notice of reconsideration.

Rule 37.—On the day succeeding that on which a final vote on any proposition or resolution concerning the Constitution, or other resolution, has been taken, said vote may be reconsidered, on motion of any member; provided, notice of intention to move such reconsideration shall have been given on the day on which such final vote was taken, by a member voting with the majority; and it shall not be in order for any member to move a reconsideration on the day on which such final vote was taken. Such motion of reconsideration shall have precedence over every other motion except a motion to adjourn. No notice of reconsideration shall be in order on the day preceding the last day of the session.

Protest of members.

Rule 38.—It shall be in order for any member, or members, to protest in writing against action of the Convention, and have such protest entered upon the minutes.

Question of privilege.

Rule 39.—A question of privilege shall be entitled to supersede other business; but when a member brings forward such question, he shall first present his complaint, either verbally or in writing; and the presiding officer shall decide, in the first instance, whether such statement, however brought forward, involves a question of privilege. If such decision shall be in favor of the question of privilege, the member may then make such observations as may be pertinent to the question of privilege, and may submit such resolution or motion as he may desire for the consideration of the Convention.

Author to speak last.

Rule 40.—The author of a motion, proposition, or resolution, shall have the privilege of closing the debate, unless the previous question has been sustained.

Duty of member rising to speak.

Rule 41.—Every member, when about to speak, shall rise and respectfully address the President, shall confine himself to the question under debate, and avoid personality, and shall sit down when he is finished. No member shall speak out of his place without leave of the President.

No interruption of member while speaking.

Rule 42.—No member speaking shall be interrupted by another, but by rising up to call to order.

Times a member may speak.

Rule 43.—No member shall speak more than twice on one question, without first obtaining leave of the Convention, nor more than once until other members who have not spoken shall speak, if they desire to.

Call to order for offensive words in debate.

Rule 44.—If any member be called to order for offensive words spoken in debate, the person calling him to order shall report the words excepted to, and they shall be taken down in writing at the Secretary's table; and no member shall be held to answer or be subject to censure of the Convention for language used in debate if any member has spoken or other business has intervened after the words spoken and before exception to them shall have been taken.

Order in speaking to questions lost by adjournment.

Rule 45.—If a question pending be lost by adjournment of the Convention, and revived on the succeeding day, no member who shall have spoken on the preceding day shall be permitted again to speak without leave of two thirds of the Convention.

Calling members to order when transgressing rules.

Rule 46.—If any member, in speaking or otherwise, transgress the rules of the Convention, the President shall, or any member may call to order. In which case, the member so called to order shall immediately sit down, unless permitted to explain; and if called to order by a member, such member shall immediately state the point of order. If the point of order be sustained by the Chair, the member shall not be allowed to proceed; but if it be not sustained, then he shall be permitted to go on. Every such decision from the Chair shall be subject to an appeal to the Convention, but no discussion of a question of order shall be allowed unless an appeal be taken from a decision of the Chair.

The President to decide who is entitled to the floor.

Rule 47.—When two or more members shall rise at once, the President shall decide who is first to speak.

Taking up propositions or resolutions out of order.

Rule 48.—When a member shall ask leave to have a proposition or resolution taken up out of its regular order, he shall, in making the motion, give the number and title of the same.

Reading of resolutions before final action thereon.

Rule 49.—Every resolution proposing any alteration in the Constitution shall be read on two several days before it is finally acted upon and adopted by the Convention.

Indorsement and statement of object of papers introduced.

Rule 50.—Every member presenting to the Convention a petition, memorial, or remonstrance, shall indorse his name thereon, together with a brief statement of the nature and object of the instrument.

Title and numbering of propositions and resolutions.

Rule 51.—Propositions and resolutions proposing matter to be incorporated in the Constitution shall be prefaced with a title briefly indicating the subject to which they refer. They shall be in writing, on legal cap paper, or printed, and shall be numbered by the Secretary in the order in which they are introduced.

Resolutions limited to one subject; reading and reference of same.

Rule 52.—Propositions and resolutions mentioned in the last foregoing rule shall embrace but one subject; they shall be read once when introduced, and then referred, without debate, to an appropriate committee.

General file.

Rule 53.—All propositions and resolutions, embracing matter proposed to be incorporated in the Constitution, reported by a standing or special committee, shall be read when reported, and shall be placed on a general file, to be kept by the Secretary, in the order in which they are reported. They shall be taken from the file and acted upon in the order in which they are placed thereon, unless otherwise ordered by the Convention; provided, that engrossed propositions and resolutions shall be placed at the head of the file, in the order in which they are received. Two hundred and forty copies of the file for each day shall be printed.

Committees not to sit during session.

Rule 54.—No committee shall sit during the session of the Convention without leave.

Committee of the Whole.

Rule 55.—In forming a Committee of the Whole Convention, the President may preside or appoint a member to preside. Propositions or resolutions relating to the Constitution shall be committed to a Committee of the Whole Convention, and shall be read in Committee of the Whole by sections. All amendments shall be noted and reported to the Convention by the Chairman. After report, the proposition or resolution shall again be subject to amendment before the final question is taken.

Rule 56.—The rules of the Convention shall be observed in Committee of the Whole, so far as they may be applicable, except for limiting the times of speaking, and except that the ayes and noes shall not be taken, and that the previous question shall not be moved.

Rule 57.—A motion that the committee rise shall always be in order, and shall be decided without debate.

Orders, resolutions, etc., which shall be considered in Committee of the Whole.

Rule 58.—Every order or resolution which proposes an alteration in the Constitution, and all reports of committees appointed to consider the propriety and expediency of making any alteration therein, shall be considered in Committee of the Whole before they are debated and finally acted on in Convention.

Parliamentary rules.

Rule 59.—The rules of parliamentary practice contained in "Cushing's Law and Practice of Legislative Assemblies," shall govern the Convention in all cases to which they are applicable, and in which they are not inconsistent with the standing rules and orders of the Convention.

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Suspending and changing rules.

Rule 60.—No standing rule or order of the Convention shall be rescinded or changed without a vote of two thirds and one day's notice being given of the motion therefor; but a rule or order may be suspended temporarily by a vote of two thirds of the members present, except rules fifty, fifty-one, fifty-three, and fifty-five.

Reading of papers.

Rule 61.—When the reading of a paper is called for, except petitions and memorials, and the same is objected to by any member, it shall be determined by a vote of the Convention without debate.

Filling blanks.

Rule 62.—In filling up blanks the least sum or number, and shortest time, shall be first put.

Members at Secretary's desk.

Rule 63.—No member or other person shall remain by the Secretary's desk while the ayes and noes are being called, or while the votes are being counted.

Leave of absence.

Rule 64.—No member shall be absent more than two days without leave of the Convention; and a vote of leave of absence shall be inoperative unless the member obtaining it shall avail himself of it within five days.

Members absent not to draw pay except in case of sickness or on committee duty.

Rule 65.—No member shall receive pay for any week day on which he has not actually attended the Convention, except in case of sickness, or when he is absent on committee duty.

Papers to be left with Secretary by members on leave of absence.

Rule 66.—Every member, before availing himself of a leave of absence, shall deposit with the Secretary all papers then in his possession belonging to the Convention.

Smoking in the hall.

Rule 67.—No smoking shall be allowed within the hall of the Convention during the time of its session.

Use of hall.

Rule 68.—The hall of the Convention shall not be used for any public or private business other than that of the Convention, except by unanimous consent.

Extra pay.

Rule 69.—No increase of pay, nor any extra pay, shall be allowed any officer or attaché of the Convention, by resolution or otherwise, except by unanimous consent.

Extra assistance and compensation.

Rule 70.—No proposition for additional help in any clerical or other department of the Convention shall be entertained except by resolution, in writing, therefor, and before final action by the Convention thereon such resolution shall be referred to the Committee on Mileage and Contingent Expenses, which committee shall inquire into the necessity therefor and the amount of compensation proper, if the same shall be required, and report without unnecessary delay; and upon receipt of such report the Convention shall forthwith proceed to consider and vote upon the passage of the resolution.

Printing.

Rule 71.—Five hundred copies of each proposition or resolution embodying matter proposed to be introduced into the Constitution shall be printed.

Employment of committee clerks.

Rule 72.—No committee shall be permitted to employ a clerk at the expense of the State, without first obtaining leave of the Convention for that purpose.

Standing committees.

Rule 73.—The standing committees of the Convention shall be as follows:

1. On Preamble and Bill of Rights; to consist of nine members.
2. On Right of Suffrage; to consist of eleven members.
3. On Legislative Department; to consist of fifteen members.
4. On Executive Department; to consist of nine members.
5. On Judiciary and Judicial Department; to consist of nineteen members.
6. On Military Affairs; to consist of eleven members.
7. On State and Municipal Indebtedness; to consist of fifteen members.
8. On Education; to consist of nine members.
9. On State Institutions and Public Buildings; to consist of eleven members.
10. On City, County, and Township Organization; to consist of fifteen members.
11. On Apportionment and Representation; to consist of fifteen members.
12. On Revenue and Taxation; to consist of fifteen members.
13. On Corporations, other than Municipal; to consist of fifteen members.
14. On Miscellaneous Subjects; to consist of nine members.
15. On Future Amendments; to consist of nine members.
16. On Schedule; to consist of eleven members.
17. On Revision and Adjustment; to consist of nine members.
18. On Water and Water Rights; to consist of fifteen members.
19. On Agriculture, Manufactures, and Commerce; to consist of eleven members.
20. On Mining; to consist of eleven members.
21. On Immigration; to consist of fifteen members.
22. On Reporting and Printing; to consist of five members.
23. On Privileges and Elections; to consist of fifteen members.
24. On Mileage and Contingent Expenses; to consist of nine members.
25. On Pardoning Power; to consist of nine members.
26. On Harbor, Tide-water, and Navigable Streams; to consist of nine members.
27. On Labor and Capital; to consist of nine members.
28. On Engrossment and Enrollment; to consist of seven members.
29. On Chinese; to consist of fifteen members.
30. On Land and Homestead Exemption; to consist of nine members.

MR. REYNOLDS. I move, to save time, that the reading of the report be dispensed with, and that two hundred and fifty copies be printed and laid on the desks.

MR. BEERSTECHER. I move to amend by making it three hundred and fifty copies.

MR. REYNOLDS. It is not necessary to print that many copies until the report has been acted upon by the House, and then print them in permanent form, including the names of the standing committees.

MR. ESTEE. The names of the committees are in the report.

MR. FREEMAN. Has this report been received?

THE PRESIDENT. Yes, sir.

MR. FILCHER. I move to make the number four hundred and eighty.

MR. BEERSTECHER. I raise the point of order that this is already an amendment to the amendment, and this third amendment is out of order.

THE PRESIDENT. The point of order is well taken. The first question is on the motion that the reading be dispensed with and that two hundred and fifty copies be printed. To that an amendment has been offered to make the number three hundred and fifty.

MR. HALE. Two hundred and fifty means two hundred and forty. I suggest that number.

MR. BEERSTECHER. I withdraw my amendment.

The motion to dispense with the reading and print two hundred and forty copies prevailed.

MR. EDGERTON. I would inquire whether the report adopted mentions the number of which the Committee on Chinese shall consist.

THE PRESIDENT. I don't understand that any number was mentioned.

MR. JONES. I don't know whether it is understood or not, but I move that eleven be the number.

MR. EDGERTON. I have the floor, I believe.

THE PRESIDENT. I don't understand that any number was mentioned.

MR. EDGERTON. I move that the committee consist of fifteen.

MR. BARTON. I second that motion.

The motion prevailed.

MR. EDGERTON. I move to make the report on rules and order of business the special order for to-morrow at eleven o'clock, so as to dispose of them.

MR. FREEMAN. I move to amend by making it two o'clock.

MR. EDGERTON. I accept the amendment.

The motion as amended prevailed.

RESOLUTIONS.

MR. HERRINGTON. I offer the following resolution:

Resolved, That each standing committee of this Convention be required to furnish from its own members such Secretaries as may be requisite for the proper recording of the proceedings of such committees.

MR. HERRINGTON. I think it is useless to make any extra expenditures for clerical help, for there will always be some member of each committee who will be qualified to perform these duties.

MR. EAGON. The rules provide for that in substance. It regulates that matter entirely, and there is no necessity for that resolution.

THE PRESIDENT. The Chair will suggest to the Convention that, perhaps, they had better wait until they hear the report of the committee before introducing such resolutions, without knowing what the report is.

MR. HERRINGTON. I withdraw the resolution for the present.

MR. CAPLES. I now call for the reading of the resolution which I sent to the desk.

MR. HILBORN. I sent up a resolution before that.

THE PRESIDENT. The Chair will recognize the gentleman from Sacramento, Mr. Caples, and the Secretary will read his resolution.

MR. HILBORN. I insist upon my resolution being read first, as it was sent to the desk first.

THE PRESIDENT. I don't recollect of recognizing the gentleman from Solano. It does not matter which resolution was received first; he was not recognized by the Chair. The gentleman from Sacramento has the floor.

MR. HILBORN. I was recognized. The report was sent up and claimed the attention of the Convention, and that being disposed of, I claim my resolution comes next.

THE PRESIDENT. This is a matter of no importance. The Chair has recognized the gentleman from Sacramento.

MR. TULLY. I think it is a matter of justice.

MR. TINNIN. I am positive that the gentleman from Solano sent his resolution to the desk first, and that he was recognized by the Chair.

MR. McCALLUM. Mr. Chairman: I wish to add my testimony as to the question of fact——

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Mr. EDGERTON. I rise to a point of order. The Chair has already decided.

The PRESIDENT. The Chair recognized the gentlemen from Sacramento.

Mr. CAPLES. The gentleman can appeal.

Mr. HILBORN. I appeal from the decision of the Chair.

The PRESIDENT. The Chair understands it to be the province of the Chair to recognize the first person addressing him. My recollection is distinct that I recognized Mr. Caples.

Mr. McCALLUM. That was the point I was making when the gentleman called me to order.

Mr. HILBORN. The gentleman overlooks one thing; my resolution was properly before the House. It was not improperly sent up. I will, however, withdraw the appeal.

The Secretary read the resolution offered by Mr. Caples, as follows:

Resolved, That J. P. Dray be appointed Night Watchman at the same per diem as paid to the Doorkeepers.

Mr. HILBORN. I ask the courtesy to have my resolution read as an amendment. I offer it as an amendment:

Resolved, That James Saultry be and he is hereby appointed Night Watchman at a per diem of five dollars a day, to be paid out of the appropriations for the expenses of the Convention.

Mr. EDGERTON. I suggest that the gentleman move to strike out and insert.

Mr. HILBORN. No, sir, I want to fix this up to suit myself.

Mr. WHITE. I move as an amendment that one of the Doorkeepers be detailed for that purpose, for the reason that I understand that there are more attachés now than are necessary. We have more Pages than necessary, and more Porters and Gatekeepers than are necessary.

Mr. EDGERTON. I rise to a point of order. We passed a rule the other day that all such matters should be referred to the Committee on Mileage and Contingent Expenses.

Mr. HILBORN. I think the gentleman is mistaken. I don't think we passed any such resolution.

The PRESIDENT. I don't think there is any standing rule of that kind. But it seems to me that the Convention the other day resolved to leave the appointment of Night Watchman to the President of the Convention. I am so informed.

Mr. HILBORN. Mr. President: If you recollect, when the committee was appointed to designate the necessary officers for this house, and made their report, we called the attention of the house to the fact that the Night Watchman had not been provided for in their report. I pointed out how necessary it was that there should be such an officer, and my friend on the right corroborated my statements, and has made a report recommending that that officer should be appointed by the President. That report was recommitted to the committee, and when they reported again they left it out, so that, though the house has declared that they will have this officer, yet they have adopted a report and left it out. I doubt if the Chair has any right to appoint that officer.

Mr. BARBOUR. I have a resolution which I wish to offer as a substitute for the motion and the amendment.

Mr. HILBORN. I move that this whole matter go back to the committee, and leave it to them to say whether such an officer is necessary or not.

Mr. BARBOUR. I offer the following resolution:

Resolved, That this Convention dispenses with the services of the two side Doorkeepers and the Mail Carrier.

Mr. BARBOUR. I offer that as a substitute, to vacate those offices, upon the ground, as I am informed by the Secretary of State, that they are entirely unnecessary. In the beginning I objected to the appointment of these officers, and now I am convinced of the absolute uselessness of these officers. The Secretary of State informs me that the Mail Carrier is entirely unnecessary and useless to the Convention, and that the Postmaster might bring all the mail without any assistance. I believe in economy and reform, and every time a gentleman moves for a clerk, I will move to strike off some of them.

Mr. McCALLUM. That motion has nothing to do with the motion of the gentleman. I was going to make another motion by moving to refer it to the Committee on Contingent Expenses. I make that motion.

The motion prevailed.

Mr. WEST. Mr. President: I desire to offer the following resolution:

Resolved, That an additional committee be appointed, which shall be known as the Committee on Land and Homestead Exemptions.

Mr. ESTEE. I move to refer this to the Committee on Rules. I have no doubt but that committee, Mr. West being a member of it, will report in favor of this resolution, if it is required, but I do enter my protest against the making of committees on this floor, without the sanction or consideration of the Committee on Rules.

Mr. WEST. Mr. President: I disclaim any discourtesy towards the Committee on Rules. I offered this so that it might be incorporated in the principal report to be laid on our desks.

The motion to refer the resolution to the Committee on Rules prevailed.

Mr. HERRINGTON. Mr. President: I now offer this resolution, and ask that it be referred to the same committee:

Resolved, That each standing committee of this Convention be required to furnish from its own members such Secretaries as may be requisite for the proper recording of the proceedings of such committees.

The resolution was so referred.

Mr. BARBOUR. Mr. President: I offer the following resolution, and ask that it be referred to the same committee:

Resolved, That an additional Committee on Judiciary be appointed.

The resolution was so referred.

Mr. SHOEMAKER. I offer the following resolution:

Resolved, That a member of each committee be detailed to do the Porter's work in the committee rooms.

Mr. SHOEMAKER. I move that it be referred to the Committee on Contingent Expenses.

The resolution was so referred.

On motion of Mr. Freeman, at three o'clock and forty-eight minutes, the Convention adjourned until to-morrow morning at ten o'clock.

ELEVENTH DAY.

Sacramento, Tuesday, October 8th, 1878.

The Convention reassembled at ten o'clock A. M., pursuant to adjournment, President Hoge in the chair.

The roll was called and members found in attendance as follows:

PRESENT.

Andrews,	Harvey,	Overton,
Ayers,	Heiskell,	Porter,
Barbour,	Herold,	Prouty,
Barnes,	Herrington,	Pulliam,
Barry,	Hilborn,	Reddy,
Barton,	Hitchcock,	Reed,
Beerstecher,	Holmes,	Reynolds,
Belcher,	Howard,	Rhodes,
Bell,	Huestis,	Ringgold,
Berry,	Hughey,	Rolfe,
Biggs,	Hunter,	Schell,
Blackmer,	Inman,	Schomp,
Boggs,	Johnson,	Shafter,
Boucher,	Jones,	Shoemaker,
Brown,	Joyce,	Shurtleff,
Burt,	Kelley,	Smith, of Santa Clara,
Campbell,	Kenny,	Smith, of 4th District,
Caples,	Keyes,	Smith, of San Francisco,
Charles,	Kleine,	Soule,
Condon,	Laine,	Stedman,
Cowden,	Lampson,	Steele,
Cross,	Larkin,	Stevenson,
Crouch,	Larue,	Stuart,
Davis,	Lavigne,	Sweasey,
Dowling,	Lewis,	Swenson,
Doyle,	Lindow,	Swing,
Dudley, of San Joaquin,	Mansfield,	Terry,
Dudley, of Solano,	Martin, of Alameda,	Thompson,
Dunlap,	Martin, of Santa Cruz,	Tinnin,
Edgerton,	McCallum,	Townsend,
Estee,	McComas,	Tully,
Estey,	McConnell,	Turner,
Evey,	McCoy,	Tuttle,
Farrell,	McFarland,	Vacquerel,
Fawcett,	McNutt,	Van Dyke,
Filcher,	Miller,	Van Voorhies,
Finney,	Mills,	Walker, of Marin,
Freeman,	Moffat,	Walker, of Tuolumne,
Freud,	Moreland,	Waters,
Garvey,	Morse,	Webster,
Glascock,	Murphy,	Weller,
Gorman,	Nason,	Wellin,
Grace,	Nelson,	West,
Graves,	Neunaber,	Wickes,
Gregg,	Noel,	White,
Hale,	O'Donnell,	Wilson, of Tehama,
Hall,	Ohleyer,	Wyatt,
Harrison,	O'Sullivan,	Mr. President.

ABSENT.

Casserly,	Eagon,	Wilson, of 1st District,
Chapman,	Hager,	Winans.
Dean,	Strong,	

The Journal of yesterday was read and approved.

The PRESIDENT then announced that portion of the standing committees that had been ordered by the Convention, as follows:

STANDING COMMITTEES.

On Preamble and Bill of Rights—Van Dyke, Van Voorhies, Mills, Freud, Ringgold, Noel, Boucher, Jones, Barton.

On Right of Suffrage—Eagon, McCallum, Garvey, Glascock, Sweasey, Evey, Hugh Walker, Townsend, Wyatt, Cross, Caples.

On Judiciary and Judicial Department—Wilson, Edgerton, Terry, Shafter, Graves, Belcher, W. L. Dudley, Eagon, Howard, Campbell, Tully, George V. Smith, Steele, Laine, Hilborn, Waters, Dunlap, Barry, Beerstecher.

On Military Affairs—Barnes, Holmes, Davis, Stedman, Moffat, E. O. Smith, Harvey, Ohleyer, Brown, Hunter, Estey.

On Education—Winans, Chapman, Martin, Morse, Reynolds, Herrington, Lampson, Mansfield, Huestis.

On City, County, and Township Organization—Hager, Fawcett, McFarland, Barbour, Hale, Hall, Schell, Tinnin, Reddy, Rolfe, Barnes, Holmes, Mills, McCallum, Freeman.

On State Institutions and Public Buildings—Overton, Van Dyke, Andrews, Keyes, Larue, Condon, Wellin.

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On Appointments and Representation—Murphy, Freeman, Swing, Prouty, West, Crouch, Wickes, Burt, McConnell, Inman, Nason.

On Miscellaneous Subjects—Dean, Kenny, O'Donnell, Soule, Schomp, Stevenson, Kelley, Farrell, Lavigne.

On Future Amendments—Blackmer, Webster, Dowling, Gorham, Herold, Grace, Lewis, Weller, Charles.

On Schedule—Moreland, Boggs, Joyce, Harrison, McComas, H. W. Smith, Neunaber, Swenson, Vacquerel, Hughey, Kleine.

On Reporting and Printing—Shoemaker, Filcher, Ayers, O'Sullivan, Thompson.

On Privileges and Elections—Larkin, Stewart, Cowden, Rolfe, Berry, Martin, Shurtleff, Lindow, Nelson, McCoy, Hitchcock, Porter, G. V. Smith, Gregg, Jas. M. Dudley.

On Mileage and Contingent Expenses—Hilborn, J. M. Walker, Rhodes, McNutt, Turner, Tuttle, Bell, Doyle, Jones.

[MR. MURPHY in the Chair.]

REPORT FROM THE COMMITTEE ON RULES AND ORDER OF BUSINESS.

MR. ESTEE made the following report from the Committee on Rules and Order of Business:

MR. PRESIDENT: Your Committee on Rules, Order of Business, and Standing Committees, to whom was referred a number of resolutions, have considered the same and beg leave to report them back as follows: First—The committee recommend for adoption the resolution offered by Mr. West, of Los Angeles, that an additional standing committee be appointed and known as the Committee on Lands and Homestead Exemption, and that said committee consist of nine members. Second—The committee recommend that in place of the resolution offered by Mr. Barbour, of San Francisco, providing for an additional Committee on Judiciary System, that the present rule on that subject be amended so as to read "Committee on Judiciary and Judicial Department." Third—That the resolution offered by Mr. Herrington, of Santa Clara, that each standing committee be required to furnish from its own members a Secretary to keep its proceedings, be referred to the Committee on Mileage and Contingent Expenses.

MR. BARNES. I move the adoption of the report.

THE CHAIR. The question is on the adoption of the committees.

MR. MCCALLUM. I move that the resolution adopted, by which the rules were made the special order for to-day at two o'clock, be reconsidered with a view to calling them up at this time.

Carried.

MR. MCCALLUM. I move that we now proceed to consider the rules reported by the Committee on Rules.

MR. GRACE. I do not know how it may be with other members of the Convention, but I certainly have not had sufficient time to read over these rules. They were laid on the tables at the time of meeting this morning. I don't know what is in them.

MR. LARKIN. I move that we take up these rules seriatim, or in taking them up commence at rule one. I hope this Convention will vote upon this question and not spend the day as we did yesterday in doing nothing.

THE CHAIR. If there is no objection, the rules will be taken up. The Chair hears no objection.

CONSIDERATION OF THE RULES.

Rule 1.—The Convention shall meet each day of sitting at ten o'clock A. M., unless it shall adjourn to some other hour.

Adopted.

Rule 2.—The Convention shall take a recess each day from twelve o'clock M. to one o'clock P. M.

Adopted.

Rule 3.—Not less than seventy-seven members shall constitute a quorum for the transaction of business.

Adopted.

Rule 4.—The President, or in his absence the President pro tem., or in the absence of both, such Chairman as shall be selected by the members present, shall take the chair at the hour to which the Convention shall have adjourned, and shall immediately call the members to order.

Adopted.

Rule 5.—He shall preserve decorum and order; may speak to points of order in preference to other members, and shall decide all questions of order, subject to an appeal to the Convention by any five members, on which appeal no member shall speak more than once, except by leave of the Convention.

MR. BARBOUR. I move to amend the rule by adding after the word "once," the words "nor more than five minutes."

MR. ESTEE. In the main that would be correct, but there may be some very important questions arise, and to limit a speaker on a question of appeal would be to deprive this Convention of the opportunity to present in a perfect form the points in question. A question of appeal might raise all the points in issue, and I would suggest that five minutes is a very short time.

MR. O'DONNELL. I think they could get leave from this Convention, if they wish to speak longer on any subject that is of importance.

MR. EDGERTON. I am decidedly in favor of the amendment proposed by the gentleman from San Francisco, Mr. Barbour. If it should ever occur that a question arises here of great importance the Convention can grant any gentleman leave to speak for a greater length of time. I hope the amendment will be adopted.

The amendment was adopted.

MR. MCCALLUM. I notice that this rule five provides that "he shall preserve decorum and order; may speak to points of order in preference to other members." I would say that I think that is an unusual proceeding. I think that is something new. But here is another: "He shall decide all questions of order, subject to an appeal to the Convention by any five members." I think it is the right of any member to appeal. I move to strike out the word "five" and insert "any member."

MR. MCFARLAND. I do not think that any one gentleman should have the right to compel a vote of the House upon an appeal without he is able to get four of us to second it. It seems to me that this rule would protect us from frivolous appeals. Certainly if the ruling of the Chair is so doubtful there would always be five members to take an appeal. It seems to me that we had better let the rule stand as it is. Why should one gentleman compel a vote of this Convention when he cannot find any other gentleman to agree with him? He certainly should have five to support a proposition that the Convention would be compelled to vote on.

MR. BEERSTECHER. It seems to me that each member ought to have the privilege of appealing. If we make it five members we simply put each member to the necessity of forming a combination with four of his friends, so that when he desires to appeal his four friends will respond to that appeal. It is the easiest thing in the world, only it makes a man have an understanding with four of his friends, so that when he appeals they will respond. It seems to me that in every deliberative assembly it is the privilege of each individual member to appeal from the decision of the Chair.

MR. LARKIN. I am certainly opposed to the amendment. I would increase that number to ten. We are here for the purpose of framing a new Constitution, and I do not desire to see any frivolous appeals taken. Any appeal that is properly made will draw a sufficient number of the members of this Convention to its support. I would prefer much to increase the number than reduce it.

MR. WYATT. I do trust that the amendment will prevail, because I think it is universally the practice in deliberative bodies that any member has a right to appeal. It is putting more power than is necessary into the hands of the President of the Convention. I trust that a spirit of fairness will adopt this amendment.

MR. DUDLEY, of Solano. It is the privilege of any member upon this floor to appeal when he has a second. I suggest to the gentleman from Alameda, Mr. McCallum, that he amend his amendment so that an appeal may be taken when asked by two members instead of one.

MR. MCCALLUM. I agree to that.

MR. EDGERTON. I understand the gentleman from Alameda, Mr. McCallum, to except to that provision which provides that the President may speak to points of order in preference to all other members. That is a universal rule in all deliberative bodies, that the presiding officer may state his reasons first, and in many cases this practice saves debate. That is borrowed from the rules governing several legislative bodies, and I believe from Mr. Cushing. Now, in regard to an appeal, the rules of the California Assembly require that an appeal should be demanded by two members. That is a body of only eighty members, and there is a limitation put upon that. Now, sir, I hold that this rule, as it stands here, will greatly expedite the business of this body. It is very easy for any member to receive the support of four others if his appeal has any merit. I hope the rule will stand as reported by the committee.

MR. FREEMAN. The reason why I think any member ought to have the right to appeal is that when an appeal is taken the original point of order is not debatable, and it is not until after the appeal is taken that a motion begins to be discussed and the attention of other members are directed to it sufficiently to have them join in an appeal. I remember the other day, when the gentleman from San Francisco desired to correct the record of his vote, the Chair three or four times decided him to be out of order. As soon as the appeal was taken, and the matter began to be discussed, the Chair at once receded from the decision and allowed the gentleman the point which he claimed. I think that any one ought to have the right to bring an appeal or point of order before the house and have it discussed.

MR. ESTEE. Mr. President: Your committee, in adopting that rule, did not deviate from the well established rules adopted by all deliberative bodies, and I can safely challenge any gentleman to find an instance in the history of legislation where one single member upon the floor, by the rules of that body, can take an appeal from the decision of the Chair. In Parliament, in the Congress of the United States, in both departments of the Legislature of California, and of every legislative body of which I have any knowledge, it takes from three to ten members to take an appeal, and the reason is an obvious one. If one member can rise in his place and appeal from every indifferent question, one member upon this floor can clog the wheels of business, can stand in his place, if he so desires, and for hours keep the Convention under his control instead of the control of the Chair. I challenge any gentleman upon this floor to point to the rules of any deliberative body where one member can rise in his place and appeal from the decision of the Chair unless sustained by some other members on the floor. It is a wise and judicious provision, and I certainly hope that thus early in the history of this Convention, we will not deviate from well and long tried rules which have been established by the wisdom of deliberative bodies tracing back through the whole history of civilization, especially when this Convention is composed of such a large number of members. The members of your committee were the representatives of this whole body. That rule was adopted unanimously by the fifteen members of that committee, after carefully examining the rules of five or six other Constitutional Conventions, the rules of the Senate and Assembly, and the parliamentary law, and we concluded that that was a wise practice. We say it would be extraordinary and unusual to permit one member on this floor, whenever the Chair shall rule upon any indifferent subject, possibly not material, to take an appeal; and I hope that this House, in its own interest, and not for the purpose of sustaining the committee, in the interest of legislation, in the light of the experience of the best legislators of the time, not here, but elsewhere, will stand up to that rule, in that it shall take at least five to appeal from the decision of the Chair. One word more and I will be seated. The gentleman from Alameda took occasion to say that the portion of the rule which provides that the Chair may speak to points of order in preference to other members, was unusual.

MR. MCCALLUM. I rise to a point of order. The point is that as to that portion of the rule there is no question pending.

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MR. ESTEE. I was unable to hear the gentleman before, and if he withdraws that I have nothing more to say.

MR. McCALLUM. Now, Mr. President, I wish to say in answer to Mr. Estee, that whenever any evidence proves to be true I will adopt it, but this positive assertion that this rule has universally prevailed I most emphatically deny. During my brief term in the Senate any member could take an appeal, and after being seconded he had the right to have a vote of the Senate. I inquired of gentlemen around me whom I happened to have met at the same time in the Assembly.

MR. EDGERTON. The rule of the Assembly is not as you state.

Mr. McCALLUM. I have not said that the rule of the Assembly is not so now. If the gentleman will allow me, I said that when I was in the Senate the gentlemen who were then in the Assembly tell me that the rule then was in the Assembly as it then was in the Senate, that any gentleman could appeal, and on being seconded have a right to have that appeal submitted to the Senate or Assembly. Now the idea is not that these appeals always involve the calling of the ayes and noes, and it is the calling of the ayes and noes that occupies so much time. That requires to be demanded by five members. But the mere right of appeal—and I have accepted the suggestion of my friend here—which I suppose would imply, in the first place, that on being seconded, any member should have the right to appeal. The occasion cited by the gentleman from Sacramento, Mr. Freeman, was in point. Here the other morning, the gentleman from San Francisco demanded that his vote should be recorded as he voted. By some misapprehension he was ruled out of order. He took an appeal and had but one second. The House, or rather the Chair, corrected the division. I undertake to say that if that member had depended upon five members noticing what was going on here, he would have failed to have received the second required by this rule. I desire to see time saved, and regret to hear gentlemen speaking frequently, and at length, upon questions of little importance. But this is a question of some moment, coming right home to the rights of members upon this floor. I have to assume, and it is proper to assume, that every member here has some reputation of his own to protect, and would not desire to get the reputation of taking frivolous appeals. I have never seen a body of such dignity as this but what every member had intelligence enough to know that he would injure himself and lose his influence if he practiced anything of that kind. Now these questions will be voted upon without a call of the ayes and noes usually, and will be disposed of in much less time than is occupied in the discussions of questions of order.

MR. WICKES. I move that "two members" be inserted instead of "five members."

MR. McCALLUM. I accept the amendment.

MR. SMITH, of Santa Clara. I move for a division of the question. Take the question on the motion to strike out first.

THE CHAIR. The Chair hardly thinks the question is divisible.

MR. DUDLEY, of Solano. When the Chairman of this Committee on Rules had the honor of representing Sacramento County in the Assembly seven years ago, the rule was that two members could take an appeal. That is the case to-day in the House of Representatives of the United States at Washington. Two members can appeal, and I think that is the common rule. I hope the motion of the gentleman from Alameda will prevail. I say that was the rule at the time when the gentleman from San Francisco, Mr. Estee, represented Sacramento County in the Assembly.

MR. ESTEE. On the contrary, it was three.

MR. DUDLEY, of Solano. It was two. It is two in the House of Representatives—rule two of the House of Representatives.

MR. ESTEE. It was three.

MR. ANDREWS. Mr. President: I believe that the question now stands on the motion to make it two. I hope that will prevail. It seems to me, Mr. President, that this is a privilege that pertains to every member to have his position on any question, so that it can be entertained by the house. So far as my experience goes in legislative bodies, I have seen but very few factious appeals. It is very rarely the case. In the hurry of matters of that kind, a member may be cut off from his privilege if he has to have four or five members second his appeal before he has the privilege of stating his grounds. I think two is sufficient. I have no knowledge of any legislative body where it has required five members to take an appeal.

MR. REYNOLDS. I desire to accept the challenge of the gentleman from San Francisco, Mr. Estee, to know where there is any legislative body that required but one member to take an appeal. I will read three lines from rule eight, of the rules adopted by the Constitutional Convention of Illinois:

"The President may speak to points of order in preference to other members, rising from his seat for that purpose, and shall decide points of order, subject to an appeal to the Convention by any one member."

MR. ESTEE. Well, what was the rule in Ohio, Pennsylvania, and New York?

MR. FREEMAN. In further reply to the gentleman from San Francisco, Mr. Estee, rule twenty-eight, of the Senate says:

"Every question of order shall be decided by the President, subject to an appeal to the Senate by any member."

MR. ESTEE. Of course. But, Mr. President, the Senate was only composed of forty members. The Assembly, with eighty members, as far as my memory goes, always required three members to appeal. In Illinois, the gentleman may be right. There is a case where the Convention only consisted of eighty members. I will say this: that this rule came up for adoption in the committee, and the gentleman from San Francisco, Mr. Reynolds, voted for it. I do not understand why a member should vote for a rule in the committee, and then come into the house and attempt to defeat it.

MR. REYNOLDS. I desire to correct the gentleman, by saying that I have said not one word except to correct the gentleman's statement. He seems to be very sensitive on the subject, and I do not wonder at it, in view of the extravagant statements that he has made here in regard to the legislative experience of all past time.

MR. EDGERTON. I desire to say one word. The rule of the Assembly—and as I understand that rule has prevailed every session—is as follows:

"He shall preserve order, and may speak to points of order in preference to the members, rising from his seat for that purpose, and shall decide questions of order, subject to an appeal to the house by any two members."

As I understand it, the rule in California never was that one member can appeal, and if this Convention should adopt such a rule any factious person in this Convention can delay its proceedings for a whole day at any time. The Assembly has eighty members. This Convention has nearly double that number. Your committee, consisting of fifteen members, carefully considered the question and came to the conclusion that it should take five members, and the gentleman from San Francisco, Mr. Reynolds, cordially assented to that rule.

MR. REYNOLDS. I desire to say one word in vindication.

THE CHAIR. Does the gentleman rise to a question of privilege?

MR. REYNOLDS. Yes. When this Committee on Rules was appointed, at the first session of that committee a sub-committee of five was appointed. They put Mr. Barnes upon the committee and then proceeded to construct these rules. Yesterday morning the committee was called together, the rules were read over to the committee, and there was no such time given to the committee to consider these rules as is now given to this house. It is unfair in the gentleman to say that there has been any due consideration of these rules by this committee. There has been no due consideration of the rules by the committee. A sub-committee of five was sprung, and they have been the men who have considered these rules and not the committee. And further, it makes no difference to me whether the Senate of California, or the Legislature of California, have provided that five members shall take an appeal, or two, or three, or any other number. It is well known that the rules of the Legislature of California have been constructed under the most outrageous and unheard-of tyranny, and for the purpose of squelching and intimidating, and running through that Legislature any measure that was required by the powers that be. Now, sir, it makes no difference what the rule of the Legislature has been, but it does make a difference what the rule shall be.

MR. EDGERTON. I rise to a point of order. The gentleman merely rose to a question of privilege, and is not at liberty to discuss the merits of the question.

MR. REYNOLDS. I yield the floor. I have said all I want to.

MR. HEISKELL. My experience differs from that of the gentleman from Sacramento, Mr. Edgerton. The rule may have been changed, but at one time in the history of California it was the rule that one member could appeal provided he had a second.

THE CHAIR. The question is on the motion of the gentleman from Alameda.

MR. McCALLUM. To strike out "five" and insert "two."

The motion was lost, on a standing vote, ayes sixty-seven, noes seventy.

MR. FREEMAN. I move that the word "five" be stricken out and the word "three" inserted.

MR. VAN DYKE. Mr. President: In view of the large number in this Convention, I would be in favor of increasing that number rather than diminishing it. I think if there is any attempt by the Chair to abuse his privilege there will be no difficulty in getting five members here to demand an appeal. I do not understand that it is the particular privilege of any member. It is a matter that affects the house, and not individuals. I do not think there will be any difficulty in getting five members to demand an appeal from anything that appears to violate the privileges of the house.

The amendment was adopted, on a standing vote, ayes seventy-five, noes sixty-two.

MR. STEDMAN. I desire to move the addition of the following words to that section: "Except the party appealing, who may speak twice."

MR. ROLFE. That would mean that the three members appealing could speak twice. It requires three members to appeal, and the amendment would therefore allow them all to speak twice.

MR. STEDMAN. In offering the amendment, I referred to the party first appealing. There would certainly be one to appeal first, and then two to second the call. Under my amendment it is intended that the first party appealing should have the right to speak twice.

The amendment was lost.

MR. COWDEN. I move to amend by inserting after the word "committees," "officers and attachés not now appointed, who shall be deemed by the Convention."

MR. LARKIN. I rise to a point of order—that the amendment is not germane to the rule.

THE CHAIR. The point of order is well taken.

Rule five was adopted.

Rule 6.—All committees shall be appointed and announced by the President, unless otherwise specially directed by the Convention.

Adopted.

Rule 7.—All writs, warrants, and subpœnas, issued by order of the Convention, shall be under his hand and attested by the Secretary.

Adopted.

Rule 8.—The President shall have the right to name any member to perform the duties of the Chair, but such substitution shall not extend beyond an adjournment.

MR. BARBOUR. I move that the words "perform the duties of the Chair" be stricken out, and the word "preside" be inserted.

The amendment was lost and the rule adopted.

Rule 9.—The President shall have the general direction of the hall

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of the Convention and of the galleries. No persons, excepting members, officers, and attachés of the Convention, and such persons as may be invited by the Convention, or by the President, shall be admitted within the bar of the Convention. The Chairman of each Committee of the Whole, during the sitting of such committee, shall have the like power of preserving order in the hall and in the galleries.

Adopted.

Rule 10.—The Secretary must attend each day, and call the roll, read the Journal, and all propositions or resolutions. He shall have the direction of the Assistant Secretaries unless otherwise ordered.

Adopted.

Rule 11.—The Assistant Secretaries must attend each day, take charge of all resolutions, propositions, petitions, memorials, and other papers presented to the Convention, file and enter the same in the books provided for that purpose, and perform such other duties as may be directed by the Secretary of the Convention.

Adopted.

Rule 12.—The Minute Clerk must keep a correct record of the proceedings of the Convention.

Adopted.

Rule 13.—The Journal Clerk must record each day's proceedings in the Journal, from which they must be read each day by the Secretary, and then be authenticated by the signature of the President.

Adopted.

Rule 14.—The Sergeant-at-Arms must give a general supervision, under the direction of the President, to the hall of the Convention and rooms attached, attend during the sittings of the Convention, execute its commands and all process issued by its authority, keep an account of pay and mileage of members, attachés and employés, and prepare checks for the same.

MR. FREEMAN. I would like to inquire about this expression, "and prepare checks for the same."

THE CHAIR. Warrants, I suppose.

MR. EDGERTON. That rule is almost in the language of the rule of the Assembly. I suppose the Sergeant-at-Arms gives the check to the Controller of State to draw the warrant. There are other rules here. There is a rule which provides that there is no pay in some cases to be allowed; that persons who are absent on business, except committee duty, or sickness, shall not have any pay at all. The Sergeant-at-Arms keeps the accounts and gives a statement to the Controller of State. It will be found in the Assembly rule. I think it is also in that section of the Code regulating the duties of the Sergeants-at-Arms of the Senate and Assembly.

MR. FREEMAN. I cannot see any meaning in the words. I move to strike out the words "and prepare checks for the same."

MR. EDGERTON. The words "prepare checks" are copied from the Code.

MR. ESTEE. Because the Controller has to have a voucher in order to settle with the State.

THE CHAIR. I am informed by the Sergeant-at-Arms that the pay-roll is already printed and he has only to fill them out.

The motion was lost.

MR. FILCHER. I move to insert in place of "prepared checks for the" the words "receipt for warrants for the."

MR. EDGERTON. Every gentleman has to receipt for his warrant when he draws it. This is an authority for the Controller of State to draw his warrant. It is proper as it stands.

The motion was lost.

MR. HERRINGTON. I think it would be satisfactory to the members to strike out the words "and prepare checks for the same," and insert "and fill up the pay-rolls of members for the Controller."

MR. EDGERTON. The Sergeant-at-Arms keeps the pay-roll, and the Controller acts independent of the pay-roll. I hope the motion will not prevail.

MR. HUESTIS. Would a motion to strike out and insert be in order? I move to insert as follows: "and prepare for the Controller of State a pay-roll of members and attachés of this Convention."

The motion was lost and the rule adopted.

Rule 15.—The Assistant Sergeant-at-Arms must attend the sittings of the Convention each day, prohibit all persons except members, officers, and employés, and such other persons as may have the privilege of the floor assigned them by the Rules of the Convention, from entering within the bar unless upon invitation, and keep order in the halls, lobbies, and galleries.

Adopted.

Rule 16.—The Secretary and Assistant Secretaries, at the close of the session of the Convention, must deliver to the Secretary of State, duly marked, labeled, and arranged, all propositions, resolutions, petitions, memorials, and other papers belonging to the Convention, and also all books belonging to the same.

Adopted.

Rule 17.—Order of Business.—1. Roll call. 2. Reading and approval of the Journal. 3. Presentation of petitions and memorials; under which head shall be included remonstrances, communications from individuals and public bodies. 4. Communications from State officers; under which head shall be embraced, also, communications from public officers, and from corporations in response to calls for information. 5. Reports of standing committees, in the order in which they stand in the rules. 6. Reports of select committees. 7. Introduction of resolutions and propositions relating to the Constitution. 8. Unfinished business. 9. Special orders. 10. General order. 11. Miscellaneous motions and resolutions.

MR. SHAFTER. I move to strike out of the fourth clause the words "in response to calls for information."

MR. LARKIN. I deem this one of the most important provisions in this rule. This Convention should have the power at any time to call for information from any corporation. It may be very important for us to ascertain some things.

MR. SHAFTER. That rule excludes any communication from corporations, except those that are made in response to a call for information. I want them all, either voluntary or otherwise, made subject to that order of business. As it is now they are excluded entirely.

MR. WYATT. I hope, Mr. President, that the fourth clause, under discussion, will not be stricken out. It will certainly be competent for this Convention to receive any and all proper communications from State officers, corporations, or any body or individual, and it will be the highest privilege and pleasure of the Convention to do so; but we certainly ought to have a rule by which we assert our authority, by which we intend to claim the authority, and by which we intend to exercise the authority of gaining information from State officers, from corporate bodies, or from any other body within the jurisdiction of the State of California. I hope, therefore, that the fourth clause of the rule under consideration will not be stricken out.

MR. McFARLAND. I do not think that the Convention apprehends the scope and purpose of the amendment. Now the clause as it reads is, "and from corporations in response to calls for information." Now, if you allow that clause to stand, you say, virtually, that a corporation shall not communicate with this Convention unless in response to a call for information.

MR. EDGERTON. The third order of business is the presentation of petitions and memorials. Now, any individual, or any corporation, can communicate with this Convention under that head.

MR. McFARLAND. From individuals and public bodies; it seems to me that it would exclude corporations, and that the fourth clause would be construed to mean that the corporations should not be allowed to communicate at all, except in response to calls for information. If you strike out these words, we can receive communications whether demanded or not. If any gentleman desires any information, of course by calling for it, he can get it. But it seems to me that if you leave these words in, we say in effect that we shall not receive any communications from corporations unless upon a call for information. Therefore I am in favor of the motion to strike out.

MR. SHAFTER. If the amendment is construed in this way, I ask leave to withdraw it.

Leave was granted, and the amendment withdrawn.

The resolution was then adopted.

Rule 18.—When a question is under debate, or before the Convention, no motion shall be received but: 1. To adjourn. 2. To lay on the table. 3. For the previous question. 4. To postpone to a day certain. 5. To commit or amend. 6. To postpone indefinitely. Which several motions shall have precedence in the order in which they are named; but the first three shall be decided without debate; and no motion to postpone to a day certain, to commit, or to postpone indefinitely, being decided, shall again be allowed on the same day, and at the same stage of the proceedings.

MR. FREEMAN. I see that in the latter part of this rule certain motions are spoken of. This last clause seems to be ambiguous. I therefore move to strike out "and at the same stage of the proceedings."

MR. EDGERTON. That rule was adopted from the rule of the Assembly of California. The committee thought that it was not proper that it should come up again at the same stage of the proceedings, but upon further deliberation, at some other hour of the day, it might be deemed advisable to take it up again.

The motion to strike out was lost, and the rule adopted.

Rule 19.—All questions relating to the priority of business shall be decided without debate.

Adopted.

Rule 20.—When a motion is made to refer any subject, and different committees should be proposed, the question shall be taken in the following order:

1. The Committee of the Whole Convention.
2. A Standing Committee.
3. A Select Committee.

Every committee of the Convention to whom a resolution or proposition has been referred shall report the same to the Convention within fifteen days from the time it is received by the Chairman of the committee, unless further time to report is granted, unless otherwise ordered by the Convention. Every proposition or resolution shall be referred to the appropriate standing committees as indicated by its name given herein.

Adopted.

Rule 21.—Any member may call for the division of a question when the sense will admit of it. A motion to strike out shall be deemed indivisible; but a motion to strike out being lost, shall neither preclude amendment nor a motion to strike out and insert.

MR. BARTON. I move to amend by inserting the following: "Provided, that in no case when the ayes and noes are called shall any two members of this Convention be permitted to pair off."

MR. EDGERTON. I rise to a point of order. That is not germane.

THE CHAIR. The point of order is well taken.

The rule was adopted.

Rule 22.—Upon a call of the Convention the names of the members shall be called over by the Secretary and the absentees noted; after which the names of the absentees shall again be called over. The doors shall then be shut, and those for whom no sufficient excuses are made may, by order of those present, be taken into custody as they appear, or may be sent for and taken into custody wherever found by the Sergeant-at-Arms, or by a special messenger, to be appointed for that purpose.

MR. STEDMAN. I move that the following be prefixed to the rule: "Any three members have a right to demand a call of the Convention, but if any objection be made the demand shall be sustained by one fifth of the members present and."

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Mr. EDGERTON. I think, perhaps, that the gentleman does not know that a call of the Convention cannot be had except by a majority vote of those present. A call of the Convention is never had except by a majority vote of the Convention or house itself. I hope the gentleman will withdraw his motion.

Mr. STEDMAN. I must differ with the gentleman from Sacramento. The Ohio Convention, from which I get that rule, was a body with one hundred and five members. Now I understand that any member can order a call of the house, no matter if there is not a majority present, no matter if certain members are present, if there is any body that three members can call for a call of the house. That is the reason that I have offered this, in order that it can be done by any three members at any time.

Mr. WATERS. Under the rules that we have, it does seem to me that any gentleman may move a call of the house. Any gentleman may second the motion. The motion will then be put, and if a majority vote for the call of the house, it is ordered. The rule that the gentleman announced was more strict even than ours. There a certain number had to move before a call could be voted on. As we have it here, if we find at any time our quorum is growing small, any gentleman may move for a call of the house. He gets a second to the motion, and the motion is put by the Chair. If a majority vote for it, the call is ordered. Then this rule comes into play. It seems to me that there is no amendment necessary to this rule.

Mr. STEDMAN. I withdraw it.

Mr. O'SULLIVAN. I move to strike out the words "to be," between the words "wherever" and "found."

The motion prevailed and the rule was adopted.

Rule 23.—Upon a division or count of the Convention on any question, no person without the bar shall be counted.

Adopted.

Rule 24.—On all questions and motions whatsoever, the President shall take the sense of the Convention by ayes and noes, provided five members present shall so require it. When the ayes and noes are taken no member shall be allowed to vote who shall have entered the Convention after the calling of the roll is finished. The names of members shall be called in alphabetical order; provided further, that on all resolutions and propositions relating to the Constitution, the final vote shall be taken by ayes and noes.

Adopted.

Rule 25.—No member shall be allowed to explain his vote or discuss the question while the ayes and noes are being called; and no member shall be allowed to change his vote after the vote is announced from the Chair.

Mr. BARTON. I believe that my amendment would apply to this rule. I, therefore, move to amend by inserting "provided that in no case where the ayes and noes are called shall any two members of this Convention be permitted to pair off."

The SECRETARY. Where is it to be put in?

Mr. EDGERTON. Let it be put in where it ought to be and then vote it down.

The amendment was lost.

Mr. MORSE. I move to amend rule twenty-four by inserting after the word "finished," in the fifth line, the words "nor shall a member be entitled to vote unless he is in his seat."

Mr. ESTEE. I hope this amendment will not be adopted. Sometimes it is a matter of convenience for a member to be in another part of the hall, and if he is not interfering with the work of the Convention, I see no reason why he should be deprived of his vote.

Mr. CROSS. It seems to me that there is good reason for requiring members to vote from their seats. It is the only way the Secretary can tell whether the person answering is the person entitled to vote. Now, during the past few days members have been answering to other members' names. A mistake is very easily discovered and corrected where a member is required to vote from his seat. An absent member's name has been voted here.

Mr. MORSE. I offered the amendment for the very reason stated by the gentleman from Nevada, Mr. Cross. I think I have noticed members vote sometimes at a distance from their places, and it is difficult for the Secretary to tell whether a gentleman has voted, or whether somebody else voted by mistake. I think the member voting should be in his seat.

Mr. LARKIN. I regret very much to differ with my friend, Mr. Morse, upon this question. I might desire to vote upon a measure, and I believe that the Secretary will soon ascertain whether the person voting is the proper voting person. I don't think that the lobby is going to get in here and vote for us. I don't think we ought to be compelled to sit in our seats during a session of ten or twelve hours. If members should desire to stand at the side, or anywhere within the rail, they should be entitled to vote. If he is within the rail he should be entitled to vote.

Mr. McCALLUM. I wish to offer another amendment. There is no doubt but that the Secretary can tell who votes, by their personal appearance, and by their voices. I propose this amendment: after the word "finished" insert "except by consent of the Convention." As this reads, no member coming in after the roll has been called, this long roll of one hundred and fifty members, can vote at all, under any circumstances.

The CHAIR. After the roll is finished?

Mr. McCALLUM. By consent of the Convention. I ask to insert the words "except by consent of the Convention." That is, not after the result has been announced; that would be too late, I admit, but after the roll is finished, and the result not announced, a member coming in ought to be permitted to vote.

Mr. EDGERTON. I hope that the suggestion of the gentleman from Alameda, Mr. McCallum, will not prevail. The rule reads: "When the ayes and noes are taken no member shall be allowed to vote who shall have entered the Convention after the calling of the roll is finished." I do not think any gentleman here ought to be permitted to leave the Convention and speculate upon results and then come in and vote. There is another general rule that any of these rules may be temporarily suspended by a two-third vote, and there is no danger of injustice being done.

Mr. McCALLUM. I withdraw my motion.

Mr. MORSE'S amendment was lost.

Mr. STEDMAN. I move to amend rule twenty-five by adding the following words: "All members of this Convention must vote on every question, unless a sufficient excuse, to be accepted by the Convention, be given."

Mr. EDGERTON. I rise to a point of order. My point is that it is not germane to the subject-matter.

Mr. ESTEE. I am in favor of embodying that rule somewhere, but I do not think this is the proper place for it. I suggest to the gentleman that he withdraw it, and have it placed in a separate rule.

Mr. STEDMAN. I will withdraw it.

Mr. LAINE. I would like to inquire of the Chairman of the Committee on Rules in regard to the meaning of the first clause of this rule. It reads: "No member shall be allowed to explain his vote or discuss the question while the ayes and noes are being called."

Mr. ESTEE. We understand it to be this: after the first name is called that no business can intervene, but that any member, when he rises to vote, of course, by leave of the house, can make an explanation. The object is that the roll call shall not be disturbed by any member rising to speak upon any question, and if he explains his vote he must confine himself to the explanation.

Rule twenty-five was adopted.

Rule 26.—It shall be the duty of each member who moves that any committee be instructed to inquire into the expediency of amending or revising the existing Constitution, to point out the amendment which he deems expedient, in writing, to accompany his motion.

Mr. WYATT. I hope the gentleman will explain what is meant by that rule.

Mr. ESTEE. I would ask the gentleman to state in what respect. It seems to me to be plain language. "It shall be the duty of each member who moves that any committee be instructed to inquire into the expediency of amending or revising the existing Constitution, to point out the amendment which he deems expedient, in writing, to accompany his motion." The proposition is this, Mr. President: A gentleman may feel a deep interest in the question of taxation. He introduces a resolution that the Committee on Taxation report to this Convention a certain section declaring that mortgages shall be taxed, for instance, and the object of this rule is that the gentleman shall embody in his resolution the identical instructions to be conveyed to the committee, so that the committee shall fully understand the wish of the house.

The rule was adopted.

Rule 27.—Motions and reports may be committed or recommitted at the pleasure of the Convention, and with or without instructions from the Convention.

Adopted.

Rule 28.—No motion or proposition of a subject different from that under consideration shall be admitted under color of amendment.

Mr. HERRINGTON. I move to strike out the word "of" and insert the word "on" after the word "proposition."

Mr. EDGERTON. The rule is right as it is. The proposition is of a subject, not on a subject.

The amendment was lost.

Mr. McCALLUM. I move to amend by adding after the word "amendment" the words "or substitute."

Mr. ESTEE. There is no substitute in the rules.

The CHAIR. Rule thirty-two makes a substitute an amendment.

Mr. McCALLUM. I withdraw the amendment.

Mr. WATERS. I rise to a point of order. It is twelve o'clock. Under the rule that has been adopted, the Convention must take a recess until one P. M.

The CHAIR. The point of order is well taken. The Convention will take a recess until one P. M.

AFTERNOON SESSION.

The Convention reassembled at one o'clock. Mr. Murphy in the chair. Roll call dispensed with.

Mr. BIGGS. I think the roll should be called.

The CHAIR. Does the gentleman insist upon the roll.

Mr. BIGGS. I move that the absentees of this morning be called.

The CHAIR. I will suggest if there are any absentees in the hall, they will rise and be recorded. The question is upon the adoption of rule twenty-nine.

Mr. ESTEE. Before passing to rule twenty-nine, I understood we were considering rule twenty-eight, when we took a recess.

The CHAIR. Rule twenty-eight was adopted—no, it was not adopted. The question was on the adoption of rule twenty-eight.

Mr. ESTEE. I move to amend by striking out the words "motion or proposition of a."

The motion prevailed, and the rule, as amended, was adopted.

Rule 29.—A motion may be withdrawn, by leave of the Convention, at any time before amendment or decision.

Adopted.

Rule 30.—A motion to adjourn shall always be in order. The Secretary shall enter on the minutes the name of any member moving an adjournment, and, also, the hour at which the motion is made.

Mr. TINNIN. I move to strike out the word "Secretary," and insert "Minute Clerk." The Secretary has nothing to do with it.

The CHAIR. No objection, the correction will be made.

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MR. MCCALLUM. I move to amend rule thirty, by inserting after the word "order" in the first line, the words, "and shall be decided without debate."

Mr. SWING. I think rule eighteen covers this same ground.

The amendment was rejected, and the rule adopted.

Rule 31. No motion shall be debated until the same shall be seconded and distinctly announced by the President; and it shall be reduced to writing, if desired by the President or any member, and shall be read by the Secretary, before the same shall be debated.

Adopted.

Rule 32.—A substitute shall be deemed an amendment, and be treated in all respects as such.

MR. MCCALLUM. Mr. Chairman: I don't rise for the purpose of offering an amendment to the rule, but to ask the Chairman of the committee if I am right in my construction of it: "A substitute shall be deemed an amendment, and be treated in all respects as such." Then, all substitutes are to be treated as amendments; in other words, substitutes are not to be entertained in any case. That will do away with substitutes entirely. Now, if I understand the law properly, an amendment to an amendment to an amendment is not in order. But a substitute for a pending resolution, and the amendment to that resolution, is in order, and the resolution and its amendment may be superseded by a substitute. I am not in favor of this radical innovation. If a resolution is presented, to which an amendment is offered, and the Convention is opposed to the whole theory of the proposition, the most expeditious way to dispose of it, is to adopt a substitute for the whole thing, and then use the substitute as a basis of action.

MR. TINNIN. I rise to a point of order. The gentleman has not offered any amendment.

THE CHAIR. The point of order is well taken.

MR. MCCALLUM. I am speaking against the resolution itself. Now, I move now, Mr. President, that this substitute be recommitted—that this rule thirty-two be recommitted to the Committee on Rules, and I ask this Convention whether it is prepared to dispense entirely with the practice of legislative bodies of using substitutes. I say it is a convenient and practical mode of arriving at the sense of the majority of the Convention; much more expeditious than the mode here proposed.

MR. TINNIN. In answer to the gentleman, and for his information, I will state that this rule has governed the legislative bodies of this State for a good many years, and as a general thing I think it has worked well, and given general satisfaction.

MR. ESTEE. This rule was interposed to do away with the question as to whether it was possible to have a substitute that was not an amendment in itself; and second, because it was not thought wise that there should be four questions pending before the house at one time. Now, sir, there can be the original question, and there can be the first and second amendments, and then there would be a substitute besides. That would be four. Now, we propose to treat a substitute as an amendment, and there will be but three questions before the house, and if the gentleman wants to reach the sense of the house by adopting any new proposition, he can refer it to a committee with instructions, and in half a dozen different ways, that are familiar to him. I trust this rule, of all others, will be adopted, as it will be found to facilitate the business of this body. You will find, by and by, in considering these amendments, the different members jumping up and proposing this amendment and that amendment, and we will get very much mixed, and if you will treat these substitutes as amendments, then there never can be any confusion. Then there will be the main question, the amendment, and the amendment to the amendment, and those three questions are familiar to all persons on this floor. I hope, for the sake of simplifying matters, the rule will be adopted. It has been the rule in our legislative assemblies for a number of years, and it has worked well.

MR. WATERS. I will state that under this rule we may have two amendments. One of these amendments, or both of them, may be substitutes. We call them amendments, although they may be substitutes. Now, the committee have recommended this rule so that there cannot be so many motions pending at one time. It cuts off the possibility of there being four or five questions before the house at one time.

MR. CROSS. Mr. President: It seems to me if we adopt this rule as it reads, it will in a great measure do away with the real benefits arising from the use of substitutes. It was illustrated yesterday, when one gentleman offered a resolution that "A" be appointed Doorkeeper. Now, if this rule is adopted, another gentleman might amend by making the salary fifty dollars a month, and another might amend the amendment by making it thirty dollars a month. Now, under this rule, if another member wants to move that "B" be appointed Doorkeeper instead of "A." before that can be done we will have to take three separate votes; vote the amendment to the amendment down, and then vote the amendment down, and then vote the original resolution down, and then take up the resolution to appoint "B" Doorkeeper. Now when there are three such motions before the house, the whole business can be closed out at one stroke, and that stroke is the substitute. That is the advantage which a substitute has; it enables us to arrive at the sense of the Convention by a single vote, and I think we should adhere to the principle of the substitute. A substitute, by one vote, can take the place of three or four.

MR. MCCALLUM. Suppose this to be the case. Suppose an amendment to the Constitution is proposed, the whole theory of the proposition the majority of this Convention are opposed to. An amendment is offered, and an amendment to the amendment; so far you can go with amendments; but the third amendment, which would be a substitute, would be ruled out of order, because, as has been suggested, you can't propose an amendment to an amendment to an amendment. Now, we will suppose that all the time it is clearly the judgment of the Convention that the whole proposition is the wrong basis of action. Now, the matter being an important one, the roll is called. We have to call the roll on amendment one and on amendment two, and spend all that time calling the roll twice, whereas, if the Convention can have the opportunity, it can vote on a substitute to take the place of the original motion. I know that many innovations have been made in the customs, but whether wisely made or not, I cannot say, but as far as my own judgment is concerned, I think not. I don't believe but what, with the intelligence of this Convention, they will be able to keep the run of even four propositions—the resolution, the amendment, the amendment to the amendment, and the substitute—for in that case, without this rule, the first question will be on the adoption of the amendment, which will take the place of the resolution and the two amendments, whichever is in accordance with the will of the majority of the Convention. The question in that case is on the substitute.

MR. WATERS. It does seem to me that the logic of the gentleman is entirely out of the way. He is presuming that the substitute, or in other words, that the last motion to be put is always right, and that the substitute will always represent the wishes of the majority of the Convention. If the rule is to allow four or five amendments, he is presuming that the last one is always going to be the best. If we limit it to two amendments the matter can be reached just as quickly as the other way. There is no reason to presume that the last amendment offered, if we allow four or five, is going to be the best one. Let us limit the number, and then we can keep straight and know what we are doing.

MR. WEST. I am not at all particular whether this section is adopted or not. I am clearly of the opinion that the committee intended to shorten the process in this Convention by the adoption of that rule. Now it is well known by gentlemen of experience in parliamentary law that there are four propositions, the original, the amendment, the amendment to the amendment, and the substitute. It is an established rule of parliamentary usage that the mover of the original proposition, and the friends of the original proposition, should have the benefit of all the amendments; in other words, that the friends have the privilege of amending the original proposition, and putting it in the best light possible. Then if a member offers a substitute the two propositions come up on their respective merits. Now, your committee endeavored to shorten and simplify matters as much as possible.

MR. HERRINGTON. It occurs to me that these two rules, twenty-nine and thirty-two, taken together, solve this problem. "A substitute shall be deemed an amendment and be treated in all respects as such." Then rule twenty-eight: "No subject different from that under consideration shall be admitted under color of an amendment." That does away entirely with any such thing as a substitute, and makes a substitute actually an amendment, because it must pertain to the same subject.

MR. ROLFE. I am in favor of adopting the rule as originally recommended by the committee. I call the gentleman's attention to rule twenty-eight, which says: "No subject different from that under consideration shall be admitted under color of an amendment." Now, unless a substitute is treated as an amendment, why any gentleman might get up here and move that when this Convention adjourn it do adjourn until next Monday. Another gentleman might get up and move as a substitute that this Convention appoint an additional Page. Now, if a substitute is not treated as an amendment—and I will confess right here that I have had no experience in parliamentary law, never was in a legislative body in my life—but it does seem to me that unless a substitute is treated as an amendment a man may make an amendment to a motion, another may offer an amendment to the amendment, then another gentleman rises and makes a motion, or offers something as a substitute to the whole thing, and then another gentleman will move an amendment to the substitute, and another will get up and move an amendment to the amendment to the substitute, and thus we will have about six propositions before the Convention at one time. If gentlemen want so many propositions to be entertained, let them amend the rule so that an amendment to an amendment to an amendment may be entertained. Let them do it directly, and not try to accomplish it in this roundabout way. I am in favor of the rule as it stands.

MR. WELLIN. I move to strike out the rule entirely.

MR. DUDLEY, of Solano. I move to strike out the rule under consideration and insert the following:

THE CHAIR. There is a motion before the house to recommit this to the Committee on Rules.

The motion to recommit was lost.

The question being on a motion to strike out, it was lost.

MR. DUDLEY, of Solano. I offer an amendment. "A substitute shall be in order, but shall not take precedence of pending amendments; but after all pending amendments have been acted upon, the substitute shall take precedence of the original motion."

MR. ESTEE. That defeats the very object of the rule.

The amendment was rejected.

The question being on the adoption of the rule, it was adopted.

Rule 33.—The previous question shall only be put when demanded by five members.

Adopted.

Rule 34.—All incidental questions of order arising after a motion is made for the previous question, shall be decided, whether on appeal or otherwise, without debate.

Adopted.

Rule 35.—The previous question shall be put in the following form: "Shall the main question be now put?" and all debate upon the main question shall be suspended until the previous question shall be decided. After the adoption of the previous question, the sense of the Convention shall forthwith be taken upon original amendments reported by a committee, upon pending amendments, and then upon the main question, without debate.

MR. ESTEE. I move to amend so that it will read, "after the adoption of the previous question the sense of the Convention shall forthwith be taken: first, upon original amendments reported by a

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committee, then upon pending amendments, and then upon the main question, without debate."

The motion prevailed, and the rule as amended was adopted.

Rule 36.—When a question is indefinitely postponed, the same shall not be again introduced during the session of the Convention.

Mr. McFARLAND. I don't know that I understand the purport of that rule: "When a question is indefinitely postponed, the same shall not be again introduced during the session of the Convention." Now, sir, I understand that this Convention, at the last moment, at any time, may take any action it pleases upon any proposition that has been presented. I do not understand that if it votes one way to-day it cannot vote another way to-morrow. Is the majority of the Convention to be bound hand and foot because a question has been indefinitely postponed? If it is, I am not in favor of any such rule.

Mr. ESTEE. The purpose seems to be very clear. It is that when a question is brought before this body for discussion and disposition, and is disposed of by indefinite postponement, it cannot be brought before the body again during this session, unless by suspending the rules. Now, any one of these rules can be suspended by a two-thirds vote, and if at any period it shall be found that we have made a mistake, you can certainly get two thirds of this Convention to agree to suspend the rules. The object is to facilitate business, and I hope the rule will be adopted.

Mr. WHITE. I move to insert the words "without the consent of the Convention."

Mr. McFARLAND. Now the explanation given by the Chairman satisfies me that we ought not to adopt this rule. He says the rules may be suspended by a two-thirds vote. Now, suppose a majority of this Convention vote to-day to indefinitely postpone a proposition, and suppose next week, or next month, after further consideration, the majority are in favor of the same proposition. According to the gentleman's motion you cannot act upon it again unless you can get a two-thirds vote. I say it is not right. I think we ought to be open to the last moment to conviction and reason. If I should vote to-day against a measure, and to-morrow I should become convinced that I was wrong, I should want the privilege of voting the other way, and the majority should be allowed to undo what it has done at any time. In that way the minority would be able to control the majority and I say it is not right. It seems to me to be a very dangerous precedent to establish. I do not understand that you can bind this Convention in any way; I understand that the majority can do as they please. I am opposed to this rule.

Mr. BARBOUR. I am opposed to this rule, and still more opposed to it after hearing the explanations of the gentleman from San Francisco. He says, after a question has been fully discussed and is indefinitely postponed, that it is permanently disposed of. Now, sir, I should like to know how it follows that a question can be discussed before it can be postponed. It seems to me that with this rule the minority might gag the majority, unless the Convention could muster a two-thirds vote to take it up again after it has been indefinitely postponed, and I am opposed to any such gag rule as this. It seems to me the majority should always be able to take up a question, and I am opposed to the motion. We have rule eighteen, which provides what shall be done in such a case: that is that a question shall not be taken up again on the same day, at the same stage of the proceedings. Now it seems to me if there is a disposition to cut off debate and gag this Convention, this rule will do it, and I am opposed to it.

Mr. ESTEE. The gentleman from San Francisco seems to entertain the idea that every member who does not believe as he does, is trying to gag him, and trying to gag the Convention. The rule referred to here is an old, well recognized rule of parliamentary law, and it is no innovation. It was not first discovered by this committee. It is as old as the history of parliamentary bodies, and your committee placed it among the rules because they thought—and they still believe—that in a body as large as this, they should have such a rule, namely, that when a question is indefinitely postponed, the same shall not again be introduced during the session of the Convention. Now, rule eighteen prescribes that the question of indefinite postponement shall be the last one disposed of by the Convention. In other words, you can exhaust the whole list of motions under these very rules before you reach the question of indefinite postponement. You have the privilege of amending a proposition as much as you please; you can perfect it, and then, after full consideration, if the majority of the Convention deliberately votes to postpone it, I want to know where the gag law applies. If there be any gag law in it, it is that the minority are attempting to impose upon the majority, and I deny that this committee has attempted to gag the gentleman from San Francisco or any other gentleman.

Mr. BARBOUR. Suppose a motion to postpone is made, and suppose the previous question is immediately moved, what are you going to do about it?

Mr. ESTEE. If the gentleman would take the trouble to study parliamentary law a little, he would have some idea of these things. If this rule is not adopted there will be no end to the debate. A question will be indefinitely postponed to-day, and to-morrow it will be brought up again and a long debate will again ensue, and the next day the same thing over again. This rule was intended to be in the interest of the business of the Convention and not as a gag.

Mr. RINGGOLD. This is a gag law, sir, and strikes directly at the minority, and I hope the minority will be wise enough to defeat it.

Mr. HERRINGTON. I move to amend by inserting after the word "question," in line one, the following: "other than such as relates to the Constitution directly," so as to read, "When a question, other than such as relates to the Constitution directly," etc.

Mr. HEUSTIS. I move to amend by adding "except by a majority vote." It seems to me that this is right and proper.

Mr. FILCHER. I raise the point of order that anything can be done by a majority vote any way, without the rule, and such a rule would be entirely useless.

Mr. HEUSTIS. I don't think the gentleman's point is well taken. I think it is nothing more than right that if this Convention to-day should arrive at a conclusion upon some proposition to be embodied in the Constitution, and in three weeks hence it clearly appeared to them that they were wrong in the first instance, they should have the right, by a majority vote, to undo what they had done and reverse their former action.

Mr. SHOEMAKER. The rule, as it stands now, is very old. We find it in Jefferson's Manual, page one hundred and forty-four. There is no gag about it.

Mr. McFARLAND. I am very sorry that in making a set of rules, party questions should be sprung here. I have no idea that this rule was ever intended to gag any member or any number of members in this Convention, but I am opposed to the adoption of the rule on principle. I understand a Convention of this kind to be very different from a Legislature. The Legislature does its work every two years. If any wrong is done it can be remedied within two years. A Constitutional Convention does its work for a generation. I do not apprehend that any clause can be put in the Constitution which we intend to submit to the people, unless the majority is in favor of it; but I do not believe that any clause the majority wants to put in there ought to be kept out by the minority, and I do not believe that the majority are going to be bound up with a rule like that. Now, there are a number of questions to come up here, upon which I have no decided opinion at present; I desire to hear the reasoning and views of others. Now, a proposition may be brought up here, and without discussion may be indefinitely postponed, and be forgotten. Afterwards, it may become apparent that such a proposition is proper, and then a minority of the Convention can prevent it. This is the direct effect of the rule. I understand that such a rule as this is common in legislative bodies. I do not know whether such is the case or not. But there is no comparison between the two bodies. The majority of this Convention, if they make a mistake, should be able to get right at any moment.

Mr. CAMPBELL. Mr. President: These rules are for the future government of this Convention. As has well been said by the gentleman from Sacramento, Mr. McFarland, this is no ordinary legislative body. We should have the utmost freedom in the consideration of all questions relating to the organic law, and it would be unjust to the people of this State—it would be unreasonable in the extreme—if at some time when there is a thin house, a proposition by a bare majority vote should be indefinitely postponed, to say in our rules, that at some future time a majority of the whole Convention could not call it up again and reopen the subject. It seems to me that the amendment offered by Mr. Heustis exactly meets the case. Let the question be considered as disposed of unless the Convention, by a majority vote, sees fit to do otherwise.

Mr. HAGER. Mr. President: In the first place, it is well enough to ascertain what the question is, as we all know it is not a new one. Now, this rule is as old as legislative assemblies themselves. It is recorded in Jefferson's Manual, which is nearly one hundred years old. I make these remarks merely because gentlemen have got up here and picked flaws at the committee, as if there was some intention to interfere with the rights of the majority. Some gentlemen seem to think that they are more holy than others, and I regret that these remarks have been made on this floor, and I hope that discipline will be enforced against those members who are constantly making these flings. This rule, whether good or not, is an old rule, and I will refer to Jefferson's Manual to corroborate what I say:

"It is proper that every deliberative assembly should have certain forms of questions, so adapted as will enable them to dispose of every proposition that may come up. They are—first, the previous question; second, to postpone indefinitely; third, to adjourn to a definite day; fourth, to lie on the table; fifth, to commit; and, sixth, to amend."

Now, this is the order of privileged questions in all parliamentary assemblies. It is true that each of these questions should be understood. Now, it would be much better if gentlemen would inform themselves in regard to parliamentary rules, and discuss them on their merits, instead of making these personal flings. I am on the committee which reported these rules, and I stand here to say that there is nothing in the rules so reported that has not been found in the rules governing legislative bodies from time immemorial. Now, if it is the desire of the Convention to postpone something indefinitely, the majority must rule. I care not whether the rule is adopted or not.

Mr. PRESIDENT. I would like to ask leave of absence for Mr. Wilson, of San Francisco, for two days.

Mr. CAMPBELL. Nobody disputes, as I understand it, that this is not a new rule, or that it is a common rule in legislative bodies; but the difficulty is, it does not apply to a body of this kind. If a resolution or proposition is introduced in Congress, and indefinitely postponed, the same proposition can be renewed at the next session of Congress, within one year after the original matter has been rejected. But not so here. This Convention sits but once. There can be no renewal of the proposition hereafter. Whatever is done, must be done while we are assembled here; and I say it is unjust, that if by chance a bare majority, at some time when the house is thin, vote to indefinitely postpone a subject-matter, it shall take a two-thirds vote to take it up again. We have important questions affecting the rights of the people; as to corporations; affecting the question of taxation; and other matters of momentous importance. Now, suppose, when one of these important questions comes up, a bare majority of a thin house votes to indefinitely postpone it; can it be argued that, after subsequent reflection, it will require two thirds of a full house to renew the proposition and call it up again as a basis of action? I submit, Mr. President, that the amendment should not be adopted.

Mr. BEERSTECHER. Mr. President: I must say that I agree with

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the gentleman from San Francisco, Mr. Estee, that this is no new rule. I think it is no endeavor to stifle the will of any person, or of any class of persons; that it is not to be offered by the majority against the minority. It is a usual rule in parliamentary bodies. But one thing seems to have been lost sight of in this matter, and that is this: rule fifty-nine of the rules presented for consideration, says, "the rules of parliamentary practice contained in Cushing's Law and Practice of Legislative Assemblies shall govern the Convention in all cases to which they are applicable, and in which they are not inconsistent with the standing rules of the Convention."

Cushing's Manual, section sixty-seven, lays it down as a law of parliamentary practice, that a motion to indefinitely postpone shall have the effect of absolutely removing the question from the consideration of the assembly during that session; in other words, the whole consideration is wiped out, and cannot be considered again during that sitting. So, if rule fifty-nine is adopted, and nothing is said about indefinite postponement, Cushing will govern; and a motion to indefinitely postpone will have the effect of absolutely removing the subject from the consideration of the body during the session. I am in favor of the rule as amended by the gentleman from Humboldt, Mr. Huestis.

MR. GREGG. I ask leave of absence for Mr. Prouty.

Granted.

MR. EDGERTON. Mr. President: In reply to the gentleman from San Francisco, Mr. Beerstecher, if he will look at rule sixty, he will find that any rule adopted may be suspended by a two-third vote, so that the question simply is, shall it require a majority vote or a two-thirds vote to call up a subject again after it has been indefinitely postponed. Now, sir, if this is a gag law, we have many rules that may in the same sense be considered gag laws. For instance, a motion to adjourn is not debatable, that is a gag law. A motion to table is not debatable, and, therefore, that is a gag law, and the previous question shuts off all further discussion, and that is a gag law. Now, as an offset to the suggestions of the gentleman from Alameda, Mr. Campbell, in regard to a majority vote in a thin house. Here is a case. A question is debated and considered for three or four days, or a week, and is finally indefinitely postponed. Any friend of the measure may give notice of a reconsideration, and the next day the whole question is reopened, and another long discussion on the merits takes place. Now, it seems to me that after the question has been so thoroughly discussed and ventilated, and finally disposed of, that it should require at least two thirds of the Convention to revive it. The same gentleman says the rule is not applicable in a Constitutional Convention. If he will look he will find that they had the same rule in the Constitutional Convention of Illinois and other States. It is right, and I hope it will be adopted.

MR. HOWARD. Mr. President: I think the rule as it stands is entirely too broad. There is no doubt about this being a general rule in parliamentary bodies, but it is entirely too broad for a Constitutional Convention. It seems to me that the amendment of the gentleman from Humboldt, Mr. Huestis, is entirely useless, as there would be no need for a rule to prescribe what the majority might do. I would move, if it is in order, to insert the words, "Unless it comes from a regular standing committee of the house." I think this rule, as it stands, will be found mischievous.

THE CHAIR. There is an amendment to an amendment already. The question is now upon the amendment offered by the gentleman from Humboldt, Mr. Huestis.

MR. VAN DYKE. I think a majority of this Convention should be allowed to resume the consideration of any subject if they find they have committed an error.

MR. BARBOUR. I do not rise for the purpose of discussing this matter again, but for a personal explanation. It seems strange that gentlemen should take it to heart so when I stated that this rule might be used as a gag. Now, I made no accusations against any gentleman. On the contrary, I think they have presented us with a fair set of rules; but they themselves didn't consider the effect of this rule. I made no imputation against the committee or any member, but I stated that the rule might be used as a gag. We may not know all the parliamentary law, but the weakest on this floor has the right to be heard, and my common sense teaches me that a majority of the Convention should be allowed to say what shall come before it.

MR. ANDREWS. It seems to me that this body should have some rule by which it can prevent a subject from being thrust upon it repeatedly. I believe such an amendment as that proposed by Mr. Howard might be acceptable.

MR. ESTEE. I do not see why that would not be acceptable. I think that is all right.

MR. McCALLUM. I prefer the amendment offered by Mr. Heustis. I don't think this Convention should be bound by the action of a majority of any committee. The committees probably may reflect the will of the Convention, but I don't wish this question to depend upon the will of a majority of any committee. I prefer to strike this out. I admit that there is a necessity to have an end to the discussion of questions coming before this Convention, but to say that a motion may not be renewed unless by a vote of two-thirds, in a Constitutional Convention, would place this Convention in this position: either the Chair would be in a position to overrule the rule itself, or the Convention would overrule the Chair, and sustain the rule; for the majority of the Convention will have its way, and if they find that they have done so ridiculous a thing as to tie themselves up in such a manner that the majority cannot rule without overruling the Chair, even when the Chair rules correctly, the chances are the Chair will be overruled. I don't propose to reproduce the arguments used by other gentlemen, but to say that a Constitutional Convention should be governed exactly by the same rules as a Legislature, seems to me to be absurd and unwarrantable. This is a Convention to revise the Constitution, and not to pass particular laws during one out of many sessions. It would be just as consistent to provide that after the Legislature has passed a law it could not be repealed, unless six out of nine should agree to it. Now, I have something which I wish to offer as a substitute—I suppose it might be called an amendment, but it is a substitute for the whole matter. Strike out and insert as follows: "Rule 36.—When a question is indefinitely postponed, the same shall not be again introduced during the session of the Convention, except by the consent of a majority of the whole Convention."

I think there should be some limit. I think the majority of the whole Convention is as far as we can require.

MR. HOWARD. I propose to add these words to the end of the rule: "unless upon the recommendation of a standing committee." Now, sir, to adopt the amendment of the gentleman from Humboldt, Mr. Heustis, is simply to place the question, not in the hands of the majority, but in the hands of the minority, and enable them to gag the whole Convention. Now, with ten men combined together they can for one hundred days prevent the consideration of anything but one subject. We never could dispose of it, for all the gentleman would have to do, is to have motions enough to use up the day, and the next day he may renew it—and the next; and the whole proceedings of the Convention might be stopped, perhaps, if that rule is adopted. We should not place ourselves in that position, where the whole proceedings can be stopped by an obstinate minority.

MR. HAGER. Mr. President: I simply want to say a few words in addition to what I said before. This proposition relates not only to the formation of the Constitution, but to every matter of business that comes before this body, whether it be the election of Clerk or Doorkeeper, or any other matter, that rule applies. It relates to the election of shorthand reporters; for instance, suppose a gentleman moves here for the third or fourth time that we go into the election of a reporter, and the question is debated for three or four hours, and the Convention want to get rid of it, and some one moves that it be indefinitely postponed; that ends the matter under this rule, and we hear no more about it, unless two thirds of the Convention vote to bring it up again. Every gentleman will say that is right. Now, in a thin Convention it may be brought up again if this rule is not adopted, day after day, until it finally succeeds. Now, I do not see why the majority have not the right to end that matter at once by indefinitely postponing it. I would agree to an amendment similar to the one proposed by the gentleman from Los Angeles, Mr. Howard, and if a proposition which has been voted down should be presented again, let it first be referred to a standing committee before again being considered by the Convention. Suppose some member should propose that the Judges should be appointed by the Governor, and he gets up day after day and moves to have that proposition inserted in the Constitution, and it is debated two or three hours each time, would it be anything unfair—would it be any hardship—for some member to say, we have had enough of this matter, and move that it be indefinitely postponed; that would end the matter. Now, if we don't have some rule of that kind by which we can suppress some ambitious man, we may be kept here one hundred days without doing anything.

THE CHAIR. The question is on the amendment offered by Mr. Heustis, to add the words "except by a majority vote."

Mr. McCALLUM. I will withdraw my amendment, and ask the gentleman to add to his amendment, "to be decided without debate."

MR. HEUSTIS. I accept the amendment.

The ayes and noes were demanded by Messrs. Barbour, Cross, and White, and the roll was called, with the following result:

AYES.

Ayers,	Hall,	O'Sullivan,
Barbour,	Harrison,	Reddy,
Barton,	Harvey,	Reed,
Beerstecher,	Heiskell,	Reynolds,
Belcher,	Herold,	Rhodes,
Bell,	Herrington,	Ringgold,
Berry,	Hilborn,	Rolfe,
Blackmer,	Hitchcock,	Schomp,
Boggs,	Holmes,	Shafter,
Brown,	Huestis,	Shoemaker,
Burt,	Hunter,	Smith, of 4th District,
Campbell,	Inman,	Smith, of San Francisco,
Caples,	Johnson,	Soule,
Charles,	Jones,	Stedman,
Condon,	Joyce,	Steele,
Cowden,	Kenny,	Sweasey,
Cross,	Kleine,	Swenson,
Crouch,	Lampson,	Swing,
Davis,	Larkin,	Thompson,
Dean,	Lavigne,	Tully,
Dowling,	Lindow,	Tuttle,
Dudley, of Solano,	Martin, of Alameda,	Vacquerel,
Estey,	McCallum,	Van Dyke,
Evey,	McComas,	Van Voorhies,
Farrell,	McCoy,	Walker, of Marin,
Filcher,	McFarland,	Waters,
Finney,	Miller,	Webster,
Freeman,	Mills,	Weller,
Freud,	Morse,	Wellin,
Garvey,	Murphy,	West,
Glascock,	Nason,	Wickes,
Gorman,	Nelson,	White,
Grace,	Neunaber,	Wilson, of Tehama,
Graves,	Noel,	Wyatt—104.
Hale,	O'Donnell,	

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NOES.

Andrews,	Hager,	Porter,
Barry,	Howard,	Pulliam,
Biggs,	Kelley,	Schell,
Boucher,	Laine,	Shurtleff,
Chapman,	Larue,	Smith, of Santa Clara,
Doyle,	Lewis,	Stevenson,
Dudley, of San Joaquin,	Mansfield,	Stuart,
Dunlap,	Martin, of Santa Cruz,	Terry,
Edgerton,	McConnell,	Tinnin,
Estee, of 1st District,	McNutt,	Turner,
Fawcett,	Ohleyer,	Winans—35.
Gregg,	Overton,	

MR. WATERS. Mr. President: From the vote taken, it appears to be the sense of the Convention that a majority vote has power to take up a motion that has been defeated. Now, the rule as it reads, allows this privilege only on questions that may have been indefinitely postponed. There are other questions than indefinite postponement. If it is the sense of this Convention that a majority may take up a proposition that has been defeated, I now move to amend the rule by striking out the words "indefinitely postponed," and insert "when a question is lost," so as to read: "When a question is lost on any final vote," etc.

MR. FREEMAN. I think that comes more properly under the next section, under the head of reconsideration.

MR. WATERS. It is germane to this very section. I see no reason why a matter that has been defeated by indefinite postponement can be again considered, when a matter that has been defeated by any other kind of a final vote cannot come in on the same footing. Why should questions that have been indefinitely postponed have this preference over matters that have been lost by any other kind of a final vote? I cannot see the justice of it.

THE CHAIR. The question is on the adoption of the amendment of the gentleman from San Bernardino.

MR. TINNIN. Mr. President: By the vote taken it is clearly the established ruling of the Convention that a majority can take up a question that has been finally disposed of. Now, I fully concur with the gentleman from San Bernardino, Mr. Waters, that there should be no privileged matters in this body. Now, we have decided that when a question has been indefinitely postponed, it can be again taken up by a majority vote, and why should we require a two-thirds vote to take up propositions that have been defeated by other means? I don't see how the house can do otherwise than sustain this amendment, and be consistent. The Convention cannot surely go back on its own act.

THE CHAIR. The question is on the amendment proposed by Mr. Waters.

MR. DUDLEY, of Solano. Mr. President: Now, the effect of the vote is not as represented by the gentleman. It does not make it a privileged question, for at any time, if any question is lost on one day, if it is not lost on a motion to indefinitely postpone, it may come up upon a simple motion, and may be considered on the following day after being voted down.

MR. BEERSTECHER. As I understand the gentleman's amendment from San Bernardino, it is where there has been a final vote upon any question. Now, the vote on indefinite postponement is not a final vote in any sense of the term, and I shall vote against his amendment.

MR. ESTEE. Mr. President: I think the motion to indefinitely postpone is one of the most final votes it is possible to have, and I hope now, if the majority of this Convention wants to control these matters, after they have been indefinitely postponed, it will be true to itself and say that on every final vote when a question is lost, it shall be considered again by a bare majority; and that is but fair, because some of the gravest questions may come under this head. Now, if we adopt this report, and adopt Cushing's Manual, we will be in this position: when a question comes up, and is postponed indefinitely, it can be brought up again the next day by a bare majority, but when a question has been defeated by any other kind of a final vote, a majority cannot bring it up again. Let us have uniformity in the rules, and if it is the intention that a majority can reëxamine a question after it is lost, let that rule apply to all questions alike.

MR. BEERSTECHER. I call attention to section thirty-seven of the report of the committee: "On the day succeeding that on which a final vote on any proposition or resolution concerning the Constitution, or other resolution, has been taken, said vote may be reconsidered on motion of any member, provided notice of intention to move such reconsideration shall have been given on the day on which such final vote was taken, by a member voting with the majority; and it shall not be in order for any member to move a reconsideration on the day on which the final vote was taken." Now, it seems to me, as suggested by the gentlemen from Sacramento, that the motion of the gentleman, Mr. Waters, ought to refer to that section and not to section thirty-six. I think we should have a clear, positive, distinct declaration of the position a motion to indefinitely postpone shall occupy in the rules of this body, and it seems to me this is an attempt to get round the vote just taken. We desire to have a distinct declaration of what position this occupies, and if we desire a further declaration on other propositions, let it be inserted in section thirty-seven. I hope the gentleman's amendment will be voted down.

MR. HERRINGTON. Mr. President: I hope this amendment will be voted down. I desire to offer a substitute to take its place, to be added at the end of the section, as follows: "Provided, such questions as do not directly relate to the Constitution shall not be again introduced except by a two-thirds vote."

THE CHAIR. The gentleman had better wait until Mr. Waters' amendment is disposed of. There is already an amendment to an amendment.

The amendment offered by Mr. Waters was lost, on a standing vote—ayes forty-six, noes fifty-four.

THE CHAIR. The question is now on the amendment proposed by Mr. Herrington.

MR. HERRINGTON. Mr. President: What we are endeavoring to get at, as I understand it, is to preserve the main important rights of the body in the framing of the Constitution, and at the same time get rid of as much useless labor as possible. By cutting off the reconsideration of foolish motions, relating to unimportant subjects, you do avoid very much useless labor. The way the rule now stands we have preserved our rights under the circumstances, and it leaves us to use our best judgment as to whether a motion, having once been disposed of, shall be again brought up; but we are not precluded by our own rules from doing as we may see fit. That is our right—it is the dearest right which this Convention has—and I am glad that this has been established as clearly and distinctly as it has been. By reason of this amendment we have secured all the advantages that we could have secured by the original form of the rule in relation to the minor subjects coming before the Convention, while we have preserved the most important rights in relation to subjects of great importance.

THE CHAIR. The question is on the amendment proposed by the gentleman from Santa Clara, Mr. Herrington.

The amendment was rejected, on a standing vote—ayes forty-two, noes sixty-two.

THE CHAIR. The question is now on the original rule as amended.

MR. BLACKMER. Mr. President: I desire to offer an amendment. Strike out the first clause as far as the word "postpone," and substitute the following in lieu thereof: "When a question has been disposed of, either by indefinite postponement or by any other final vote," so that the rule will read: "Rule 36.—When a question has been disposed of, either by indefinite postponement, or by any other final vote, it shall not again be introduced."

THE CHAIR. That same proposition was contained in the amendment proposed by the gentleman from San Bernardino, Mr. Waters, and has been voted down.

MR. BLACKMER. Mr. President: It hardly comes under the same clause. I think by comparing them there will be found a radical difference in the two propositions.

THE CHAIR. The question is on the amendment proposed by Mr. Blackmer.

MR. HEUSTIS. If the gentleman will allow me; I understand that question has already been disposed of when the house refused to adopt the amendment of the gentleman from Santa Clara.

THE CHAIR. The Chair will hold that it is a little different. I think it is in order.

MR. FREUD. I hope, Mr. President, the amendment will prevail.

MR. FREEMAN. I hope the amendment will not prevail. We have two rules now, one on indefinite postponement and one on reconsideration. If we can dispose of this one on indefinite postponement then we can take up the next one, in relation to reconsideration, which is embraced in rule thirty-seven. This amendment should be voted down, and if necessary it can be considered when we come to rule thirty-seven.

MR. BLACKMER. The question of reconsideration has this difficulty in it, when you take it upon this proposition, that the motion to reconsider must be given notice of immediately after the passage of the measure, and it does not provide for a change in the views and opinions of the Convention after the lapse of any considerable period of time. After one day, then the matter of reconsideration is of no avail whatever, and it seems to me the only way out of this difficulty is to pass this amendment.

MR. FREEMAN. I merely rise to say in reply that an amendment can be offered to rule thirty-seven which can provide for the method of notice. There is no reason why notice should be given to reconsider on the same day. On the other hand the Convention may have rule thirty-seven amended so that notice of reconsideration may be given at any time when it sees proper, and we can better regulate these matters then.

The question being on the amendment proposed by Mr. Blackmer, it was lost on a standing vote—ayes thirty-four, noes sixty-eight.

The rule as amended was then adopted, reading as follows:

Rule 36.—When a question is indefinitely postponed it shall not again be introduced during the session of the Convention, except by a majority vote, to be decided without debate.

Rule 37.—On the day succeeding that on which a final vote on any proposition or resolution concerning the Constitution, or other resolution, has been taken, said vote may be reconsidered on motion of any member; provided, notice of intention to move such reconsideration shall have been given on the day on which such final vote was taken, by a member voting with the majority; and it shall not be in order for any member to move a reconsideration on the day on which such final vote was taken. Such motion of reconsideration shall have precedence over every other motion, except a motion to adjourn. No notice of reconsideration shall be in order on the day preceding the last day of the session.

MR. FREEMAN. Mr. President: I desire to offer an amendment to rule thirty-seven: Strike out all down to the word "such," and insert as follows: "At any time after the final vote on any proposition or resolution concerning the Constitution, or other resolution, has been taken, the vote may be reconsidered on motion of any member who voted with the majority, provided, it shall not be in order for any member to move a reconsideration without giving one day's notice of such motion."

The amendment was rejected and the rule was adopted.

Rule 38.—It shall be in order for any member or members to protest in writing against action of the Convention, and have such protest entered upon the minutes.

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Adopted.

Rule 39.—A question of privilege shall be entitled to supersede other business; but when a member brings forward such question, he shall first present his complaint, either verbally or in writing; and the presiding officer shall decide, in the first instance, whether such statement, however brought forward, involves a question of privilege. If such decision shall be in favor of the question of privilege, the member may then make such observations as may be pertinent to the question of privilege, and may submit such resolution or motion as he may desire for the consideration of the Convention.

Adopted.

Rule 40. The author of a motion, proposition, or resolution, shall have the privilege of closing the debate, unless the previous question has been sustained.

MR. ESTEE. I think that should be amended so as to read, the author of a motion or the Chairman of a committee. The point I wish to make is this: that under our rules the committees will present most of the questions for the consideration of the Convention, and it will be hard to determine who the author is. I make no motion, I only throw this out as a suggestion.

The rule was adopted.

Rule 41.—Every member, when about to speak, shall rise and respectfully address the President, shall confine himself to the question under debate, and avoid personality, and shall sit down when he is finished. No member shall speak out of his place without leave of the President.

MR. EDGERTON. Does that read "is finished" or "has finished?" Is the Clerk reading from the original notes? If it is that way, I hope the word "is" will be changed to "has."

The rule was adopted.

Rule 42.—No member speaking shall be interrupted by another, but by rising up to call to order.

Adopted.

Rule 43.—No member shall speak more than twice on one question without first obtaining leave of the Convention, nor more than once until other members who have not spoken shall speak, if they desire to.

MR. GREGG. I move to amend by inserting after the word "twice" the following words: "No member shall speak more than twice nor more than thirty minutes at one time upon the same question."

MR. ESTEE. I hope that will not be adopted so early in the session. There will be some of the gravest questions to come before this Convention, and there are gentlemen probably prepared to come before this Convention and give us a great deal of information, and certainly it would be unusual to limit them to thirty minutes.

MR. GREGG. The purpose is simply to cut off useless debate.

The amendment was rejected.

MR. BARBOUR. I move to amend the rule by adding at the end of the rule, "A majority of the Convention may rescind or suspend this rule." I don't think it would be right to require a two-third vote.

The amendment was rejected, and the rule was adopted.

Rule 44.—If any member be called to order for offensive words spoken in debate, the person calling him to order shall report the words excepted to, and they shall be taken down in writing at the Secretary's table; and no member shall be held to answer or be subject to censure of the Convention for language used in debate if any member has spoken, or other business has intervened, after the words spoken and before exception to them shall have been taken.

Adopted.

Rule 45.—If a question pending be lost by adjournment of the Convention, and revived on the succeeding day, no member who shall have spoken on the preceding day shall be permitted again to speak without leave of two thirds of the Convention.

Adopted.

Rule 46.—If any member in speaking or otherwise transgress the rules of the Convention, the President shall, or any member may, call to order; in which case, the member so called to order shall immediately sit down, unless permitted to explain; and if called to order by a member, such member shall immediately state the point of order. If the point of order be sustained by the Chair, the member shall not be allowed to proceed; but if it be not sustained, then he shall be permitted to go on. Every such decision from the Chair shall be subject to an appeal to the Convention, but no discussion of a question of order shall be allowed unless an appeal be taken from a decision of the Chair.

Adopted.

Rule 47.—When two or more members shall rise at once, the President shall decide who is first to speak.

Adopted.

Rule 48.—When a member shall ask leave to have a proposition or resolution taken up out of its regular order, he shall, in making the motion, give the number and title of the same.

Adopted.

Rule 49.—Every resolution proposing any alteration in the Constitution shall be read on two several days before it is finally acted upon and adopted by the Convention.

Adopted.

Rule 50.—Every member presenting to the Convention a petition, memorial, or remonstrance, shall indorse his name thereon, together with a brief statement of the nature and object of the instrument.

Adopted.

Rule 51.—Propositions and resolutions proposing matter to be incorporated in the Constitution shall be prefaced with a title briefly indicating the subject to which they refer. They shall be in writing, on legal cap paper, or printed, and shall be numbered by the Secretary in the order in which they are introduced.

Adopted.

Rule 52.—Propositions and resolutions mentioned in the last foregoing rule shall embrace but one subject; they shall be read once when introduced, and then referred, without debate, to an appropriate committee.

MR. LAINE. Mr. President: I desire to offer an amendment to rules fifty-one and fifty-two. The object of the committee in preparing these two rules seems to have been to simplify the work of the Convention. In my judgment they have confused it, and it will take weeks to introduce a very small amount of matter. In other words, every proposition must be written out separately and introduced. There are a number of members who have prepared drafts of the Constitution with some care. They may contain valuable matter, and they may not. But having devoted some study to them it is proper that they should be introduced in this condition, that the press and the people of the State may know what is contained in them. They must see the instrument together in all its parts, because, in my estimation, it will be perfectly useless to send the Bill of Rights to one committee and the Judicial Department to another, and so on, without having some knowledge of the whole instrument as an instrument. In other words, we are reconstructing the whole political structure, and it must be a house complete in all its parts, and all its chambers and divisions must be in harmony. In other words, put it together as reasonable architects, and in order to do that we must see the instrument together; and if gentlemen desire to offer amendments to the instrument it will be necessary to have it all together, in order to see how they will fit and harmonize. In my judgment that will simplify the work; if not, these gentlemen who have prepared Constitutions will have to split them apart, and it will require a long time to introduce them section by section and article by article. There will be a great deal of confusion if this Convention refuses to do so. In this way I cannot see any difficulty whatever. For that reason we adopt that rule in Congress in reference to the President's Message, and in the Legislative Assemblies in reference to the Governor's Message. They are not cut up and the part relating to one subject sent to this committee and another to another. The document must be considered in its entirety. Let the Constitutions that are introduced be printed and distributed among the members. Then if it is desirable to have the different articles considered by different committees it can be done, but the document will be before each committee and they can see the relation that the parts bear to one another. As far as I am individually concerned, if these rules are adopted in this shape, I shall simply offer all the propositions to the committee and not to the Convention, because it will impose too much labor. I offer to amend as follows: Amend rule fifty-one to read as follows:

"Propositions and resolutions proposing matters to be incorporated into the Constitution, or proposing an entire draft of a Constitution, or of any separate article or section, shall be in writing on legal cap paper, signed by the member offering the same, and shall be numbered by the Secretary in the order in which they are introduced."

THE CHAIR. The question is on the adoption of the amendment offered by the gentleman from Santa Clara, Mr. Laine.

MR. EDGERTON. Mr. President: I regard those two rules as among the most important, as far as they relate to the procedure of this body. The gentleman from Santa Clara, Mr. Laine, tells us that he has been to a great deal of labor in preparing drafts of a Constitution, and he moves to amend so that an entire Constitution may be sent up. Now, it will have to be cut up and sent to the several committees, and the question is, who shall do this? Everything sent up has to be sent to appropriate committees, and who is to determine what committees it shall go to? I think there are about thirty committees, and if the entire document is to go to the committees, somebody has got to rummage through it and see which goes to this committee, and which to that. Now, the course of procedure marked out in those two rules is this: if anybody has a proposition to make, it shall be prefaced with the proper title, read once when sent up, and then referred to a committee. When it comes from the committee it is read again, and then goes to the general file, as provided for in rule fifty-three, and then it is open to debate. Here is a resolution that such and such a provision be inserted in the Legislative Department. It is headed so the Secretary knows what committee to refer it to, and when it comes back it is placed under that head.

MR. LAINE. It seems to me that every member of this Convention would know what the Bill of Rights was, what the article on revenue and taxation was, and all the various articles of the Constitution, as well as if there were memoranda attached, because the draft of the Constitution is prepared with reference to that matter. I can see none of this difficulty. It will take weeks the other way to introduce these propositions, if they have to be prepared article by article. It will take six weeks to get anything into this Convention to work upon.

MR. BIGGS. I am in hopes this amendment will be adopted. Every member will know what committee he is on. I hope this Convention will adopt it.

MR. HAGER. Mr. President: This is a matter of much greater importance than it seems at first glance. Now, we have a great many standing committees, how many I do not know, probably thirty. Each committee is charged with certain of these branches. No one committee is charged with the whole matter, and the rule proposed here, as I understand it, is that when a proposition is introduced by any member it must be referred to the proper committee. Now, suppose a gentleman gets up here and offers an entire Constitution, to what committee must that Constitution be referred? It is not a single proposition, and the member who has prepared it may himself divide it up into as many parts as are necessary. I do not see as it is necessary that the propositions should be on legal cap paper. I do not see any need of that. The next rule says that the propositions shall be read once and referred to appropriate committees. That is the correct method. No one committee should have charge of the entire Constitution, and they should come here in separate propositions, and be referred to the several committees who have charge of the various subjects. Otherwise we will never get to any conclusion. I think my friend from Santa Clara, Mr. Laine, is

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wrong in his conclusions, and that the amendment ought not to be adopted.

The amendment proposed by Mr. Laine was rejected.

The rules, fifty-one and fifty-two, were adopted.

Rule 53.—All propositions and resolutions embracing matter proposed to be incorporated in the Constitution, reported by a standing or special committee, shall be read when reported, and shall be placed on a general file, to be kept by the Secretary, in the order in which they are reported. They shall be taken from the file and acted upon in the order in which they are placed thereon, unless otherwise ordered by the Convention; provided, that engrossed propositions and resolutions shall be placed at the head of the file, in the order in which they are received. Two hundred and forty copies of the file for each day shall be printed.

Adopted.

Rule 54.—No committee shall sit during the session of the Convention without leave.

Adopted.

Rule 55.—In forming a Committee of the Whole Convention, the President may preside or appoint a member to preside. Propositions or resolutions relating to the Constitution shall be committed to a Committee of the Whole Convention, and shall be read in Committee of the Whole by sections. All amendments shall be noted and reported to the Convention by the Chairman. After report, the proposition or resolution shall again be subject to amendment before the final question is taken.

Mr. WHITE. I move to amend, that the President shall not preside in the Committee of the Whole—that he shall appoint a member to preside.

Mr. TINNIN. The object of this committee in fixing it that way was to expedite business. That has been the custom in the Senate of this State for years, and has been found to work well, and I can see no reason why it should be changed.

Mr. BEERSTECHER. The only objection I see to the section as it stands now is this: it provides that the regular President presiding over the Committee of the Whole shall report. Now, who is he to report to when the Committee of the Whole resolves itself back into Convention? The Chairman of the Committee of the Whole makes a report of the work done in the committee. Now, if the President of the Convention is Chairman of the committee, who is he going to make his report to?

Mr. ESTEE. Why, it is made to the Convention. This has been the practice in your Senate here for years. The Chairman merely rises and states to the Convention what has transpired in the Committee of the Whole, that they have had under consideration so and so, and report it back with amendments, recommending that they be adopted.

The amendment was rejected, and the rule was adopted.

Rule 56.—The rules of the Convention shall be observed in Committee of the Whole, so far as they may be applicable, except for limiting the times of speaking, and except that the ayes and noes shall not be taken, and that the previous question shall not be moved.

Adopted.

Rule 57.—A motion that the committee rise shall always be in order, and shall be decided without debate.

Adopted.

Rule 58.—Every order or resolution which proposes an alteration in the Constitution, and all reports of committees appointed to consider the propriety and expediency of making any alteration therein, shall be considered in Committee of the Whole before they are debated and finally acted on in Convention.

Adopted.

Rule 59.—The rules of parliamentary practice contained in "Cushing's Law and Practice of Legislative Assemblies," shall govern the Convention in all cases to which they are applicable, and in which they are not inconsistent with the standing rules and orders of the Convention.

Adopted.

Rule 60.—No standing rule or order of the Convention shall be rescinded or changed without a vote of two thirds and one day's notice being given of the motion therefor; but a rule or order may be suspended temporarily by a vote of two thirds of the members present, except rules fifty, fifty-one, fifty-two, fifty-three, and fifty-five.

Mr. WYATT. I move to amend rule sixty so as to make it conform with rule thirty-six, on the question of indefinite postponement.

The motion prevailed, and the rule as amended was adopted.

Rule 61.—When the reading of a paper is called for, except petitions and memorials, and the same is objected to by any member, it shall be determined by a vote of the Convention, without debate.

Adopted.

Rule 62.—In filling up blanks the least sum or number and shortest time shall be first put.

Adopted.

Rule 63.—No member or other person shall remain by the Secretary's desk while the ayes and noes are being called, or while the votes are being counted.

Adopted.

Rule 64.—No member shall be absent more than two days without leave of the Convention; and a vote of leave of absence shall be inoperative, unless the member obtaining it shall avail himself of it within five days.

Adopted.

Rule 65.—No member shall receive pay for any week day on which he has not actually attended the Convention, except in case of sickness, or when he is absent on committee duty.

Mr. WEBSTER. I move to strike out the word "week" and insert after the word "duty" the further words, "days of actual session," so as to read as follows: "No member shall receive pay for any day on which he has not actually attended the Convention, except in case of sickness, or when he is absent on committee duty on days of actual session."

Mr. GREGG. I offer an amendment to the amendment: "No member shall receive pay for more than two days absence at one time, except the absence is occasioned by sickness, or by committee work, or other business of the Convention. But pay shall not be allowed a member for more than ten absent days during the term of the Convention."

The CHAIR. The question is on the amendment to the amendment.

Mr. WATERS. I rise to a point of order. The salary of members of this Convention is fixed by law. We cannot by any vote of ours, even by a two thirds-vote, adopt any rule affecting the rights of any member on this floor as regards the salary he shall receive. We have no power to say how much we shall receive. That is a matter fixed by law.

Mr. WEBSTER. I believe in establishing this rule. It has been the rule, I know, that members of the Legislature from time immemorial have drawn pay, not only for week days when they were not in session, but for Sundays. I say it is a wrong principle. It is not the way we conduct our own private business, and even if the Legislature has established the rule for us, we should establish a different rule. We don't employ men to work for us by the day and then pay them a salary for the days that they don't work. We don't employ carpenters by the day and pay them the same wages for Sundays that they get on week days. We have no more right to our pay for Sunday than the carpenter has. I hold that we should observe the same rule in the service of the State as we would follow in conducting our private affairs. It is wrong in principle, and if precedents are numerous we propose to dispense with precedents, and act independently according to what we believe to be right.

The CHAIR. The point of order is well taken; the Legislature has provided for the compensation of the members of this Convention.

Mr. REYNOLDS. I offer an amendment to add at the end of the rule.

Mr. McFARLAND. I understand the ruling of the Chair to be that the rule itself, as proposed by the committee, is out of order.

The CHAIR. The Chair sustained the point of order under section five of the Act calling the Convention: "The delegates shall receive the same per diem and mileage as members of the Legislature."

Mr. STEDMAN. Does that strike the rule out?

The CHAIR. Yes, sir.

Mr. STEDMAN. Then, sir, I move to insert my motion, made this morning, as rule sixty-five. It is not quite the proper place to insert it, but I will offer it:

"Rule 65.—All members shall vote on every question, unless excused by the Convention."

Adopted.

Mr. REYNOLDS. Do I understand that rule sixty-five is decided to be out of order?

The CHAIR. Rule sixty-five, as amended by Mr. Stedman, is adopted. We are now considering rule sixty-six.

Mr. REYNOLDS. If rule sixty-five is ruled out of order, I desire to appeal from the decision of the Chair.

The CHAIR. It is too late. The Secretary will read rule sixty-six.

Mr. BARBOUR. We never had a chance to vote on this rule sixty-five. We didn't have a chance to vote on it.

The CHAIR. The Chair will state the proposition.

Mr. BARBOUR. I maintain that this Convention can control the per diem of its members; and I should like to have a chance to be heard.

The CHAIR. The point of order was made by the gentleman from San Bernardino, Mr. Waters, that this Convention had no right to regulate the per diem and mileage of its members, the Legislature having fixed it; and the Chair held the point to be well taken. Then the gentleman from San Francisco, Mr. Stedman, offered a new rule, to take the place of rule sixty-five; which was adopted. We are now considering rule sixty-six; and the Chair will hold that the appeal comes too late.

Mr. ESTEE. I do not suppose that the ruling of the Chair will interfere with bringing it up again for consideration. I will read what the law says:

"The delegates to the Convention shall receive the same per diem and mileage as members of the Legislature: *provided*, no compensation shall be allowed delegates after the expiration of one hundred days. No pay shall be allowed for any recess longer than three days at one time."

I think the Chair is wrong about that. I think the Convention has a perfect right to regulate it, by law, as to the manner in which members shall be paid. What if a member should leave and be absent for the whole term?

The CHAIR. The Convention has power to send for any member who absents himself, or he can be expelled.

Mr. HAGER. The statute as read by the Chair, and referred to by the gentleman from San Francisco, Mr. Estee, is all right, but there is another provision here, that raises a question which has not been sufficiently considered, perhaps. Another portion says, "the Convention may adopt such rules and regulations for its own government as a majority of its members may determine." Now, there is full power to make regulations as to pay of members, or any other matters in the enforcing of discipline. We cannot increase the per diem, but we may say when it shall be cut off, by a rule which a majority may adopt.

Mr. FILCHER. I rise to a point of order. The discussion is out of order, as the Chair has decided, and there is no appeal pending.

The CHAIR. The point of order is well taken.

Rule 66.—Every member, before availing himself of a leave of absence, shall deposit with the Secretary all papers then in his possession belonging to the Convention.

Mr. BARBOUR. I move that the rules be suspended for the purpose of allowing an appeal on the ruling of the Chair.

Lost.

Rule sixty-six was adopted.

Rule 67.—No smoking shall be allowed within the hall of the Convention during the time of its session.

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Adopted.

Rule 68.—The hall of the Convention shall not be used for any public or private business other than that of the Convention, except by unanimous consent.

Adopted.

Rule 69.—No increase of pay, nor any extra pay, shall be allowed any officer or attaché of the Convention, by resolution or otherwise, except by unanimous consent.

Adopted.

Rule 70.—No proposition for additional help in any clerical or other department of the Convention shall be entertained except by resolution, in writing, therefor, and before final action by the Convention thereon such resolution shall be referred to the Committee on Mileage and Contingent Expenses, which committee shall inquire into the necessity therefor and the amount of compensation proper, if the same shall be required, and report without unnecessary delay; and upon receipt of such report the Convention shall forthwith proceed to consider and vote upon the passage of the resolution.

Adopted.

Rule 71.—Five hundred copies of each proposition or resolution embodying matter proposed to be introduced into the Constitution shall be printed.

MR. ROLFE. I do not wish to be captious, but it seems to me this will involve an enormous amount of unnecessary printing. I have no doubt but what on the first day that we get to the real business of the Convention there will be two or three hundred propositions introduced, some of them very long, and they will all have to be printed. I am not prepared now to offer a substitute, but I am prepared to vote against that rule.

MR. ANDREWS. I move to strike out "five hundred" and insert "four hundred and eighty."

The motion prevailed, and the rule as amended was adopted.

MR. HUESTIS. I was on my feet before the motion was put, and I ask leave now to propose an amendment to the rule. My amendment is simply to carry out the suggestions of the gentleman from San Bernardino, Mr. Rolfe. It will save an enormous expense. I propose to add the words "when ordered by the Convention."

THE CHAIR. It is moved to amend so as to read "four hundred and eighty copies when ordered by the Convention."

MR. EDGERTON. The gentleman will observe that the rule limits all this to matter proposed to be incorporated in the Constitution.

MR. HUESTIS. Suppose there are ten distinct propositions to be embodied in the Constitution, it will involve five thousand documents.

MR. EDGERTON. I move the rules be suspended then.

MR. LARKIN. I am in favor that every article affecting this Constitution shall be printed so as to be circulated among the people of this State, because very few of the people in this State take the Sacramento papers. They should be circulated among the people of this State, and the only way is to print a certain number of copies, and five hundred copies is low enough. It is few enough, and every proposition should be printed.

MR. ESTEE. It strikes me, Mr. President, that the time required by this Convention to discuss a motion every time it is made will cost more to the people of this State than the printing will amount to. Now the Constitution, when adopted, will not be one tenth or one twentieth as large as the statutes, and it is infinitely more important to the people of this State to know what these amendments are than to know what some bill in the Legislature is that perhaps relates to a road law, or questions of that kind. I hope the rule will be adopted as amended, for four hundred and eighty copies. It has been suggested that these things will be published by the newspapers. That is true, to some extent; but if you have these things printed in this way, they can be sent to the local papers in the various counties in the State, and thus they will be brought to the notice of the people, and they will know what is going on here.

MR. HILBORN. Mr. President: This is a matter in which we should make haste slowly. I am afraid this printing will make a hole in the appropriation which will startle us. I understand there are eight or ten or twenty complete drafts of a Constitution, and all this will have to be printed if this rule is adopted, and I think before we proceed with this matter we should make some inquiry as to what the expense will be, and whether it is necessary—where these parties have already got up these drafts and had them printed and widely circulated—whether it is necessary for us to print them over again, is a matter of serious consideration at this time, and I think it is better to refer this matter to a committee to investigate the probable cost. I move to refer it to the Committee on Printing.

MR. HAGER. I have noticed in some of the Constitutions recently framed that there is a provision that no bill introduced shall be considered until it has first been printed. I think it is a most important thing to see that these propositions shall be printed and distributed throughout the country. There is no other way of conveying the information to the people than the one proposed. Suppose a proposition has been introduced, and is reported by a committee, and some member moves to substitute his proposition in its place, why every member will have to go to the desk and get the written copy. There is no way we can progress here, and have the questions properly before us, except by having these propositions printed. I don't care what the cost may be: we had better expend the whole sum of money to have these propositions printed than to have them enacted without being in print. Nor am I sure, sir, that this printing bill will have to come out of our appropriation. The Act itself says all the printing necessary for the Convention, under the provisions of this Act, shall be done at the State Printing Office. Now, we are bound to have it done there, without any regard to the expense to the State. I think it is a charge entirely outside of the appropriation; but whether it is or not, these propositions should all be printed. I am satisfied we cannot act intelligently on this matter unless we can know what is contained in each proposition. We cannot go to the desk to look at the original every time we want to know anything about it. We must have printed copies for our own use, or we might as well abandon the work at once. I hope this rule will stand, and that every proposition, if it is of importance enough to be considered at all, will be printed for the use of the members.

MR. AYERS. Before the amendment and the rule are referred to the Committee on Printing, I would like to be informed how the Committee on Printing is going to make an intelligent report to this Convention, as to the probable cost—in what way they are going to arrive at it. There may be one hundred different drafts of Constitutions made here. The propositions that will come before this Convention will be numerous, and there is no way by which we can get at them unless we know something about the number of propositions and Constitutions that will be introduced.

MR. LARKIN. As far as that matter, I think it is plain. We must have them printed. I appeal to any gentleman, if a legislative body of this importance could act intelligently on propositions of this kind, unless they are printed and laid before the members, so that they may study them. It is the most important part of our duties, and it is right that they shall be printed, so that the people of the State may understand what we are doing here.

MR. HILBORN. I don't object to that. All I ask is that we shall, before we act, inquire into the probable cost, so that gentlemen may vote intelligently upon it.

MR. VAN DYKE. I cannot see any necessity for printing every proposition that is introduced here by every member. The propositions must be reported by committees before they can be considered, and I cannot see the necessity of printing this great mass of stuff without regard to what it contains. We have adopted a rule that you cannot consider a proposition until it has been to a committee, and the argument in favor of printing would only apply to reports of committees. I propose an amendment to this rule, as follows:

THE CHAIR. The question is on referring it to the Committee on Printing.

MR. McCALLUM. The question is on reference. I shall vote for the reference, because I am opposed to the proposition as presented by the Committee on Rules. The argument in favor of it is, I believe, that four hundred and eighty copies should be printed to be circulated among the people of this State. You might print four hundred and eighty thousand in that form and they would not reach the people of this State. These things will be printed every morning by the enterprising press of the State, and thus they will reach the people in all parts. But these are to be for the use of the Convention, and two hundred and forty copies of each will be sufficient. There are three or four enterprising daily papers in this State, each one of which will contain every one of these propositions as fast as they are presented.

MR. ESTEE. Does the gentleman mean that the newspapers are going to print these twenty drafts of the entire Constitution that have been spoken about?

MR. McCALLUM. No, sir; these Constitutions, under the rule we have adopted, these Constitutions must be cut up and presented as separate propositions, relating to the different articles in the Constitution. There are twelve articles, and if there are ten Constitutions prepared, that would be one hundred and twenty propositions. That will require fifty-seven thousand six hundred copies.

MR. EDGERTON. I rise to a point of order. The question is on referring to the committee.

THE CHAIR. The gentleman will confine himself to the question.

MR. McCALLUM. If it is in order I will say that I am in favor of reference, because I am in hopes that will kill the proposition. I will do this because I am in hopes that the rule will be amended in some way in reporting it back here. If they are to be printed, I think two hundred and eighty copies will be all sufficient.

The motion to refer to the Committee on Printing was lost on a standing vote—ayes, 41, noes, 74.

MR. VAN DYKE. Mr. President: I now offer an amendment, to read as follows: Insert between the words "Constitution" and "shall" the words "reported to the Convention by a committee."

MR. ESTEE. As far as the committee is concerned, and as far as I am concerned, I will vote to limit the expenses of this body, but I think it would be extraordinary for this body to say that propositions and amendments to the Constitution should not be printed. These propositions go before the various committees for their consideration, and it is of the utmost importance to have them printed. We cannot intelligently dispose of these propositions in any other manner. I do not believe there are any gentlemen on this floor, however wise, or however much experience they may have had in legislative matters, who can know the various amendments to the Constitution that may be proposed and act intelligently on them in committee or in this Convention unless they are printed. I hope the greatest latitude will be allowed in printing. I hope the thoughtful members in this body will take this into careful consideration. This is the most important rule reported by the committee, and I hope it will be adopted as reported.

MR. BIGGS. I have had the honor, Mr. Chairman, to serve in the Legislature of the State of California, and every gentleman knows that when a bill is introduced and is referred to a committee—everything is referred to a committee before it is printed—and you take the action of the committee and print it, and I dare the gentleman to deny it. What is the use of one hundred and fifty members on this floor having one hundred and fifty propositions alike? Let these propositions go to a committee, and then let the action of the committee be printed. Why, sir, upon the subject of taxation, if you please, I ask this Convention, do they propose to have every resolution printed which is nearly the same? Why not refer them to the proper committees and let the com-

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mittees act on them, and after they are reported to the Convention have them printed and laid before the Convention?

Mr. LARKIN. I ask the gentleman, in all seriousness, whether he proposes that these committees shall be the grave of every proposition submitted here that does not please them? Unless the majority of a committee sees fit to report it back and order it printed it will not be printed.

Mr. BIGGS. Mr. Larkin knows very well that every committee has the right to make a minority and majority report. The House may take the minority or majority report, just as they see fit, and every resolution will be acted on by the majority. It can always be brought before the Convention by a majority vote, when every other means fail. I say it is a waste of the people's money to have every resolution and proposition that is submitted, without referring it to a committee, printed. One gentleman says every bill is printed. Every bill is reported to the proper committee, and their action is printed, and that's the way it's done. I ask this Convention to let us change that rule, and let us refer these resolutions and propositions to the appropriate committees, and let them act on it as the action of that committee.

Mr. ESTEE. Suppose the gentleman from Alameda, Mr. Van Dyke, has been incubating upon a proposition in reference to the Constitution that he regards as of great importance to the welfare of the State. He sends that up and it is read once and referred to a committee, without printing. The committee reports a substitute, something relating to the same matter, but different altogether. Now, I would like to know how this Convention is going to understand which is the best measure to adopt, except by comparison of the original and the substitute. To do so, are the gentlemen all going to flock to the Secretary's desk to examine it? I shall, for one, want to have a copy of every proposition. I want to study it there and after a committee has reported something else in place of it. I want the original proposition at my disposal, so that I may compare the two and arrive at a conclusion for myself. Now, in reference to the suggestion of Major Biggs, that no bill is ever printed in the Legislature until after it goes to a committee, he is very much off his reckoning. I hold in my hand the rules of the Assembly of California. The same rule is there, which provides that two hundred and forty copies of every bill of a general nature shall be printed. Now, in the name of common sense, let me ask him if the propositions to be embodied in the organic law of a great State, to last, perhaps, for a generation, are not of as much importance as bills of a general character in the lower branch of the Legislature. Let us have them printed, so that we may study them, and digest them, and thoroughly understand them when we come to vote. The people do not appreciate this cheese paring economy, for every dollar saved in this way may be the loss of thousands in other directions. As to the cost, I think I am entirely within the bounds of reason when I say the total cost of printing for this Convention will not be four thousand dollars.

Mr. HILBORN. Does the gentleman know what it cost for printing in the Senate last fall?

Mr. ESTEE. Yes, sir; but the gentleman does not seem to take into consideration the limit that is being placed in this rule, limiting it to such matters as pertains directly to the Constitution.

Mr. HILBORN. It cost for printing that fall eleven thousand dollars.

Mr. ESTEE. Now, sir, suppose it should cost fifty thousand dollars, or one hundred thousand dollars, and here I deny that the newspapers will publish this mass of matter. I undertake to say that the articles on judiciary will make so much that no paper in this State will undertake to print the half of it, and these gentlemen who are trying so hard to curry favor with the dear people, will soon find themselves covered up by an avalanche of letters from their constituents, praying them not to hide their light under a bushel. I tell you this is no economy. Let the broad sunlight shine upon our actions here, and let the people know what we are doing.

Mr. JOHNSON. Mr. President: It occurs to me that this is a very important rule. If we print these various propositions and rules they come under our immediate notice, and are subject to our close scrutiny. If, on the other hand, these propositions are sent to the committee without printing, we know not what disposition will be made of them. They may never see daylight. They may be buried out of sight, and it will be for us to unearth them. Here is a proposition on some subject, not in the old Constitution, but on some particular thing, the Judicial Department, or Taxation, or some other particular thing. On the other hand, gentlemen will have a whole Constitution submitted as a proposition. Now, is it to be supposed that the newspapers will print these entire Constitutions? Is it to be supposed that the newspapers will print these entire propositions and resolutions? No, sir. They will print certain propositions and resolutions as they see fit, or certain parts of the proposed Constitution, and that will be the extent to which the members of this Convention will be advised of the purport of these propositions and resolutions. On the other hand, if we have them all printed and distributed among the members, then we can keep them before us, and scan them and criticise them, and we can then form some definite idea of the merits of the various proposed amendments and resolutions. It occurs to me that this is not the proper kind of economy to practice in the interests of the State. These propositions and resolutions should be printed. We have a State Printing Office, and all it costs is the bare material and labor. We are in a better position in that respect than many of the other States, which I believe are growing more liberal in regard to printing public documents. In my opinion the proper thing to do is to have these propositions all printed, and the number to be printed, after they are in type, will make very little difference in the cost, so there is no economy in cutting down the number. If this is done we will be better able to vote right.

Mr. VAN DYKE. My amendment does not go upon the theory that it is impossible to print any other matter except that relating to the Constitution. It is within the power of the body at any time to print propositions or resolutions submitted by any member.

Mr. BEERSTECHER. Mr. President: It seems to me that we are here for a purpose, not merely to consume this one hundred and fifty thousand dollars for salaries. There seems to be a fear on the part of some of the members that some of this one hundred and fifty thousand dollars may possibly be diverted into other channels than for mere salaries, and their pay correspondingly reduced. It seems to me the people sent us here to use this one hundred and fifty thousand dollars, and such other money as is necessary, to frame a Constitution, and, in order to do that, to provide ourselves with all the necessary auxiliaries in order to carry out the purposes for which we are here. Now, this is a very important matter. It gives every one who introduces a proposition here a chance to have that proposition fully considered, and does not consign any of them to oblivion, by merely referring it to a committee, thus to be buried at the option of the committee. By referring it to a committee, that committee may never report upon it, and the matter will pass into oblivion. While I am in favor of being economical, I believe that every proposition brought before this Convention should be printed.

Mr. NOEL. Mr. President: I think this is very important. If the Convention intends to submit to the judgment of the committees entirely, then let the propositions go to the committees without printing. If, on the other hand, the Convention intends to exercise its own judgment, it can do that only by a comparison of all the propositions submitted, and it will never be possible to do that except by having them printed. If the proposed amendment prevails, it seems to me that these committees will serve no other purpose than as a place for smothering the various propositions introduced by members of the Convention. The Convention will know nothing about the propositions except as they hear them read at the Clerk's desk.

Mr. BARRY. Mr. President: As one of the Committee on Rules, that I think this Convention can act more wisely, and more understandingly, on matters coming before it if all these proposed amendments are printed. We are wasting and frittering away more money in this discussion than it would cost to do the work. I think it is necessary and useful to have this printing done, and while there may be some matters that are not worthy of being printed, taken as a whole it is well worth while. I hope the Convention will come to a vote at once.

Mr. HAGER. Mr. President: I regret to take up any further time, but it seems to me, sir, this is a very important matter. As I stated before, I have some doubt whether this expense will come out of the appropriation of one hundred and fifty thousand dollars. If we find that we are trenching to any considerable extent upon this appropriation, we can take the advice of the Attorney-General, and if he advises us that the cost of printing must come out of this appropriation, then we can commence and cut down. I am of the opinion that the Attorney-General will say that the expense of printing is independent of this one hundred and fifty thousand dollars appropriation, and will be paid for by the State. Now, I undertake to say that to frame a Constitution without the propositions being printed is an utter impossibility, and I for one do not desire to place myself upon record here as wishing to deprive the people of any information which they are entitled to, as to what may be going on here. They want light as to every proposition presented here, and they have allowed us printing presses and types in order that we may do this very thing. Every lawyer and every Judge in the State will want to be informed as to every proposition that is presented here, and they have a right to know. Every man interested in corporations will want to know as to propositions introduced in relation to them. Every landholder will want to know about the propositions on revenue and taxation, and every one interested in any of the avocations affected will want to know, and the people will look back with grave suspicion on any attempt to deprive them of that information. How are they to get that information? By the speeches and proceedings? No, sir, you have refused to let the people read what you have to say; you have refused to publish even the Journal of your proceedings, and now you propose to cover up the proposed amendments to the Constitution. You say they will get it through the public press; but how will the press get it unless you print it and send it to them, for there are only a few papers represented here? Will they come here and copy your propositions and print them? No, sir, they will do nothing of the kind. If you do not print these things you will soon hear from your constituents in a way that will convince you that they do not thank you for this kind of economy.

Suppose one of these propositions is before a committee for consideration, how are they going to consider it if it is not printed? One member, or the Secretary, will have to read from bad manuscript, perhaps, while the others listen, trying in vain to get some idea of its contents as the reader stumbles through it, and after it is read they must vote on it, aye or no. They have no copy of it, they cannot criticise it, they cannot consider it section by section, they cannot propose amendments. If this is to be the practice we might as well abandon the work at once, for it will never be a success, and will not give satisfaction. Now, in regard to printing in legislative bodies, the rules of the Senate of the United States provide that every bill and general resolution introduced or reported from a committee, and bills and general resolutions received by the House, and all reports, shall be printed, unless the printing is dispensed with. The dispensing with the printing is the exception to the rule, and every bill has to be printed. If there are matters of so little consequence that they should not be printed the rule can be suspended.

Mr. SWING. I move the previous question.

The call for the previous question was seconded by Messrs. Tinnin and Freeman.

The CHAIR. The question is on the amendment offered by Mr. Van Dyke.

The amendment was rejected.

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The amendment proposed by the gentleman from Humboldt, Mr. Huestis, was rejected.

The rule as amended was then adopted.

Rule 72.—No committee shall be permitted to employ a clerk at the expense of the State without first obtaining leave of the Convention for that purpose.

Adopted.

Rule 73.—The standing committees of the Convention shall be as follows:

1. On Preamble and Bill of Rights. To consist of nine members.
2. On Right of Suffrage. To consist of eleven members.
3. On Legislative Department. To consist of fifteen members.
4. On Executive Department. To consist of nine members.
5. On Judiciary and Judicial Department. To consist of nineteen members.
6. On Military Affairs. To consist of eleven members.
7. On State and Municipal Indebtedness. To consist of fifteen members.
8. On Education. To consist of nine members.
9. On State Institutions and Public Buildings. To consist of eleven members.
10. On City, County, and Township Organization. To consist of fifteen members.
11. On Apportionment and Representation. To consist of fifteen members.
12. On Revenue and Taxation. To consist of fifteen members.
13. On Corporations other than Municipal. To consist of fifteen members.
14. On Miscellaneous Subjects. To consist of nine members.
15. On Future Amendments. To consist of nine members.
16. On Schedule. To consist of eleven members.
17. On Revision and Adjustment. To consist of nine members.
18. On Water and Water Rights. To consist of fifteen members.
19. On Agriculture, Manufactures, and Commerce. To consist of eleven members.
20. On Mining. To consist of eleven members.
21. On Immigration. To consist of fifteen members.
22. On Reporting and Printing. To consist of five members.
23. On Privileges and Elections. To consist of fifteen members.
24. On Mileage and Contingent Expenses. To consist of nine members.
25. On Pardoning Power. To consist of nine members.
26. On Harbors, Tide Water, and Navigable Streams. To consist of nine members.
27. On Labor and Capital. To consist of nine members.
28. On Engrossment and Enrollment. To consist of seven members.
29. On Chinese. To consist of fifteen members.
30. On Land and Homestead Exemptions. To consist of nine members.

MR. REYNOLDS. Mr. President: I offer the following as a new rule:

"No member shall receive pay for any week day on which he has not actually attended the Convention, except in case of sickness, when absent on committee duty, or upon adjournment over by the Convention."

MR. REYNOLDS. I offer this amendment as a new rule, to be known as rule seventy-three, because I am satisfied that the ruling of the Chair on rule sixty-five was wrong; that he ruled it out of order under misapprehension of the scope of the rule. Now, the only object of this rule is to cut off the pay of members who voluntarily absent themselves from the Convention during its sessions. That is the entire object of this rule. The Convention had no chance to take any action upon the ruling of the Chair. Some gentlemen supposed that it was an interference with the law calling the Convention. That is not the object of the rule, but only to cut off these gentlemen from going away. I desire to have the sense of the Convention on that proposition.

MR. WATERS. I raise the point of order that the members of this Convention are entitled to receive ten dollars a day for every day during the session of this Convention. Those are the very words of the statute.

MR. EDGERTON. I raise the point of order that the Chair should state whether the point of order is sustained or not, and then discussion will be in order.

MR. WATERS. As to whether this Convention can grant leave of absence, is one thing; and cutting off the pay of delegates is another thing. If I apply for a leave of absence, it is the province of this Convention to grant it, or not, as they may see fit. Now, if it is the policy of the Convention to say that leave of absence shall not be granted except in case of sickness, say so; but the question as to whether you can cut off the pay of a delegate, is another thing. You may tell him that he has agreed to work for this State for one hundred days, and he must stay and do it; and if he absents himself you have the power to send for him and bring him back. I would be perfectly willing to have this rule enforced as to myself; but I will not vote to apply it to others. The rule is not right.

MR. REYNOLDS. I want to do this as a kind of a fine. If they are not in attendance, they will be practically fined ten dollars.

THE CHAIR. If the gentleman will put his proposition in that shape, so as to make it a fine of ten dollars, the Chair will entertain it, otherwise it (the point of order) will be sustained.

Mr. EDGERTON. Mr. President: I desire to send up an additional rule, to be known as Rule Seventy-four:

"Rule 74. When any resolution, proposition, or other document shall be referred to a committee, the Secretary shall, without delay, cause the same to be delivered to the Chairman of such committee, and take his receipt therefor, and a book for that purpose shall be kept, and such receipt shall state the date at which such resolution, proposition, or paper is delivered."

THE CHAIR. If there is no objection, the rule will be considered now.

The rule was adopted.

Mr. STEDMAN. I desire to appeal from the ruling of the Chair.

The appeal was seconded by Messrs. Barbour and Reynolds.

Pending the appeal, on motion of Mr. McCallum, at five o'clock and five minutes the Convention adjourned until to-morrow.

TWELFTH DAY.

SACRAMENTO, Wednesday, October 9th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hall,	O'Sullivan,
Ayers,	Harrison,	Overton,
Barbour,	Harvey,	Porter,
Barnes,	Heiskell,	Pulliam,
Barry,	Herold,	Reddy,
Barton,	Herrington,	Reed,
Beerstecher,	Hilborn,	Reynolds,
Belcher,	Hitchcock,	Rhodes,
Bell,	Holmes,	Ringgold,
Berry,	Howard,	Rolfe,
Biggs,	Huestis,	Schell,
Blackmer,	Hughey,	Schomp,
Boggs,	Hunter,	Shafter,
Boucher,	Inman,	Shoemaker,
Brown,	Johnson,	Shurtleff,
Burt,	Jones,	Smith, of Santa Clara,
Campbell,	Joyce,	Smith, of 4th District,
Caples,	Kelley,	Smith, of San Francisco,
Chapman,	Kenny,	Soule,
Charles,	Keyes,	Stedman,
Condon,	Kleine,	Steele,
Cowden,	Laine,	Stevenson,
Cross,	Lampson,	Strong,
Crouch,	Larkin,	Stuart,
Davis,	Larue,	Sweasey,
Dean,	Lavigne,	Swenson,
Dowling,	Lewis,	Swing,
Doyle,	Lindow,	Terry,
Dudley, of San Joaquin,	Mansfield,	Thompson,
Dudley, of Solano,	Martin, of Alameda,	Tinnin,
Dunlap,	Martin, of Santa Cruz,	Townsend,
Eagon,	McCallum,	Tully,
Edgerton,	McComas,	Turner,
Estee,	McConnell,	Tuttle,
Estey,	McCoy,	Vacquerel,
Evey,	McFarland,	Van Dyke,
Farrell,	McNutt,	Van Voorhies,
Fawcett,	Miller,	Walker, of Marin,
Filcher,	Mills,	Waters,
Finney,	Moffat,	Webster,
Freeman,	Moreland,	Weller,
Freud,	Morse,	Wellin,
Garvey,	Murphy,	West,
Glascock,	Nason,	Wickes,
Gorman,	Nelson,	White,
Grace,	Neunaber,	Wilson, of Tehama,
Gregg,	Noel,	Winans,
Hager,	O'Donnell,	Wyatt,
Hale,	Ohleyer,	Mr. President.

ABSENT.

Casserly,	Prouty,	Wilson, of 1st District.
Graves,	Walker, of Tuolumne,	

The Journal of yesterday was read, and, after several corrections, was approved.

ADDITIONAL STANDING COMMITTEES.

THE PRESIDENT announced the following additional committees:

On Legislative Department—Terry, Biggs, Finney, Caples, Garvey, Heiskell, Holmes, McCallum, Filcher, E. O. Smith, Graves, Reynolds, Mansfield, Cowden, Hale.

On Executive Department—Campbell, Stuart, Hitchcock, Andrews, Shurtleff, Harvey, West, Swing, Herrington.

On State and Municipal Institutions—Casserly, Martin, of Alameda, Waters, Reddy, Hall, Graves, M. M. Estee, Howard, Berry, Noel, Chapman, Mills, Gregg, Sweasey, Wyatt.

On Revenue and Taxation—Edgerton, Casserly, Tully, Biggs, J. M. Dudley, Miller, Shafter, Barbour, H. C. Wilson, Turner, Inman, Prouty, Hunter, Overton, Moffat.

On Corporations other than Municipal—M. M. Estee, Winans, Reed, Webster, Barbour, Steele, Berry, Gregg, Reddy, Schell, Rhodes, Boggs, White, Dean, Dunlap.

On Revision and Adjustment—Wm. L. Dudley, Hager, Freeman, Fawcett, Casserly, Miller, Hale, Porter, Belcher.

On Water and Water Rights—Tinnin, Pulliam, Keyes, Belcher, Brown, Filcher, Henry Smith, Lewis, McComas, John Walker, Estey, Hunter, Soule, Shoemaker.

On Agriculture, Manufactures, and Commerce—Reed, Tinnin, Web-

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ster, Larue, Townsend, Larkin, Fawcett, Johnson, H. C. Wilson, White, Freud.

On Mining—Pulliam, Tinnin, Hale, Keyes, Lampson, Jones, McCoy, Burt, Strong, Dowling, McNutt.

On Pardoning Power—Shafter, Laine, Johnson, Barry, Rolfe, Hall, Huestis, Kelley, George V. Smith.

On Harbors, Tide Waters, and Navigable Streams—Ayers, Mills, Hilborn, Cowden, J. West Martin, Barnes, Webster, H. Walker, Mansfield.

On Labor and Capital—Belcher, Holmes, E. O. Smith, Ed. Martin, Hall, Barton, Stedman, Caples, Harvey.

On Engrossment and Enrollment—Noel, Wickes, Blackmer, Ringgold, Johnson, Chapman, Stevenson.

On Chinese—Miller, S. M. Wilson, Barbour, Larkin, Shurtleff, Van Voorhies, Murphy, McFarland, Crouch, Andrews, Finney, White, Tuttle, Ed. Martin, Evey.

On Immigration—Barbour, Miller, S. M. Wilson, Evey, Larkin, Shurtleff, Van Voorhies, Murphy, McFarland, Crouch, Andrews, Finney, White, Tuttle, Ed. Martin.

On Lands and Homestead Exemption—E. O. Smith, Glascock, West, Davis, Schomp, Charles, Ohleyer, Brown, McConnell.

Additional to the Committee on State Institutions and Public Buildings—Beerstecher, Porter, McComas, Thompson.

THE RULES.

MR. ESTEE offered the following resolution:

Resolved, That the rules, as adopted, be re-referred to the Committee on Rules, with instructions to prepare an index to the same, and have it printed in pamphlet form, with the names of the officers and attachés of the Convention attached thereto.

Adopted.

MR. O'DONNELL. I have a resolution to offer.

MR. WATERS. I rise to a point of order. Resolutions are not now in order.

THE PRESIDENT. Introduction of propositions in relation to the Constitution are now in order.

INTRODUCTION OF PROPOSITIONS.

On motion of Mr. Edgerton, Mr. Barbour had leave to offer the following resolution:

Resolved, That on presentation of resolutions and propositions, as provided for in part seven of rule seventeen, the Secretary shall call the list of delegates alphabetically, and each delegate, when his name is called, shall be allowed to present two independent resolutions or propositions relating to the proposed Constitution, which shall be read and referred without debate. If the call be not completed on the day it is commenced, the Secretary shall commence the call on the next day where he left off on the previous day, and so on for the next day after, coming back, when through, to the head of the list, until the further order of the Convention.

Adopted.

MR. WATERS. I would suggest that it be made a rule of the Convention.

THE PRESIDENT. Under that rule the Secretary will call the roll.

COMMITTEE ROOMS.

MR. VAN DYKE offered the following resolution:

Resolved, That the Sergeant-at-Arms be instructed to prepare suitable rooms for the use of the standing committees.

MR. VAN DYKE. Some of these committees are already prepared to go to work, and it is necessary to have rooms assigned them in order to perform their duties.

MR. EDGERTON. I rise to a point of order. We have a rule fixing our order of business. That resolution will be in the eleventh, or last order of business.

THE PRESIDENT. The point of order is well taken. The Chair supposed that the house was willing to receive the resolution. The Secretary will call the roll.

PROPOSITIONS AND RESOLUTIONS.

The Secretary called the roll, and propositions and resolutions were sent up as follows:

OFFICE OF LIEUTENANT-GOVERNOR.

MR. BARBOUR introduced the following resolution to abolish office of Lieutenant-Governor:

Resolved, That the Committee on Executive Department be directed to inquire into the expediency of abolishing the office of Lieutenant-Governor.

Referred to Committee on Executive Department.

SINGLE LEGISLATIVE CHAMBER.

MR. BARBOUR introduced the following resolution on single Legislative Chamber:

Resolved, That the Committee on the Legislative Department be directed to inquire into the expediency of establishing a single Legislative Chamber.

Referred to Committee on Legislative Department.

MR. DUDLEY, of Solano. I rise to a point of order. Rule twenty-six, which has been adopted, says: "It shall be the duty of each member who moves that any committee be instructed to inquire into the expediency of amending or revising the existing Constitution, to point out the amendment which he deems expedient, in writing, to accompany his motion." These amendments do not accompany the motion of the gentleman from San Francisco, Mr. Barbour.

THE PRESIDENT. I think these resolutions sufficiently point out the intention. The point of order is overruled.

HOURS OF LABOR.

MR. CONDON offered the following resolution establishing hours of labor:

Resolved, That the Committee on Labor and Capital be instructed to report a provision firmly establishing eight hours as a legal day's work.

Referred to Committee on Labor and Capital.

LIEN LAW.

MR. CONDON offered the following resolution relative to mechanics liens:

Resolved, That the Committee on Labor and Capital be instructed to report provisions creating a perfect lien in favor of mechanics and all laboring men, upon the thing whereon the labor is performed and the land whereon fixed, for their compensation.

Referred to Committee on Labor and Capital.

LICENSES TO CHINESE.

MR. DOWLING introduced the following proposed amendment to the Constitution, prohibiting the granting of licenses to aliens:

WHEREAS, The immigration of aliens, ineligible to become citizens of the United States, to this State, is detrimental to our well-being and dangerous to our institutions; therefore the following article should be inserted in the Constitution of California:

Resolved, That no alien ineligible to become a citizen of the United States shall ever be granted a license to trade, peddle, or carry on any kind of mercantile business in this State after the adoption of this Constitution.

Referred to Committee on Chinese.

IRRIGATION.

MR. DOWLING introduced the following proposed amendment to the Constitution, relative to irrigation:

WHEREAS, The subject of irrigation is one of paramount importance to the State of California, and one which deserves the serious consideration of this Convention, as on it depends, in a great measure, the future prosperity and greatness of this State, and, in view of this fact, the following Article should be entitled to a place in the Constitution:

The Legislature shall provide for the construction and maintenance of a system of irrigating canals and ditches in this State, said canals and ditches to belong forever to the State, and remain under its direct control.

Referred to Committee on Water and Water Rights.

THE SUPREME COURT.

MR. EDGERTON introduced the following proposed amendment to the Constitution, concerning the Supreme Court:

Resolved, That the following provision be adopted in the Constitution:

All terms of the Supreme Court shall be held at the seat of government; but the times for holding such terms shall be provided by law.

Referred to Committee on Judiciary and Judicial Department.

SEAT OF GOVERNMENT.

MR. EDGERTON introduced the following proposed amendment to the Constitution, concerning the seat of government:

Resolved, That the following provision be adopted in the Constitution:

The seat of government shall be at Sacramento, until otherwise directed by law; but no law proposing a change thereof shall be effectual for any purpose until it is submitted to the electors of the State, at a general election, for approval, and is approved by a majority of two thirds of all the votes cast at such general election for or against such proposed change.

Referred to Committee on Legislative Department.

CHARGES ON RAILROADS AND VESSELS.

MR. ESTEE introduced the following proposed amendment to the Constitution, relative to discrimination of charges of railroads and vessels:

SECTION 1. All individuals, associations, and corporations shall have the equal right to have persons and property transported over railroads in this State, or upon vessels plying upon the waters of this State, and no discriminations shall be made in charges for or in facilities for transportation of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad shall be delivered at any station or landing at charges not exceeding the charges of transportation of persons and property of the same class, in the same direction, to any more distant station, but excursions and commutation tickets may be issued at special rates.

SEC. 2. No discrimination in charges or facilities for transportation shall be made between transportation companies and individuals, or in favor of either, by abatement, drawback, or otherwise, and no railroad, or owner or master of a vessel, or any lessee, manager, or employé thereof, shall make any preferences in furnishing cars, or motive power, or facilities for loading or unloading freight.

SEC. 3. No railroad, railway, or other transportation company shall grant free passes, or passes at a discount, to any person except officers or employés of the company.

Referred to Committee on Corporations other than Municipal.

HOMESTEAD EXEMPTION.

MR. EVEY introduced the following proposed amendment to the Constitution, relative to homestead exemption:

The homestead is the place on which the owner resides, who shall, at all times, have the right to point out and designate the same by any mode he may choose, and shall embrace and consist of one or more lots or parcels of land not in excess of one hundred and sixty acres, not exceeding the value of five thousand dollars, which shall be and remain free and exempt from incumbrance by debt or contract of every kind whatsoever, and free and exempt from forced sale by any and all writs or process whatever; and with the growing and grown produce there-

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upon, shall not be alienated by any person or process, if the owner be a married man and under coverture, without the written consent of his wife, taken and acknowledged in the manner as now established by law.

Referred to Committee on Land and Homestead Exemption.

EMPLOYMENT OF CHILDREN.

MR. FARRELL offered the following resolution in regard to the employment of children under fourteen years of age:

Resolved, That the Committee on Miscellaneous Subjects be requested to insert a clause in the Constitution prohibiting the employment of children under the age of fourteen years, in factories or other manufacturing establishments.

Referred to Committee on Miscellaneous Subjects.

MUNICIPAL CORPORATIONS.

MR. FAWCETT introduced the following proposition to incorporate new matter in the Constitution:

No municipal corporation shall hereafter be created by special Act, nor shall any existing charter be changed or amended by special Act. The Legislature shall provide a uniform system of municipal governments, and may divide the same into classes according to population.

Referred to Committee on City, County, and Township Organizations.

CORPORATIONS.

MR. FAWCETT introduced the following proposed amendment to the Constitution to amend section thirty-one, article four, of the Constitution, relative to corporations. Amend so as to read as follows:

Corporations may be formed under general laws, but shall not be created by special Act. All general laws passed pursuant to this section may be altered from time to time, or repealed.

Referred to Committee on City, County, and Township Organizations.

TRIAL JURIES.

MR. FREEMAN offered the following resolution in regard to Trial Juries:

Resolved, That the Constitution be so amended as to permit two thirds of the trial jurors in any case to render a verdict.

Referred to Committee on Judiciary and Judicial Department.

GRAND JURIES.

MR. FREEMAN offered the following resolution in regard to Grand Juries:

Resolved, That the Constitution be so amended as to authorize the Legislature to dispense with Grand Juries, by general laws, in such cases as it may deem proper.

Referred to Committee on Judiciary and Judicial Department.

DECLARATION OF RIGHTS.

MR. GREGG introduced the following proposed amendment to the Constitution, concerning the "Declaration of Rights:"

Amendment suggested to section seventeen of the "Declaration of Rights."

Be it resolved, That foreigners who, under the laws of the United States, are privileged to become citizens of the United States, and who are or may hereafter become bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.

Referred to Committee on Preamble and Bill of Rights.

JUDICIAL SYSTEM.

MR. HAGER introduced the following proposed judicial system—suggested amendments of the present, proposed to be incorporated in the new Constitution as a judicial system:

TO THE DECLARATION OF RIGHTS.

SECTION 1. The right of trial by jury shall be secured to all, and remain inviolate; but hereafter the concurrence of only three fourths of the jury shall be necessary to render a verdict. In criminal cases, where the punishment may be death or imprisonment in the State Prison, the jury shall consist of sixteen persons; in all other actions, either criminal or civil, the jury shall consist of twelve persons; but by the agreement of the parties the jury, in a civil action, may consist of eight persons, or a trial by jury may be waived.

SEC. 2. No person shall be held to answer for a crime or any public offense punishable by death or imprisonment in the State Prison (except in cases of impeachment, or in cases arising in the militia when in actual service, or in the land or naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace), unless on presentment or indictment of a Grand Jury. In all other cases offenses shall be prosecuted criminally by indictment, information, or complaint, as concurrent remedies; and in any trial in any Court whatever, the party accused shall be allowed to appear and defend in person, and with counsel, as in civil actions. Hereafter a Grand Jury shall consist of nineteen men, any ten (10) of whom concurring may find an indictment or true bill. The Legislature, by a two-thirds vote of all the members elected to each House, may abolish or establish and restore the Grand Jury system in all or any county of the State.

SEC. 3. No person shall be compelled in any criminal case to be a witness against himself, but if he voluntarily becomes a witness he may be fully cross-examined; nor shall any person, after being once acquitted by a jury, be again, for the same offense, put in jeopardy of life or liberty; but if the jury fail to render a verdict, or if judgment after verdict be arrested or reversed, nothing herein contained shall prevent a new trial.

SEC. 4. No person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken or damaged for public use without just compensation. Such compensation shall be ascertained by a jury in such manner as may be prescribed by law; and until the same shall be paid to the owner, or into Court for the owner, the property shall not be disturbed, or the proprietary rights of the owner therein divested. The fee of lands taken for railroad tracks or canals, without the consent of the owner thereof, shall remain in such owner, subject to the use for which it is taken.

SEC. 5. The provisions of this Constitution are mandatory and prohibitory, unless by express words it is declared to be otherwise.

TO THE JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of this State, in matters of law and equity, shall be vested in a Supreme Court, in District Courts, in County Courts, and in Justices of the Peace, and in such municipal Courts of inferior criminal jurisdiction as the Legislature, with the concurrence of two thirds of all the members elected to each house, may establish in any incorporated city or town.

SEC. 2. The Supreme Court shall consist of eight Justices. The Justices of the Supreme Court shall be learned in the law, and not less than thirty-five years of age. They must be citizens of the United States and of this State for five years next preceding their election or appointment.

SEC. 3. The Supreme Court shall have a general superintending control over all inferior tribunals, and shall have appellate jurisdiction as follows: In all cases involving the construction of the Constitution of the United States or of this State; in all cases where the validity of any statute or treaty of, or authority exercised under, the United States is drawn in question; in all civil cases arising in the District Courts whereof such Courts have exclusive original jurisdiction; in all cases of probate in the County or Probate Courts; and in all criminal cases amounting to felony, on questions of law alone; and it shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and such other writs as may be necessary to the complete exercise of its appellate jurisdiction. The Justices, and each of them, upon petition in behalf of any person held in actual custody, may issue writs of habeas corpus to any part of the State, and make such writs returnable before the Supreme Court, or a Justice thereof, or before any District Court, or County Court, or before any Judge of such Courts.

SEC. 4. The Justices of the Supreme Court, except as in this Constitution otherwise provided, shall be elected by the qualified electors of the State—two every two years at each general election—and shall hold office for the term of eight years. But the Legislature may, in its discretion, provide separate tickets and ballot-boxes for the election of Justices of the Supreme Court at a general election, or may change the time of election of such Justices from a general to a special election, to be held every two years.

SEC. 5. The full terms of office of the Justices of the Supreme Court, and the unexpired terms of those elected to fill any vacancies, shall commence on the first Tuesday after the first Monday in January next ensuing their election. Those appointed shall enter upon the discharge of their duties as soon as qualified.

SEC. 6. The Justices of the Supreme Court shall be so classified that only two of them shall go out of office every two years, and at the same time. If a vacancy occurs in the office of Justice of the Supreme Court, it shall be filled by the Governor. The person so appointed shall only hold the office until the next election appointed for the election of Justices of the Supreme Court by the people, when the vacancy shall be filled by the election of a Justice, who shall hold the office only for the unexpired term.

SEC. 7. The State shall, from time to time, be divided by the Legislature into two territorial districts, each district to be composed of entire contiguous counties. A Supreme Court, to consist of any four of the eight Justices of the Supreme Court, shall be held in each territorial district, and the concurrence of three Justices shall be necessary to pronounce a judgment or render a decision. Appeals to the Supreme Court from judgments entered of record in a county within a territorial district shall be to the Supreme Court in the same district.

SEC. 8. If in any case pending in the Supreme Court, in either district, the Justices be equally divided in opinion, or the Court overrules an authoritative decision previously made by any Supreme Court of this State, such case shall, with a statement of the reason therefor, be certified and transmitted to the Supreme Court in full bench, to consist of eight Justices. All cases so certified and transmitted shall be heard in the Supreme Court in full bench, and only, unless the Court otherwise direct, upon written arguments; and the concurrence of five Justices shall be necessary to pronounce a judgment or render a decision therein. If five Justices fail to concur the judgment appealed from must be affirmed.

SEC. 9. The Supreme Court, in full bench of eight Justices, and the Supreme Court in the territorial districts, of four Justices, shall be held at such times and places, and appeals thereto, respectively, shall be taken, certified, transmitted, and the business of the Courts regulated as may be prescribed by law.

SEC. 10. At any session of the Supreme Court the Justice holding a commission oldest in date shall be Chief Justice, and if there be more than one commission of the same date the Justices may select the Chief Justice.

SEC. 11. The State shall provide suitable Court-rooms and accommodations for holding the sessions of the Supreme Court, and for the Justices and officers.

SEC. 12. When any Justice of the Supreme Court, through interest or other disability, is disqualified from taking part in the hearing or decision of any case pending before the Supreme Court, in full bench, the remaining Justices may call to their assistance a disinterested District Judge, who shall act in such case as a Justice of the Supreme

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Court. In like cases the Supreme Court, in either territorial district, may call to its assistance another Justice of the Supreme Court or a District Judge.

Sec. 13. The present Justices of the Supreme Court shall remain in office (unless sooner succeeded by those elected under this Constitution) until the expiration of the terms of office respectively to which they were elected; but their terms of office shall expire, and the payment of further salaries or compensation cease, and they shall severally retire from office in the order of their election (the Justice of the shortest unexpired term first) at the commencement of the terms of office, respectively, of Justices elected under this Constitution. To succeed the present Justices of the Supreme Court two Justices shall be elected at the —— election in the year —— and —— in the year ——.

Sec. 14. All judicial decisions in this State shall be free for publication by any person; but the Supreme Court may designate what decisions and opinions delivered by that Court, or the Justices thereof, shall be printed at the expense of the State; and no payment shall be made by the State for the publication of any decisions or opinions not so designated. All cases finally submitted to the Supreme Court must be decided without unnecessary delay, and within three months after such submission.

Sec. 15. The State, except as otherwise provided in this Constitution, shall be divided into convenient judicial districts of entire contiguous counties, in each of which one District Judge shall be elected by the qualified electors of the district, at the general or special elections provided for the election of Justices of the Supreme Court. Such judicial districts may be changed, enlarged, diminished, or abolished by the Legislature, by a two-thirds vote of all the members elected to each house, as public convenience may require; and whenever a judicial district shall be abolished the office of the Judge and his salary and compensation shall cease. The District Judges shall hold their offices for the term of eight years.

Sec. 16. Any single county containing fifty thousand inhabitants may of itself constitute a judicial district. In a judicial district composed of a single county, the Legislature, by a two-thirds vote of all the members elected to each house, may, from time to time, as the public convenience may require, provide for an additional District Judge for every additional fifty thousand inhabitants in such county, each of whom may separately hold District Courts, hear and try cases, perform all the duties imposed upon District Judges, and exercise the full jurisdiction of District Courts. In any judicial district where there may be more than one District Judge, the several District Courts therein, for business purposes, shall be known and designated as the First, Second, etc., District Court of the —— Judicial District, in numerical order, according to their respective numbers and judicial districts, as may be prescribed by law. The business, practice, and proceedings, and the times and manner of holding such Courts, may be regulated by general and special laws applicable to such judicial districts.

Sec. 17. The District Courts shall have original jurisdiction in all cases in equity; in all cases involving the title of real property or mining claims; the construction of the revenue laws of this State; the legality of any tax, impost, assessment, toll, or municipal fine, forfeiture or penalty, or the title to any office under this State; and in all other cases in which the demand, exclusive of interest or the value of personal property in controversy amounts to three hundred dollars; and, also, in all criminal cases not otherwise provided for, or which may be conferred by law. They shall also have such concurrent jurisdiction with, and such appellate jurisdiction from, inferior tribunals as may be conferred by law.

Sec. 18. No person shall be eligible to the office of District Judge unless he be learned in the law and has attained the age of thirty-five years; and who has not, for five years next preceding his election, been a resident of the district, and a citizen of the United States and of this State.

Sec. 19. The District Courts shall exercise a superintending control over County Courts, Probate Courts, and other inferior Courts in each county of their respective districts; and they and the Judges thereof shall have power to issue orders and writs of mandamus, quo warranto, certiorari, prohibition, ne exeat, injunction, habeas corpus, and all other orders and writs necessary and proper to the complete exercise of their jurisdiction, and to hear and determine the same.

Sec. 20. In each of the counties of the State there shall be a County Court, and, except as otherwise provided in this Constitution, for each a County Judge shall be elected by the qualified electors of the county. County Judges shall hold their offices for the term of four years.

Sec. 21. In any county containing over fifty thousand inhabitants, the Legislature, by a two-third vote of all the members elected to each house, may, from time to time, as the public convenience may require, provide for such county one additional County Judge for each additional fifty thousand inhabitants; each of whom shall separately hold County Courts, hear and try cases, exercise the jurisdiction and perform all other duties imposed upon County Courts and Judges. The business, practice, and proceedings of, and the manner and times of holding such Courts, may be regulated by general and special laws applicable to such counties.

Sec. 22. The County Courts shall have original jurisdiction of actions of forcible entry and detainer and to prevent or abate a nuisance; of proceedings in insolvency, and of all such special cases and proceedings as are not otherwise provided for; they shall also have such criminal jurisdiction as the Legislature may prescribe; and shall have power to hear applications for and to issue naturalization papers. They shall also have appellate jurisdiction in all cases arising in Courts held by Justices of the Peace, and in such inferior municipal Courts as may be established under this Constitution. County Judges shall hold, in their respective counties, Probate Courts, and in such Probate Courts, and as Probate Judges, shall perform such duties as may be prescribed by law. In any county where there may be two or more County Judges the Probate Court shall be held, and the duties of Probate Judge performed, by one or more of such County Judges, as the public convenience may require, and as may be prescribed by law.

Sec. 23. The County Courts, in their respective counties, shall exercise a superintending control over Justices of the Peace and all municipal Courts, and shall have authority to issue writs of habeas corpus on petition by, or on behalf of, any person in actual custody, unless committed or imprisoned by the order or judgment of the Supreme Court, or a Justice thereof, or by a District Court, or a Judge thereof.

Sec. 24. No person shall be eligible to the office of County or Probate Judge unless he has attained the age of thirty years, and for five years next preceding his election or appointment has been a resident of the county, a citizen of the United States and of this State.

Sec. 25. District, County, and Probate Judges shall be elected at the general or special elections, and in the same manner prescribed for the election of Justices of the Supreme Court, and shall enter upon the duties of their respective offices on the first Tuesday after the first Monday in January next after their election.

Sec. 26. The election of all Justices and Judges of Courts of record shall be held and conducted as this Constitution, and laws in harmony therewith, may provide; and in case of a tie, or contested election between any candidates, the same shall be determined as prescribed by law.

Sec. 27. District Judges may interchange with each other in holding District Courts, and in the performance of official duties, in the several judicial districts throughout the State; and if, from any cause, a County or Probate Judge be unable or disqualified from holding Court in any county, such Court may be held by any other County or Probate Judge.

Sec. 28. The Supreme Court, District Courts, County Courts, and Probate Courts shall be Courts of record.

Sec. 29. The Legislature shall provide for the election, in each county, of as many Justices of the Peace as the public convenience may require, with such duties, powers, jurisdiction (inferior to the Courts of record), and terms of office as prescribed by law.

Sec. 30. The Justices of the Supreme Court, District Judges, County and Probate Judges shall, at stated times during their continuance in office, receive for their services such compensation as is or may be prescribed by law, which shall not be increased or diminished after their election, or during their terms of office. The compensation to County and Probate Judges shall be paid out of the county treasury of their respective counties. No judicial officer, except Justices of the Peace when authorized by law, shall receive to his own use any fees or perquisites of office.

Sec. 31. The Justices of the Supreme Court, District Judges, County and Probate Judges, during the term for which they shall have been elected shall not be eligible to any other office, State or Federal, than a judicial office, nor shall they hold any other office of profit under this State or under the Government of the United States, or of any other State, or practice as an attorney or counselor in any Court in this State.

Sec. 32. In jury trials, Judges may state the testimony and declare the law, but shall not charge juries as to conclusions of fact.

Sec. 33. The Legislature shall have no power to grant leave of absence to any judicial officer, and if any such officer shall absent himself from the State for more than thirty consecutive days his office shall be forfeited and become vacant.

Sec. 34. If a Justice or Judge of any Court of record willfully violates his oath of office, or neglects, or by reason of prolonged sickness or physical or mental infirmity becomes unable to perform the duties of his office with efficiency, the Legislature shall have power, by a two-thirds vote of the members of each house concurring, and with the approval of the Governor, to remove such Justice or Judge from office; but the cause of such removal shall be first stated on the Journal of each house, and notice thereof given to such Justice or Judge, with such reasonable time to be heard in his defense as may be prescribed by law.

Sec. 35. The style of all process shall be "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

Sec. 36. The salaries and compensation allowed to judicial officers must be fixed by law. The yearly salary and compensation of Justices of the Supreme Court shall not exceed the sum of —— dollars; that of a District Judge shall not exceed the sum of —— dollars; and that of a County Judge, or a Judge of a Municipal Court, shall not exceed the sum of —— dollars. Justices of the Peace shall receive such salaries or fees as prescribed by law.

Sec. 37. Judicial officers, before entering upon the duties of their respective offices, shall take and subscribe before a Judge of a Court of record the following oath or affirmation, in writing: "I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States; that I will support and fully sustain, observe, and obey the Constitution of the State of California, in all its parts and provisions, and that I will faithfully discharge the duties of (here insert title of office), according to the best of my ability and understanding." The oath or affirmation of a Justice of the Supreme Court, or of a District Judge, must, before the issuance of his commission, be filed and deposited in the office of the Secretary of State; that of a County Judge, the Judge of a Municipal Court, and of a Justice of the Peace, must, in like manner, be filed and deposited in the office of the County Clerk of the county.

Referred to Committee on Preamble and Bill of Rights, and Committee on Judiciary and Judicial System.

Mr. VAN DYKE. I believe that violates the rule. These propositions are on different branches, and referred to different committees. The fore part was in reference to the Bill of Rights and the latter part to the Judicial Department.

Mr. HAGER. Some portions of the Bill of Rights relate to the

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judicial system, and that portion of it was referred to the Committee on Preamble and Bill of Rights. That which relates to Jury Trials is also a part of the judicial system, which is now embodied in the Bill of Rights. This is a proposition for a new judicial system.

THE PRESIDENT. The Chair decides that the resolutions sent up by the gentleman from San Francisco, Mr. Hager, relate to but one subject. Portions of them may be referred to different committees. Therefore the point of order is not well taken.

RAILROAD CORPORATIONS.

MR. HOWARD introduced the following proposed amendment to the Constitution, relative to corporations:

Resolved, That the Constitution should embrace the following provisions in relation to railways:

Railroad corporations in this State are common carriers, and their ways public highways, and such corporations subject to legislative control. They shall be chartered under general and uniform laws. Each shall have the right to connect with any other, and transfer and receive freight and passengers without delay or discrimination; but no such corporation shall consolidate directly or indirectly with a parallel or competing line. The railroad and steamship corporations or companies in this State, under pain of forfeiture of charters, are prohibited from combining or pooling freights or fares, or in any manner combining or pooling with each other. No railroad or canal company in this State shall charge more than —— cents per mile as fare for passengers for a distance over thirty miles, or more than —— cents per ton per mile for freight for any distance over thirty miles. Freight shall include delivery, wharfage, and storage for forty-eight hours after notice to the consignee. Rates never shall be higher from a given point to another on any such way than from the first point to one more distant on the same way, except on excursion trains or commutation. Discrimination in rates between individuals or corporations asking to be served is prohibited; and no railroad, canal, or steamship officer shall be permitted to become privately interested in transportation or furnishing supplies. Common-carrying corporations are forbidden to engage in mining or other business. The Legislature of this State shall pass laws to more fully enforce the provisions of this article, and to correct abuses and prevent discrimination and extortion in the rates of freights and fares on the public ways of this State, and fix, from time to time, by proper enactments and laws, reasonable maximum rates of charges for transportation of passengers and freight on the different railroads and canals in this State, not inconsistent with the foregoing; and shall enforce such laws by adequate penalties, to the extent, if necessary, of forfeiture of franchises held by any corporation offending against such laws.

Referred to Committee on Corporations other than Municipal.

TAXATION.

MR. HUESTIS introduced the following proposed amendment to the Constitution, concerning revenue and taxation:

Resolved, That the Committee on Revenue and Taxation be requested to embody in their report the following propositions:

SEC. —. Every person and corporation shall pay a tax in proportion to the value of his, her, or its property within this State. All moneys due and owing to any person, or to become due, by a solvent debtor, whether secured by mortgage or otherwise, are property within the meaning of this Constitution, and shall be taxed; *provided*, that all property of the United States, of the State, of counties, cities and counties, cities, or other municipal corporations, and all growing crops, shall be exempt from taxation. The Legislature shall enact such laws as may be necessary to carry into effect the provisions of this section.

SEC. —. For the purpose of preventing double taxation, the Legislature shall enact laws necessary to authorize Assessors to deduct the just debts, evidenced by note, mortgage, or other written instrument of the person taxed, from the estimated value of his, her, or its taxable property. Solvent debts, secured by mortgage owned or held by non-residents of the State, shall be assessed to such non-residents, and the tax so assessed shall be a lien upon, and collectible from, the property described in the mortgage; *provided*, that the amount of the tax so collected from such mortgaged property may be deducted by the mortgagor from the debt secured by the mortgage. All contracts by one party for the payment of taxes assessed to another are hereby prohibited and declared null and void.

Referred to the Committee on Revenue and Taxation.

EMPLOYMENT OF CHINESE BY CORPORATIONS.

MR. FREUD introduced the following proposed amendment to the Constitution, relative to the employment of Chinese by corporations:

SECTION —. No charter, contract, grant, or subsidy shall be issued by this State to any railroad, mining, or other corporation unless it shall contain the express stipulation that no Mongolian shall ever be used, hired, or employed by such corporation in any capacity whatever.

SEC. —. Violation of the foregoing provision shall work a forfeiture of said charter, contract, grant, or subsidy.

SEC. —. No railroad, mining, or other corporation in existence at the time of the adoption of this Constitution shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads, mines, or other corporations.

Referred to Committee on Corporations other than Municipal.

LICENSES FOR ALIENS.

MR. FREUD introduced the following proposed amendment to the Constitution, relative to granting licenses, franchises, or privileges to aliens not eligible to become citizens of the United States.

Resolved, That the following sections be inserted in the new Constitution:

LEGISLATIVE DEPARTMENT.

SECTION —. The Legislature shall frame such laws for the regulation of franchises, privileges, permits, or licenses for the carrying on of any business or industry as shall prohibit the granting, issuing, or use of any such franchise, privilege, permit, or license to any alien resident of this State who by law is ineligible to citizenship.

SEC. —. Violation of the foregoing provision shall be declared a felony, punishable in accordance with the laws of this State.

Referred to Committee on Legislative Department.

EXCESSIVE BAIL.

MR. HUGHEY introduced the following proposed amendment to the Constitution, relative to excessive bails and fines:

Resolved, That the Judiciary Committee insert the following section in Bill of Rights, in their draft of the new Constitution:

ARTICLE —.

SECTION —. Excessive bail shall not be required, nor excessive fines imposed, nor shall witnesses be imprisoned, in default of bail, as such.

Referred to Committee on Judiciary and Judicial Department.

TENURE OF OFFICE.

MR. JOHNSON introduced the following proposition as to officers and their tenure of office:

All officers of this State, county officers, members of the Legislature, and township officers, shall be elected on the first Tuesday after the first Monday in November, eighteen hundred and eighty, and every four years thereafter, and shall hold their offices until their successors are elected and qualified; said officers, so elected, to enter upon the discharge of their duties on the first Wednesday in January next after their election; and officers holding office at the time of the adoption of this Constitution shall hold over till the first Wednesday in January, eighteen hundred and eighty-one. Judges of Courts of record are excepted from the operation of the foregoing proposition.

Referred to Committee on Privileges and Elections.

REAL ESTATE TO ALIENS.

MR. JOYCE introduced the following proposed amendment to the Constitution, relative to the lease or sale of real estate to aliens not eligible to become citizens:

SECTION 1. No alien or aliens shall ever be capable of taking, holding, transmitting, or transferring title to any real estate within this State, or of acquiring or transferring any right, title, or interest in any real estate in this State, under lease or otherwise.

Referred to Committee on Chinese.

MR. JOYCE also introduced the following proposed amendment to the Constitution, relative to the same subject:

SEC. 2. All real estate in this State which shall hereafter be conveyed or leased to any alien who does not first legitimately declare his intentions to become a citizen of the United States, under the laws thereof, shall escheat to the State.

Referred to Committee on Chinese.

A WHOLE CONSTITUTION.

MR. LAINE. I confess that I do not fully understand the scope of this rule, but it appears a proposition must embrace a single idea. It seemed to me upon the introduction of the proposition by the gentleman from San Francisco, Mr. Hager, that it embraced a number of ideas, but was placed under the head of one proposition. Now, I do not desire to infract the rules of this Convention, but I desire to offer a proposed Constitution for the State of California, as one proposition, if I may be in order in doing so. It takes it all in, and of course there is more than one idea embraced in it. It is on legal cap and otherwise meets all the rules of the Convention. If I can be allowed to introduce it, I desire that it be referred to the Committee on Revision and Adjustment.

THE PRESIDENT. By unanimous consent of the Convention it can be introduced.

MR. BARBOUR. I object.

THE PRESIDENT. It is out of order, then.

MR. HAGER. I wish to correct the gentleman, so far as the proposition I introduced is concerned. It relates to one subject entirely—to the administration of justice alone.

MR. LAINE. I would ask a ruling of the Chair.

THE PRESIDENT. I rule the proposition out of order.

MR. McCALLUM. Will the Chair entertain a motion to suspend the rule? I move that the rule be suspended, in order that he may offer his Constitution as a whole—that rule fifty-two be temporarily suspended.

Lost.

ALIENS BECOMING SETTLERS.

MR. LARKIN introduced the following proposed amendment to the Constitution, relative to aliens becoming settlers in this State:

ARTICLE —.

SECTION 1. No person shall be permitted to settle in this State who is not eligible to become a citizen of the United States after the adoption of this Constitution.

SEC. 2. All contracts made with any such person or persons, coming into this State contrary to the provisions of the foregoing section, shall be void; and any person who shall employ such person or persons, lease, rent lands or houses to him or them, or encourage any such person or persons to remain in the State, shall be fined in any sum not less than twenty dollars nor more than one thousand dollars.

SEC. 3. All fines which may be collected for a violation of the provisions of this article, or of any law which may hereafter be passed for the purpose of carrying the same into execution, shall be set apart and appropriated to the Common School Fund of the State.

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Sec. 4. The Legislature shall pass laws to carry out the provisions of this article.

Referred to Committee on Legislative Department.

LAND SUBSIDIES.

Mr. LINDOW offered the following resolution relative to land subsidies:

Resolved, No land or other subsidies should be granted to any corporations.

Resolved, Land grabbing must be stopped.

Referred to Committee on Corporations other than Municipal.

ABOLITION OF GRAND JURIES.

Mr. MANSFIELD offered the following resolution in relation to Grand Juries:

Resolved, That Grand Juries be abolished in this State by an appropriate provision in the new Constitution.

Referred to Committee on Judiciary and Judicial Department.

QUALIFICATION OF VOTERS.

Mr. MARTIN, of Santa Cruz, offered the following resolution relative to persons voting who have not been naturalized six months prior to an election:

Resolved, That the Committee on Suffrage be instructed to inquire into the expediency of making provision that persons entitled to citizenship shall not be allowed to vote at any election in this State, unless they shall have obtained final naturalization papers six months prior to any election.

Referred to Committee on Right of Suffrage.

READING OF BILLS.

Mr. McCALLUM offered the following resolution to amend the Constitution relative to the reading of all bills by sections, on the question of their passage, and taking and recording the final vote on such question:

Resolved, That the Constitution should be so amended as to provide that every bill shall be read in full on the question of its passage, and further, that the ayes and noes shall be always taken and recorded on such question.

Referred to Committee on Legislative Department.

MEETING OF THE LEGISLATURE.

Mr. McCALLUM offered the following resolution relative to the meeting of the Legislature:

Resolved, That the Committee on the Legislative Department are hereby instructed to report an amendment to article four of the Constitution, so as to provide that the time of meeting of the Legislature shall be fixed to commence on the first Wednesday after the first Monday in January ensuing the election of its members.

Referred to Committee on Legislative Department.

RIGHT OF SUFFRAGE.

Mr. McFARLAND introduced the following proposed amendment to the Constitution relative to the right of suffrage:

Resolved, That the following provisions be inserted in the Constitution:

Every unmarried woman having such qualifications of age, residence, and citizenship as are prescribed in this Constitution for male voters, who is or may hereafter be the owner of property of the value of one thousand dollars, shall be entitled to vote at all elections in this State; and every married woman having the said qualifications of age, residence, and citizenship, who is or shall be the owner of separate property of the value of two thousand dollars, shall be entitled to vote at all elections in this State; *provided*, that the Legislature shall have the power to extend the elective franchise to any or all other women having the above named qualifications of age, residence, and citizenship.

Referred to the Committee on Right of Suffrage.

PARDONS AND REPRIEVES.

Mr. MORELAND introduced the following suggested amendment to section thirteen, article five, of the present Constitution:

The power to grant pardons and reprieves after conviction, for all offenses except treason and cases of impeachment, shall be lodged in a Commission to consist of three persons, to be chosen as provided by law. They shall have power to grant such pardons and reprieves upon such conditions and with such restrictions and limitations as they may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardon. Upon conviction for treason, they shall have power to suspend the execution of sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. They shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the pardon or reprieve.

Referred to Committee on Pardoning Power.

ABOLITION OF FINES.

Mr. MORSE offered the following resolution to abolish fines:

Resolved, That the Committee on Preamble and Bill of Rights be instructed to report a section abolishing fines upon conviction of crime, except in cases of petty misdemeanor.

Referred to Committee on Preamble and Bill of Rights.

CHINESE TESTIMONY.

Mr. MURPHY offered the following resolution, relative to Chinese testimony:

Resolved, That the Committee on Chinese be instructed to prepare a clause in the new Constitution forbidding the employment of Chinese testimony in cases where white persons are parties.

Referred to the Committee on Chinese.

TAXATION.

Mr. MURPHY introduced the following proposed amendment to section thirteen, article eleven, of the present Constitution:

Resolved, That the Committee on Taxation and Revenue insert the following amendment in the Constitution:

Sec. 13. Taxation shall be equal and uniform throughout the State. Mortgages, bonds, notes, book accounts, and all other evidences of indebtedness shall be taxed to their full cash value. All property in this State shall be taxed in proportion to its value, to be ascertained and directed by law, but Assessors and Collectors of town, county, and State taxes shall be elected by the qualified electors of the district, county, or town in which the property taxed for State, county, or town purposes is situated.

Referred to Committee on Revenue and Taxation.

EMPLOYMENT OF ALIENS.

Mr. NELSON introduced the following proposed amendment to the Constitution, relative to employment of aliens:

Resolved, That no alien, ineligible to become a citizen of the United States, shall ever be employed on any State, county, municipal, or other public work in this State after the adoption of this Constitution.

Referred to Committee on Chinese.

DECLARATION OF RIGHTS.

Mr. NOEL introduced the following proposed amendment to the Declaration of Rights, article one, section twenty-two:

The Legislature shall not grant to any citizen, or class of citizens, privileges or immunities which upon the same terms shall not equally belong to all citizens.

Sec. 23. Aliens who are, or who by the laws of the United States may become, citizens of the United States, and who are bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.

Sec. 24. The State, by virtue of its sovereignty, has the absolute right to control the police regulations within its limits.

Referred to Committee on Preamble and Bill of Rights.

ABOLITION OF POLL TAX.

Mr. O'SULLIVAN introduced the following proposed amendment to the Constitution, relative to the prohibition of a poll tax:

Resolved, That the following provision should be inserted in the Constitution:

A tax on human existence being an absurdity, antagonistic to free institutions, therefore taxes by the poll are forever prohibited in this State.

Referred to Committee on Revenue and Taxation.

ACQUISITION OF LAND.

Mr. REYNOLDS offered the following resolution, relative to the acquisition of land:

Resolved, That the Committee on —— be and are hereby instructed to inquire into and report as to the expediency of so amending the Constitution as to limit the future acquisition of land by any one person, or association of persons, or corporation.

Mr. REYNOLDS. I ask to lay that resolution temporarily on the table, for the reason that I have only heard the names of the committees called, and hardly know to what committee I would like to have it referred.

The PRESIDENT. It would go to the Committee on Miscellaneous Subjects.

Mr. REYNOLDS. I do not desire it referred to a committee unless I know who the committee are. I understand ——

The PRESIDENT. The resolution is not debatable.

Mr. REYNOLDS. I desire only to state that I hope to get a committee reported by the Committee on Rules and Order of Business, on Land Limitations, and if so I will then ask to have it referred to that committee.

The PRESIDENT. The resolution will lie on the table as the gentleman desires it.

WATER RIGHTS.

Mr. OHLEYER introduced the following proposed amendment to the Constitution, relative to water rights:

Resolved, That all the waters of the State are the common property of the people, and no individual or corporation shall be permitted to use the same to the injury of their neighbors.

Referred to Committee on Water and Water Rights.

The hour having arrived, the Convention took a recess until one o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at one o'clock, the President pro tem., Belcher, in the chair.

On motion of Mr. McFARLAND, the roll call was dispensed with.

Mr. EDGERTON. Mr. President: I move that four hundred and eighty copies of the list of committees and the members constituting the same be printed.

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MR. BARBOUR. I second that motion.

MR. ESTEE. It is already ordered.

MR. EDGERTON. The list of committees is ordered, but not the names of the members constituting the committees.

MR. ESTEE. Then put in the residence of the members.

MR. REYNOLDS. I hope the motion will prevail, for this reason——

MR. MURPHY. I rise to a point of order. We are not now under the head of motions and resolutions.

THE PRESIDENT pro tem. The point of order is well taken. The Secretary will proceed to call the roll on receiving propositions.

PROPOSED AMENDMENTS AND RESOLUTIONS.

MR. RINGGOLD offered the following resolution, relative to an oath, which was read by the Secretary and referred as noted:

Resolved, After the adoption of this Constitution, no person shall ever be allowed to either vote at any State, county, township, or municipal election in this State, or the election of officers of any corporation for profit, nor be allowed to prosecute or defend any civil action in any of the State, county, or municipal Courts of this State, who, when challenged so to do by any citizen of the State, shall refuse to take the following oath or affirmation: "I do solemnly swear (or affirm) that since the expiration of ninety days after the adoption of the now existing Constitution of the State of California, I have not directly or indirectly employed in this State, or elsewhere to render service in this State, any foreign-born Mongolian, nor any alien resident of this State who is not entitled under the laws of the United States to become a citizen thereof, either as a laborer, servant, mechanic, manufacturer, or otherwise, and I have not, since the expiration of ninety days after the adoption of said Constitution, knowingly bought, sold, or used, either for food, raiment, or any other purpose, any article manufactured, produced, or prepared in this State, in whole or in part, by the labor of any such Mongolian, or other alien resident of this State who is not entitled, under the laws of the United States, to become a citizen thereof." All executive, legislative, and judicial officers of this State, and all county, township, and municipal officers shall, before entering upon the discharge of the duties of their respective offices, take and subscribe the above oath (or affirmation), together with the following: "And I will support the Constitution of the United States, and the Constitution of the State of California, and will faithfully discharge the duties of the office of —— according to the best of my ability."

Referred to the Committee on Right of Suffrage.

JUDICIAL DEPARTMENT.

MR. ROLFE introduced the following proposed amendment to the Constitution, to take the place of sections one, two, three, and four, of article six.

The reading was dispensed with.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of this State shall be vested in a Supreme Court, in District Courts, in County Courts, in Probate Courts, and in Justices of the Peace, and in such Recorders' and other inferior Courts as the Legislature may establish in any incorporated city or town.

SEC. 2. The Supreme Court shall consist of a Chief Justice and five Associate Justices. The Justice having the shortest term to serve shall be the Chief Justice. The Justices of the Supreme Court shall be elected by the qualified electors of the State, at the general elections next after vacancies may occur in any of such offices respectively, either by expiration of term, death, resignation, or otherwise. They shall hold their offices for the term of twelve years from the first day of January next after their election.

SEC. 3. The Supreme Court shall have appellate jurisdiction in all cases in equity; also, in all cases at law which involve the title or right to the possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest or the value of the property in controversy, amounts to —— hundred dollars; also, in all cases arising in the Probate Courts, and also in all criminal cases amounting to felony, on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of its appellate jurisdiction. One Justice may issue writs of habeas corpus to any part of the State upon petition and behalf of any person held in actual custody, and may make such writ returnable before himself, or the Supreme Court, or before any District Court or any County Court in the State, or before any Judge of said Courts.

SEC. 4. The Supreme Court shall be divided into two divisions, of three members each. The Justice of each division having the shortest term to serve shall be the Presiding Justice thereof. Such division shall be made by the Justices by mutual agreement among themselves, or if in any case they cannot agree, then by the Chief Justice. One division shall be known as the Equity Division, and the other as the Law Division. The Equity Division shall hear and determine all appeals in equity cases, or in which questions of equity constitute the principal or important questions involved. The Law Division shall hear and determine appeals, and have jurisdiction in all other cases. The Chief Justice shall allot to each division its appropriate cases, in accordance with the foregoing division, but his allotment of any case or cases shall be subject to revision and change by the full bench, on the application of any two Justices of the Division to which such allotments so asked to be changed may be made by the Chief Justice, the decision thereon by the full bench to be made as in any other case of appeal.

SEC. 5. Terms of the full bench of the Supreme Court shall be held by the Justices of both Divisions sitting together as one Court. The full bench of the Supreme Court shall have jurisdiction in all cases decided by either Division, in which there shall not be a concurrence of all the Justices thereof, and in all cases which, on account of their importance, may be transferred to the full bench by order of the Division having the jurisdiction thereof, after judgment or decision by the Division.

SEC. 6. Terms of the full bench and of each Division of the Supreme Court shall be held at such times and place or places as may be prescribed by law. The presence of four Justices shall be necessary to constitute a quorum of the full bench to transact business, and the concurrence of a majority of Justices present shall be necessary to pronounce a judgment or decision of the full bench. The judgment or decision in all cases coming to the full bench from either Division, in which the judgment or decision of the Division shall have been concurred in by two of the Justices thereof, shall be considered as affirmed by the full bench, unless a majority of the Justices present, constituting a quorum of the full bench, shall concur in a reversal or modification. The presence of two Justices shall be necessary to constitute a quorum of either Division to transact business.

Referred to the Committee on Judiciary and Judicial Department.

A RESOLUTION CONCERNING THE LEGISLATIVE DEPARTMENT.

MR. SCHELL introduced the following resolution:

Resolved, That the following provision be incorporated in the Constitution:

No new bill shall be introduced into either House of the Legislature during the last ten days of the session thereof.

Read and referred to the Committee on Legislative Department.

RELATIVE TO TAXATION.

MR. SCHOMP introduced the following resolution:

Resolved, That all farming lands, of equal producing capacity, should be subject to equal taxation, without reference to cultivation.

Read and referred to the Committee on Revenue and Taxation.

RELATIVE TO THE RIGHTS OF FOREIGN-BORN CITIZENS.

MR. SHOEMAKER introduced the following amendment to section seventeen, article one, of the Constitution, relative to rights of foreign-born residents:

Proposition to amend section seventeen, article one, of the Constitution, so as to read as follows:

SEC. 17. Foreigners (except Mongolians) who are or who may hereafter become bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens, restricted only by such regulations as the Congress of the United States may impose.

Read and referred to the Committee on Preamble and Bill of Rights.

RELATIVE TO BILLS OF ATTAINDER.

MR. SHOEMAKER introduced the following amendment to section sixteen, article one, of the Constitution, relative to bills of attainder, ex post facto laws, etc.

Proposition to amend section sixteen, article one, of the Constitution, so that it will read as follows:

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts or making irrevocable any grant of special privilege or immunities, shall ever be passed.

Read and referred to the Committee on Preamble and Bill of Rights.

PROPOSITION IN FAVOR OF THE MINORITY SYSTEM FOR THE ELECTION OF MEMBERS OF THE SENATE AND HOUSE OF REPRESENTATIVES.

MR. SMITH, of Santa Clara, introduced the following resolution:

Resolved, That the Committee on the Legislative Department be requested to inquire into the propriety of incorporating into the new Constitution the following provisions: The Legislature shall apportion the State every ten years, beginning with the year ——, by dividing the population of the State into as ascertained by the last Federal census by the number of twenty-five, and the quotient shall be the ratio of representation in the Senate. The State shall be divided into twenty-five Senatorial districts, each of which shall elect one Senator, whose term of office shall be four years. The Senators elected in the year —— shall vacate their office at the end of two years, and those elected bearing even numbers at the end of four years, and vacancies occurring by the expiration of term shall be filled by the election of Senators for the full term. Senatorial districts shall be formed of contiguous and compact territory bounded by county lines, and contain as nearly as practical equal number of inhabitants, but no district shall contain less than four fifths of the Senatorial ratio. Counties containing not less than the ratio and three fourths may be divided into separate districts, and shall be entitled to two Senators, and to one additional Senator for each number of inhabitants equal to the ratio contained by such county in excess of twice the number of said votes. The House of Representatives shall consist of three times the number of the Senators, and their term of office shall be two years. Three Representatives shall be elected to each Senatorial district at the general election in the year ——, and every two years thereafter in all elections of Representatives aforesaid each qualified voter may cast as many for one candidate as there are Representatives to be elected, or may distribute the same in equal parts thereof among the candidates as he shall see fit, and the candidates highest in votes shall be declared elected.

Read and referred to the Committee on Apportionment and Representation.

RELATIVE TO RAILWAYS.

MR. SMITH, of Santa Clara, introduced the following proposition—declaring railways public highways; requiring the Legislature to establish maximum rates and charges for freight and carrying passengers;

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the rolling stock of a railroad company made personal property, and liable to execution and sale; prohibiting the consolidation of railroad companies; majority of Directors to be citizens or residents of State; prohibit companies from inflating stock, etc.

Resolved, That the Committee on Corporations other than Municipal be requested to inquire of the propriety of the following provisions for the Constitution:

Railways heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law; and the Legislature shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads in this State. The rolling stock, and all other movable property belonging to any railroad company or corporation in this State, shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the Legislature shall pass no law exempting any such property from execution and sale. No railroad corporation shall consolidate its stock, property, or franchise with any other railroad corporation running a parallel or competing line. A majority of the Directors of any railroad corporation now incorporated or hereafter to be incorporated by the laws of this State, shall be citizens and residents of this State. No railroad corporation shall issue any stock or bonds, except for money, labor, or property actually reserved and applied to the purposes for which such corporation was created, and all dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void. The exercise of the power and the right of eminent domain shall never be so construed or abridged as to prevent the taking by the Legislature of the property and franchise of incorporated companies already organized and subjecting them to the public necessity the same as of individuals. The right of trial by jury shall be held inviolate; in all trials by jury shall be held inviolate; in all trials of claims for compensation, when, in the exercise of the said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right. The Legislature shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties to the extent, if necessary for that purpose, of forfeiture of their property and franchise.

Reading dispensed with. Referred to the Committee on Corporations other than Municipal.

RELATIVE TO TAXATION.

Mr. SMITH, of Kern, introduced the following proposed amendment to the Constitution:

Resolved, That the following be incorporated in the Constitution of this State as a part of the system of taxation, and be known as article eight, sections one, two, three, and four of said Constitution:

ARTICLE VIII.

SECTION 1. Taxation shall be equal and uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and taxes shall be levied and collected under general laws; all private property in the State, not exempt herein or under the laws of the United States, shall be taxed in proportion to its value in money, to be ascertained as provided by law. The word property, as used in this article and section, is hereby declared to include choses in action, money at interest, at hand, or on deposit; credits, whether evidenced by notes, mortgages, or otherwise; goods, chattels, and effects, wherever they are; ships and vessels at home or abroad; public stocks and securities; stocks in moneyed corporations, owned in the State, whether within or without the State; interest or increase on the bonds of the Government of the United States when owned within the State, whether the same be within or without the State; credits or money due on a debt at the time of assessment to be assessed to the debtor who shall have a lien on the debt, and against the creditor, for the amount of the tax, and to be deducted from the debt from the date of the payment of the tax. But when a debt is secured by mortgage, and the debt is assessed against the debtor, who shall pay the tax thereon, in the assessment of land upon which such mortgage rests to the amount of the mortgage debt resting on said land shall be deducted from the valuation of said land, or real property, when the same would, without such deduction, result in double taxation, by such land not being fully paid for by the owner thereof. But it shall not be considered double taxation when such real property is used for security purposes only by the mortgage, and in the assessment of credits their valuation shall be measured by the amount of assets of the debtor and the security of the credits. Property owned by the United States, by this State, or by municipal corporations under the laws of this State, all necessary public school property, public cemeteries in actual use, and growing crops, shall be exempt from taxation.

SEC. 2. There shall be a State Board of Equalization, consisting of the Secretary of State, the Controller, and the Attorney-General. Said Board shall equalize the valuation of the taxable property in the State for State purposes; shall have appellate jurisdiction from County Boards of Equalization, and shall perform such other duties as may be prescribed by law. The Boards of Supervisors of the various counties of the State shall constitute Boards of Equalization of their respective counties, and for the purposes of equalization shall have full power (subject to appeal) to review and to raise or lower any county assessment, either upon complaint or upon their own motion; and it shall be their duty, at any convenient time, to be by such Boards previously fixed, before the regular assessments in each county, to classify and grade the lands in their respective counties subject to taxation, under such regulations as shall be provided by law; and for the purposes of classifying and grading lands said Boards may appoint deputies, whose duties shall be subject to the control and revision by said Boards. And said Boards shall perform such other duties in equalizing, grading, and classifying as the Legislature may prescribe.

SEC. 3. Before any agricultural, grazing, mineral, or wild lands shall be assessed, they shall be so graded and classified by the Board of Equalization of each county that lands of the same kind and location shall be placed in a separate class, each class to be graded as to value in numerical order from first upwards. But cultivated lands shall not be graded as lands of a greater value than the same kind and class of lands uncultivated. Lands, whether cultivated or not, of the same kind and quality, shall be graded and classified in the same grade and class. The assessment of lands shall be based upon their grade and classification; but lands belonging to the Government of the United States upon which preëmption or United States Government homestead rights have not been perfected, and possessory rights, shall not be graded nor classified, nor subject to taxation, until such rights have been perfected into a fee-simple ownership. And in the taxation of lands the improvements shall be separately assessed.

SEC. 4. There shall never be levied or collected, by general levy and collection, any special road tax. Where funds other than such as may come from county treasuries are needed for the construction and repair of county roads, bridges, and ferries, the same may be levied upon the owners of property adjacent to such proposed roads, bridges, and ferries, or improvements, in proportion to the amount and value of such property and the convenience and value of such roads, bridges, and ferries to such property, or the owners and inhabitants thereof.

SEC. 5. No corporations, except for benevolent, religious, scientific, or education purposes, shall be hereafter formed under the laws of this State, unless the persons named as corporators shall, at or before the filing of the articles of incorporation, pay into the State treasury one hundred dollars for the first fifty thousand dollars or less stock, and a further sum of twenty dollars for every additional ten thousand dollars of its capital; and no such corporation shall hereafter increase its capital stock without first paying into the State treasury twenty dollars for every ten thousand dollars of increase; and laws shall be passed to prevent and to punish, by heavy penalties and forfeitures, evasions of any of the provisions of this section.

Reading dispensed with. Referred to the Committee on Revenue and Taxation.

RELATIVE TO EDUCATION.

Mr. SMITH, of San Francisco, introduced the following:

Resolved, That neither the General Assembly, nor any county, town, township, school district, municipal or other corporation, shall ever make any appropriation to, or pay from any public fund whatever, anything in aid of any sectarian purpose, or to help support or sustain any school, academy, seminary, college, or university, or other institution of learning controlled by any sectarian denomination whatever; nor shall any grant or donation of land or personal property ever be made by any such public corporation for any sectarian purpose whatever.

Reading dispensed with. Referred to the Committee on Education.

RELATIVE TO PARDONING POWER.

Mr. SMITH, of San Francisco, introduced the following resolution, relative to the pardoning power:

Resolved, That the Constitution ought to be so amended as to abolish the power of pardon now vested in the State Executive.

Read, and referred to the Committee on Pardoning Power.

RELATING TO CORPORATIONS.

Mr. STEDMAN introduced the following proposed amendment to the Constitution:

Resolved, That the following section be incorporated into the new Constitution:

SECTION —. Every corporation or person having work done by contract shall be liable for all dues from contractors or sub-contractors to laborers and material-men for service or material hereafter done or furnished on such work; *provided*, that notice of the amount of such dues be given to such person or company within thirty days after the date when payable.

Referred to Committee on Corporations other than Municipal.

DISPENSING WITH GRAND JURIES.

Mr. STEDMAN introduced the following resolution:

Resolved, That the Standing Committee on the Judiciary be instructed to inquire into and report to the Convention the propriety of dispensing with Grand Juries, and that if the committee should be in favor of dispensing with Grand Juries they report a section of the Constitution on that subject.

Referred to Committee on Judiciary and Judicial Department.

RELATIVE TO THE ELECTIVE FRANCHISE FOR WOMEN.

Mr. STEELE introduced the following resolution:

Resolved, That the Committee on Privileges and Elections be instructed to inquire into the justice and expediency of extending the elective franchise to women on the same basis of qualification as established by law for the male voter.

Referred to the Committee on Privileges and Elections.

RELATIVE TO THE WORDS "WHITE MALE."

Mr. SWEASEY introduced the following resolution:

Resolved, That article two, section one, of the present Constitution be amended by striking out the words, in line one, "white male," and wherever the same words may occur.

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Referred to the Committee on Right of Suffrage.

MR. SWEASEY introduced the following resolution:

TAXATION OF VESSELS.

Resolved, That all water-craft, steamers, sail vessels, steam-tugs, etc., shall be assessed for taxes in the counties where the majority of the owners reside.

Referred to the Committee on Commerce and Navigation.

RELATIVE TO EQUAL TAXATION OF LAND.

MR. SWENSON introduced the following resolution:

Resolved, That all lands in this State, of equal productive capacity, shall be taxed alike, without reference to improvements.

Referred to the Committee on Revenue and Taxation.

LIABILITY OF STOCKHOLDERS IN CORPORATIONS.

MR. SWING introduced the following resolution:

Resolved, That there be incorporated in the Constitution a clause making each stockholder of a corporation or joint stock company individually and personally liable, in the amount of the face value of his stock, for all debts and liabilities of the corporation or joint stock company.

Referred to Committee on Corporations other than Municipal.

RELATIVE TO VOTERS.

MR. THOMPSON introduced the following resolution:

Resolved, That all citizens of this State who are entitled to exercise the elective franchise shall be required to vote at all municipal or State elections, under penalty of a fine of not less than ten dollars nor over five hundred dollars, as the next Legislature of this State shall determine, the same to go to the School Fund of the State. And in case of any such citizen neglecting to vote for three consecutive elections, he shall thereby be disfranchised for the term of three years thereafter, unless prevented by sickness, or absence from the State.

Referred to the Committee on the Right of Suffrage.

THE VETO POWER.

MR. TOWNSEND introduced the following resolution relative to the veto power of the Governor:

EXECUTIVE DEPARTMENT.

Resolved, That the committee be instructed to put a clause in the Constitution authorizing the Governor to veto any item of appropriation bills without affecting the other portions of the bill.

Referred to the Committee on the Executive Department.

RIGHT OF SUFFRAGE.

MR. TULLY introduced the following proposed amendment to the Constitution, in regard to the right of suffrage:

Resolved, That the Legislature of the State of California shall pass no law requiring a property qualification for office.

Referred to the Committee on Right of Suffrage.

RELATIVE TO THE CHINESE.

MR. TURNER introduced the following proposed amendment to the Constitution:

Resolved, "The Chinese must go."

Referred to the Committee on Chinese.

TAXATION WITHOUT REPRESENTATION.

MR. TUTTLE introduced the following resolution relative to taxation without representation:

Resolved, That no citizen shall be taxed without representation.

Referred to the Committee on Right of Suffrage.

GRAND JURIES.

MR. TUTTLE introduced the following proposed amendment to the Constitution, relative to Grand Juries:

Resolved, That the Judiciary Committee recommend that the Grand Jury shall consist of thirteen members.

Referred to the Committee on Judiciary and Judicial Department.

TRIAL BY JURY.

MR. VAN DYKE introduced the following proposed amendment to the Constitution, relative to trial by jury:

Resolved, That section three of the Bill of Rights of the present Constitution be so amended that a trial jury may be constituted of a less number than twelve members, and for the rendition of a verdict by a vote less than the whole number of jurors. Also, for dispensing with a jury in civil actions, except in certain specified cases, such as cases sounding in tort.

Referred to Committee on Preamble and Bill of Rights.

FREIGHTS AND FARES.

MR. WATERS introduced the following proposed amendment to the Constitution, relative to freights and fares:

Resolved, That there be incorporated in the Constitution a provision, mandatory in its terms, requiring the Legislature to pass laws prohibiting discrimination in freights and fares, for or against any persons or places, by common carriers in this State.

Referred to Committee on Corporations other than Municipal.

TAXATION OF STOCKS.

MR. WELLIN introduced the following resolution in relation to a more uniform collection of taxes:

Resolved, That all bank, mining, and other stocks shall be assessed at their full value in money.

Referred to the Committee on Revenue and Taxation.

MECHANICS' LIENS.

MR. WELLIN introduced the following resolution, in relation to the protection of laborers' wages, and the security of persons selling materials:

Resolved, That all improvements, buildings, railroads, flumes, dams, bridges, or other structures shall be held, together with the land belonging to such works or improvements, for the full payment of all labor and materials used in such works.

Referred to the Committee on Legislative Department.

RELATIVE TO THE DUTIES OF RAILROAD OFFICERS.

MR. WEST offered the following proposed amendment to the Constitution:

SECTION —. The General Assembly shall enforce by fine and imprisonment, and such other penalties and forfeitures as may be effectual prohibitions:

First—Against any director or officer of any railroad company, during his term of office, buying, selling, or in any manner dealing in the capital stock of such company, or being individually interested in any contract with it, except as an ordinary shipper or passenger.

Second—Against officers and employés of railroad companies giving or issuing any free or discriminating passes or bills of lading, or other discriminating gratuities, to any person elected to or holding any office of profit or trust under the public authority of this State or of the United States.

Referred to Committee on Corporations other than Municipal.

RELATIVE TO PREAMBLE.

MR. WICKES introduced the following proposed amendment, relative to the preamble:

Resolved, That the following preamble be referred to the Committee on Preamble and Bill of Rights, as presenting a basis for an organic law that shall claim obedience, command respect, insure progress, and give a dignity and especial guarantee to the Bill of Rights immediately following it:

PREAMBLE.

We, the people of the State of California, declare that God, being the author of order and law, is the final umpire of all government; that He delegates authority to the people to frame, amend, or change its form, according to their necessities and principles of justice; that He clothes them with power to enforce it; that he holds each and all amenable for the use or abuse of such delegated power; that, in this connection, allegiance to God and to the State are one. And upon these fundamental truths we establish this Constitution.

Referred to the Committee on Preamble and Bill of Rights.

RELATIVE TO MEMBERS OF THE LEGISLATURE.

MR. WHITE introduced the following proposed amendment to the Constitution, relative to members of the Legislature:

Resolved, That the Committee on Miscellaneous Subjects be instructed to report the following:

SECTION 1. A member of the Legislature who shall solicit, demand, or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation, or person, any money, office, appointment, employment, testimonial, reward, thing of value or enjoyment, or of personal advantage, or promise thereof, for his vote or official influence, or for withholding the same, or with an understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit or demand any such money or other advantage, matter, or thing aforesaid for another, as the consideration of the payment or promise of such money, advantage, matter, or thing to another, shall be held guilty of bribery within the meaning of this Constitution, and shall incur the disabilities provided thereby for said offense, and such additional punishment as is now or shall be provided by law.

SEC. 2. Any person who shall, directly or indirectly, offer, give, or promise, any money, or thing of value, testimonial, privilege, or personal advantage, to any executive or judicial officer, or member of the Legislature, to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law.

SEC. 3. The offense of corrupt solicitation of members of the Legislature, or of public officers of the State, or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment.

SEC. 4. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery or corrupt solicitation, or practices of solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony, and any person convicted of either of the offenses aforesaid shall, as part of the punishment therefor, be disqualified from holding any office or position of honor, trust, or profit in this State.

Referred to the Committee on Miscellaneous Subjects.

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RELATIVE TO EDUCATION.

Mr. WHITE introduced the following proposed amendment to the Constitution, relative to education:

Resolved, That the Committee on Education be instructed to report the following article for the new Constitution of California:

ARTICLE —.

SECTION 1. A Superintendent of Public Instruction shall be elected by the qualified electors of the State at the same time that the Governor is elected, and shall hold his office for the same time as the Governor. His duties shall be provided by law. He shall receive an annual salary of two thousand four hundred dollars, to be paid quarterly.

SEC. 2. The Legislature shall foster by all suitable means the public school system of the State. The proceeds of all lands that may be granted by the United States to this State for educational purposes, or that have been heretofore granted, all estates of deceased persons who may have died without leaving a will or heirs, and also such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State, and no part of such fund, or any money raised by taxation for school purposes, shall ever be appropriated to or divided between sectarian schools.

SEC. 3. Instruction in the common schools shall be in the English language, and confined to the following: reading, writing, orthography, grammar, geography, arithmetic, book-keeping, algebra, geometry, surveying, navigation, and ancient and modern history.

SEC. 4. The Legislature shall provide that no religious books shall be used in the common schools, or any particular religion taught or advocated, and that care shall be taken to guard the rights of conscience of all children attending the public schools.

SEC. 5. The Legislature shall by law provide that none but teachers of unquestioned sobriety and good moral character shall be employed as teachers in the public schools.

SEC. 6. The Legislature shall provide by law that a lecture on the nobility of labor shall be delivered at least once a month in every public school in the State by the Principal thereof, dwelling on its paramount importance in the affairs of men in every walk of life.

SEC. 7. The common schools of this State shall be kept up and supported in each district for at least four months of every year, and the Legislature shall by law provide the necessary funds for doing so.

SEC. 8. Education in the public schools shall be free to all, and each scholar shall be furnished with such school books as his studies require, at the expense of the State.

SEC. 9. The Legislature may require, by law, that every parent or guardian of children under fourteen years of age shall give them as good an education as that to be obtained in the common schools, in cases where they do not send them to the public schools by choice.

SEC. 10. The Legislature shall enact laws for the modification and management of the State University, so that hereafter all instruction shall be of a practical character, and confined to all such teaching as shall properly belong to all mechanical arts and sciences, and to all sciences properly relating to agriculture, and no other. The system adopted shall provide that every student shall spend at least two hours every day in manual labor, at some mechanical art or in cultivating the ground. The students in attendance at the University shall be entitled to instruction in all studies they may select consistent with the rules of the University, all necessary books, and board and lodging, free of all charge. The privilege of sending to the University shall be divided between the cities and counties of the State, according to population, in such manner as the Legislature may provide.

SEC. 11. When the University of California is modified as provided for in the foregoing section, the Legislature shall make such appropriations from the State treasury as they shall deem prudent to assist in its support; and the proceeds of all lands granted by Congress to the State for University purposes shall be properly invested as a perpetual fund for its support; but until such modification is provided for by law, no money whatever shall be expended by the State for its support.

SEC. 12. In order that every child in this State may have a fair opportunity to learn the privileges, rights, duties, and obligations pertaining to freemen, the Legislature shall, by appropriate legislation, cause to be published, at the expense of the State, in one well-bound volume, of convenient size, the Declaration of American Independence, the Constitution of the United States of America, the Constitution of the State of California, and Washington's Farewell Address; and shall cause the same to be distributed, free of cost, to the children in the common schools, and to be used and taught therein as a text-book; and also in the University of California.

Referred to the Committee on Education.

RELATIVE TO TAXATION.

Mr. WILSON, of Tehama, introduced the following proposed amendment to the Constitution, relative to taxation:

Resolved, That the cause of the most of the wrongs that the people now complain of is the unjust legislation in favor of capital;

Second—All men should pay taxes on what he is actually worth;

Third—No person should pay taxes on his indebtedness.

Referred to the Committee on Revenue and Taxation.

RELATIVE TO EDUCATION.

Mr. WINANS introduced the following proposition to incorporate the following into the new Constitution, under the article entitled "Education," and as part of that article:

SECTION 1. A Superintendent of Public Instruction shall be elected by the qualified electors of this State at the same time the Governor is elected. He shall hold his office for four years from the second Monday in January next after his election. His duties shall be prescribed by law.

SEC. 2. There shall be elected by the qualified electors of this State, at the same time the Governor is elected, four members of a State Board of Education, one for two years, one for four yeaas, one for six years, and one for eight years, and at each succeeding biennial election there shall be elected one member of such Board, who shall hold office for eight years. The Superintendent of Public Instruction shall be ex officio a member and Secretary of said Board. The Board shall have the same pay and mileage as members of the Legislature when in session.

SEC. 3. The State Board of Education shall meet at the Capital of the State, under the call of the Secretary of the Board, on the first Tuesday in February next succeeding their election, and continue in session not longer than twenty days, and annually thereafter for not to exceed twenty days at each annual session. A majority shall constitute a quorum.

SEC. 4. The State Board of Education shall have power to legislate and make rules in relation to common schools, and the State Normal School, and perform such other duties as may be required by law. The State Board of Education, in fixing the course of study, shall include the following branches: reading, writing, spelling, arithmetic, geography, grammar, history of the United States, and in the higher classes some manual of government. The proceedings of the Board shall be printed by the Superintendent of State Printing, under the direction of the Superintendent of Public Instruction, and the Superintendent of Public Instruction shall send a copy of said proceedings to each School Trustee and teacher in this State, and have one thousand extra copies printed for citizens generally who may apply for them. Neither the State Board of Education nor the Legislature shall enforce a uniformity of text-books throughout this State, but the matter shall be left to local Boards of Education and Trustees of school districts to select suitable text-books, and for such period of time as they deem best for their interests.

SEC. 5. The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that may be granted by the United States to this State for the support of schools, which may be sold or disposed of, and the five hundred thousand acres of land granted to the new States under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without having a will or heir, and also such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

SEC. 6. The Legislature shall provide for a system of common schools, by which a school shall be kept up and supported, in each district, at least three months in every year, and any district neglecting to keep up and support such a school may be deprived of its proportion of the interest of the public fund during such neglect.

SEC. 7. The Legislature shall take measures for the protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States, or any person or persons, to this State, for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source, for the purposes aforesaid, shall be and remain a permanent fund, the interest of which shall be applied to the support of said University, with such branches as the public convenience may demand, for the promotion of literature, the arts and sciences, as may be authorized by the terms of said grant. And it shall be the duty of the Legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

SEC. 8. No religious sect or sects shall ever have use of or control any part of the School or University Funds of this State.

Referred to the Committee on Education.

RELATIVE TO RATE OF INTEREST.

Mr. WYATT introduced the following proposed amendment to the Constitution, relative to rate of interest:

Resolved, That the Legislative Committee be instructed to report a clause in the Constitution which shall prevent any person from receiving, directly or indirectly, any greater interest, or usury, for the use of loaned money, than seven per cent. per annum.

Referred to the Committee on Legislative Department.

RELATIVE TO FORCED SALE OF PROPERTY.

Mr. WYATT introduced the following proposed amendment to the Constitution, relative to the forced sale of property:

Resolved, That the Judiciary Committee be instructed to report a clause in the Constitution which shall prevent the sale of any property in this State, under judicial or other forced sale, unless said property shall bring two thirds of its appraised value under such sale, the appraisement to be made as provided by law.

Referred to Committee on Judiciary and Judical Department.

RELATIVE TO BILL OF RIGHTS.

Mr. LARUE introduced the following proposed amendment to section twenty-one, article one, of the Constitution, relative to powers not granted—a proposition to amend section twenty-one, article one, of the Constitution, so as to read as follows:

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SEC. 21. This enumeration of rights shall not be construed to impair or deny others retained by the people, and shall not be construed to the exercise of powers not granted herein.

Referred to the Committee on Preamble and Bill of Rights.

RELATIVE TO GRAND JURORS.

MR. LARUE introduced the following proposed amendment to the Constitution, relative to Grand Jurors:

That the Constitution be so amended that Grand Jurors must be selected by the County Judge from the taxpayers of the county, and must serve for a term of one year, to be called together by the County Judge at any time; and a majority of two thirds of said Grand Jury shall indict.

Referred to Committee on Judiciary and Judicial Department.

MR. AYERS. Mr. President: I wish to offer a proposition.

MR. EDGERTON. We have a rule that each gentleman shall send up whatever propositions he may wish to introduce as his name is called, and the object of that rule is to prohibit and avoid the printing of superfluous matter. Gentlemen might send up resolution after resolution, embodying the same proposition. That would defeat the very purpose of the rule.

MR. AYERS. As I introduced no proposition at the time my name was called, I ask leave to now introduce my propositions.

Leave was granted.

RELATIVE TO FREIGHTS AND FARES.

MR. AYERS introduced the following proposed amendment to the Constitution, relative to freights and fares:

Resolved, That the Committee on Corporations consider the following proposition for insertion in the Constitution:

SECTION —. Whenever a railroad or canal corporation shall, for the purpose of competing with a rival line, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such reduced standard.

Referred to Committee on Corporations other than Municipal.

RELATIVE TO A LABOR BUREAU.

MR. BEERSTECHER introduced the following proposed amendment to the Constitution, relative to Bureau of Labor and Labor Statistics:

Resolved, That there should be a Bureau of Labor and Labor Statistics established as a department of the State Government.

Referred to the Committee on Labor and Capital.

RELATIVE TO OFFICIAL BONDS.

MR. MCFARLAND introduced the following proposed amendment to the Constitution, relative to official bonds:

EXECUTIVE DEPARTMENT.

No officer of this State, or of any municipal corporation thereof, shall be required to give any official bond, except in cases of officers who, by virtue of their offices, have custody of private property.

Referred to Committee on Executive Department.

SALARY OF STATE OFFICERS.

MR. KEYES introduced the following proposed amendment to the Constitution, relative to the salary of State officers:

Resolved, That the salary of the Governor shall not exceed five thousand dollars per annum, and the salary of the Lieutenant-Governor shall be double the pay of Senators, and the pay of members of the Legislature shall be five dollars per diem while in attendance.

Referred to the Committee on Legislative Department.

POLL TAX.

MR. HITCHCOCK introduced the following proposed amendment to the Constitution, relative to section five, article two of Constitution:

Resolved, That article (2) two, section (5) five, be amended so as to read:

That no person shall be entitled to vote that has not paid a "poll" tax the previous year.

Referred to Committee on Right of Suffrage.

RIGHT OF WAY FOR WATER DITCHES.

MR. HITCHCOCK introduced the following proposed amendment to the Constitution, relative to agriculture, manufacturing, mining, and irrigation:

Resolved, All persons and corporations shall have the right of way across public, private, and corporate lands for the construction of ditches, flumes, and canals for the purpose of conveying water for domestic purposes, for the irrigation or reclamation of lands, and for manufacturing and mining purposes, and for drainage, upon payment of just compensation. Persons owning lands benefited thereby shall bear their just proportion of expenses for drainage or protection against overflow.

Referred to Committee on Agriculture, Manufactures, and Commerce.

MR. INMAN. Mr. President: The rule presented this morning was to the effect that the roll shall be called each morning, and each member whose name was called had the privilege of introducing one or two resolutions. Now, you can see that men whose names have been called are again introducing propositions.

THE PRESIDENT pro tem. The seventh rule in the order of business is the introduction of propositions relating to the Constitution. I do not know what the rule is you refer to. The Secretary will read it again.

The SECRETARY reads:

Resolved, That on presentation of resolutions and propositions, as provided for in part seven of rule seventeen, the Secretary shall call the list of delegates alphabetically, and each delegate, when his name is called, shall be allowed to present two independent resolutions or propositions relating to the proposed Constitution, which shall be read and referred, without debate. If the call be not completed on the day it is commenced, the Secretary shall commence the call on the next day where he left off on the previous day, and so on for the next day after, coming back, when through, to the head of the list, until the further order of the Convention.

THE PRESIDENT pro tem. I am of the opinion that the right to introduce these resolutions is limited to the roll call.

UNFINISHED BUSINESS.

THE PRESIDENT pro tem. The next business in order is unfinished business.

MR. STEDMAN. Mr. President: I do not desire to make a speech on the matter of the appeal which now comes up under this head, but I simply desire to state that there was a similar rule adopted in the Ohio Constitutional Convention, and I desire to read that portion of the Ohio Act calling the Convention, which refers to the salary of delegates, and also to read the same portion of this Act, to show the similarity. Section nine of the Act calling the Ohio Constitutional Convention says that the delegates and officers of the Convention shall be entitled to the same compensation and mileage for their services as is allowed by law to members of the general Assembly, to be paid out of the State Treasury, on the warrant of the Controller of State. Now, in the Act calling our Convention, it says the delegates to the Convention shall receive the same per diem and mileage as members of the Legislature. Now, Mr. President, the Ohio Convention adopted a similar rule to the one which was proposed by the gentleman from San Francisco, Mr. Reynolds. That rule was enforced, I believe, during the whole of the session of that Convention—a greater part of it, anyway. Now, you will notice the similarity between the two Acts; and if it was proper to establish such a rule in the Ohio Convention, I submit we have a perfect right to adopt such a rule calling this Convention, as the Acts are very similar. That was the argument of the Chair in deciding the point of order to be well taken, that the Act specified that the delegates to this Convention should receive a certain salary. I took the appeal more on this ground than any other, that in my judgment the Legislature has no right to come into this Convention and say what rules we shall adopt, or what we shall do in this Convention. After we have complied with the first part of the Act, and organized the Convention, it is my judgment that we have a perfect right to establish what rules we please, and I appeal from the decision on these grounds.

THE PRESIDENT pro tem. The question is on the appeal.

MR. ROLFE. Mr. President: There are certain things that are clearly within the power of the Legislature to prescribe for this Convention, and there are certain other things it cannot. One of the things that is within the power of the Legislature is to fix the pay of members of this Convention and their mileage. I am not here to say whether it is right or wrong, for the purposes of this appeal. We were elected under the law allowing us ten dollars a day. Now, I say, if by any rule of this Convention we can annul that provision of the law under which we have met, and prescribe our own pay, then I say we can prolong this session for six months, or a year and six months, and vote ourselves twenty dollars a day. The law provides that we shall receive per diem the same as members of the Legislature, except that it makes certain exceptions; that we shall not receive pay for a longer time than three days of adjournment. That is, if we adjourn over for a longer time than three days, we shall not draw pay. Now, if we can adopt and enforce this rule, by a similar rule we can annul the provisions of the statute, and adjourn over for two weeks, and say that we shall receive our pay all the time. As I said, we can prolong our session beyond the prescribed limit fixed by the statute. Now, I propose to stay here and attend to the business of this Convention, and finish up the work in one hundred days, and I do not propose to ask this State to pay me one dollar for anything over the one hundred days, and I have no false modesty, and I have no false modesty which will prevent me from getting up here and demanding all that the State promised to pay me. I shall endeavor to earn the money, and when I do the work I shall demand the pay for it. I shall therefore vote to sustain the ruling of the Chair. If any gentleman has any scruples about taking pay when he is not in actual attendance, he is not compelled to take it. I have no such scruples. I believe it can be safely said that a majority of the delegates will lose money by accepting seats in this Convention at ten dollars a day, and I do not propose to lose any more than the law compels me to.

MR. HEUSTIS. Mr. President: I move to indefinitely postpone the appeal.

THE PRESIDENT pro tem. The gentleman from Humboldt moves to indefinitely postpone the appeal.

The motion prevailed.

MR. REYNOLDS. I rise to a point of order. My point of order is that a motion to indefinitely postpone an appeal is not in order, and cannot be made under any circumstances.

THE PRESIDENT pro tem. The Chair decides the point not well taken. It may be postponed.

NEW RULES.

MR. COWDEN offered the following as a new rule, to be numbered rule seventy-five:

Rule 75.—All officers and attachés, not yet appointed nor elected, who shall be deemed necessary by the Convention, shall be appointed and announced by the President.

MR. AYERS. If we are under the head of unfinished business, I would like to call up a resolution.

MR. COWDEN. I think a rule of that kind is necessary now.

MR. TINNIN. I move to refer it to the Committee on Rules.

It was so referred.

MR. AYERS. I call for the reading of my resolution.

MR. VAN DYKE. I object to resolutions being sent up until the Chair announces that order of business. I ask what is the order of business?

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THE PRESIDENT pro tem. The Convention was adopting rules.

MR. AYERS. I sent up a resolution in reference to the rules to be referred to a standing committee, for the appointment of another committee, and I ask that this take precedence to other resolutions. It was to this effect, that a new standing committee be appointed, to consist of eleven members, on Federal Relations.

The Secretary read as follows:

Resolved That a Committee on Federal Relations, to be composed of nine members, be added to the standing committees.

Referred to the Committee on Rules and Order of Business.

MR. WHITE offered the following:

Resolved, That there should be appointed a Committee of nine on State Officers, to ascertain and report to this Convention the names of all persons in any manner employed under the present organization of the State government, with the duties required of them, and the time spent each day in the performance of those duties, and the compensation paid to each such officer, deputy, clerk, or employé.

Referred to the Committee on Rules and Order of Business.

MR. DOWLING offered the following:

Resolved, That a Special Committee on Irrigation and Surveying be appointed, to consist of nine members.

Referred to the Committee on Rules and Order of Business.

MR. O'SULLIVAN offered the following:

Resolved, That the Committee on Lands and Homestead Exemption be increased from nine to fifteen members.

MR. O'SULLIVAN. I think this committee is one of great importance, and I think there should be a large number on such committee.

Referred to the Committee on Rules and Order of Business.

MR. GRACE offered the following:

Resolved, That this Convention do now proceed to apportion the seats in this chamber among the delegates by lot.

Ruled out of order.

MR. SHOEMAKER offered the following:

Resolved, That in printing matters introduced into the Convention required to be printed, the Superintendent of State Printing shall use for the present the original papers introduced here.

MR. EDGERTON. I rise to a point of order. We have not reached that order of business.

THE PRESIDENT pro tem. The point is well taken. The resolution is out of order. The next order is the special order.

INCREASING COMMITTEES.

MR. HAGER. Mr. President: I believe the Standing Rules are now before the house. I want to make a motion in reference to the rules. I desire to make a motion as to the Committee on Apportionment and Representation. San Francisco is not represented on that committee. San Francisco composes about one third of the State, and should be represented on that committee. I move, therefore, that Mr. Barnes and Mr. Reynolds be added to that committee. There is no member from San Francisco on that committee.

The motion prevailed, and Messrs. Barnes and Reynolds were added.

MR. AYERS. Having done an act of justice to the City of San Francisco, I would now ask that the Convention do an act of justice to the southern end of the State. We have no representation upon the Committee on Corporations.

MR. EDGERTON. I rise to a point of order. I would inquire under what head we are now acting?

THE PRESIDENT pro tem. Under the head of special orders.

MR. EDGERTON. Then the gentleman from Los Angeles, Mr. Ayers, is out of order. It will be in order for him when we arrive at that order of business.

MR. AYERS. It was in order for San Francisco, and I think it is in order for Los Angeles. I say that the southern end of the State, as far as I recollect, has no representative upon the Committee on Corporations other than Municipal. That to the people of that end of the State the question of railroad discrimination is one of vital importance. We have over four hundred miles of railroad in that portion of the State, and this committee will have to deal with the subject; and we would like to have that portion of the State represented on the committee; and we ask that General Howard and Mr. West be added to that committee.

MR. HALE. I rise to a point of order. One of our rules says the committees shall be appointed by the President of the Convention, and now it is proposed to have the Convention appoint them.

MR. AYERS. It was all right in the case of San Francisco.

THE PRESIDENT pro tem. The point of order seems to be well taken.

MR. AYERS. Mr. President: I answer that point of order in this way. Yesterday we refused to establish the two-third rule in this Convention, and I hold that a majority of the Convention can allow this motion, notwithstanding the rule.

MR. WATERS. I move that the rule be temporarily suspended, in order that these two names may be added to the committee.

THE PRESIDENT pro tem. It is moved and seconded that the rule be temporarily suspended.

MR. ROLFE. The rule simply provides that the President shall appoint the committee, when not otherwise ordered. And this motion is out of order and unnecessary.

THE PRESIDENT pro tem. The number is fixed by the rule. In view of this rule itself the Chair sees no objection in the motion being put.

The motion prevailed, and Messrs. Howard and West were added to the committee.

MR. O'DONNELL. Mr. President: As the Committee on Chinese is a very important committee, I move that it be increased from nine to fifteen members.

Ruled out of order, as the committee already consists of fifteen members.

MR. LARKIN. I desire to make a motion to suspend the rules for the purpose of naming Mr. Strong as a member of the Committee on Water Rights. He resides in that portion of the State where those things should be represented. I hope the Convention will consent to have him there.

THE PRESIDENT pro tem. It requires a motion that he be added.

MR. LARKIN. I move that he be added to the Committee on Water and Water Rights.

The motion prevailed, and Mr. Strong was added to the committee.

MR. FREUD. Mr. President: If the Convention please, I would like to bring before its consideration a matter I consider germane to that now before the house. Mr. Finney was appointed as a member of the Committee on Chinese Immigration. I was appointed a member of the Committee on Agriculture. I don't know much about agriculture, and Mr. Finney tells me he don't know much about Chinese. Now it would be mutually agreeable to us, and with the consent of the house, we would like to change positions.

Leave was granted.

MR. O'DONNELL. Mr. President: I move that the Committee on Chinese be increased from fifteen to twenty-one.

MR. WICKES. Put Mr. O'Donnell on the committee and he will make the other six.

MR. MURPHY. I move that Mr. O'Donnell be added to the committee.

MR. FILCHER. Mr. President: I would like to make a motion that the rules be suspended, and that J. P. Wickes be added to the Committee on Education.

MR. MURPHY. I have the floor, I believe.

MR. CAMPBELL. I hope we shall proceed no farther in this matter, if we do we shall get into confusion. The committees will be so changed that there will be no way of getting out of it. The printers will not be able to ascertain who are members of committees. We have too many committees now. They are too large, and I hope we shall stop this business of adding to the committees.

The motion to add Mr. O'Donnell to the Committee on Chinese prevailed, by a standing vote—ayes, sixty-two, noes, fifty-eight.

RESOLUTION.

MR. EDGERTON offered the following:

Resolved, That as to all resolutions and propositions relating to the Constitution, the titles and names of the authors of the same, and the date of their introduction only, be entered on the Journal.

MR. EDGERTON. Mr. President: I send up that resolution, because unless it is adopted it will be necessary to employ a clerical force of fifteen or twenty to write up this Journal. This is the practice in legislative bodies, to enter the names of the authors and titles of bills introduced on the Journal.

The resolution was adopted.

OFFICIAL REPORTING.

MR. McFARLAND offered the following:

WHEREAS, It is of the greatest importance that the notes of the proceedings of this Convention should be taken in full, in order that the same may be published in case the Constitution shall be adopted by the people; therefore, be it

Resolved, That one official reporter shall be elected, who shall have power to appoint one assistant, each to receive a per diem of ten dollars. The duties of the official reporter and his assistant shall be to take down in shorthand, verbatim, all the debates and proceedings of the Convention from beginning to the end. The official reporter shall be required to give a good and sufficient bond in the sum of ten thousand dollars, that he will, upon the order of this Convention, at any time, or upon the order of the Legislature, or upon the request of any member of this Convention, write out in full or in part, as may be directed, the debates and proceedings of the Convention, at a cost not to exceed twenty cents per folio for transcribing.

MR. McFARLAND. Mr. President: I offer this resolution, sir, because I am satisfied this Convention is still in doubt as to whether we should have an official reporter of the proceedings of this body or not. It is necessary to determine now whether we shall entirely ignore any attempt to perpetuate the proceedings of this Convention. Now, this proposition looks to the election of two reporters without any provision for the publication. It will cost but twenty dollars a day. That will preserve in shorthand the proceedings and debates of the Convention, and if it is not deemed best to publish them now we need not do so, but leave that to the Legislature. But if at any time any member desires to have a portion of the notes transcribed, the reporter is compelled to do so. If the Legislature desires to publish them, it can do so, or if the Convention desires to order them written out and published, it can do so.

MR. EDGERTON. I rise to a point of order. Under the rules it must go to a committee.

MR. HOWARD. I move that it be referred to the Committee on Reporting and Printing. There is no other appropriate committee.

MR. SMITH, of Kern. Before that reference is made I wish to send up an amendment and have it read.

THE SECRETARY read as follows:

Resolved, That there be elected by this Convention an official shorthand reporter, whose duty it shall be to report only such debates as may be made upon the following leading questions, to wit: Chinese immigration; taxation and finance; the judiciary; State and municipal indebtedness; education: State, county, and township organization; railroads and other corporations; water and water rights; suffrage—provided, the expense of such reporting shall not exceed six thousand dollars for the session of the Convention.

MR. McCALLUM. I offer the following as an amendment or substitute:

Resolved, That a Phonographic Reporter and an assistant shall be appointed, to report and transcribe the proceedings of this Convention; provided, that such services can be obtained on satisfactory terms to the Convention.

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Resolved, further, That the committee heretofore appointed on Phonographic Reporter is hereby instructed to ascertain on what terms such services can be procured, and report thereon, by resolution or otherwise, as soon as practicable; such report to include the per diem, the amount per folio for transcribing, and cost of indexing, and, if printed, when and on what terms the same can be placed on the desks of the members.

MR. WHITE. I move that the whole subject-matter be indefinitely postponed.

MR. ESTEE. The question to refer comes up first.

MR. McFARLAND. I rise to a point of order. The rules provide that no final action shall be taken until it has been referred to the committee. The motion to indefinitely postpone is final action.

MR. EDGERTON. Under rule eighteen, the motion to commit takes precedence.

MR. WHITE. We have lost a great deal of time, and the rest of the evening may as well be spent in disposing of it.

THE PRESIDENT pro tem. The motion to refer takes precedence. It is moved that this resolution be referred to the Committee on Reporting and Printing.

MR. EDGERTON. I have a suggestion to make—it requires a two-third vote to suspend the rule seven.

MR. AYERS. That only applies to clerical officers.

MR. HOWARD. Rule seven has no application here at all.

THE PRESIDENT pro tem. The motion is to refer to the committee.

MR. FREUD. I move to lay this whole matter on the table.

The motion was lost on a standing vote—ayes, forty-two, noes, seventy-one.

MR. McCALLUM. I move to refer to the Committee on Contingent Expenses.

The motion prevailed.

OTHER RESOLUTIONS.

MR. ESTEE offered the following:

Resolved, That all motions to increase the number of committees, or to form new committees, be referred without debate to the Committee on Rules.

MR. BARBOUR. I have a substitute to offer to the resolution:

Resolved, That the delegation from San Francisco constitute one of the standing committees.

MR. ESTEE. That is not an amendment to the resolution I offered.

The resolution offered by Mr. Estee was adopted.

MR. DOWLING offered the following:

Resolved, That the seats to be occupied by members of the Constitutional Convention be drawn by lot.

MR. STEDMAN offered the following substitute:

Resolved, That the members of the Convention now proceed to select their seats by lot, provided that before any such selection, the temporary President of the Convention be permitted to select his seat; and

Resolved, That the friends of any absent member may select his seat for him.

MR. SMITH, of Santa Clara. I move to lay the resolution on the table.

The motion to table prevailed—ayes, eighty-five.

MR. VAN DYKE. Mr. President: There is a resolution now on the table that was ruled out of order before we commenced on this order of business, and I wish to call it up now. It was to the effect that the Sergeant-at-Arms be instructed to prepare rooms for the committees.

MR. ESTEE. If the object is to go outside of the Capitol, I am opposed to it.

MR. VAN DYKE. That is not the object. It is to have rooms in the building prepared for the use of the standing committees.

MR. ESTEE. I move to amend by adding "rooms in the Capitol building."

The amendment was adopted, and the resolution as amended was also adopted.

MR. BARTON. Would it be in order to move to amend one of the standing rules at this stage of the business. I have a resolution to offer amending rule two, but if there is any objection I will not offer it.

MR. LARKIN. I raise the point of order that no notice has been given, and therefore the resolution is out of order.

MR. BARTON. Then I will withdraw it and give notice of a motion to amend.

MR. CAMPBELL. Mr. President: I wish to offer a resolution and have it referred to the Committee on Printing:

Resolved, That the Committee on Reporting and Printing ascertain from the publisher of the Daily Record-Union upon what terms he will publish in said paper daily a full report of the debates of this Convention.

MR. GREGG offered the following as a substitute:

Resolved, That a committee of three be appointed to determine and report at what cost the Record-Union, or any other daily paper in this city, will publish in the daily issue a full and true report of the debates and proceedings of this Convention, and furnish to the members of the Convention two hundred and fifty copies every morning.

MR. O'SULLIVAN. I move to indefinitely postpone the resolutions.

MR. AYERS. I raise the point of order. The Act calling this Convention requires that the printing necessary to be done by the Convention shall be done at the State Printing Office—not in a newspaper office, but in the State Printing Office.

THE PRESIDENT pro tem. The point of order is well taken, and the resolutions are out of order.

MR. O'SULLIVAN. I moved to indefinitely postpone.

THE PRESIDENT pro tem. The gentleman is out of order.

MR. FILCHER offered the following:

Resolved, That J. West Martin, of Alameda, and J. T. Wickes, of Nevada, be added to the Committee on Education.

MR. ROLFE moved to add Mr. Blackmer to the committee.

Referred to Committee on Rules and Order of Business.

MR. HUESTIS. By request, I introduce a resolution, and ask to have it referred to the Committee on Contingent Expenses:

Resolved, That the Controller of State be and he is hereby authorized to draw a warrant in favor of W. F. Germaine, in the sum of eighteen dollars, for services rendered as Page during the organization of this Convention.

Referred to the Committee on Mileage and Contingent Expenses.

MR. EAGON offered the following:

Resolved, That the Controller of State be and he is hereby authorized and directed to draw his warrant in favor of G. E. McStay for the sum of forty dollars, for services rendered in writing the Journal of proceedings during the organization of this Convention, prior to October third, eighteen hundred and seventy-eight; that the State Treasurer is hereby authorized to pay the same out of the appropriation for expenses of this Convention.

Referred to Committee on Mileage and Contingent Expenses.

MR. HILBORN offered the following:

Resolved, That in printing matters introduced into the Convention required to be printed, the Superintendent of the State Printing shall use for the present the original papers introduced; he or his chief clerk receipting to the Secretary of the Convention for the same, and returning them to the Secretary's desk as soon as possible.

Adopted.

At three o'clock and five minutes P. M., on motion of Mr. Murphy, the Convention adjourned until to-morrow.

THIRTEENTH DAY.

SACRAMENTO, Thursday, October 10th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hale,	O'Sullivan,
Ayers,	Hall,	Overton,
Barbour,	Harrison,	Porter,
Barnes,	Harvey,	Pulliam,
Barry,	Heiskell,	Reddy,
Barton,	Herold,	Reed,
Beerstecher,	Herrington,	Reynolds,
Belcher,	Hilborn,	Rhodes,
Bell,	Hitchcock,	Ringgold,
Berry,	Howard,	Rolfe,
Biggs,	Huestis,	Schell,
Blackmer,	Hughey,	Schomp,
Boggs,	Hunter,	Shafter,
Boucher,	Inman,	Shoemaker,
Brown,	Johnson,	Shurtleff,
Burt,	Jones,	Smith, of Santa Clara,
Campbell,	Joyce,	Smith, of 4th District,
Caples,	Kelley,	Smith, of San Francisco,
Casserly,	Kenny,	Soule,
Chapman,	Keyes,	Stedman,
Charles,	Kleine,	Steele,
Condon,	Laine,	Stevenson,
Cowden,	Lampson,	Strong,
Cross,	Larkin,	Stuart,
Crouch,	Larue,	Sweasey,
Davis,	Lavigne,	Swenson,
Dean,	Lewis,	Swing,
Dowling,	Lindow,	Terry,
Doyle,	Mansfield,	Thompson,
Dudley, of San Joaquin,	Martin, of Alameda,	Townsend,
Dudley, of Solano,	Martin, of Santa Cruz.	Tully,
Dunlap,	McCallum,	Turner,
Eagon,	McComas,	Tuttle,
Edgerton,	McConnell,	Vacquerel,
Estee,	McCoy,	Van Dyke,
Estey,	McFarland,	Van Voorhies,
Evey,	McNutt,	Walker, of Marin,
Farrell,	Miller,	Waters,
Fawcett,	Mills,	Webster,
Filcher,	Moffat,	Weller,
Finney,	Moreland,	Wellin,
Freeman,	Morse,	West,
Freud,	Murphy,	Wickes,
Glascock,	Nason,	White,
Gorman,	Nelson,	Wilson, of Tehama,
Grace,	Neunaber,	Winans,
Graves,	Noel,	Wyatt,
Gregg,	O'Donnell,	Mr. President.
Hager,	Ohleyer,	

ABSENT.

Garvey,	Prouty,	Walker, of Tuolumne,
Holmes,	Tinnin,	Wilson, of 1st District.

LEAVE OF ABSENCE.

Leave of absence was granted, for one day each, to Messrs. Jones and Holmes.

The Journal of yesterday was read and approved.

PETITIONS AND MEMORIALS.

MR. MANSFIELD. I desire to offer the following resolution:

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WHEREAS, It is represented that the United States is about to conclude a commercial treaty with the Republic of France, that will in effect prove destructive to the wine interests of the United States, and especially to California; therefore,

Resolved, That the subject be referred to the Committee on Agriculture, Manufacture, and Commerce, with instructions to inquire into and report, at as early a time as practicable, to this house, for its protest or for such other action as it may deem expedient.

MR. MANSFIELD also offered the following:

LOS ANGELES, October 5th, 1878.

To the Hon. John M. Mansfield, member of the Constitutional Convention, Sacramento, California:

Dear Sir: At a public meeting of the business men and viniculturists of Los Angeles County, held at the Court House this day, with the Hon. John G. Downey in the chair, a committee was appointed to draft suitable resolutions in relation to the above subject-matter. [Signed by a large number of business men.]

MR. BARBOUR offered the following:

Resolved, That this Convention memorialize the President of the United States to take such measures to abrogate or modify the Burlingame treaty; and also memorialize Congress to prohibit Chinese immigration.

MR. NOEL. I raise the point of order that the resolution is out of order, because that is a resolution, and not a memorial.

THE PRESIDENT. That comes within the rule, and is in order. It will be referred to the Committee on Chinese.

ACKNOWLEDGING GOD IN THE CONSTITUTION.

MR. CROUCH presented the following memorial:

To the Constitutional Convention, to meet at Sacramento, California, on the 28th day of September, 1878:

Believing that Almighty God is the source of all power and authority in civil government, that the Lord Jesus Christ is the Ruler of Nations, and that the revealed will of God is of supreme authority in civil affairs;

Remembering that this country was settled by Christian men, with Christian ends in view, and that they gave a distinctly Christian character to the institutions which they established;

Perceiving the persevering attempts which are made to prohibit the reading of the Bible in our public schools, to overthrow our Sabbath laws, to abolish the oath, prayer in our State Legislature, and other Christian features of our institutions, and so to divorce the Government from all connection with the Christian religion;

Viewing with grave apprehension the corruption of our politics, and the prevalent lack of moral and religious character in those who hold office in the State; and

Believing that a written Constitution should contain explicit evidence of the Christian character and purpose of the State which frames it; and perceiving that the silence of the Constitution of the State, as well as of the United States, in this respect, is used as an argument against all that is Christian in the usage and administration of the Government;

We, the undersigned, citizens of the State of California, petition your honorable body to frame the Constitution so that it shall suitably express our acknowledgment of Almighty God as the source of all authority in civil government, of the Lord Jesus Christ as the Ruler of Nations, and of His revealed will as of supreme authority; and thus indicate that this is a Christian commonwealth, and place all the Christian laws, institutions, and usages of the State on an undeniable legal basis in the fundamental law of the same. [Signed by James Mitchell, and fifty others.]

MR. MILLS presented a petition to the same effect as the above, signed by about fifty persons.

MR. OVERTON presented a memorial to the same effect, signed by thirty persons.

MR. HAGER presented a memorial on the same subject, same as above, signed by one hundred and ten persons.

MR. VAN DYKE presented a memorial on the same subject, signed by seventy persons.

MR. HAGER presented the following memorial, which was referred to the Committee on Preamble and Bill of Rights:

To the Constitutional Convention, to meet at Sacramento on the 28th day of September, 1878: We, the undersigned, citizens of the State of California, believing that civil government is a divine institution, and that the Constitution of a commonwealth composed of Christian people should be framed so as to promote the highest interests of all the people, by fostering justice, morality, benevolence, and Christian institutions and usages, do hereby petition your honorable body to frame the new Constitution of California in accordance with this theory. And, more specifically:

1. So that there will be in the Constitution a full and explicit acknowledgment of Almighty God as the source of all authority in civil government, of the Lord Jesus Christ as the Ruler of nations, and of the supreme authority of the moral law of God, as revealed in the Bible; and thus indicate that California is a Christian commonwealth, and place all Christian laws, institutions, and usages of the State on an undeniable basis in the fundamental law of the same.

2. So that under the Constitution there may be statute laws to prevent, not only public acts of blasphemy and gross forms of profanity, but also all such gross violations of the Divine law of the Christian Sabbath as tend to prevent Christian people from peaceably enjoying their right to rest and worship on the Lord's day.

3. So that it may be constitutional to pass statutory laws to prohibit the manufacture and sale of spirituous liquors for common drinks; and especially so that the sale of such common drinks cannot be on the Christian Sabbath.

4. So that murder shall be punished only by the death penalty, and that the Governor cannot have power to pardon murderers or commute their punishment.

5. So that no law can be enacted by which the religious exercise of prayer, or the reading of the Bible, in the public schools of the State, can be prohibited, or by which prayer at the opening of the daily sessions of the Legislature can be prevented.

6. So that all such persons as are designated or described below shall forever be ineligible to any office of the State, viz:

(1.) All persons not born in the United States, unless they have lived in the same more than ten years;

(2.) All who deny the existence of a Supreme Being—the God of the Bible;

(3.) All who declare that they are enemies of the Christian religion, or deny the supreme authority of the law of God contained in the Holy Scriptures;

(4.) All who are guilty of any of the gross acts of immorality, such as blasphemy, profane swearing, Sabbath desecration, drunkenness, traffic in intoxicating liquors or common drink, adultery or similar acts of licentiousness, gambling, lying, for perjury;

(5.) All who have ever taken up arms in rebellion gainst the Government of the United States, or against this State;

(6.) All who have been justly condemned prisoners in any State Prison; and,

(7.) All who are known to not have the scriptural qualifications of civil rulers. See Exodus, 18, 21: "Provide out of all the people able men, such as fear God, men of truth, hating covetousness; and place such over them to be rulers." And II Samuel, 23, 3: "He that ruleth over men must be just, ruling in the fear of God."

7. So that all oaths of office, or oaths required of witnesses, jurors, etc., shall be in the name of God, and always with uplifted hand.

8. So that no one can be deprived of the elective franchise, or of the right of citizenship, or of education in the public schools, on account of nationality, color, or sex.

9. So that the elective franchise may not be granted to persons of foreign birth, except those who speak the English language, until after they have been in the United States five years, and to no one who is unable to read the English language intelligently.

10. So that in trials by jury verdicts may be rendered by nine out of twelve.

JOHN RICE,	N. A. JOHNSTON,
S. RICE,	N. J. RICE,
R. R. JOHNSTON	T. E. RICE,
GEORGE HOWE,	WM. MOORE,
M A JOHNSTON,	R E. JOHNSTON.

MR. LAINE presented a memorial on the same subject as above, signed by eighty persons.

RELATIVE TO FEMALE SUFFRAGE.

MR. ROLFE presented the following petition, relative to female suffrage:

To the Constitutional Convention, in Sacramento, California, assembled:

The undersigned, citizens of California, respectfully petition your honorable body to so amend the Constitution that no citizen of the State shall be disfranchised on account of sex.

[Signed by Samuel Morton and several hundred others.]

LOCAL OPTION.

MR. HOWARD presented a petition from citizens of Los Angeles County, asking for the passage of a local option law, as follows:

To the Constitutional Convention:

We respectfully represent that we have a right to be by law protected in life, person, and property, from intemperance; our lives are in danger, property is stolen and destroyed in consequence of whisky, and our taxes doubled; snares are set all over our land to draw our sons and daughters from virtue to vice, from plenty to poverty, and from honor to degradation. We demand that the Convention shall "lead us not into temptation, but deliver us from evil" of intemperance. Give us a local option law.

[Signed by J. O. Matthewson, and one hundred and nine others.]

Referred to the Committee on Legislative Department.

MR. HILBORN presented the following petition from citizens of Solano County, as follows:

The honorable members of the Constitutional Convention:

WHEREAS, it seems right, reasonable, and proper that a majority of the citizens in any community should have the right to decide in regard to the sale of intoxicating liquors within its bounds; and

WHEREAS, the highest judicial authority of this State has declared that our present State Constitution does not allow such decision; therefore, we, the undersigned citizens of Solano County, State of California, hereby respectfully petition the members of our State Constitutional Convention to insert an article in the Constitution to be presented to the people, giving them the power at every general election to vote for or against the granting of license for the sale of intoxicating liquors in any township, village, town, or ward of a city.

[Signed by J. W. Jones, and fifty-four others]

REPORTS OF COMMITTEES.

MR. HILBORN, from Committee on Mileage, made the following report:

Mr. President: Your Committee on Mileage and Contingent Expenses beg leave to report that the members of the Convention are entitled to mileage for number of miles and amounts, as follows:

NAMES.	Miles.	Amounts.
Andrews	354	$53 10
Ayers	956	143 40
Barbour	168	25 20
Barnes	168	25 20
Barry	238	35 70
Barton	674	101 10
Beerstecher	168	25 20
Belcher	104	15 60
Bell	168	25 20
Berry	570	85 50
Biggs	150	22 50
Blackmer	1141	171 00
Boggs	408	61 20
Boucher	192	28 80
Brown	516	77 40
Burt	122	18 30
Campbell	182	27 30
Caples	40	6 00
Casserly	168	25 20
Chapman	194	29 10
Charles	250	37 50
Condon	168	25 20
Cowden	104	15 60
Cross	142	21 30
Crouch	122	18 30
Davis	238	35 70
Dean	122	18 30
Dowling	168	25 20
Doyle	168	25 20
Dudley, J. M.	44	6 60
Dudley, W. L.	96	14 40
Dunlap		
Eagon	118	17 70
Edgerton		
Estee	168	25 20
Estey	220	33 00
Evey	1016	152 40
Farrell	168	25 20

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NAMES.	Miles.	Amounts.
Fawcett	738	$110 70
Filcher	74	11 10
Finney	792	118 80
Freeman		
Freud	168	25 20
Garvey	146	21 90
Glascock	90	13 50
Gorman	168	25 20
Grace	168	25 20
Graves	586	87 90
Gregg	566	83 40
Hager	168	25 20
Hale	74	11 10
Hall	96	14 40
Harrison	168	25 20
Harvey	120	18 00
Heiskell	166	24 90
Herold	168	25 20
Herrington	306	45 90
Hilborn	120	18 00
Hitchcock	120	18 00
Hoge	168	25 20
Holmes	308	46 20
Howard	974	146 10
Huestis	624	93 60
Hughey	168	25 20
Hunter	122	18 30
Inman	252	37 80
Johnson	282	42 30
Jones	312	46 80
Joyce	168	25 20
Kelley	40	6 00
Kenny	168	25 20
Keyes	100	15 00
Kline	168	25 20
Laine	306	45 90
Lampson	180	27 00
Larkin	100	15 00
Larue		
Lavigne	168	25 20
Lewis	120	18 00
Lindow	168	25 20
Mansfield	956	143 40
Martin, E.	410	61 50
McCallum	182	27 30
McComas	316	47 40
McConnell	38	5 70
McCoy	152	22 80
McFarland		
McNutt	140	21 00
Miller	168	25 20
Mills	180	27 00
Moffat	220	33 00
Moreland	314	47 10
Morse	196	29 40
Murphy	728	119 20
Nason	346	51 90
Nelson	168	25 20
Neunaber	168	25 20
Noel	408	61 20
O'Donnell	168	25 20
Ohleyer	106	15 90
O'Sullivan	168	25 20
Overton	282	42 30
Porter	118	17 70
Prouty	90	13 50
Pulliam	180	27 00
Reddy	942	141 30
Reed	58	8 70
Reynolds	168	25 20
Rhodes	44	6 60
Ringgold	168	25 20
Rolfe	1,200	180 00
Schell	154	23 10
Schomp	70	10 50
Shafter	232	34 80
Shoemaker	134	20 10
Shurtleff	122	18 30
Smith, E. O.	304	45 60
Smith, G. V.	556	83 40
Smith, H. W.	168	25 20
Soule	366	54 90
Stedman	168	25 20
Steele	596	89 40
Stevenson	354	53 10
Stuart	252	37 80
Sweasey	624	93 60
Swenson	168	25 20
Swing	1,176	176 40
Terry	96	14 40
Tinnin	434	65 10
Townsend	410	61 50
Tully	256	38 40
Turner	298	$44 70
Tuttle	410	61 50
Vacquerel	168	25 20
Van Dyke	182	27 30
Van Voorhies	182	27 30
Walker, J.	200	30 00
Waters	1,176	176 40
Webster	188	28 20
Weller	286	42 90
Wellin	168	25 20
West	980	147 00
Wickes	122	18 30
White	410	61 50
Wilson, H. C.	286	42 90
Wilson, S. M.	168	25 20
Winans	168	25 20
Wyatt	392	58 80
Martin, J. W.	182	27 30
Strong	260	39 00
Thompson	168	25 20

We therefore recommend the adoption of the following resolution:

Resolved, That the Controller of State be authorized and directed to draw his warrants, payable out of the appropriation for this Convention, in favor of the parties named, and for the amounts stated in the above report.

HILBORN, Chairman.

MR. HILBORN moved that the reading be dispensed with, and the report printed and laid on the desks of members.

So ordered.

MR. HILBORN, from the Committee on Mileage and Contingent Expenses, also made the following report:

Your Committee on Mileage and Contingent Expenses, to whom was referred the resolution by Mr. Caples, and also the resolution by Mr. Hilborn providing for the employment of a Night Watchman, have had the same under consideration, and hereby report as follows: That the attendance of a Night Watchman in the hall of this Convention is absolutely necessary; that one person can perform the duty of both Day and Night Watchman, and that five dollars per day is a reasonable compensation for said services. The committee offered the following resolution:

Resolved, That James Saultry be and he is hereby appointed Night Watchman of this Convention, at a salary of five dollars per day, the same to date from the beginning of this Convention.

MR. CAPLES. Is the question debatable?

THE PRESIDENT. Yes, sir.

MR. CAPLES. Mr. President: I offered the first resolution for the appointment of a gentleman to fill that position. I did so because I believed him to be a sober, truthful, honest, conscientious, faithful gentleman, and that he will perform the duties of the position creditably. The gentleman proposed by the other resolution may be equally qualified. On that I do not undertake to say; but I understand that Mr. Saultry is now on the payroll of the State Prison, I don't know in what capacity. I see he is also performing some function here.

MR. HILBORN. I am informed that such is not the fact. I don't want him to be misrepresented.

MR. FAWCETT. The Convention passed a rule yesterday that all employés should be appointed by the President, with certain exceptions.

THE PRESIDENT. The Chair understands that the Night Watchman was not mentioned.

MR. MCCALLUM. The report goes to the table until we reach resolutions. We have not yet reached resolutions. We are now under the head of standing committees.

THE PRESIDENT. That is a report from a standing committee, and the question is always on the adoption of the resolution. It belongs to the report and comes up with the report.

MR. CAPLES. Whether it be true or not that Mr. Saultry is on the payroll, I shall not undertake to say, but it does appear that he is here in some capacity, I don't know what. He appears to be engaged during the day, and there is to be an effort made to enforce the eight-hour law, and it seems to me that to work this gentleman, Mr. Saultry, twenty-four hours in a day, would be to call down upon our heads the wrath and indignation of the Workingmen. It does appear to me that one position of ten, or twelve, or fourteen hours a day is enough for him to fill, whether he is or not on the payroll at San Quentin. As I remarked before I shall not undertake to say which of the two gentlemen are best qualified to fill the position, but I do think, and submit to the candor of the gentleman, whether it is not more proper, other things being equal, to give the position to the gentleman who is at liberty to devote his entire time to the duties of the position. Now if this gentleman performs these functions during the day, it seems to me we are working him too hard. I think twelve hours is enough without imposing any more, and therefore I am opposed to his appointment.

MR. HEISKELL. Mr. President: It is proposed to take the appointment of these subordinate officers from the Chair, and I wish to protest against this manner of appointing by resolution. There are other gentlemen here as competent to fill this position as Mr. Saultry. Give them all a fair chance to compete. The great argument in his favor that he is familiar with the duties of the place has no great weight; I know other gentlemen equally competent. As to this matter of his being on the payroll, I wish to make a statement. It appears that he was on the payroll in eighteen hundred and seventy-seven. When the Legislature convened he laid down his arms and came here and got a position as Night Watchman. The Legislature adjourned and he again appears on the payroll. His name appears on the payroll for the month of August just past.

THE PRESIDENT. The question is on the adoption of the resolution reported by the Committee on Mileage.

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Mr. WHITE. I move as an amendment that one of these Doorkeepers be detailed to do that duty. We already have more attachés than are necessary. We have eight Pages when four would do. I am opposed to squandering the people's money, earned by the sweat of their brow, in any such way. We should study economy in all we do. We have one Mail-carrier and one Postmaster, when one would do for both. I move that one of the Doorkeepers be detailed to do this work. I move to strike out the name of Saultry and put in one of the Doorkeepers. I don't know the names—let the Chair select.

Mr. GREGG. I offer a substitute for both, to be referred to the same committee:

Resolved, That the President of the Convention appoint A. C. Wan, of Kern County, Night Watchman, at a salary of five dollars a day.

Mr. AYERS. I move that the whole matter be laid on the table.

The motion prevailed.

Mr. HILBORN presented the following further report from the Committee on Mileage and Contingent Expenses:

Mr. President: Your Committee on Mileage and Contingent Expenses, to whom was referred the resolution offered by Mr. Beerstecher, providing that the Journal of this Convention shall be printed each day and laid upon the desks of the members, has had the same under consideration, and hereby report the same back and recommend that it be not adopted.

The PRESIDENT. The question is on the adoption of the report of the committee.

Mr. HILBORN. Mr. President: In connection with this matter I beg leave to say that I addressed a note to the State Printer to get an idea of the probable cost, and I would like to have his letter read. I would call the attention of the Convention also to the fact that if this is done it will make it necessary to have another clerk at the desk, at a salary of eight dollars a day, or eight hundred dollars for the session.

The Secretary read the letter as follows:

OFFICE OF STATE SUPERINTENDENT PRINTING,
October 9th, 1878.

S. G. Hilborn, Chairman of Committee on Mileage and Contingent Expenses—Sir: I have taken five hundred pages as a basis on which to make an estimate as to the probable cost of printing three hundred and fifty copies of the Journal of the Constitutional Convention, and find the following: Composition, five hundred and seventy dollars; presswork, seventy-six dollars and eighty cents; paper, seventy-five dollars and ten cents; folding and stitching, two hundred and twenty-seven dollars and fifty cents—total, nine hundred and forty-nine dollars and fifty cents, or a fraction less than two dollars per page. The resolution does not contemplate the printing and binding of extra copies at the end of the session, but, supposing it to be an oversight, which the Convention will discuss, I hereby take the liberty of giving you an additional estimate, based on five hundred copies, printed and bound, one composition of the matter to be used in both regular and extra editions: Paper, one hundred and five dollars; presswork, seventy-six dollars and eighty cents; binding, three hundred and twenty-five dollars; make-up, sixty-four dollars—total, five hundred and seventy dollars and eighty cents, or total of one thousand five hundred and twenty dollars and sixty cents for eight hundred and fifty copies of the Journal, of five hundred pages each. Respectfully submitted.

F. P. THOMPSON, Superintendent State Printing.

The PRESIDENT. The question is on the adoption of the report of the Committee on Mileage and Contingent Expenses.

The report was adopted.

Mr ESTEE, from the Committee on Rules and Order of Business, presented the following report:

Mr. President: Your Committee on Rules, Order of Business, and Standing Committees, have had under consideration:

First—The resolution introduced by Mr. Ayers, of Los Angeles, asking that there be added to the standing committee of the Convention, one on Federal Relations, to consist of nine members, and report that in its opinion no committee on that subject is necessary.

Second—Your committee also had under consideration the resolution presented by Mr. O'Sullivan, of San Francisco, asking that the Committee on Land and Homestead Exemption be increased from nine to fifteen members, and recommend that that committee be increased from nine to eleven members.

Third—Your committee have also had under consideration the resolution offered by Mr. Dowling, of San Francisco, requesting the formation of a new Committee on Irrigation and Surveying, and respectfully report the same back to the Convention, and recommend that it be not adopted. There is already a Committee on Water and Water Rights, and one on Agriculture. The further multiplicity of committees on similar subjects is deemed by your committee inadvisable.

Fourth—Your committee has also considered the resolution introduced by Mr. Wyatt demanding that there be formed a standing committee on State Affairs, whose duty should be to report the names of all persons employed under the present State organization, the duties required of each, and the time spent by each in the performance of such duties, with compensation. We respectfully submit that such a committee is wholly unnecessary; that the present Constitution and the Political Code will show what State officers and employés are authorized by law, and the Controller's books will show who are under pay of the State, and the amount each receives. If the investigation asked for is necessary, the committees already appointed have ample scope for the performance of that duty. In conclusion, on this subject, your committee cannot too highly deprecate the making of useless or unnecessary committees. The multiplicity of committees, and the increase of the members of the same, instead of facilitating business, will, in the opinion of your committee, greatly embarrass the business of the Convention by dividing up the duties and responsibilities of committee work into such small parts that no marked result will be reached.

Fifth—Your committee has also considered the resolution introduced by Mr. Cowden, relative to the appointment of officers and attachés, which was to be known as rule seventy-five, and report the following, to be known as rule seventy five, and respectfully ask its adoption:

"Rule 75—Appointment of attachés. All officers and attachés except clerks of Committees and Phonographic Reporters, not yet elected or appointed, which shall by the Convention be deemed necessary, shall be appointed by the President of the Convention."

M. M. ESTEE, Chairman.

The PRESIDENT. The question is on the adoption of the report.

Mr. FILCHER. What has become of the resolution offered by me, and referred to that committee? What disposition was made of it?

Mr. ESTEE. The committee has not yet disposed of it.

The report of the committee was adopted.

Mr. HILBORN. I rise to make a motion in relation to the printing of the report of the Committee on Mileage and Contingent Expenses. I move that it be sent at once to the printing office.

The PRESIDENT. There being no objection, it is so ordered.

Mr. BEERSTECHER. I rise for information. Rule seventy-five, on printing, says there shall be four hundred and eighty copies of each proposition and resolution relating to the Constitution, printed and laid on the desks. I will ask if the resolutions and propositions introduced yesterday are printed, and if so why they are not laid on the desks?

The PRESIDENT. The Chair is informed that the Secretary was unable to get them out in time.

MOTIONS AND RESOLUTIONS.

Mr. BEERSTECHER. Mr. President: I have a resolution which I wish to offer:

Resolved, That the Secretary of State is hereby requested to have such rooms in the Capitol building as may be used for meetings of committees, members, etc., lighted on the nights said meetings are held, and that Patrick Levey, the Porter who has charge of the gas department here, is hereby allowed two dollars for the performance of such extra service, to be paid out of the appropriation for the expenses of the Convention.

Mr. BEERSTECHER. Mr. President: I understand that unless a resolution of this character is adopted, there is no authority anywhere for lighting the committee rooms, or such rooms as may be occupied in this building, other than those usually occupied when there is no session of any Convention or Legislature here; that it is usual for the Legislature to pass a resolution of this character to confer authority upon those who light the rooms. I understand farther, that Mr. Levey is employed in the gas department, and receives the sum of seventy-five dollars per month; that it is not any part of his duties to remain here until eleven or twelve o'clock; that every Legislature has allowed Mr. Levey an additional sum of two dollars. The gentleman is obliged to be here beyond the time contemplated in his employment for which he receives seventy-five dollars a month. He has, since this Convention has been in session, been here nearly every night until after midnight. He earns his money and ought to have it. I believe in economy, but I also believe in paying a man his just earnings.

Mr. RINGGOLD. I hope it will be given to some other man.

Mr. BEERSTECHER. I would state that he has had the gas department under his charge for a long time, and understands it, and can save more than fifty times the amount to the State by his management.

Mr. FREEMAN. The resolution goes to the Committee on Mileage and Contingent Expenses, under rule seventy.

The PRESIDENT. The resolution will go to that committee.

Mr. GEORGE offered the following resolution:

Resolved, That the Controller of State be and he is hereby authorized to draw his warrant, payable out of the appropriation for the expenses of this Convention, in favor of Edward H. Morritz, in the sum of fifteen dollars, for services rendered as Page during the organization of this Convention.

Referred to the Committee on Mileage and Contingent Expenses.

Mr. LARKIN. Mr. President: I ask the consent of the Convention to submit a resolution that will clearly interpret the rule as to propositions to be submitted. Yesterday I observed that the propositions were in various forms, many of them instructing committees to report this and that. I desire an interpretation of the rule so that it will be clearly understood by this Convention, so that when a member offers a proposition he may do it in the best form, so that the committee which is instructed will have something tangible. I desire each and every man to so state his views that it may be acted upon by this Convention. That is my reason for offering the resolution.

The Secretary read the resolution, as follows:

Resolved, That all propositions submitted to this Convention be substituted in the form of an article, or the section of an article, in the proper form to be embodied in the Constitution.

Mr. EDGERTON. I move that it be referred to the Committee on Rules and Order of Business.

Mr. SMITH, of Kern. I move that it now be adopted. I move we take a vote on the resolution now.

Mr. HAGER. I think it is right, and I move that the rules be suspended and the resolution adopted.

The motion to suspend the rules for the purpose of considering the resolution prevailed.

Mr. CAPLES. I would propose an amendment to the resolution, that the roll be called again, and that all those who did not avail themselves yesterday of their privilege under the rule, to present two propositions, be permitted now to present them; and as a reason for the motion I will state, that perhaps a majority of members on this floor were not aware that propositions would be received at that time. It is right and proper that these persons should be permitted to present their propositions under the same rule.

Mr. LARKIN. I had no intention of shutting off any propositions. My idea was that these gentlemen should submit their propositions in the form of an article. I have no desire to shut off the gentleman from Sacramento. But I want these resolutions and propositions to be put in proper form, so that when the committees report they will be in proper shape. I desire that each man shall present his propositions in the shape of an article. I want each and every man's views.

The PRESIDENT. The Chair will state that the gentleman from Sacramento, Mr. Caples, is mistaken. The roll has been called, and will be called, every morning until the Convention shall order different, so that he will have an opportunity to offer propositions.

Mr. CAPLES. The resolution is not right. He has no right to say that propositions shall only be received in a certain form, in the form of articles in the Constitution.

The PRESIDENT. The resolution seems to be an amplification of the provisions of rule fifty-one.

Mr. CAPLES. I hold that in justice to these members who have not had an opportunity to present their propositions, that this roll should

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be called again, and allow them to present their propositions upon the same basis and in the same form as the others presented theirs yesterday, and after the roll has been called through, I have no objection to the resolution presented by the gentleman. But until all the members have an opportunity of doing here what all the others have been allowed to do, I hold that this is snap judgment to cut them off now, and I shall, as an amendment, propose that the roll be called again, and those who didn't respond yesterday, I think they should be permitted to present their propositions on the same terms as those introduced yesterday.

MR. HAGER. Mr. President: The member appears to be laboring under a misapprehension as to the resolution now offered. It will not prevent the offering of any proposition when the roll is called again. It is intended merely to prevent members getting up and asking that committees be instructed to report upon this or that proposition; in other words, it compels the member to formulate his proposition himself, instead of asking the committee to consider and report it. I think it is perfectly right under rule fifty-one—nothing more than an enforcement of rule fifty-one—that is that any member may get up and offer any proposition as to amendments to the Constitution, in any particular, and that these propositions will be referred to the committees.

THE PRESIDENT. The amendment is not in order. The question is on the adoption of the resolution.

The resolution was adopted.

PROPOSITIONS AND RESOLUTIONS RELATING TO THE CONSTITUTION.

MR. STUART. I have a proposition to offer.

THE PRESIDENT. The roll will be called.

CHINESE IMMIGRATION.

MR. AYERS introduced the following proposed amendment to the Constitution:

SECTION —. All further immigration to this State of Chinese is hereby prohibited. The municipal authorities of the ports in the State to which they are destined shall have power to prevent their debarkation, and to reembark them if landed.

Referred to the Committee on Chinese.

DIRECTORS OF SAVINGS BANKS.

MR. AYERS introduced the following proposed amendment to the Constitution in reference to the responsibility of the Directors of savings banks.

SECTION —. It shall be the duty of the Legislature to enact a law which shall hold the Directors of savings banks responsible in their individual property and estates for the misappropriation, by the officers of such banks, of the funds or deposits of such institutions.

Referred to the Committee on Legislative Department.

ABROGATING THE BURLINGAME TREATY.

MR. BARBOUR introduced the following proposed amendment to the Constitution, relative to petitioning for the abrogation of the Burlingame treaty:

Resolved, That this Convention memorialize the President of the United States to abrogate or modify the Burlingame treaty; and also memorialize Congress to prohibit Chinese immigration; and that the Chair appoint a committee of seven to draft such memorials, to be submitted to this Convention.

Referred to the Committee on Chinese.

ON LOBBYING.

MR. BARBOUR introduced the following proposed amendment to the Constitution, in reference to lobbying:

SECTION —. Lobbying is declared to be a crime, and the Legislature shall enforce this provision by suitable penalties.

Referred to the Committee on Preamble and Bill of Rights.

ANTI-CHINESE SECTIONS.

MR. BARBOUR introduced the following proposed amendment to the Constitution:

SEC. —. The people of this State have the inherent, sole, and exclusive right of regulating their internal government and the police thereof; they have the right to determine what is detrimental to the well-being of the State, and to exhaust the power of the State to prohibit and prevent it.

SEC. —. Aliens eligible to become citizens of the United States, under the naturalization laws thereof, who are, or may hereafter become, bona fide residents of this State, may acquire, inherit, possess, enjoy, and dispose of property, real and personal, as native-born citizens; they have the same right to sue and be sued in the Courts of the State; to have license to carry on business or follow any trade or occupation; to fish in the inland waters of the State, and to the equal protection of the laws as native-born citizens. Aliens ineligible to become citizens may be prohibited by the Legislature whenever, in its judgment, the welfare of the State demands it, from acquiring, inheriting, possessing, enjoying, and disposing of any property, real or personal; from suing or being sued in any of the Courts of the State; from fishing in the inland waters of the State; from having license to engage in any business or occupation in this State, and may be excluded from residence in any specified limits of this State whenever their presence shall be deemed dangerous to the health, comfort, and happiness of the people.

SEC. —. There shall be neither slavery nor involuntary servitude within the State of California, save as a punishment for crime, after legal conviction thereof. The Legislature shall provide, by suitable penalties, for the prohibition of the bringing into this State of persons bound to a term of service or labor on contracts made without the United States, and may provide for the deportation of all persons thus brought into the State.

Referred to the Committee on Preamble and Bill of Rights.

ON EDUCATION.

MR. BARNES introduced the following proposed amendment to the Constitution:

Resolved, That section three, of article nine, of the Constitution, be amended by adding thereto the following:

That all moneys raised by taxation in towns, cities, and school districts, for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town, city, or school district in which the money is to be expended; and such moneys shall never be expended upon, or appropriated to, any religious sect, for the maintenance, exclusively, of its own schools.

Referred to the Committee on Education.

ON PARDONING POWER.

MR. BARRY introduced the following proposed amendment to the Constitution, entitled: Resolution to amend section thirteen, of article five, of the Constitution.

EXECUTIVE DEPARTMENT.

The Governor shall have the power to grant reprieves and pardons in cases of misdemeanor only after conviction. The Governor, Attorney-General, and Justices of the Supreme Court, or a major part of them, may, upon such conditions and with such limitations and restrictions as they may deem proper, remit fines and forfeitures, commute punishments, and grant pardons after conviction, in all cases except misdemeanors (where the Governor alone shall have the power), treason, and impeachment, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason they shall have the power to suspend the execution of the sentence until the case shall be reported to the Legislature, at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. They, and the Governor shall himself in cases of misdemeanor, communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence at its date, and the date of the pardon or reprieve.

Referred to the Committee on Pardoning Power.

ASIATIC COOLIEISM.

MR. BARRY offered the following resolutions, relative to the Constitution:

Resolved, First—That Asiatic coolieism, being a form of human slavery, is forever prohibited in this State.

Second—That all contracts for coolie labor are null and void.

Third—That all companies or corporations, whether formed in this country or any foreign country, for the importation of such labor, shall be subject to the penalties and punishment provided in the law of Congress against the importers of African slaves.

Fourth—That in all trials under State jurisdiction for violations of this section, the jury shall be the judge of the law and the facts in each case.

Fifth—This section shall be enforced by appropriate legislation.

Referred to the Committee on Chinese.

RELATIVE TO ASSESSMENTS.

MR. BARTON offered the following resolution relating to the Constitution:

Resolved, The Legislature shall have power to fix a day for the listing of all property within this State, and, by appropriate legislation, compel the Assessors of this State to prepare such list, with the statutory exemptions printed thereon, and forward at least one list to every taxpayer within his respective district.

Referred to the Committee on Revenue and Taxation.

LOCAL POWERS OF THE PEOPLE.

MR. BARTON offered the following resolution relating to the rights of the people in regard to their local powers:

Resolved, The Legislature shall have power to properly submit the question of local option to the people in regard to the subject of the County Commissioners granting license to wholesale or retail intoxicating liquors in their respective counties, cities, or cities and counties, in this State.

Referred to the Committee on Legislative Department.

RELATIVE TO HOURS OF LABOR.

MR. BEERSTECHER introduced the following proposed amendment to the Constitution, relative to hours of labor:

SECTION 1. No person shall be employed in manual labor (except agricultural labor) by any person, firm, or corporation in this State, for more than eight hours in any one day, except when it is necessary to repair machinery to prevent stoppage, or to prevent impending calamity. Eight hours shall constitute a day's work, and in no case shall the hours of labor exceed forty-eight (48) per week.

SEC. 2. Violations hereof shall be punished as misdemeanors.

Referred to the Committee on Legislative Department.

DEPARTMENT OF LABOR STATISTICS.

MR. BEERSTECHER introduced the following proposed amendment to the Constitution, in relation to a State Department of Labor and Labor Statistics:

SECTION 1. There shall be a State Department of Labor and Labor Statistics.

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SEC. 2. The duty of the department shall be to collect and publish statistical details concerning every class of labor in this State; also to have general supervision of the commercial, industrial, educational, social, and sanitary condition of the laboring classes.

SEC. 3. Weekly and annual reports shall be made by the department and printed by the State Printer, and gratuitously distributed throughout the State. The chief of the department shall also report to each Legislature, and advise such legislation as may be necessary to encourage and protect labor.

SEC. 4. The officers shall be a General Superintendent, with an office in the State Capitol building; and a Superintendent, with an office in the City of San Francisco. They shall be elected at the general State election, and hold office for four years. Their salary shall be two hundred ($200) dollars per month.

SEC. 5. The Legislature may provide for traveling and other incidental expenses, and for employment of clerks, and their compensation.

Referred to the Committee on Legislative Department.

RELATIVE TO TAXATION.

MR. BELCHER introduced the following proposed amendment to the Constitution, in relation to taxation:

Resolved, That the following proposition concerning taxation be embraced in the Constitution:

SECTION —. A State Board of Equalization, consisting of two members from each Congressional District in the State, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year eighteen ——, and every four years thereafter, whose duty it shall be to equalize the valuation of the taxable property in the State for the purposes of State taxation. The Boards of Supervisors of the several counties in the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purposes of county taxation. The Legislature shall provide, by law, for carrying into effect the provisions of this section.

Referred to the Committee on Revenue and Taxation.

IN REFERENCE TO THE LAW DEPARTMENT.

MR. BELCHER introduced the following proposed amendment to the Constitution:

Resolved, That the following proposition be embodied in the Constitution, and referred to Committee on Judicial Department:

SEC. 1. A law department is established. It consists of a Senior and Junior Commissioner, who shall hold their offices, the Senior until he is seventy years of age, the Junior until he succeeds the Senior by right of succession, which is hereby secured in case of vacancy in the office of the Senior. To be eligible for the first appointment under this Constitution, the Senior Commissioner must not be less than fifty years of age, and must have served not less than six years as Judge of the District or Supreme Court of the State, or of both. The Junior Commissioner, to be eligible, must in all cases be a counselor at law of at least four years' standing since his admission to the bar of the Supreme Court of the State, and must not be over forty years of age. Their salaries must be paid in like time, manner, and amounts as the Associate Justices of the Supreme Court.

SEC. 2. The Commissioners must be appointed without reference to their political opinions. They must be nominated by a majority of the Judges of the Supreme Court, appointed by the Governor, and confirmed by the Senate. The Judges of the Supreme Court may retire a Commissioner on half-pay for life, when satisfied that he is mentally or physically too infirm to discharge the duties of his office, and that the infirmity is apparently incurable. When a Commissioner serves till the age of seventy he shall draw half-pay the remainder of his life. A Commissioner cannot resign unless his resignation is accepted by the powers which nominated, appointed, and confirmed him.

SEC. 3. The Supreme Court must remove a Commissioner when, upon petition and hearing, it finds either one or more of the following facts:

1. Participation in the practice of law since his appointment, or accepting or agreeing to accept a fee or reward for professional service or advice.
2. Habitual intemperance.
3. Commission of a felony.
4. Gross neglect of official duty.
5. Incompetency; to be determined upon the inspection of the official works as they appear in writing or print.

SEC. 4. The Commissioners must, subject to adoption by the Legislature:

1. Perfect by amendment the Code system of the State;
2. Reduce to Code form of expression all uncodified statutes that are reasonably capable of being incorporated into the Codes, and insert their contents in places where they logically belong;
3. Insert, in proper places, at their discretion, such rules of the common law as have been omitted from the Codes;
4. Distribute provisions to and in their proper title, when found clearly out of their place;
5. Make but one expression of a rule in the four Codes except by way of reference;
6. Revise the expression in sections containing unreasonable redundancy, giving them the most condensed form consistent with clearness and certainty;
7. Subdivide sections of unreasonable length into two or more, in such manner as will secure single or separate expression of each particular subject, as far as reasonably practicable;
8. Insert all additional sections where they logically belong, by numerical or alphabetical designation, as 100, 100a, 100b, etc.; or, 100–1, 100–2, 100–3, etc.;
9. Remove all doubts or conflicts, supply defects, and give uniformity in style, expression, and in the form and length of sections, so far as may be reasonably practicable.

SEC. 5. The Commissioners must:

1. Annotate the work as they proceed and make references by the correlative use of numerals, indicating the particular point, word, or clause to which the citation specially refers, and add such brief assignment of reasons for particular expression as their judgment may dictate;
2. Prepare for publication, within four years from the adoption of the Constitution, an annotated edition of the Codes, and continue the process of annotation and amendment, and prepare subsequent revised editions, to be published from time to time, at least once in every ten years. The Legislature must provide for their publication, but the Commissioners must supervise it. They must prepare the form of bills or Acts when requested by resolution of either house, particularly specifying the objects to be attained.

SEC. 6. The Commissioners shall report their labors to each succeeding Legislature, and shall act advisory of the two houses touching the amendment of the Codes and the preparation of the form of expression of all laws to be passed, and shall, during the recess of the Legislature, examine all bills referred to them for consideration by either House, and report thereon to the next Legislature, when so instructed, in the order of reference. The Senior Commissioner shall be a member of the Senate, and the Junior Commissioner shall be a member of the Assembly, but not entitled to a vote or hold other office.

Referred to the Committee on Judiciary and Judicial Department.

MR. BELL offered a resolution in relation to the appointment of officers.

MR. ROLFE. Mr. President: The proposition does not comply with the rule. It is not in the shape of a proposition.

THE PRESIDENT. It does not comply with the rule passed this morning. Return it to the gentleman.

ASSESSMENT OF PROPERTY.

MR. BIGGS introduced the following proposed amendment to the Constitution, relative to assessment of property:

Resolved, All property subject to taxation shall be taxed in proportion to its value. All debts secured by mortgage or mortgages, solvent debts, moneys, certificates of deposit, all capital of joint stock companies, corporations, savings in banks, shall be taxed to the owner or owners, holder or holders of the same, for the full amount represented by said joint stock company or companies, corporation or corporations, savings in bank or banks. The word property herein used is intended to include every kind of property, real and personal, that has any value thereto. Growing crops shall not be considered as property. All assessments shall fall due on the —— day of ——, at twelve o'clock M.

Referred to the Committee on Revenue and Taxation.

LEGISLATIVE OATH.

MR. BIGGS introduced the following proposed amendment to the Constitution, relative to the oath to be taken by members of Legislature.

LEGISLATIVE DEPARTMENT.

SECTION 1. *Resolved*, That every Senator and Representative elect, before entering upon the duties of his office, shall take and subscribe the following oath or affirmation: "I do solemnly swear, or affirm, that I will support the Constitution of the United States and of the State of California, and faithfully perform the duties of my office; and that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office, other than the compensation allowed by law." The oath shall be administered in the halls of their respective houses to the members thereof, by some Judge of the Supreme Court, or the District Court, or the County Court of Sacramento County, or, after the organization, by the presiding officer of either house, and shall be filed in the office of the Secretary of State. Any member of either house refusing to take said oath, or affirmation, shall be deemed to have thereby vacated his office, and any member convicted of having violated his oath, or affirmation, shall be deemed guilty of perjury, and be forever thereafter disqualified from holding any office of trust or profit in this State.

SEC. 2. The members of the Senate and Assembly shall severally receive from the public treasury such compensation as may, from time to time, be provided by law, not to exceed five dollars per day for the first —— days of each session, and after that not to exceed one dollar per day for the remainder of the session. In addition to per diem, the members shall be entitled to receive traveling expenses or mileage for any regular and extra session, not greater than now provided by law; but no member shall be entitled to traveling expenses or mileage for any extra session that may be called within one day after an adjournment of a regular session. Each member may receive, at each regular session, an additional sum of twenty-five dollars, which shall be in full for all stationery used in his official capacity, and all postage and other incidental expenses and perquisites.

SEC. 3. No bill shall become a law unless on its final passage the vote be taken by the yeas and nays, the names of the members voting for and against the same be entered on the Journal, and a majority of the members elected to each house be recorded thereon as voting in its favor.

SEC. 4. No amendment to bills by one house shall be concurred in by the other, except by a vote of a majority of the members elected thereto, taken by yeas and nays, and the names of those voting for and against recorded upon the Journal thereof; and reports of Committees of Conference shall be adopted in either house only by the vote of a majority of the members elected thereto, taken by the yeas and nays, and the names of those voting recorded upon the Journal.

Referred to the Committee on Legislative Department.

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MR. MURPHY. I move that all propositions be read by title, and not in accordance with rule fifty-one, and referred to a committee.

THE PRESIDENT. It is so ordered.

MR. BLACKMER. I send up two propositions.

MR. CROSS. It seems to me, Mr. President, that it is not right, simply having the title read, and then lay the bill aside. For instance, one man introduces a proposition on the Chinese question, and it is read; it may be the same proposition that several other members have in contemplation, and they can save themselves the trouble when they see that it has been introduced. There may be a number of plans introduced. There is one introduced by Judge Hale, and one by Mr. Filcher, and there is no use in having any more introduced. I say that the propositions ought to be read.

MR. HAGER. This rule, fifty-two, requires it to be read, and to dispense with it the Convention will have to dispense with the rule. Any member may move that a proposition be not read, and any member may demand the reading of a proposition.

MR. BLACKMER. I call the attention of the Secretary to the fact that I sent up two propositions which have not been read.

THE PRESIDENT. The Chair will rule now that they must be read, under the rule, unless the Convention suspends the rule and dispenses with the reading.

RELATING TO EDUCATION.

MR. BLACKMER introduced the following proposed section, to be incorporated into article nine of the present Constitution, relating to education:

SECTION —. There shall be a State Board of Education, consisting of two members from each Congressional District, who shall be nominated by the Governor and confirmed by the Senate, for the term of four years. The State Superintendent shall be ex officio a member of said Board.

Referred to the Committee on Education.

RELATING TO SUFFRAGE.

MR. BLACKMER introduced the following proposed amendment to the Constitution:

Amend section one, article two, so as to read as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof (except such as are now or may hereafter be debarred by treaty from attaining to the rights of citizenship, and Indians who continue to maintain their tribal relations), of the age of twenty-one years, who shall have been a resident of the State one year, and of an election district six months next preceding an election, shall be entitled to vote at all elections which are now or may hereafter be authorized by law.

Referred to the Committee on Right of Suffrage.

MR. NOEL. I move that the rules be suspended and that the resolutions and propositions be read by title and referred to the proper committees.

MR. BEERSTECHER. I rise to a point of order. I call the attention of the house to section sixty, which says, on suspension or change of the rules, that no standing rule or order shall be rescinded without a vote of two thirds and one day's notice being given, but a rule or order may be temporarily suspended by a vote of two thirds, except rules fifty-one, fifty-two, fifty-three, and fifty-five, which includes this rule among those excepted.

THE PRESIDENT. The point of order is well taken, and the motion is out of order.

PROTECTION OF RIGHTS.

MR. BROWN introduced the following proposed amendment to the Constitution:

No clause in this Constitution shall be so construed as to invalidate rights to property that have been acquired under the laws of this State prior to the adoption of this Constitution.

Referred to the Committee on Preamble and Bill of Rights.

RELATIVE TO A BOARD OF RAILROAD COMMISSIONERS.

MR. CAMPBELL introduced the following proposed amendment to the Constitution, entitled a proposition to establish a Board of Railroad Commissioners:

Resolved, That the following provision be incorporated in the Constitution:

ARTICLE —.

SECTION —. The Governor shall appoint three Railroad Commissioners, who shall hold their offices during the pleasure of the Governor. Said Commissioners shall have power, and it shall be their duty, to examine the books, papers, and documents of all railroad corporations, other than street railroad corporations, organized under the laws of this State, or any portion of whose road shall be within the limits of this State; to investigate their affairs, ascertain their receipts and disbursements, and, by vote of a majority, to establish reasonable rates of fares and freights upon any of such roads whenever and as often as they shall deem necessary, and alter the same when in their judgment it shall be proper. Said Commissioners, and each of them, shall have access to all the books, papers, and documents of all such corporations, and any officer of any such corporation having the care, custody, or control of such books, papers, or documents, who shall, at any reasonable time, refuse to any Commissioner access thereto, shall be deemed guilty of a misdemeanor, and fined not more than five thousand dollars, or imprisoned in the County Jail not exceeding one year. Said Commissioners, and each of them, shall have power, in the discharge of their duties, to administer oaths, issue subpœnas for and examine witnesses upon oath; and any witness who shall perjure himself before said Commissioners, or either of them, shall be liable to all the pains and penalties affixed by law to the crime of perjury; and any witness who shall fail to attend, or shall refuse to testify in any material matter, shall be punished for contempt by the District Court, as in other cases of contempt. Such Commissioners shall, annually, and whenever requested by him, report to the Governor such information as may be proper. Any such corporation refusing to conform to such rates as shall be established by said Commissioners, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding twenty thousand dollars; and every officer, servant, or employé thereof who shall willfully refuse to conform to such rates, and shall demand or receive rates in excess thereof, shall be guilty of a misdemeanor, and be fined not exceeding five thousand dollars, or by imprisonment in the County Jail not exceeding one year. These provisions shall be deemed self-executing, but the Legislature may enforce them by additional legislation. Nothing herein contained shall be construed to prohibit the Legislature from altering, by law, the rates of freights and fares fixed by said Commissioners. The salary of said Commissioners shall be fixed by law.

Referred to Committee on Corporations other than Municipal.

IN RELATION TO EXCESSIVE BAIL.

MR. CAPLES introduced the following proposed amendment to the Constitution, as a substitute for section six, article one:

Excessive bail shall not be required nor excessive fines imposed, nor shall witnesses be unreasonably detained.

Referred to the Committee on Preamble and Bill of Rights.

MR. CAPLES also offered a proposition instructing the Committee on Judiciary and Judicial Department to report an article in relation to jury trials.

MR. BARBOUR (pending the reading). I raise the point of order that the proposition does not comply with the rule adopted this morning.

MR. CAPLES. I ask unanimous consent of the Convention to have it read and referred.

Objection being made, the document was returned to the author.

RELATIVE TO LABOR AND CAPITAL.

MR. CONDON introduced the following proposed amendment to the Constitution, relative to labor and capital:

Be it resolved, That labor in prisons and other institutions under the control of the State, or of any county, city, town, village, or municipality within the State, shall not be let out by contract, nor shall the inmates of State Prisons be employed in any manufacture in such a manner as to compete or come in conflict with private manufacture within the State. But they shall be employed in labor on land or buildings, or in making any or all articles to be used in the prison in which they may be respectively confined.

Referred to the Committee on Labor and Capital.

A JUDICIARY SYSTEM.

MR. CROSS introduced the following proposed amendment to the Constitution, in relation to a new judiciary system:

ARTICLE —.

SECTION 1. The judicial power of this State shall be vested in one Supreme Court, County Courts, Justices of the Peace, and such Police and other inferior Courts for cities and towns as may be created by the Legislature, with such inferior jurisdiction as the Legislature may confer upon them.

SEC. 2. The Supreme Court shall have appellate jurisdiction of all cases on appeal, of which the County Courts have original jurisdiction.

SEC. 3. The County Courts shall have original jurisdiction in all cases arising in law, equity, and probate, and in all special cases, excepting where money or personal property only is in dispute, and the amount or value thereof is less than five hundred dollars; and except, also, in such cases of misdemeanor as the Legislature may direct to be tried and determined before Justices of the Peace, or the inferior Courts of cities and towns. The County Courts shall also have appellate jurisdiction of all cases of which Justices of the Peace, and the inferior Courts of cities and towns, have original jurisdiction.

SEC. 4. The County Courts shall always be open for the transaction of business, except upon legal holidays.

SEC. 5. There shall be one County Court in every county, and the Legislature may provide for as many more, in any county having more than twenty thousand people, as it shall deem necessary.

SEC. 6. Each township of each county shall have two Justices of the Peace. Their jurisdiction shall extend to all cases where the matter in controversy is money or personal property, and the amount or value thereof does not exceed five hundred dollars.

SEC. 7. All judicial officers shall be elected at general elections—Supreme Court Judges, for ten years; County Judges, for six years, and Justices of the Peace and Judges of inferior Courts in cities and towns, for four years.

Referred to Committee on Judiciary and Judicial Department.

TO PROHIBIT SPECIAL LEGISLATION.

MR. CROUCH introduced the following proposed amendment to the Constitution, in relation to the declaration of rights:

Resolved, That the following be adopted in the Constitution, under the head of Bill of Rights, as—

SEC. —. All laws shall be general and have a uniform operation throughout the State. The Legislature shall have no power to pass any local or special laws.

Referred to Committee on Preamble and Bill of Rights.

SUFFRAGE AND ELECTIONS.

MR. DAVIS introduced the following proposed amendment to the Constitution, in relation to suffrage and elections:

Resolved, Every person shall be disqualified from holding office, during the term for which he may have been elected, who shall have given or offered a bribe or rewards to procure his election.

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Referred to Committee on Right of Suffrage.

ELIGIBILITY FOR OFFICE.

Mr. DAVIS introduced the following proposed amendment to the Constitution entitled "Suffrage and Elections—Eligibility for Office:"

Resolved, No person holding a lucrative office or appointment under the Government of the United States, or under this State, shall be eligible to the Legislature, nor shall one person hold more than one lucrative office at the same time; *provided*, that offices of the militia, to which there is attached no annual salary, and the office of Postmaster, where the compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative.

Referred to Committee on Privileges and Elections.

RELATING TO THE JUDICIARY.

Mr. DEAN introduced the following proposed amendment to the Constitution, relating to the Judicial Department:

Resolved, That the following be incorporated in the Constitution:

Section —. Each county is a judicial district. District Judges shall be elected by the qualified electors of their respective districts at the general State election, and hold their respective offices for the term of six years and until their successors are elected and qualified. If a vacancy occur in the office of District Judge, from causes other than the expiration of a full term, the Governor shall fill such vacancy by appointment for the remainder of the term, and the appointee shall only hold the office for the remainder of the said term, and until his successor is elected and qualified.

Sec. —. Every county containing less than twenty thousand inhabitants shall elect one District Judge. Counties, or consolidated cities and counties, containing more than twenty thousand inhabitants, shall elect an additional Judge for every twenty thousand inhabitants and for such fraction as shall exceed fifteen thousand. The Legislature, by a two-thirds vote of all the members elected to each house, may increase or decrease the number of District Judges for such districts as have more than one District Judge.

Sec. —. Each District Court shall be held by one District Judge; and when two or more Judges are elected for one county, or city and county, Courts shall be held separate, but the judgments and orders of each shall be entered and enforced as of the district of such county, or city and county.

Referred to the Committee on Judiciary and Judicial Department.

THE LAND DEPARTMENT.

Mr. DOWLING introduced the following proposition in relation to Land Department:

In view of the fact that a great portion of the public lands of California have been and are being appropriated by individuals and corporations, either under the guise or in open violation of the law—it is also a fact, that is but too apparent, that thousands of acres of the fairest lands in the State are held by proxy without the shadow of a title—and as it is an essential necessity for the future well-being of the State that all lands of equal productive value should be equally taxed, it follows that the only means left to carry out our intentions, and correct the abuses of the past, is by having a general re-survey of the State; therefore the Committee on Lands should recommend favorably the following article:

Article —.

The Legislature shall provide for a general re-survey of the State.

Referred to the Committee on Land and Homestead Exemptions.

RELATIVE TO MINING.

Mr. DOWLING introduced the following proposed amendment to the Constitution, relating to mining:

Whereas, A considerable portion of the most precious grounds in the State are owned and worked by a class of aliens who add nothing to our wealth or industry, and are by nature and the law of our land ineligible to become good and respected citizens of this commonwealth, hence the following article should and ought to be inserted in the new Constitution:

Article —.

No alien, ineligible to become a citizen of the United States, shall ever be permitted to hold, own, or work any of the placers, or any other gold-bearing grounds, in the State of California. Nor shall any citizen hold in trust, by proxy or otherwise, any such lands for such aliens.

Referred to the Committee on Mining.

Mr. BARNES. I desire to offer a resolution in respect to adjournment:

Resolved, That when the Convention adjourns to-day it adjourns till Monday, the fifteenth, at one o'clock P. M.

Mr. CONDON. I move that the resolution be laid on the table.

The motion to lie on the table prevailed.

The hour having arrived, the Convention took a recess until one o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at one o'clock P. M., President Hoge in the chair.

Roll call dispensed with.

RELATIVE TO TAXATION.

Mr. DUDLEY, of Solano, introduced the following proposed amendment to the Constitution, relative to taxation:

Resolved, That the following proposition be incorporated in the new Constitution:

Article —.

Section 1. Taxation shall be equal and uniform throughout the State. All property in this State not exempt under the laws of the United States, except property belonging to the State, county, or other municipal corporations, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property," as used in this article and section, is hereby declared to include all moneys, credits, dues, franchises, investments in bonds, stocks, joint stock companies, and all other matters and things capable of ownership and having value in exchange.

Sec. 2. The Legislature shall have power to provide by law for the assessment and collection of a tax upon incomes derived from bonds, notes (whether secured by mortgage or not), or securities of any kind, other than shares or stocks in joint stock companies, corporations, or associations formed for profit, and doing business in this State; *provided*, that if the income tax provided for in this section shall be levied, then the property from which such incomes are derived shall be exempt from the payment of a direct or ad valorem tax.

Sec. 3. The Legislature shall have power to provide for the assessment and collection of a tax upon the incomes of all railroad, navigation, or banking corporations, bank and exchange agencies, and insurance companies, foreign or domestic, or any other corporations (other than municipal) or associations whatever, formed for profit, and doing business in this State; *provided*, that if the Legislature shall provide for the assessment of a tax upon incomes as set forth in this section, all property owned by and necessarily used by such corporation in producing such income shall be exempt from an ad valorem tax.

Sec. 4. If the Legislature shall provide for the payment of a tax upon incomes, as provided in sections two and three of this article, such income tax shall be made to approximate as near as practicable to equality with the direct or ad valorem tax on other classes of property.

Sec. 5. Should the Legislature deem it inadvisable to levy a tax upon incomes, as provided in sections two and three of this article, then all property shall be taxed according to the true intent and meaning of section one of this article.

Sec. 6. Growing crops shall not be subject to taxation.

Referred to the Committee on Revenue and Taxation.

WATER AND WATER RIGHTS.

Mr. DUNLAP introduced the following proposed amendment to the Constitution, in reference to water and water rights:

Resolved, That there be introduced into the Constitution a clause as follows:

Section —. There shall be no further appropriation of the waters of the streams and lakes of this State by individuals or corporations.

Referred to the Committee on Water and Water Rights.

CONCERNING LICENSE.

Mr. EAGON introduced the following proposed amendment to the Constitution, concerning license:

No license tax shall be assessed against, or collected from, any person for carrying on any business, trade, or profession in this State.

Referred to Committee on Revenue and Taxation.

CONCERNING THE LEGISLATIVE DEPARTMENT.

Mr. EDGERTON introduced the following proposed amendment to the Constitution, concerning the Legislative Department:

Resolved, That the following provision be adopted in that article of the Constitution which relates to the Legislative Department:

Section 1. The Legislature shall have no power to pass retroactive laws, or laws impairing the obligation of contracts; *provided, however*, that the Legislature may, by general laws, authorize the Courts to carry into effect the manifest intention of parties and officers, by curing omissions, defects, and errors in the instruments and proceedings, arising out of their want of conformity with the laws of this State, and upon such terms as shall be just and equitable.

Referred to the Committee on Legislative Department.

IN RELATION TO SPECIAL LAWS.

Mr. EDGERTON introduced the following proposed amendment to the Constitution, concerning the Legislative Department:

Resolved, That the following provisions be adopted in that article of the Constitution which relates to the Legislative Department:

Section 1. The Legislature shall not pass any special or local law in the following cases: Authorizing the creation, extension, or impairing of liens; regulating the affairs of counties, cities, townships, wards, or school districts; changing the names of persons or places; changing the venue in civil or criminal cases; authorizing the laying out, opening, altering, or maintaining roads, highways, streets, or alleys; relating to ferries or bridges, except for the erection of bridges crossing streams which form boundaries between this and any other State; vacating roads, town plats, streets, or alleys; relating to cemeteries, or public grounds, not of the State; authorizing the adoption or legitimation of children; locating or changing county seats; incorporating cities, towns, or villages, or changing their charters; for the opening or conducting of elections, or fixing or changing the place of voting; granting divorces; erecting new townships, changing township lines or school districts; creating offices, or prescribing the powers and duties of officers in counties, cities, townships, election or school districts; changing the law of descent or succession; regulating the practice or jurisdiction of, or changing the rules of evidence in, any judicial proceeding or inquiry before Courts, Sheriffs, Commissioners, Arbitrators, Referees, or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate; regulating the fees or extending the powers or duties of any county, city, or township officer; regulating the management of public

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schools, the building or repairing of school houses, or the raising of money for such purpose; fixing the rate of interest; affecting the estate of minors, or persons under disability; remitting fines, penalties, or forfeitures, or refunding moneys legally paid into the State treasury; exempting property from taxation; regulating labor, trade, mining, or manufacturing; granting to any corporation, association, or individual, any special or exclusive privilege or immunity, or to any corporation, association, or individual, the right to lay down a railroad track; nor shall the Legislature indirectly enact such special or local law by the partial repeal of a general law, but laws repealing local or special laws may be passed; nor shall any law be passed granting powers or privileges in any case where the granting of such powers and privileges shall have been provided for by a general law, nor where the Courts have jurisdiction to grant the same, or give the relief asked for.

In all the cases above enumerated, and in all other cases where a general law can be made applicable, all laws shall be general and of a uniform operation throughout the State.

Referred to the Committee on Legislative Department.

RELATIVE TO SUFFRAGE.

MR. EVEY introduced the following proposed amendment to the Constitution, relating to the right of suffrage:

Every citizen of the United States and of this State, who shall have resided within this State one year, and within the county ninety days, or thirty days within the district, next before any election to be holden in compliance with any law of this State, shall have the right and privilege to vote, except he may have been convicted of felony by the laws of this State, and is at the time uncommitted thereof. And should such citizen be deprived of such privilege by any person or persons holding such election, upon any pretense or cause whatever, such citizen shall have the right to sue the State, in any Court thereof having jurisdiction, free of cost; and upon establishing the fact of his right to vote and prohibition of the exercise of that right, by a jury, shall recover of the State not less than five thousand dollars nor more than ten thousand.

Referred to the Committee on Right of Suffrage.

RELATIVE TO ILLEGAL VOTING.

MR. EVEY introduced the following proposed amendment to the Constitution, relative to rights of suffrage:

If any person shall give, or offer to give, any bribe, present, or reward, or any promise, or any security, for the payment or the delivery of money, or any other thing, to induce any voter to refrain from casting his vote, or to prevent him in any way from voting, or to procure a vote for any candidate, the person giving, or offering to give, and the person receiving the same, and any person who shall give, or cause to be given, an illegal vote, knowing it to be such, at any election hereafter held in this State, shall, on conviction in any of the Courts of this State, be forever disqualified to hold any office of profit or trust, or to vote at any election in this State.

Referred to the Committee on Right of Suffrage.

RELATIVE TO LABOR AND CAPITAL.

MR. FARRELL introduced the following proposed amendment to the Constitution, relative to labor and capital:

SEC. —. When the price of labor is due and unpaid, any mechanic or laborer who is not so paid shall be enabled to enter any Court of competent jurisdiction, and upon his statement, properly verified, without any further formality, upon proper notice thereof, and judgment, cause the appointment of a receiver to take charge of the moneys and property of the employer, and apply enough of the same to the payment of any labor unpaid, before using the estate, or any portion thereof, for any other purpose.

Referred to the Committee on Labor and Capital.

RIGHTS OF FOREIGNERS.

MR. FARRELL introduced the following proposition for incorporation in the Bill of Rights in the proposed new Constitution:

SECTION —. No foreigner who is, or may hereafter be, entitled to become a citizen of the United States, under the naturalization laws thereof, and who now is, or may hereafter become, a resident of this State, shall be entitled to the enjoyment of the same rights in respect to the ownership, possession, enjoyment, and inheritance of property as are secured to native-born citizens under this Constitution, unless he shall have first declared his intention to become a citizen of the United States, and renounced his allegiance to the country of his nativity, in accordance with the naturalization laws of the United States.

Referred to the Committee on Preamble and Bill of Rights.

PARDONING POWER.

MR. FAWCETT introduced the following proposed amendment to the Constitution, in relation to the pardoning power:

SECTION —. The power to grant pardons shall be vested in the Governor, but shall be exercised only in cases where evidence is newly discovered, after judgment, clearly establishing the innocence of the convicted party.

Referred to the Committee on Pardoning Power.

SESSIONS OF THE LEGISLATURE.

MR. FILCHER introduced the following proposed amendment to article four, section two, of the Constitution of California:

ARTICLE IV.

SEC. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday after the first Tuesday of January next ensuing the election of its members, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation. No session shall continue longer than ninety days, and no bill shall be introduced during the last ten days of the session, unless by consent of three fourths of the members of the House in which said bill is offered.

Referred to the Committee on Legislative Department.

VACANCIES IN THE LEGISLATIVE DEPARTMENT.

MR. FILCHER introduced the following proposed amendment to article four, section thirteen, of the Constitution of California:

ARTICLE IV.

SEC. 13. Where a vacancy occurs in either house of the Legislature, from any cause, the house in which said vacancy occurs shall, if in session, proceed immediately to elect, from the constituency deprived of representation, a member to fill the said vacancy. If the Legislature is not in session at the time a vacancy occurs, it shall, on convening, proceed at once, as heretofore provided, to fill said vacancy.

Referred to the Committee on Legislative Department.

LIMITING LAND MONOPOLY.

MR. FREEMAN introduced the following proposed amendment to the Constitution, entitled: "Prohibition of land monopolies—to limit the monopolization of real estate."

ARTICLE —.

SECTION —. That after the adoption of this Constitution, no person or corporation shall, except by inheritance, by direct grant from the United States, by a bona fide execution or judicial sale, or by proceedings in the exercise of the right of eminent domain, become the legal or equitable owner of more than one thousand acres of land situate in this State. All lands transferred or attempted to be transferred in violation of this section thereby vest in the State. The Legislature shall pass laws to more fully enforce the provisions of this section; and may, from time to time, impose additional limitations regarding the amount of lands which may be acquired by any person or corporation.

Referred to Committee on Land and Homestead Exemption.

RELATION OF THE STATE TO THE UNITED STATES.

MR. FREEMAN introduced the following proposed amendment to the Constitution:

Resolved, That the Committee on Preamble and Bill of Rights inquire into the expediency of inserting the following in the Bill of Rights:

ARTICLE —.

SECTION —. This State shall ever remain a member of the American Union, and its people a part of the American Nation, and the paramount allegiance of its citizens shall be due to the Constitution and Government of the United States.

Referred to the Committee on Preamble and Bill of Rights.

PROPERTY QUALIFICATIONS.

MR. FREUD introduced the following proposed amendment to the Constitution:

Resolved, That the following provisions be referred to the Committee on Bill of Rights for adoption in the Constitution:

SEC. —. No property qualification shall ever be required for any person to vote, hold office, or become a juror.

SEC. —. Chinese testimony, unless corroborated by testimony other than Chinese, shall never be accepted by any Court under the jurisdiction of this State.

SEC. —. No money shall be appropriated for the payment of any religious services in either house of the Legislature.

Referred to the Committee on Preamble and Bill of Rights.

ON FUTURE AMENDMENTS.

MR. GORMAN introduced the following proposed amendment to the Constitution, relative to future amendments:

Resolved, That future amendments, when submitted to the people, shall be voted upon in separate articles and not as a whole, and no amendment shall be submitted oftener than five years.

Referred to Committee on Future Amendments.

MR. GORMAN also offered a resolution in reference to the employment of convict labor.

MR. ROLFE (pending the reading of the proposition). I object to the proposition, because it does not comply with the rule; it is not in proper form.

THE PRESIDENT. The objection is sustained; the document will be returned to the author.

IN RELATION TO THE BALLOT.

MR. GRACE introduced the following proposition for incorporation in the proposed Constitution:

ARTICLE —.

SECTION 1. Every male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the State six months next preceding the election, and of the county, township, ward, or precinct in which he resides fifteen days, shall have the qualifications of an elector and be entitled to vote at all elections.

SEC. 2. All elections shall be by ballot.

SEC. 3. No idiot or insane person shall be entitled to the privileges of an elector, nor shall any person who shall have been convicted of bribery, perjury, or other infamous crime, be entitled to said privileges, unless his disability shall have been removed by special Act of the Legislature.

SEC. 4. Electors, during their attendance at elections, and in going to and returning therefrom, shall be privileged from arrest in all cases except treason, felony, and breach of the peace.

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SEC. 5. No person shall be deemed to have gained or lost his residence as an elector by reason of his presence or absence in the service of the United States, or in the navigation of the high seas, or waters of the United States, or by reason of his presence or absence for any temporary purpose.

SEC. 6. The exercise of the privilege of the elective franchise is hereby declared to be a duty of citizenship, and the Legislature shall have power to enforce the performance of said duty by appropriate legislation.

SEC. 7. The privileges of an elector of the State of California shall never be extended to any person of the Asiatic or Mongolian race, regardless of the question of his nativity.

Referred to the Committee on Privileges and Elections.

FEMALE SUFFRAGE.

MR. GRACE introduced the following proposed amendment to the Constitution, relating to female suffrage:

Resolved, That the following be referred to the Committee on Future Amendments: Strike out from the present Constitution, wherever the same occurs, the word "male," and insert after the word "he," wherever the same occurs, the words "or she."

Referred to the Committee on Future Amendments.

RELATIVE TO TAXATION.

MR. GREGG introduced the following proposed amendment to the miscellaneous provisions of the Constitution. Suggested amendment to section thirteen of article eleven:

Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed in proportion to its value. Assessments of lands shall be had separate and apart from the assessment of improvements thereon. Lands of like quality in the same vicinity shall be assessed alike, whether improved or not. Growing crops, except tame grasses, shall not be taxed. Assessments may be equalized as may be provided by law, but the State Board of Equalization shall consist of seven members, appointed by the Governor; such appointments to be made so that each Congressional District shall be represented thereon.

Referred to the Committee on Revenue and Taxation.

DECLARATION OF RIGHTS.

Mr. GREGG introduced the following proposition to amend the "Declaration of Rights." Amendment suggested to section nine of the "Declaration of Rights:"

Every citizen may freely speak and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and, being true, was published with good motives and for justifiable ends, the party shall be acquitted. The jury shall not determine the law of libel. Criminal prosecutions for libel must be had in the county of the first publication of the libel.

Referred to the Committee on Preamble and Bill of Rights.

IN REFERENCE TO THE PREAMBLE AND BILL OF RIGHTS.

MR. HAGER introduced the following amendments to the preamble and declaration of rights proposed to be incorporated in the new Constitution:

Resolved, That the following proposed amendments to the Preamble and Declaration of Rights be adopted in the new Constitution:

TO THE PREAMBLE.

We, the people of the State of California, grateful to Almighty God for our freedom, in order to perpetuate its blessings and promote our common welfare, do establish this Constitution.

TO THE DECLARATION OF RIGHTS.

SECTION 1. The right of trial by jury shall be secured to all, and remain inviolate; but hereafter the concurrence of only three fourths of the jury shall be necessary to render a verdict. In criminal cases, where the punishment may be death, or imprisonment in the State Prison, the jury shall consist of sixteen persons. In all other actions, either criminal or civil, the jury shall consist of twelve persons; but by the agreement of the parties, the jury, in a civil action, may consist of eight persons, or a trial by jury may be waived.

SEC. 2. No person shall be held to answer for a crime, or other public offense, punishable by death, or imprisonment in the State Prison (except in cases of impeachment, or in cases arising in the militia when in actual service, or in the land or naval forces in time of war, or which this State may keep, with the consent of Congress, in the time of peace), unless on presentment or indictment of a Grand Jury. In all other cases offenses shall be prosecuted criminally by indictment, information, accusation, or complaint, as concurrent remedies, as may be prescribed by law; and in any trial, in any Court whatever, the party accused shall be allowed to appear and defend, in person and with counsel, as in civil actions. Hereafter a Grand Jury shall consist of nineteen men, any ten (10) of whom concurring may find an indictment or true bill. The Legislature, by a two-thirds vote of all the members elected to each house, may abolish, or establish and restore, the Grand Jury system in all or any county of the State.

SEC. 3. No person shall be compelled in any criminal case to be a witness against himself, but if he voluntarily becomes a witness he may be fully cross-examined. Nor shall any person, after being once acquitted by a jury, be again for the same offense put in jeopardy of life or liberty; but if the jury fail to render a verdict, or if judgment after verdict be arrested or reversed, nothing herein contained shall prevent a new trial.

SEC. 4. No person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken or damaged for public use without just compensation. Such compensation shall be ascertained by a jury, in such manner as may be prescribed by law; and until the same shall be paid to the owner, or into Court for the owner, the property shall not be disturbed or the proprietary rights of the owner therein divested. The fee of lands taken for railroad tracks or for canals, without the consent of the owner thereof, shall remain in such owner, subject to the use for which it is taken.

SEC. 5. That no person elected or appointed to any State, county, or municipal office, or employment of trust or profit, under the laws of this State or any ordinance of any municipality therein, shall hold such office unless, during his continuance therein he shall personally devote his entire time, or so much thereof as may be necessary to the performance of the duties thereof.

SEC. 6. No public officer, nor any person who has held a position of trust, and as such been the collector or receiver of public money, shall be eligible to any office of trust or profit in this State, under the laws thereof, or of any municipality therein, until he shall have accounted for and paid over all public money for which he may be accountable.

SEC. 7. The provisions of this Constitution are mandatory and prohibitory, unless by express words it is declared otherwise.

Referred to the Committee on Preamble and Bill of Rights.

FRANCHISES OF CORPORATIONS.

MR. ESTEE introduced the following proposed sections, relative to forfeitures of franchises of corporations and the exercise of the right of eminent domain:

SECTION 1. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith at the time of the adoption of this Convention, shall thereafter have no validity.

SEC. 2. The Legislature shall not remit the forfeiture of the charter of any corporation now existing, or which shall hereafter exist under the laws of this State, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

SEC. 3. The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subject them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State.

Referred to Committee on Corporations other than Municipal.

THE POWER OF THE LEGISLATURE.

MR. HALL introduced the following proposed provision, touching the future power of the Legislature in respect to certain corporations:

Resolved, That the following section be incorporated into the Constitution to be framed by this Convention, to wit:

SECTION —. The power heretofore held by or reserved to the Legislature of this State, under the Constitution and laws, over or in respect to corporations other than municipal, thereunder organized and existing before and at the time this Constitution takes effect, is neither denied nor abridged, altered or impaired in any manner, or to any extent whatever, by any article, section, clause, or other matter or thing in this Constitution expressed or to be implied therefrom.

Referred to Committee on Corporations other than Municipal.

RESTRICTIONS ON THE LEGISLATIVE POWER.

MR. HALL introduced the following proposition for a limitation of the power of the Legislature:

Resolved, That there shall be embodied in the Constitution, to be framed by this Convention, a section to the following effect, to wit:

SECTION —. The Legislature shall have no power to pass special laws authorizing any named minor to sell, lease, or encumber his or her property, or providing for the sale of the real estate of any named minor, or other person laboring under legal disability, by any executor, administrator, guardian, trustee, or other person; or establishing, locating, altering the course, or affecting the construction of roads, or the building or repairing of bridges; or establishing, altering, or vacating any street, avenue, or alley of any city and county, city, or town; or extending the time for the assessment or collection of taxes, or otherwise relieving any Assessor or Collector of taxes from the due performance of his official duties; or giving effect to informal or invalid wills or deeds; or legalizing, except as against the State, the unauthorized or invalid acts of any officer; or granting to any individual, company, or corporation, the right to lay down railroad tracks in the streets of any city and county, city, or town; or establishing fees of public officers; or exempting any property of any named person or corporation from taxation; but for such cases the Legislature shall provide by general laws; and in all cases where a general law can be made applicable, no special law shall be enacted.

Referred to the Committee on Legislative Department.

COMPULSORY EDUCATION.

MR. HARRISON introduced the following proposed amendment to the Constitution, in relation to compulsory education:

SECTION —. It shall be the duty of the Legislature to provide for a system of compulsory education for all children under the age of fourteen, such education to be entirely secular, and for this purpose it shall

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provide for the creation of a special fund, for the purpose of giving such assistance to indigent children as will enable them to partake of the benefits of such system.

Referred to the Committee on Education.

RELATIVE TO PUBLIC SCHOOLS.

MR. HARRISON introduced the following proposed amendment to the Constitution, for incorporation in the article on education:

SECTION —. It shall be the duty of the Legislature to provide, by appropriate legislation, for the giving of lectures in the public schools of this State, at least once every week, upon the subject of labor, and its paramount importance in the affairs of men in every walk of life.

Referred to the Committee on Education.

RELATIVE TO THE BILL OF RIGHTS.

MR. HARVEY introduced the following proposition to amend section two, article one, of the Constitution, relative to declaration of rights:

SEC. 2. All free governments are created for the benefit of the people and by their authority, and all laws should be so framed as to promote the welfare of the governed; therefore, the burdens of the State ought to be, and of right should be, so imposed as to bear uniformly and equally on all its citizens.

Referred to the Committee on Preamble and Bill of Rights.

RELATIVE TO THE MILITIA.

MR. HARVEY introduced the following proposition to amend article seven of the Constitution, in relation to militia. Proposition to amend article seven of the Constitution, in relation to militia, by addition of the following sections:

SEC. 4. The militia shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest during their attendance at musters and elections, and in going to and returning from the same.

SEC. 6. No person having conscientious scruples against bearing arms shall be compelled to do militia duty in time of peace.

SEC. 7. The Legislature shall provide by law for the exemption of members of voluntary military companies from jury duty, and from the payment of poll tax, or head tax of any description.

Referred to the Committee on Military Affairs.

IN RELATION TO THE MILITIA.

MR. HEISKELL introduced the following proposed amendment to the Constitution in relation to militia:

The Legislature shall not appropriate any money for the organization or maintenance of the militia of this State.

Referred to the Committee on Military Affairs.

RELATIVE TO THE PARDONING POWER.

MR. HEROLD introduced the following proposed amendment to the Constitution, relative to pardoning power:

Resolved, That the pardoning power be invested in a committee of three.

Referred to the Committee on Pardoning Power.

RELATIVE TO CORPORATIONS.

MR. HEROLD introduced the following proposed amendment to the Constitution, relative to corporations:

Resolved, That all corporations depending on the patronage of the public be restricted from charging exorbitant rates; and, therefore,

Resolved, That under no consideration such corporations be permitted to derive from such investment a gain of no more than nine per cent. per annum on the cash capital so invested.

Referred to Committee on Corporations other than Municipal.

LIMITING THE POWER OF THE LEGISLATURE.

MR. HERRINGTON introduced the following proposed amendment to the Constitution:

Mr. President: I offer the following, limiting the powers of the Legislature under the new Constitution, and suggest that it be made a section of an article therein, to be known as Legislative Department:

SECTION —. The Legislature shall have no power:

1. To make any appropriation for a longer period than four years;

2. To create any forfeiture which shall be determinable by any process inferior to a judicial inquiry and determination by a Court of competent jurisdiction, in which the existence of the dereliction of person or property, the condition upon the occurrence of which the forfeiture attaches, shall be judicially declared;

3. To grant or authorize the payment of any private claim for loss or hardship suffered in the fulfillment or discharge of any contract, public office, or duty; or for the relief of the principal or sureties upon any bond or obligation for the fulfillment of any contract with the State, or any municipality or political subdivision thereof, or for the faithful discharge of any obligation or official duty arising under any law of the State;

4. To pass any special law whatever.

But this section shall not be construed to prohibit the enactment of local laws of a general nature.

Referred to the Committee on Legislative Department.

RIGHTS OF ALIENS.

MR. HERRINGTON introduced the following proposed amendment to the Constitution. Mr. President: I offer the following, defining the rights of aliens under the new Constitution, and suggest that it be made a section of an article therein, to be known as Bill of Rights:

SECTION —. Aliens who, by the laws of the United States, can become citizens thereof, and who are or may hereafter become bona fide residents of this State, shall have the same rights in respect to possessing, enjoying, and inheriting property as native-born citizens; but aliens who, by the laws of the United States, are prevented becoming citizens thereof, shall not take by purchase, gift, devise, or inheritance any estate or interest in real property; and all property, real and personal, owned by such alien at the time of his death shall, at the death of such alien, escheat to and vest in the State of California, and shall be disposed of and the proceeds applied to the support of common schools, under such regulations as the Legislature shall prescribe. But this section shall not apply to property acquired by such alien prior to the adoption of this Constitution, if owned by him at the time of his death.

Referred to the Committee on Preamble and Bill of Rights.

DISPOSITION OF THE PUBLIC FUNDS.

MR. HEUSTIS introduced the following proposed amendment to the Constitution, concerning the appropriation of the public funds:

Resolved, That the following be incorporated in the Constitution:

ARTICLE —.

SECTION —. No appropriation of the public funds shall ever be made except for the actual expenses of the government and the support of institutions controlled by the State; and no appropriation shall ever be made for the maintenance, support, or benefit of any corporation, private enterprise, or sectarian institution.

Referred to the Committee on Legislative Department.

RELATIVE TO TAXATION.

MR. HUGHEY introduced the following proposed amendment to the Constitution, relative to taxation:

ARTICLE —.

SECTION —. All lands of this State shall be graded in quality, as to tillage, or grazing, or desert, which gradation shall be done by a proper Board of Appraisers in each county. The Legislature shall pass all suitable Acts in relation to the said Board.

ARTICLE —.

SECTION —. All lands of the same grade shall be taxed at the same valuation, whether improved or not improved. Improvements on land shall be taxed separately from the land.

ARTICLE —.

SECTION —. Church property, to the value of five thousand (5,000) dollars, shall be exempt from taxation.

Referred to Committee on Revenue and Taxation.

EXTRA COMPENSATION.

MR. JOHNSON introduced the following proposed amendment to the Constitution, in relation to extra compensation to public officers. A proposition to amend article fourth of the Constitution, by adding the following:

No extra compensation shall be made to any officer, public agent, employé, or contractor, after the services shall have been rendered on the contract entered into, nor shall any money be paid out of any fund whatever by way of additional compensation to any of said persons, nor shall any money be appropriated or paid on any claim, the subject-matter of which shall not have been provided for by preëxisting law.

Referred to the Committee on Legislative Department.

EIGHT-HOUR LAW.

MR. JOYCE introduced the following proposed amendment to the Constitution, in reference to an eight-hour law:

Be it resolved, That the Committee on Capital and Labor are hereby recommended to embody in their report the following provision:

That all State, county, municipal, town, and corporation, other than municipal corporation, work be done by the day, and that eight hours' labor be a day's work.

Referred to the Committee on Labor and Capital.

THE NUMBER OF SENATORS.

MR. JOYCE introduced the following proposed amendment to the Constitution, regulating the number of Senators:

Be it resolved, That the Committee on Legislation are hereby recommended to report the following amendment to article four, section six, of the present Constitution:

The number of Senators shall not be less than forty nor more than fifty, and that the same shall be divided into two classes. The seats of the first class shall be vacated at the expiration of the second year; the seats of the second class to be vacated at the expiration of the fourth year, so that one half shall be chosen biennially; the same to commence from the first election after the adoption of this Constitution.

Referred to the Committee on Legislative Department.

RELATING TO CHINESE.

MR. KENNY introduced the following proposed amendment to the Constitution:

Resolved, No alien, ineligible to become a citizen of the United States, shall ever be permitted to catch fish, either by hook, net, or seine, in the waters of California, or any place under its jurisdiction.

Referred to the Committee on Chinese.

CHINESE IMMIGRATION.

MR. KLEINE introduced the following proposed amendment to the Constitution:

Resolved, That a per capita tax of two hundred and fifty dollars shall be levied upon each coolie immigrant arriving in California.

Referred to the Committee on Chinese.

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ON SUSPENDING THE RULES.

Mr. TERRY. Mr. President: I move that the rules be suspended, in order to allow the gentleman from Santa Clara, Mr. Laine, to introduce the whole draft of a Constitution prepared by him. A great many batches of resolutions have been introduced here, and a great deal of labor has been performed here. This Constitution is the work of a man who has had a great deal of legislative experience, of a man of a great deal of ability, and he has devoted months of labor to this work, and I ask that the rules be suspended and that he be allowed to introduce it as a whole.

The PRESIDENT. Rule fifty-two governs this matter: "Propositions and resolutions mentioned in the last foregoing rule shall embrace but one subject." Rule sixty prohibits the suspension of rule fifty-two.

Mr. TERRY. The motion is to suspend the rule, and the rule that prohibits it.

Mr. McCALLUM. We may be able to suspend rule sixty, which says that rule fifty-two cannot be suspended, because rule sixty does not provide that rule sixty itself shall not be suspended.

The PRESIDENT. The Convention can suspend rule sixty, but rule fifty-two will remain in force.

Mr. CAMPBELL. Why not suspend that in that way?

The PRESIDENT. The motion is to suspend rule sixty.

Mr. CAMPBELL. Mr. President: I hope this rule will be suspended. I have examined the draft of the Constitution which, the gentleman from Santa Clara, Mr. Laine, has prepared, and I am satisfied that it contains a great number of valuable suggestions which will be of great use to the committees. It is a work of great labor, as stated by the gentleman from San Joaquin, Mr. Terry, and it is good service to the public if we suspend the rules and allow it to be introduced.

Mr. BARBOUR. Mr. President: It seems to me the proposition of the gentleman obviates the necessity of having any rules at all. We are trying to beat the devil round the stump. Here is a rule which prohibits the temporary suspension of the rules, and it is now proposed to suspend the rule which prohibits suspension. It seems to me, Mr. President, we might as well wipe out the rules at once, because if this precedent is established to accommodate this case, we can at any time the occasion arises wipe out the rules by two motions—one for the rule which forbids suspension, and the second for the rule which stands in the way. I can see no use of rules at all if this can be done.

Mr. McCALLUM. I don't suppose the committee intended to do what the gentleman says they have done. There should be no such construction placed upon it.

Mr. BEERSTECHER. Mr. President: It seems to me that the ruling of the Chair, in this instance, was correct. We have here rule sixty, which says that certain rules cannot be suspended. The rule which we propose to suspend is one that can only be suspended, under the rules, by a two-thirds vote and one day's notice. Now, if you can get around that rule by suspending rule sixty, why, rule sixty means just nothing at all. It means nothing at all. And if that rule is to have any force and effect here at all, it must not be suspended on every occasion that it is found to stand in the way of the accomplishment of some particular thing. I think the decision of the Chair, in this instance, was entirely correct, otherwise, the rule is a dead letter and means nothing at all.

Mr. BARNES. Mr. President: I do not see any reason why the rule should be suspended in favor of Santa Clara. All the gentleman requires to get the instrument properly before the Convention, is to take the instrument to pieces, and introduce each article separately, and have them referred to the proper committees. There are other gentlemen here who have had to do this in order to get their Constitutions before the committees. I think Mr. Beerstecher is right. In no instance do I think the rules should be suspended for the purpose of allowing one gentleman to introduce *in solido* a Constitution for the State of California. If it can be done in any other way in conformity with the rules we will help him.

Mr. FILCHER. Mr. President: With all deference to the gentleman from Santa Clara, Mr. Laine, notwithstanding I would like very much to be placed in possession of a copy of his Constitution, I hope that the motion to suspend the rules will not prevail. As I understand from declarations made here there are some twenty drafts of Constitutions held by various members of this body. It seems to me, Mr. President, that we cannot afford to do it. If we suspend the rules and receive the Constitution drafted by Mr. Laine in its entirety, under our rules we must print it as a whole, and we will establish a precedent that will compel us to print the twenty Constitutions. I desire that members should see the bearing of this thing before they vote. I would like, for my part, to have the benefit of the knowledge and experience of the gentleman from Santa Clara, Mr. Laine, but I think he can afford to come under the same rule that the rest of us have to.

Mr. BEERSTECHER. I raise the point of order: can rule sixty be suspended?

The PRESIDENT. It may be suspended by the Convention.

Mr. ESTEE. Mr. President: I hope this rule will not be suspended, because if we adopt the precedent of suspending rules which stand in the way, upon every occasion of seeming necessity, where will we land. There will be absolutely no protection for the Convention, if we lay down the precedent that rules are only made to be broken. This rule reads that no standing rule shall be suspended except by a two-thirds vote and one day's notice being given. If that language means anything, it means that the only possible way to suspend this rule is to give one day's notice and then rescind or change it by a two-thirds vote. I hope this Convention will not stultify itself by permitting the suspension of that rule.

Mr. WICKES. Mr. President: I trust this rule will not be suspended in order to give the gentleman from Santa Clara a chance to get in his Constitution. I think he can get it through another channel.

Mr. REYNOLDS. I move to suspend the further consideration of this order.

The PRESIDENT. The question is upon suspending rule sixty.

The motion was lost.

Mr. REYNOLDS. Now, Mr. President, I move to suspend the further consideration of order number seven, and proceed with the next order of business. The reason I make this motion is that the table of the Secretary is loaded with matter which it will require three or four days to print, and we might as well suspend the further consideration for the present at least.

Mr. WHITE. I move that the resolution be sent to the table, because if it was adopted it would be an act of injustice to those whose propositions have not been reached, and they would be cut off from getting their propositions before the Convention.

The PRESIDENT. The question is on laying the motion on the table.

The motion prevailed.

The Secretary proceeded to call over the list of members.

COMPULSORY EDUCATION.

Mr. LAVIGNE introduced the following proposed amendment to the Constitution, in reference to compulsory education:

Resolved, That a system of compulsory education for children under the age of fourteen years should be adopted, and all books used in the public schools, academies, colleges, and universities of this State shall be furnished free of charge to the pupils of said schools, academies, colleges, and universities under the control of this State.

Referred to the Committee on Education.

THE VETO POWER.

Mr. LEWIS introduced the following proposed amendment to the Constitution, in reference to the "veto power of Governor."

Proposition to amend section seventeen, article four, by adding the subjoined:

The Governor shall have power to disapprove of any section in a bill passed by the Legislature, or any part of said bill, and the part or parts of the bill approved shall be the law, and the part or parts disapproved shall be void unless repassed according to the foregoing rules and limitations prescribed by said section.

Referred to the Committee on the Executive Department.

LAND MONOPOLY.

Mr. LINDOW introduced a proposition in relation to vested rights and the prohibition of land monopoly.

Mr. VAN DYKE (pending the reading). I raise the point of order, that the proposition is not in the form required by the rules.

The PRESIDENT. The point of order is well taken, and the document will be returned to the author.

Mr. REYNOLDS. I move that we do now postpone the further consideration of order number seven, and if gentlemen will only consider——

Mr. BEERSTECHER. I rise to a point of order. The gentleman, Mr. Reynolds, made a motion a few moments ago to the same effect, which motion was voted down, and now he renews it again. I think he is out of order.

The PRESIDENT. Other business has intervened since the motion was made, and the motion is in order.

Mr. REYNOLDS. Mr. President: If gentlemen will only consider this subject, they will be ready to vote for the postponement of the further consideration——

The PRESIDENT. Debate is out of order. These resolutions and propositions are to be received without debate, and referred. The motion is in order, but debate is out of order. The question is on the motion to postpone the consideration of this order of business.

The motion was lost.

RELATIVE TO DIVORCES.

Mr. MANSFIELD introduced the following proposition to amend section twenty-six, article four, of the present Constitution, in relation to divorce:

Resolved, That section twenty-six, of article four, of the present Constitution, be so amended as to read as follows:

No divorce shall be granted by the Legislature of this State, nor by the Courts thereof, except for adultery.

Referred to the Committee on Legislative Department.

LEAVE OF ABSENCE GRANTED.

Mr. SHAFTER. Mr. President: I am obliged to ask a favor of this Convention, and that is an indefinite leave of absence. I have two entire Constitutions drawn [laughter], and if I can be allowed this time I can look over them and see what to leave out. As I am trying to get up some homesteads for poor men, I know the members will look favorably on my request. I have not been able to hear a word that has gone on here to-day. Four or five days will have to elapse before this matter can be printed, and I ask this Convention to allow me to go away.

There being objections raised, the question was put to a vote of the Convention, and on a standing vote, leave of absence was granted, ayes 103, a clear majority.

Mr. ESTEE. Mr. President: I would like to have two days leave of absence. It is absolutely necessary for me to get away. I understand that there can be no printed matter presented to the Convention to amount to anything before Sunday or Monday, and I can be back here Sunday morning.

Mr. HAGER. Mr. President: I want to move an amendment, and ask leave of absence, or rather I will move that all the balance of the members have leave of absence until Monday next at one o'clock. I am willing that every one shall have the same privileges that I ask for myself. We have more business now than the printer can get through

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with, and we make nothing by staying here, and we had better adjourn over. I move to adjourn until Monday next at one o'clock P. M.

MR. WHITE. I move to lay the motion on the table.

The ayes and noes were demanded by Messrs. White, Stedman, and Beerstecher. The roll was called, and the motion prevailed by the following vote:

AYES.

Andrews,	Garvey,	O'Sullivan,
Ayers,	Gorman,	Porter,
Barbour,	Grace,	Reddy,
Barry,	Harrison,	Reed,
Barton,	Herrington,	Rhodes,
Beerstecher,	Hilborn,	Ringgold,
Bell,	Howard,	Shoemaker,
Biggs,	Hughey,	Shurtleff,
Blackmer,	Hunter,	Smith, of San Francisco,
Brown,	Joyce,	Soule,
Caples,	Kenny,	Stevenson,
Chapman,	Kleine,	Sweasey,
Charles,	Laine,	Swenson,
Condon,	Larkin,	Swing,
Cowden,	Larue,	Townsend,
Davis,	Lavigne,	Tully,
Doyle,	Lindow,	Tuttle,
Dudley, of San Joaquin,	Martin, of Santa Cruz,	Vacquerel,
Estey,	McComas,	Waters,
Evey,	McConnell,	Webster,
Farrell,	Moffat,	West,
Fawcett,	Moreland,	Wickes,
Finney,	Nelson,	White,
Freeman,	Neunaber,	Wyatt—73.
Freud,		

NOES.

Barnes,	Heiskell,	Reynolds,
Belcher,	Herold,	Rolfe,
Berry,	Hitchcock,	Schell,
Boggs,	Inman,	Schomp,
Boucher,	Johnson,	Smith, of Santa Clara,
Burt,	Kelley,	Smith, of 4th District,
Campbell,	Keyes,	Stedman,
Crouch,	Lampson,	Steele,
Dudley, of Solano,	Lewis,	Strong,
Dunlap,	Mansfield,	Stuart,
Eagon,	McCallum,	Terry,
Edgerton,	McNutt,	Thompson,
Estee,	Miller,	Turner,
Glascock,	Mills,	Van Dyke,
Graves,	Morse,	Van Voorhies,
Gregg,	Nason,	Weller,
Hager,	Noel,	Wellin,
Hale,	Ohleyer,	Wilson, of Tehama,
Hall,	Overton,	Winans,
Harvey,	Pulliam,	Mr. President—60.

MR. SWING. I move that leave of absence be granted to Mr. Estee.

The motion prevailed.

The Secretary proceeded with the call of the roll.

LAWS TO BE PUBLISHED IN ENGLISH.

MR. MARTIN, of Santa Cruz, introduced the following proposed amendment to section twenty-one, of article eleven, of present Constitution:

All laws, decrees, regulations, which from their nature require publication, shall be published in the English language only.

Referred to the Committee on Legislative Department.

STATE AND MUNICIPAL INDEBTEDNESS.

MR. MILLER introduced the following amendment to the Constitution, relative to State and municipal indebtedness.

Section proposed for adoption in the Constitution:

SECTION —. The State shall not have power to borrow money except for purposes of defense against invasion, or for the suppression of insurrection or rebellion. No county, city, town, or other municipal corporation shall have power to borrow money for any purpose, except for supplying cities or towns of more than five thousand inhabitants with water, and no indebtedness for that purpose shall be incurred until authorized by a vote of a majority of the legal voters of the city or town to be affected thereby; but nothing herein shall be so construed as to prohibit the Legislature from authorizing the State, or any county, city, or town to pay its existing bonded indebtedness by the substitution or exchange of bonds bearing a lower rate of interest than is now paid upon the existing indebtedness.

Referred to Committee on State and Municipal Indebtedness.

RELATIVE TO THE MILITIA.

MR. MILLS introduced the following proposed amendment to article seven, section one, of the Constitution of the State of California:

Add to said section first the following words, "or the Constitution of the State of California."

Also, add to said article seven an additional section, to be known as section four, and to read as follows:

SEC. 4. There shall not be any independent military company, or other armed body of persons, other than troops of the United States, but such as are expressly authorized by some law of this State; and all military companies, or other armed bodies, other than the troops or military of the United States, at any time organized or existing in this State, shall be subject to the control of the Governor, as provided by section three of this article, and it is hereby made the duty of the Legislature to fix by law the duties and liabilities of such companies and armed bodies of persons.

Referred to the Committee on Military Affairs.

LIMITING THE AMOUNT OF STATE TAX.

MR. MORELAND introduced the following proposed amendment to the Constitution, to limit amount of State tax.

ARTICLE —.

SECTION —. The State tax on taxable property, exclusive of the tax necessary to pay the bonded debt of the State, shall not exceed forty cents on the one hundred dollars valuation; and whenever the taxable property of the State shall amount to seven hundred million dollars the rate shall not exceed thirty cents.

Referred to the Committee on Revenue and Taxation.

IN REGARD TO BANKS.

MR. MORELAND introduced the following proposed amendment to the Constitution, in regard to banking institutions.

ARTICLE —.

SECTION —. It shall be a crime, the nature and punishment of which shall be prescribed by law, for any President, Director, Manager, Cashier, or other officer of any banking institution, to receive or assent to the reception of deposits, or create or assent to the creation of debts by such banking institution, after he shall have had knowledge of the fact that it is insolvent or in failing circumstances; and any officer, agent, or manager shall be individually responsible for such deposits so received, and all such debts so created with his assent.

Referred to Committee on Corporations other than Municipal.

IN REGARD TO A STATE BOARD OF HEALTH.

MR. MORSE introduced the following proposed amendment to the Constitution, in relation to a State Board of Health:

The Legislature shall provide by law for the maintenance and efficiency of a State Board of Health.

Referred to the Committee on Miscellaneous Subjects.

LEAVE OF ABSENCE.

Mr. O'Donnell was granted leave of absence until Monday.

RIGHTS OF WIFE AS ADMINISTRATRIX.

MR. NASON introduced the following proposed amendment to the Constitution, in relation to the right of the wife to administer on the estate of a deceased husband.

Proposition to amend section fourteen, of article eleven, of the present Constitution, by addition of the following:

And also giving the surviving wife the right to administer on the estate of her husband without giving bonds, whenever the property belonging to the estate has been acquired by the joint efforts of herself and husband.

Referred to the Committee on Miscellaneous Subjects.

THE SESSIONS OF THE LEGISLATURE.

MR. NASON introduced the following proposition to amend section two (2), of article four (4), of the Constitution, relative to Legislative Department.

Amended so as to read as follows:

SEC. 2. The sessions of the Legislature shall be quadrennial, and shall commence at twelve (12) o'clock M., on Wednesday next after the first Monday in January next ensuing the election of its members, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation. No session shall continue longer than one hundred days.

Referred to the Committee on Legislative Department.

RELATING TO LAND TENURES.

MR. O'SULLIVAN introduced the following proposed amendment to the Constitution, in relation to land tenures and limitation of ownership:

Resolved, That the following provisions regarding land tenures and limitation of ownership of land, in the future, should be adopted as part of the Constitution of this State:

SECTION 1. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed; nor shall the law of primogeniture or entailments ever be in force in this State.

SEC. 2. All lands within the State are declared to be allodial, and feudal tenures are prohibited. Leases and grants of land for a longer term than ten years, in which rent or service of any kind shall be reserved, and all fines and like restraints upon alienation, reserved in any grant of land hereafter made, are declared to be void. No lessee shall sublet any portion of the land held in his name.

SEC. 3. No person other than citizens, or those who have declared their intentions to become such, shall ever acquire or own, either by purchase or otherwise, real property in this State; and in case any alien dies possessed of real property in this State, contrary to this provision, such property shall escheat to the State. Nor shall any lands in this State be held in trust for any alien; but the creation of any trust in lands for the benefit of an alien shall at once escheat the land to the State.

SEC. 4. No person shall forever hereafter be permitted to acquire, in any manner, more than six hundred and forty (640) acres of land in this State. Copartnerships, joint, or other ownership of lands, shall not be allowed contrary to this provision. No person who dies possessed of landed property in this State shall have the right to will or devise more than six hundred and forty (640) acres of land to any one heir; otherwise the said will shall be void; *provided, however*, that all land over and above the six hundred and forty (640) acres so devised to each law-

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ful heir, of which such deceased person died lawfully possessed, shall be sold to the highest bidders for cash, in quantities not exceeding six hundred and forty (640) acres each, and the proceeds divided equally among the lawful heirs.

SEC. 5. Actual occupation and continuous use for agricultural purposes during a period of one year shall constitute a title to the ownership of land in this State. Tracts of land of over six hundred and forty (640) acres in extent, which shall remain unoccupied and unused for agricultural purposes during a period of one year, shall be open to the occupation and use of citizens of the United States, in quantities not exceeding one hundred and sixty (160) acres; *provided*, if it shall appear that any other person has previous title to such tract of land, the party occupying and using the same shall pay to said person the assessed value of the property.

SEC. 6. No more than one hundred and sixty (160) acres of land shall hereafter be granted or patented by the State, in any manner, to any one person. No grant or patent of lands by the State shall hereafter be made otherwise than upon the basis of actual settlement and use. No land scrip or land location certificates shall ever be issued in this State.

Referred to the Committee on Land and Homestead Exemption.

THE OWNERSHIP OF WATER.

MR. O'SULLIVAN introduced the following proposed amendment to the Constitution, relative to rivers and lakes:

Resolved, That the persistent attempts to monopolize Nature's free gift to all, water, demand the insertion of the following emphatic declaration in the Constitution:

SECTION 1. All the rivers and fresh water lakes within the boundaries of this State are common property, and shall be controlled by the government for public uses alone.

Referred to the Committee on Water and Water Rights.

THE ELECTIVE FRANCHISE.

MR. REED introduced the following proposed amendment to the Constitution, relative to the elective franchise:

ARTICLE —.

No person shall have the right to vote, or be eligible to office under the Constitution of this State, who shall not be able to read the Constitution of this State and write his name; *provided, however*, that the provisions of this amendment shall not apply to any person prevented by physical disability from complying with its requisitions, nor to any person who now has the right to vote, nor to any person who shall be sixty years of age or upward at the time this amendment shall take effect.

Referred to the Committee on Privileges and Elections.

DECLARATION OF RIGHTS.

MR. REED introduced the following proposed amendment to the Constitution:

SECTION —. No money shall be drawn from the State treasury for the benefit of any religious or theological institution.

Referred to the Committee on Preamble and Bill of Rights.

POWERS AND DUTIES OF CERTAIN CORPORATIONS.

MR. RHODES introduced the following proposed amendments to the Constitution, creating a Board to supervise and prescribe the duties, powers, and liabilities of certain corporations, and for other purposes:

Resolved, That the following sections be appropriately numbered and incorporated into the proposed Constitution:

SECTION —. A State Board of Supervisors shall be formed, to consist of seven members. The Attorney-General and the Surveyor-General shall be ex officio members of such Board. One member shall be elected by the qualified voters of the State at large, and one member in each Congressional District by the qualified voters thereof. The five Supervisors to be elected as herein provided, shall be elected at the same time as the Governor of the State, and shall hold their office for the term of four years, and until their successors shall have been elected and qualified.

SEC. —. No person shall be elected Supervisor who, at the time of his election, is a stockholder in, or officer or employé of any banking company, insurance company, railroad company, or other incorporated company doing business in this State for profit. When any Supervisor, elected as provided in section —— of this article, shall become interested, either as stockholder, officer, or employé of any company named in this section, he shall thereby become ineligible as a member of the Board of Supervisors, and his seat therein shall then become vacant.

SEC. —. The Governor of the State shall, by appointment, fill any vacancy occurring in the Board of Supervisors, but in making such appointment no Congressional District shall be deprived of its representative in the Board. The person so appointed shall hold his office until the next general election, and until his successor is elected and qualified.

SEC. —. The State Board of Supervisors shall have power, and it shall be the duty of the Board:

First—To sit as a State Board of Equalization, to equalize and adjust assessments made in the several counties of the State for the purpose of taxation, under regulations to be prescribed by law.

Second—To supervise the public institutions of the State, and exercise such powers in relation thereto as may be conferred upon the Board by law.

Third—To examine into and report upon the condition of all banking institutions, insurance companies, and other incorporated companies doing business for profit in the State, exercising therein, among other functions, those of Bank Commissioner and Insurance Commissioner.

Fourth—To fix and determine rates to be charged for freights and fares by all railroad companies within this State, and to classify the different commodities carried as freight on such railroads.

Fifth—To prescribe such rules for the government and control of such railroad, and other incorporated companies, as may be necessary to protect the people of the State against unjust exactions, favoritism, and other discriminations.

Sixth—To file in the office of the County Clerk of each of the several counties of this State a schedule of freights and fares as fixed by said Board, as often as the same shall be changed, showing the classifications and rates to be charged for each class; and it shall be lawful for all railroad companies in this State to charge and receive the rates fixed upon by such Board for freight and for passenger fare, and none other.

Seventh—The Board shall have such further powers and shall perform such further duties as may be prescribed by law.

SEC. —. The Board of Supervisors shall keep an office at the Capitol of the State, and shall meet as often as the public good may require, but not less often than once in each month. It shall organize by electing a President and Vice President from its own members, and a Secretary, who may or may not be taken from its own members. Four members shall constitute a quorum to transact business.

SEC. —. The five members of the Board, to be elected as herein provided, shall receive as compensation for their services each the sum of —— dollars per annum, payable as the salaries of other State officers are paid, and the further sum of —— cents per mile for every mile necessarily traveled in the performance of their duties. Each member, before entering upon the discharge of the duties of his office, shall take the accustomed oath of office.

Referred to Committee on Miscellaneous Subjects.

CONCERNING VACANCIES IN OFFICE.

MR. SHOEMAKER introduced the following proposed amendment to the Constitution, concerning vacancies in office:

Amend section eight, article five, of the Constitution, so as to read as follows:

SEC. 8. When any office shall from any cause become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have the power to fill such vacancy for the unexpired term, if an executive office; if a United States Senator, he shall fill the vacancy by granting a commission which shall expire at the end of the next session of the Legislature; if a judicial officer, he shall fill such vacancy by issuing a commission until the next election for judicial officers, when an election shall be had for the unexpired term.

Referred to the Committee on Executive Department.

CONCERNING THE VETO POWER.

MR. SHOEMAKER introduced the following proposed amendment to the Constitution, concerning the veto power:

Amend section sixteen, article five, of the Constitution, so as to read as follows:

SEC. 16. The Governor shall have the power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the Executive veto.

Referred to the Committee on Executive Department.

CONCERNING TAXATION.

MR. SHOEMAKER introduced the following proposed amendment to the Constitution, concerning taxation:

Amend section thirteen, article eleven, of the Constitution, so as to read as follows:

SEC. 13. Taxation shall be uniform and equal throughout the State. All property of every kind and character, whether land, notes, certificates of deposit, bonds, or other securities in this State, shall be taxed in proportion to its value, to be ascertained as directed by law; but Assessors and Collectors of State, county, city, town, or district taxes, shall be elected or appointed, as the Legislature may direct.

Referred to the Committee on Revenue and Taxation.

MR. SMITH, of Kern. I rise to a point of order. There are more than two propositions.

MR. SHOEMAKER. They only relate to one subject.

Objection withdrawn.

TAXATION OF CORPORATE PROPERTY.

MR. SHOEMAKER also introduced the following amendment to section fourteen, article eleven, of the Constitution, relative to taxing corporations:

Amend section fourteen, article eleven, of the Constitution, so as to read as follows:

SEC. 14. The power to tax corporations and corporate property, or to regulate the affairs thereof, shall not be surrendered or suspended by any contract or grant to which the State may be a party.

Referred to the Committee on Legislative Department.

PAY OF STATE OFFICERS.

MR. SHOEMAKER also introduced the following proposed amendment to the Constitution, relating to the compensation of State officers:

Amend section twenty-one, article five, of the Constitution, so as to read as follows:

SEC. 21. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, and Superintendent of Public Instruction shall each, at stated times during their continuance in office, receive for their services a compensation, which shall not be increased or diminished during the term for which they shall have been elected, but neither of those officers shall receive for his own use any fees for the performance of his official duties. The Attorney-General shall not practice in any Court other than the Supreme Court, except in the discharge of his official duties.

Referred to the Committee on Legislative Department.

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THE PREAMBLE.

MR. SHURTLEFF introduced the following resolution, in reference to the Preamble to the Constitution:

Resolved, That the Preamble in the present Constitution of this State is concise, appropriate, and comprehensive, and that it is the sense of this Convention that it should be incorporated in the new Constitution without alteration or amendment.

Referred to the Committee on Preamble and Rill of Rights.

RESTRICTIONS ON THE LEGISLATURE.

MR. SMITH, of Santa Clara, introduced the following proposed amendment to the Constitution:

The Committee of the Legislative Department be requested to inquire into the propriety of incorporating into the Constitution the following provision:

The Legislature shall not ratify any amendments proposed by Congress to the Constitution of the United States until after the same shall have been submitted to the voters of the State at a general election, and be ratified by a majority of said voters.

Referred to the Committee on Legislative Department.

REDEMPTION AFTER TAX SALES.

MR. SMITH, of Santa Clara, introduced the following proposed amendment to the Constitution, relating to redemption from tax sales of real estate:

The Legislature shall provide, in all cases where it may be necessary to sell real estate for the non-payment of taxes, or special assessments for State, county, municipal, or other purpose, that a return of such unpaid taxes or assessments shall be made to some general officer of the county, having authority to receive State and county taxes, and there shall be no sale of said property for any of said taxes or assessments but by said officer, upon the order or judgment of some Court of record. The right of redemption from all sales of real estate for the non-payment of taxes, or special assessments of any character whatever, shall exist in favor of owners and persons interested in real estate for a period of not less than two years from such sales thereof. And the Legislature shall provide by law for a reasonable notice to be given to the owners or parties interested, by publication in the nearest newspaper of the fact of the sale of the property for such taxes or assessments, and when the time of redemption shall expire; *provided*, the occupants shall in all cases be served with personal notice before the time of redemption expires.

Referred to the Committee on Revenue and Taxation.

A JUDICIAL DEPARTMENT.

MR. SMITH, of Kern, introduced the following proposed amendment to the Constitution, in relation to the Judicial Department:

Proposed amendment to article six of the Constitution, on the Judiciary:

ARTICLE VI.

SECTION 1. The judicial power of this State shall be vested in a Supreme Court, in District Courts, in Municipal Courts, in Justices of the Peace, and in such other inferior Courts as the Legislature may establish in any incorporated city or town.

SEC. 2. The Supreme Court shall consist of a Chief Justice and eight Associate Justices. For appellate jurisdiction from the District Courts, the Supreme Court shall be divided into three sections of three Justices each; and for appellate jurisdiction from said sections, the said Justices to preside in bank. The presence of five Justices in bank shall be necessary for the transaction of the business of the Supreme Court in bank, except such business as may be done at chambers, and the concurrence of five Justices in bank shall be necessary to pronounce a judgment therein. The presence of two Justices sitting in each section of the Supreme Court shall be necessary for the transaction of the business of a section, except such business as may be done at chambers; and the concurrence of two Justices in a section shall be necessary to pronounce a judgment therein. When only two Justices sit in the hearing of any case in a section of the Court, and they disagree, and the case is not appealed to the Supreme Court in bank, the judgment below shall stand affirmed. Each Justice shall preside with the section of the Court which is within the Supreme Judicial District in which he was elected, except when presiding in bank, and except when called upon for temporary purpose to preside in another section by the Justice of another section. The powers and jurisdiction of each of said sections shall be equal and concurrent.

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State, by districts, as hereinafter provided, at the general State elections. The first election for Justices of the Supreme Court shall be held on the first Wednesday in September, in the year eighteen hundred and seventy-nine. The Justices shall hold their offices for the term of twenty years from the first Monday in January next after their election, except that those elected in each Supreme Judicial District at the first election, who, at their first meeting, shall so classify themselves by lot that one Justice in each section shall go out of office in the year eighteen hundred and eighty-four, and every four years thereafter. The Justice having the shortest time to serve in the section to which he belongs, shall be the presiding Justice of that section of the Supreme Court. In case of a vacancy from any cause in the office of Justice of the Supreme Court, the Governor shall appoint some suitable person, resident of the same Supreme Judicial District, to fill such vacancy, who shall hold the place made vacant for the unexpired time for which the former incumbent was elected, or, by lot, was chosen. The Chief Justice shall be chosen by a majority of the Justices in bank, from the presiding Justices of the sections, at the first meeting and organization of the Supreme Court in bank, and thereafter at the expiration of the term of office of the Chief Justice as a Justice of the Supreme Court, and to fill any vacancy in the office of Chief Justice.

SEC. 4. The Supreme Court in bank shall have appellate jurisdiction from the three sections of the Supreme Court, in the following cases:

First—In cases where a construction of the Federal or State Constitution was in dispute, or in which the constitutionality of any statute or municipal ordinance was necessarily in dispute and decided.

Second—In cases where one of the Justices of one of the sections of the Supreme Court dissents from the decision of the majority of that section, and gives a written opinion showing the reasons of his dissent.

Third—In cases where either of said sections overrules a prior decision of the highest Court of the State not previously overruled by the same Court.

Fourth—In cases where one of said sections decides a principle contrary to the decision of another of said sections.

Fifth—In all criminal cases determined in either section of the Supreme Court where the judgment is death or imprisonment for life.

Sixth—To such other cases of rare importance as the Legislature may by law prescribe. The Supreme Court in bank, and in said sections, shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary and proper to the complete exercise of its appellate jurisdiction, both in bank and in sections. Each of the Justices shall have the power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself or in the Supreme Court, either in bank or in any section, or before any District Court. The Supreme Court in its several sections shall have appellate jurisdiction, in all cases arising in the District Courts for the counties within the respective Supreme Judicial Districts, to the sections within such Supreme Judicial Districts respectively; but cases may be transferred from one section or Supreme Judicial District to another section or district whenever it may be deemed proper by a majority of the Justices of the section, or by virtue of such further regulations as the Legislature may prescribe, or by the consent and written stipulation of the parties to the cause, through their respective attorneys at law.

SEC. 5. The State shall be divided as equally as practicable according to population, without dividing a county, except where a county may form more than one district, into three judicial districts, to be known as Supreme Judicial Districts, and numbered from one to three. One of said sections shall hold its sessions and transact its business at a locality in such of said judicial districts which, as the Legislature shall prescribe, shall be most accessible from all parts of each district as may be, and be nearest to the greatest population and amount of business in each district. Until the Legislature shall by law select other localities, the City of Sacramento, the City and County of San Francisco, and the City of Los Angeles, respectively, shall be the localities where said sections shall hold their sessions and transact their business in their judicial districts. Until a reapportionment of the State, and the Legislature shall reform the Supreme Judicial Districts upon said reapportionment, they shall be as follows: The First Supreme Judicial District shall be composed of the Counties of ——; the Second Supreme Judicial District shall be composed of the City and County of San Francisco: and the Third Supreme Judicial District shall be composed of the Counties of ——.

SEC. 6. Each county is a judicial district for District Courts, for which District Judges shall be elected by the qualified electors of the county, or city and county, at the general State election next after the adoption of this Constitution; *provided*, that in every county, or city and county, containing less than twenty thousand inhabitants, shall elect one District Judge. Counties, or cities and counties, containing more than twenty thousand inhabitants, may elect such further number of District Judges as shall be prescribed by law, not exceeding one for every twenty thousand inhabitants and one for such fraction as shall exceed ten thousand, which shall be the number for the purposes of the next election. Where there is more than one such Court in a county, or city and county, they shall be numbered as the Legislature shall direct. The District Judges shall hold their offices for the term of ten years from the first Monday of January, A. D. eighteen hundred and seventy-nine. In districts where there shall be more than one District Judge, a Presiding Judge shall be elected by lot, who shall distribute the labor performed by each. Each District Court shall be held by one District Judge, and the Courts shall be separate, but the judgments and orders of each shall be entered and enforced as of the District Court of each county, or city and county.

SEC. 7. The District Court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest, amounts to three hundred and fifty dollars; and in all criminal cases not otherwise provided for; also in actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance, and all such special cases and proceedings as are not otherwise provided for; also of all matters of probate; and said Courts shall have the powers of naturalization and to issue papers therefor. Said Courts and their Judges shall have the power to issue writs of habeas corpus, on petition by or on behalf of any person in actual custody, in their respective counties. Said Courts shall be always open (legal holidays and non-judicial days excepted, and during such vacations as the Legislature may see proper to grant, never to exceed fifteen days), and their original jurisdiction shall extend to all parts of the State. They shall have appellate jurisdiction in all cases arising in Municipal Courts, in all criminal cases arising in Justices of the Peace, and such other inferior Courts as the Legislature may establish in incorporated cities and towns, and in all civil cases arising in such inferior Courts, in which the demand, exclusive of interest, exceeds the sum of one hundred dollars; all of said appeals to be taken only on questions of law, and only to the District Court of the county in which the appeal is taken. The said District Courts shall also have power to issue writs of mandamus,

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injunction, prohibition, certiorari, quo warranto, and all other writs necessary and proper to complete the exercise of their jurisdiction. In case of sickness, absence, or other incapacity of a District Judge, his Court may be held by any other District Judge of the State.

SEC. 8. Each city, town, and village in the State, having over five hundred inhabitants shall have as many Municipal Courts, and there shall be established in towns and villages having five hundred inhabitants and under, and in townships and districts outside of towns, cities, and villages, such Justices of the Peace as the Legislature shall prescribe. The jurisdiction of Municipal Courts shall extend to all cases where the amount in controversy, exclusive of interest, does not exceed three hundred and fifty dollars; to cases of forcible entry and detainer, their jurisdiction shall be concurrent with that of the District Courts; to the foreclosure of mechanics' liens and mortgages, where the amount claimed, exclusive of interest, does not exceed three hundred and fifty dollars; and to such cases of misdemeanor and special cases as shall be fixed by law. The jurisdiction of Justices of the Peace shall extend to all cases where the amount claimed does not exceed one hundred dollars, exclusive of interest, and to such cases of misdemeanor and special cases as may be provided by law. Judges of Municipal Courts shall hold their offices for four years, and Justices of the Peace shall hold their offices for two years.

SEC. 9. The Supreme Court, the District Courts, and such other Courts as the Legislature may declare, shall be Courts of record. The Legislature shall fix by law the jurisdiction of such inferior Courts as it may establish in incorporated cities and towns, and shall fix by law the powers, duties, and responsibilities of the Judges thereof; *provided*, that the jurisdiction of such inferior Courts shall extend to the trial of misdemeanors and cases arising under ordinances of such cities and towns. The times and places of holding the several Courts of record, except as herein provided, shall be provided by law. No judicial officer, except Justices of the Peace, Justices or Judges of such inferior Courts as may be established in incorporated cities and towns, and Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 10. The unfinished business remaining in the Probate Court of the City and County of San Francisco shall be apportioned between the several District Courts therein established under this Constitution, in such manner as the Legislature shall direct.

SEC. 11. The Supreme Court and the District Courts now in existence are continued until the first Monday in January, A. D. eighteen hundred and seventy-nine, but after said first Monday in January next their powers shall only extend to the determination of such cases or proceedings pending therein as may have been submitted for decision prior to that time; and for that purpose the Justices and Judges of said Courts shall hold their offices until the first day of April, A. D. eighteen hundred and seventy ——, but said Justices and Judges shall not, by reason of so holding over, be ineligible to hold any office under this Constitution during said holding over.

SEC. 12. The Justices of the Supreme Court shall appoint a Reporter of the decisions of the Supreme Court rendered in each of the sections thereof, and in bank, who shall receive an annual salary of two thousand dollars.

SEC. 13. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient; and all opinions shall be free for publication by any person.

SEC. 14. The Justices of the Supreme Court and the District Judges shall be ineligible to any other office than a judicial office during the term for which they shall have been elected, except in case of resignation, and then not until two years after such resignation. In addition to the oath of office, they shall, before entering upon their offices, take and subscribe an oath that they will not, during such term, accept any Federal office, other than a judicial office.

SEC. 15. The Justices of the Supreme Court and District Judges shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall be elected; *provided*, that District Judges shall be paid out of the county treasury of their respective counties.

SEC. 16. The Justices of the Supreme Court and the District Judges shall be ineligible to any other office than a judicial office during the term for which they shall have been elected.

SEC. 17. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

SEC. 18. The style of all process shall be: "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SEC. 19. The Legislature shall provide for the election of a Clerk of the Supreme Court, of County Clerks, District Attorneys, Sheriffs, Assessors, and other necessary officers, and shall fix by law their duties and compensations. The Legislature may also provide for the appointment by the several Courts of record of one or more Commissioners, with authority to perform chamber business connected with the administration of justice, as may be prescribed by law. Until the Legislature provides different offices, and their terms of office, other than Judges, the same county offices, and their terms, as now exist, shall continue as if this Constitution had not been adopted.

SEC. 20. The Justices of the Supreme Court, and the Judges of the Municipal Courts, shall not practice law, and shall not act as counsel, nor appear as attorney at law, in any case or proceeding in any Court, during their continuance in office.

Referred to Committee on Judiciary and Judicial Department.

IN REGARD TO PRIVATE CORPORATIONS.

Mr. SMITH, of Kern, introduced the following proposed amendment to article tenth of the Constitution, in regard to private corporations.

ARTICLE X.

SECTION 1. Corporations may be formed under general laws, but shall not be created by special Act. All general laws passed pursuant to this section may be altered from time to time or repealed.

SEC. 2. Each stockholder shall be individually and personally liable for his proportion of all debts and liabilities of a corporation created or incurred while he remains such stockholder.

SEC. 3. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the Legislature from taking the property and franchises of corporations and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well-being of the State.

SEC. 4. In all elections for Directors or managers of any incorporated company, each shareholder shall have the right to cast as many votes in the aggregate as shall equal the number of shares so held by him or her in said company, multiplied by the number of Directors or managers to be elected at such election; and each shareholder may cast the whole number of votes, either in person or by proxy, for one candidate, or distribute such votes among two or more candidates; and such Directors or managers shall not be elected in any other manner.

SEC. 5. No corporation shall engage in any business other than that expressly authorized in its charter; nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business.

SEC. 6. No corporation shall issue stocks or bonds, except for money, labor done, or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the two thirds in value of the stock, first obtained at a meeting to be held, after sixty days' notice given in pursuance of law.

SEC. 7. No railroad or telegraph company shall consolidate with or hold an interest in the stock or bonds of any other railroad or telegraph company; nor shall the same persons be officers in corporations owning competing lines of railroads or telegraphs.

SEC. 8. No railroad or telegraph company shall lease or in any manner manage or control the railroad or telegraph line of another company.

SEC. 9. All individuals, associations, and corporations shall have equal rights to have persons and property transported over railroads, and no undue or unreasonable discrimination shall be made in charges for or in facilities for transportation of freight or passengers within the State. Persons and property transported over any railroad shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class in the same direction, to any more distant station; but excursion and commutation tickets may be issued at special rates.

SEC. 10. The Legislature shall pass statutes to correct abuses and prevent unjust discrimination and extortion in the rates of freights and fares on the railroads in the State, and provide for the enforcement of such statutes by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of property and franchise; and shall from time to time pass laws establishing reasonable maximum and minimum rates of charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties, to the extent of forfeitures, if necessary.

SEC. 11. Every railroad corporation organized in this State shall maintain an office therein, where transfers of its stock shall be made, and where its books shall be kept for inspection by any stockholder or creditor of such corporation, in which books shall be recorded the amount of capital stock subscribed or paid in, and by whom, the names of the owners of its stock, and the amounts owned by them respectively, the transfers of said stock, and the names and places of residence of its officers.

SEC. 12. All railroads shall be public highways, and all railroad companies shall be common carriers. Any corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads in other States. Every railroad company shall have the right with its roads to intersect, connect with, or cross any other railroad; and shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination, in such manner as may be prescribed by general statute.

SEC. 13. No President, Director, officer, or employé of any railroad company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company.

SEC. 14. No railroad, railway, or other transportation company, shall grant free passes, or passes at a discount, to any public officer.

SEC. 15. No foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the same upon whom process may be served.

SEC. 16. The rolling stock and all other movable property belonging to any railroad company, corporation, or individual in this State, shall be considered personal property, and shall be liable to execution and sale, in the same manner as the personal property of individuals; and the Legislature shall pass no law exempting such property from execution and sale.

SEC. 17. No railroad or other corporation, or the lessees, purchasers, or managers of any railroad corporation, shall consolidate the stock, property, or franchises of such corporation with, or lease, or purchase the works or franchise of, or in any way control any railway or railroad corporation owning or having under its control a parallel or competing

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line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line. The question whether railroads are parallel or competing lines shall, when demanded, be decided by a jury, as in other civil cases.

SEC. 18. If any railroad company, organized under the laws of this State, shall consolidate, by sale or otherwise, with any railroad company organized under the laws of any other State, or of the United States, the same shall not thereby become a foreign corporation; but the Courts of this State shall retain in all matters which may arise as if said consolidation had not taken place. In no case shall any consolidation take place, except upon public notice of at least sixty days to all stockholders in such manner as may be provided by law.

SEC. 19. No law shall be passed for the benefit of a railroad, or other corporation, or any individual, or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the State, a new liability in respect to transactions or considerations already passed.

SEC. 20. No law shall be passed granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained.

SEC. 21. No railroad corporation in existence at the time of the adoption of this Constitution, or any individual, shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.

Referred to Committee on Corporations other than Municipal.

SECTARIAN TEACHING.

MR. SMITH, of San Francisco, offered the following resolution, concerning the public schools:

Resolved, That no sectarian book, or sectarian creed, shall ever be allowed in any of the public schools of this State.

Mr. ROLFE. I raise the point of order that it does not conform to the requirements of the rule.

THE PRESIDENT. Return it to the author as not in the proper form.

MR. SMITH also offered a resolution prohibiting the increase of salaries for State officers.

MR. ROLFE. I raise the same point of order, that it is not in proper form.

THE PRESIDENT. The resolution is not in the proper form, and the Secretary will return it to the author.

TAXATION.

MR. STEDMAN introduced the following proposed amendment to the Constitution, relative to taxation:

Resolved, That the Committee on Revenue and Taxation be instructed to report the following section to be incorporated into the new Constitution:

SECTION —. Banks now existing, or to be hereafter created, and all bankers, shall be taxed by such equitable rules, based upon capital employed and amount of business done by them, as will require them to share equally with other business interests in the burden of taxation.

Referred to the Committee on Revenue and Taxation.

LEGISLATIVE POWERS.

MR. STEDMAN introduced the following proposed amendment to the Constitution, relative to legislative powers:

Resolved, That the following section be referred to the Committee on Legislative Powers for insertion in article on Legislative Department:

SECTION —. The assent of three fourths of the members elected to each house of the Legislature shall be required to every bill appropriating the public money or public property for any purpose.

Referred to the Committee on Legislative Department.

IN REFERENCE TO SUBSIDIES.

MR. STRONG introduced the following proposed amendment to article two, section ten:

No county, township, city, town, village, or other political or municipal division of the State, shall become a stockholder, either directly or indirectly, in any joint stock company, corporation, or association, or shall raise money for, or loan its credit to, or in aid of, any company, corporation, or association, or shall purchase or contract, or in any way aid in purchasing or constructing, any railroad, or appurtenances thereto belonging.

Referred to Committee on City, County, and Town Organizations.

ON SUFFRAGE.

MR. STUART introduced the following proposed amendment to the Constitution:

The Constitution shall contain the following provisions in relation to the right of suffrage:

Every male citizen, twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections:

First—He shall have been a citizen of the United States at least one month.

Second—He shall have resided in the State one year.

Third—He shall have resided in the election district where he shall offer to vote at least two months immediately preceding the election.

Fourth—If twenty-two years of age or upwards, he shall have paid within two years a State or county tax, which shall have been assessed at least two months, and paid at least one month before elections.

Referred to the Committee on Right of Suffrage.

Ruled out of order.

MR. SWEASEY introduced a resolution in relation to the salary of State officers, which was ruled out of order, as not in the proper form.

HOURS OF LABOR.

MR. THOMPSON introduced the following proposed amendment to the Constitution, in relation to the hours of State labor, etc:

ARTICLE —.

SECTION 1. All offices, State, county, and municipal, shall remain open for the transaction of business eight hours each business day.

SEC. 2. Eight hours shall constitute a legal day's work in each and every department of the State, county, and municipal governments.

Referred to the Committee on Miscellaneous Subjects.

ON SUFFRAGE.

MR. TULLY introduced the following proposed amendment to the Constitution, relative to suffrage.

Incorporate the following in the Constitution:

The Legislature of the State of California shall pass no law requiring an educational qualification for suffrage.

Referred to the Committee on Education.

EMINENT DOMAIN.

MR. TULLY introduced the following proposed amendment to the Constitution, in relation to the taking of private property for public use.

Amend section eight, article one, of the Constitution, as follows:

Private property shall not be taken for public use without just compensation be first made, or secured by a deposit of money to the owner, and such compensation shall be ascertained by a jury of twelve men, without deduction for benefit to any property of the owner, in a Court of record, as shall be prescribed by law.

Referred to the Committee on Miscellaneous Subjects.

TAXATION OF CHURCH PROPERTY.

MR. VACQUEREL introduced the following proposed amendment to the Constitution, in relation to the taxation of church property:

Resolved, That all church property, of whatever nature, shall be subject to taxation. Only benevolent institutions, under the direct control of the State, shall be exempt from taxation.

Referred to the Committee on Revenue and Taxation.

RELIGIOUS FREEDOM.

MR. VACQUEREL introduced the following proposed amendment to the Constitution, in relation to the Bill of Rights:

Religious freedom being the fundamental principle of republican government, the Legislature shall not, under any consideration, enact any law giving preference to any religious sect or mode of worship.

Referred to the Committee on Preamble and Bill of Rights.

MECHANICS' LIENS.

MR. VAN DYKE introduced the following proposed amendment to the Constitution, in relation to mechanics' liens:

ARTICLE —.

SECTION —. Mechanics, material-men, artisans, and laborers of every class shall have a lien upon the property on which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished, and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.

Referred to the Committee on Miscellaneous Subjects.

IN RELATION TO CORPORATIONS.

MR. VAN VOORHIES introduced the following proposed amendment to section thirty-two, article four, of the existing Constitution.

Amend said section so as to read as follows:

SEC. 32. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law. The property of corporations now existing, or hereafter created, shall forever be subject to taxation the same as the property of individuals, and the franchises of such corporations shall be assessed at their actual cash value and taxed accordingly.

Referred to Committee on Corporations other than Municipal.

ON SUFFRAGE.

MR. VAN VOORHIES introduced the following proposed amendment to section one, article two, of the existing Constitution:

Strike out the word "male," wherever it occurs in said section. In the sixth line (copy of the Constitution furnished the Convention) after the word "he" insert "or she," and after the word "his," in the same line, insert "or her."

Referred to the Committee on Right of Suffrage.

IN REFERENCE TO THE PREAMBLE.

MR. WEBSTER introduced the following proposed amendment to the Constitution, in reference to the Preamble:

We, the people of California, in order to form a more perfect government, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution.

Referred to the Committee on Preamble and Bill of Rights.

BILL OF RIGHTS.

MR. WEBSTER introduced the following proposed amendment to the Constitution, in relation to the Bill of Rights:

SEC. 3. That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty, and property; and whenever the government assumes other functions than those herein enumerated its tendency is towards usurpation and oppression.

Referred to the Committee on Preamble and Bill of Rights.

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LAKES AND RIVERS.

MR. WELLIN introduced the following proposed amendment to the Constitution:

That the waters of Lake Bigler or Tahoe should be taken possession of by the State and used for irrigating the dry lands, and that we do not recognize any individual rights to that or any other lake.

Referred to the Committee on Water and Water Rights.

ALIENS AS LAND-HOLDERS.

MR. WELLIN introduced the following proposed amendment to the Constitution, in reference to prohibiting aliens from holding lands, etc.:

Resolved, That no alien shall ever be allowed to take fish in the waters of the State.

Resolved, That no alien shall be allowed to hold lands either by fee-simple or by lease in this State.

Resolved, That no citizen shall ever be allowed to hold lands in trust or otherwise for aliens.

Resolved, That no license to carry on any kind of business shall ever be granted to any Asiatic or Chinaman.

Resolved, That no Chinaman shall ever be allowed to bring suit in any Court against a white person or to testify against a white person.

Resolved, That no citizen or other person shall ever be allowed to bring suit as trustee or by assignment for any Chinaman.

Referred to the Committee on Chinese.

CRIMINAL PROSECUTIONS.

MR. WEST introduced the following proposed amendment to the Constitution, on the subject of criminal prosecutions:

1. Prosecutions for crimes and misdemeanors may be begun by indictment found by a Grand Jury, or by information laid before a Justice of the Peace.

2. The Grand Jury shall consist of fifteen men, and an indictment may be found upon the concurrence of nine of their number.

3. The Grand Jury shall be ordered by the County Judge, at his discretion, but not oftener than once in each year.

4. An information is a writing verified by a person called a prosecutor, charging another with the commission of a crime or misdemeanor, and setting forth the facts necessary to constitute the offense.

5. Such information may be presented to a Justice of the Peace, and when such Justice has not jurisdiction to try the offense charged there shall be had a preliminary examination, in which defendant shall have right to be heard by himself and counsel.

6. Should it appear that the offense charged has been committed, and the Justice be satisfied of defendant's guilt, he shall adjudge and bind the defendant to appear before the Court having jurisdiction of the offense.

7. Upon this information, and the judgment of the Justice thereon being filed in the Court having jurisdiction, the District Attorney shall file in such Court a complaint signed by him, officially, charging the defendant with the offense for which he is held to answer. This complaint shall state the facts necessary to constitute a cause of action.

8. Upon such complaint the defendant may be tried.

9. After the defendant has been bound to appear, and within ten days thereafter, or at any time prior to filing the complaint, he shall have the right to be heard on a writ of habeas corpus before a Judge of a Court of record, and if such Judge shall find, on reviewing the evidence taken at the preliminary examination, that the defendant has been held without reasonable or probable cause, he shall order the defendant discharged, and the District Attorney shall not further prosecute the proceeding.

10. Should the information be dismissed by the Justice, after a hearing on a preliminary examination, or the defendant be so discharged on habeas corpus, no second information shall be prosecuted against the defendant on the same charge, unless the second information be approved and signed by the District Attorney of some Court having jurisdiction to try the case.

11. A person may be prosecuted by indictment for any offense of which the District or County Court has jurisdiction, although the information has been dismissed by a Justice, or the defendant discharged on habeas corpus.

Referred to Committee on Judiciary and Judicial Department.

ON CORPORATIONS.

MR. WICKES introduced the following proposed amendment to the Constitution, in relation to the jurisdiction of State over corporations:

Resolved, That the State, by right of eminent domain, holds supervisory jurisdiction over all railways, public highways, or toll-roads, routes of transportation; over all natural and artificial reservoirs, and water ways; and such right entitles her to regulate fares and rates, annul vested rights or call for their reversion, and to adopt such measures as will protect her people from extortion and monopolies.

Referred to Committee on Corporations other than Municipal.

IN RELATION TO INTEREST ON MONEY.

MR. WHITE introduced the following proposed amendment to the Constitution, in relation to interest on money:

SECTION 1. No agreement, or contract, or obligation hereafter made or entered into in this State shall be of any validity whatever, or be enforced in any of the Courts of this State, or be entitled to a record, that provides, directly or indirectly, for the payment of more than seven per cent. interest on money, or for the payment of the taxes, or any part of the taxes, of the lender of money, or anything of value by the borrower upon the money or thing loaned, or that provides for the payment of the lender's attorney fees in case of a forced collection of the money or thing of value lent. And the Legislature shall enforce this provision of the Constitution by an enactment of law which shall provide for the forfeiture, by the lender of money, of at least one fourth of the money or value of the thing lent, for any attempt to evade this section by receiving a premium of any sort whatever as a condition of lending the money.

SEC. 2. All bonds and mortgages, notes and contracts for the payment of money, in existence at the date of the adoption of this Constitution, shall be subject to the rate of interest and other conditions as provided for in said instrument up to the date of their maturity, and no longer.

Referred to the Committee on Miscellaneous Subjects.

LEGISLATIVE DEPARTMENT.

MR. WHITE introduced the following proposed amendment to the Constitution, in relation to the Legislative Department:

The article in the new Constitution relating to the Legislature shall be as follows:

ARTICLE —.

SECTION 1. The legislative power of this State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California, and the enacting clause of every law shall be as follows: "The People of the State of California, represented in Senate and Assembly, do enact as follows."

SEC. 2. The Senate shall consist of fifteen members, and the Assembly of forty-five members, all to be elected by single districts, as hereinafter provided.

MR. MCCALLUM. Mr. President: That is evidently a very voluminous document.

MR. BARNES. I would like to know what that publication is.

MR. EDGERTON. If it has a title, I move that the title only be read.

THE PRESIDENT. There being no objections it is so ordered.

SEC. 3. The members of the Senate and Assembly shall be chosen by the qualified electors of their respective districts, under this Constitution, as follows: The first election for members of both houses of the Legislature shall be on the first Wednesday of September, eighteen hundred and seventy-nine, and their term of office shall be three years. The second election for members of the Legislature shall be on the first Tuesday after the first Monday in November, eighteen hundred and eighty-two, and their term of office shall be four years; and every four years thereafter, on the same day of the same month, the members of the Legislature shall continue to be chosen for the same term of office of four years.

SEC. 4. No person shall be qualified to be a member of the Legislature of the State of California except he shall have been a citizen of the United States for at least three years, and a bona fide resident of the State for the two years preceding his election, and a qualified elector in the district he represents.

SEC. 5. The first regular session of the Legislature shall commence on the first Tuesday after the first Monday in January, eighteen hundred and eighty, and may continue in session for one hundred days, exclusive of Sundays, at the per diem pay for each member of six dollars. The second regular session shall commence on the first Tuesday after the first Monday in January, of the year eighteen hundred and eighty-three, and may continue in session for sixty days at the same per diem pay for the members as that of the preceding Legislature. Thence, afterwards, at the expiration of each four years, dating from the first Tuesday after the first Monday in January, eighteen hundred and eighty-three, the Legislature shall convene in regular session, and continue as long in session as shall seem to be for the welfare of the State, and no longer; for which the members shall be paid a per diem of ten dollars for the first thirty working days, and nothing after the expiration of said thirty days.

SEC. 6. Members of the Legislature, before they enter upon their official duties, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of California, and I will faithfully discharge the duties of Senator or Assemblyman according to the best of my ability. That I have not knowingly or intentionally paid or contributed anything, or made any promise in the nature of a bribe, to directly or indirectly influence any vote at the election at which I was chosen to fill the said office; that I have not accepted, nor will I accept or receive, directly or indirectly, any money, office, promise, position, place, or thing from any corporation, company, or person, for any vote or influence I may give or withhold on any bill, resolution, or other official act." This oath, or affirmation, shall be administered by a Judge of the Supreme Court or District Court, in the hall of the house to which the member is elected; and the Secretary of State shall record said oath subscribed by each member. Any member who shall refuse to take the oath or affirmation herein presented shall thereupon forfeit his office; and every member who shall be convicted of having sworn or affirmed falsely to or in violation of said oath or affirmation, shall thereupon forfeit his office, and be disqualified thereafter from holding any office of profit or trust in this State, and may be punished as provided for perjury in other cases.

SEC. 7. At the first session of the Legislature after the adoption of this Constitution, and as often as once in ten years thereafter, it shall apportion the State into as many Congressional Districts as California is allowed members in Congress; and, also, into fifteen State Senatorial Districts and forty-five Assembly Districts. In making these apportionments, the division of counties must be avoided except where a county is entitled to two or more Assemblymen or Senators. Equality in population must also be observed as far as it is practicable, and no one county shall ever be entitled to more than three of the State Senators. Every district named in this section shall be composed of contiguous and compact territory as far as that may be practicable.

SEC. 8. For the purpose of the election to take place in the month of

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September, eighteen hundred and seventy-nine, the State is hereby divided into Senate and Assembly Districts as follows:

* * * * * * * *

SEC. 9. The sessions of the Legislature shall commence at twelve o'clock on the days and years heretofore provided.

SEC. 10. The Secretary of State shall call the Senate to order at the opening of each new Senate, and preside over it until a temporary presiding officer thereof shall have been chosen and shall have taken his seat.

SEC. 11. The Attorney-General of the State shall call the Assembly to order at the opening of each new Assembly, and preside over it until a temporary presiding officer thereof shall have been chosen and taken his seat.

SEC. 12. The Senate shall choose from its own body a President, and the Assembly from its own body a Speaker.

SEC. 13. Each house shall choose its own officers, and judge of the qualifications, elections, and returns of its own members.

SEC. 14. A majority of the members elected to each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house may provide.

SEC. 15. Each House shall determine the rules of its own proceedings, and may, with the concurrence of two thirds of all the members elected, expel a member, but no member shall be twice expelled for the same offense.

SEC. 16. Each house may punish by imprisonment any person, not a member, for disorderly or contemptuous behavior in its presence, but such imprisonment shall not extend beyond that session.

SEC. 17. Each house shall keep a Journal of its own proceedings, and publish the same; and the yeas and nays of the members of either House, on any question, shall, at the request of any three members present, be entered on the Journal.

SEC. 18. The enacting clause of every law shall be: "The People of the State of California do enact as follows."

SEC. 19. All bills shall originate in the house of Assembly, but may be amended by the Senate.

SEC. 20. No bill shall become a law without the concurrence of a majority of the members elected to each house. Every bill, having passed both houses, shall be signed by the President of the Senate and Speaker of the House, and submitted to the Governor for his approval.

SEC. 21. No Act of the Legislature shall embrace more than one subject, and that shall be expressed in its title; but if any subject shall be embraced in an Act which is not expressed in its title, such Act shall be void only as to so much thereof as is not so expressed.

SEC. 22. No law shall be revised or amended by reference to its title only, but the law revised or the section amended shall be inserted at length in the new Act, and no Act shall be revised by the repeal of a repealing Act.

SEC. 23. No Act of the Legislature shall take effect until the first day of July next after its passage, unless otherwise expressed in the last section of the Act.

PRIVILEGES AND DISABILITIES.

SEC. 24. Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest while the Legislature is in session; and they shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

SEC. 25. No person elected to the Legislature shall receive any civil appointment within this State, from the Governor, the Governor and Senate, or from the Legislature, during the term for which he shall have been elected, nor within a year thereafter, under any law passed while he was a member; and all such appointments shall be void.

SEC. 26. No member of the Legislature shall be interested, directly or indirectly, in any contract with the State, or any county, or city and county, or other municipal corporation thereof, authorized by any law passed during the term for which he shall have been elected, or within one year after the expiration of his term of office.

SEC. 27. The Legislature shall make no appropriation of money out of the treasury in any private bill.

SEC. 28. Bills making appropriations for the pay of members and officers of the Legislature, and for salaries of the officers of the State, shall contain no provision on any other subject.

SEC. 29. Bills making appropriations for the support of institutions of the State and asylums shall contain no provisions on any other subject.

SEC. 30. No money shall be drawn from the State treasury except in pursuance of an appropriation made by law.

SEC. 31. In addition to the pay heretofore provided for members of the Legislature, each member shall be entitled to receive as mileage three dollars for every twenty miles of travel to and from their residence to the place of holding the session. Each member shall also receive at each regular session an additional sum of fifty dollars, which shall be in full for all stationery used, and all postage and all other incidental expenses; and no allowance or emolument for any purpose whatever shall be made to or received by any member of either house for his use, out of the Contingent Fund or otherwise, except as herein expressly provided; and no allowance, extra pay, or emoluments, for any purpose whatever, shall ever be paid to any officer, agent, clerk, servant, or employé of either house of the Legislature, or of any committee thereof, except such per diem as may be provided for by law, not exceeding five dollars per day.

SEC. 32. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery, in this State.

SEC. 33. The census taken under the direction of the Congress of the United States in every ten years shall be the basis of fixing and adjusting the Congressional and Legislative Districts.

SEC. 34. No person holding any office under the United States, or any other powers, shall be eligible to any civil office of profit under this State government.

SEC. 35. No person who shall be convicted of the embezzlement or defalcation of the public funds of this State, shall ever be eligible to any office of honor, trust, or profit under this State; and the Legislature should, as soon as practicable, pass a law providing for the punishment of such embezzlement or defalcation as a felony.

SEC. 36. An accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws at every regular session of the Legislature.

SEC. 37. Every bill shall be read at length on three different days in each house, and all amendments made thereto shall be printed for the use of the members before the final vote is taken on its passage.

SEC. 38. The Governor and Justices of the Supreme Court, and Judges of the District Courts, shall be liable to impeachment for misdemeanor in office, but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial, and punishment, according to law. All other officers shall be tried for misdemeanor in office as the Legislature may provide.

SEC. 39. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for this purpose the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two thirds of the whole number of Senators.

SEC. 40. When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

SEC. 41. The doors of each house shall be open, except upon such occasions as, in the opinion of the house, may require secrecy.

SEC. 42. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. 43. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it he shall sign it, but if not he shall return it, with his objections, to the house of the Assembly, which shall enter the same upon the Journal, and proceed to reconsider it. If, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two thirds of the members of each house present, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted) the same shall become a law, in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor within ten days after such adjournment (Sundays excepted) shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law, in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contain several items of appropriation of money, he may object to one or more items, while approving other portions of the bill; in such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor; and the appropriations so objected to shall not take effect, unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the house of Assembly a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor.

SEC. 44. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, or university, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or by any city, city and county, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.

SEC. 45. The Legislature shall have no power to give or to lend, or to authorize the giving or lending of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof in any manner whatever for the payment of the liabilities of any individual, association, municipal or other corporation whatever, nor shall it have power to make any grant or authorize the making of any grant of any public money or thing of value to any individual, municipal or other corporation whatever; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

SEC. 46. The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered or a contract has been entered into or performed in whole or in part, nor to pay or authorize the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void.

SEC. 47. No bill shall be considered for final passage unless the same

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has been reported upon by a committee and printed for the use of the members.

Sec. 48. Upon the final passage of every bill in each house, the vote shall be taken by yeas and nays aud entered upon the Journal; and no bill shall be passed unless a majority of all the members elected to each house shall vote therefor on its final passage.

Sec. 49. The Legislature shall not pass local or special laws in any of the following enumerated cases—that is to say, changing the names of persons or places; changing county seats or locating them, except upon the organization of a new county; regulating county and township affairs; regulating the practice in Courts of justice; regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and Constables: providing for changes of venue in civil or criminal cases; providing for the election of members of the Boards of Supervisors; summoning and impaneling grand and petit juries; providing for the management of common schools; the opening and conducting of elections, or designating the place of voting; the sale or mortgage of any property belonging to minors or others under disability; the protection of game or fish; chartering or licensing ferries or toll-bridges; remitting fines, penalties, or forfeitures; creating, increasing, or decreasing salaries, fees, percentage, or allowance of public officers during the term for which said officers are elected or appointed; changing the law of descent; authorising or directing the payment of money by any county, city and county, or other municipal corporation. All legislation of this character, and which is strictly local in its operation, and which cannot be beneficially reached by general laws, shall be intrusted to the Board of Supervisors of the respective counties of the State, and there guarded from abuse by appropriate State legislation.

Sec. 50. Corporations may be formed under general laws, but shall not be created by special Act, except for municipal purposes. All general laws and special Acts, passed pursuant to this section, may be altered, from time to time, or repealed.

Sec. 51. Dues from corporations shall be secured by such individual liability of the corporators, and other means, as may be prescribed by law.

Sec. 52. The term "corporation," when used in this Constitution, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue, and shall be subject to be sued, in all Courts, in like cases as natural persons.

Sec. 53. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but associations may be formed, under general laws, for the deposit of gold and silver; but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

Sec. 54. The Legislature of this State shall prohibit by law any person or persons, association or company, or corporation from exercising the privilege of creating paper to circulate as money.

Sec. 55. Each stockholder of a corporation or joint stock association shall be individually and personally liable for his proportion of all its debts and liabilities.

Sec. 56. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations.

Sec. 57. The Legislature shall never grant divorces, but divorces may be obtained by civil action in the District Courts for the causes provided by law, but no person from whom a divorce is obtained shall, during the lifetime of the person obtaining the divorce, be allowed again to contract a marriage. This provision shall be enforced by suitable legislation.

Sec. 58. A member of the Legislature who shall solicit, demand, or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation, or person, any money, office, appointment, employment, testimonial, reward, thing of value or enjoyment, or of personal advantage, or promise thereof, for his vote or official influence, or for withholding the same, or with an understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit or demand any such money or other advantage, matter, or thing aforesaid for another, as the consideration of the payment or promise of such money, advantage, matter, or thing to another, shall be held guilty of bribery within the meaning of this Constitution, and shall incur the disabilities provided thereby for said offense, and such additional punishment as is or shall be provided by law.

Sec. 59. Any person who shall, directly or indirectly, offer, give, or promise any money, or thing of value, testimonial, privilege, or personal advantage to any executive or judicial officer, or member of the Legislature, to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law.

Sec. 60. The offense of corrupt solicitation of members of the Legislature, or of public officers of the State, or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment.

Sec. 61. Any person may be compelled to testify in any lawful investigation or judicial proceeding against any person who may be charged with having committed the offense of bribery, or corrupt solicitation, or practices of solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony; and any person convicted of either of the offenses aforesaid shall, as part of the punishment therefor, be disqualified from holding any office or position of honor, trust, or profit in this State.

Referred to the Committee on Legislative Department.

Mr. HALE. Mr. President: I move we do now adjourn until Monday, at ten o'clock.

Mr. WATERS. I move to amend the motion, that we do now adjourn until ten o'clock to-morrow morning.

The amendment was lost.

The motion to adjourn until Monday at ten o'clock was lost.

Mr. BARNES. I move that when the roll call is completed, and all the propositions have been submitted, that the Convention adjourn until Monday, at one o'clock.

The PRESIDENT. The motion is out of order. No business has intervened.

AMENDING THE RULES.

Mr. CAMPBELL gave the following notice:

Notice is hereby given that, on to-morrow, or as soon thereafter as I can with reference to the order of business, I shall move to amend the sixtieth rule, by striking out the words "except rules fifty, fifty-one, fifty-two, fifty-three, and fifty-five;" also I shall move to repeal rule seventy-one.

ALEXANDER CAMPBELL.

Mr. BARTON. Mr. President: I gave notice yesterday of a motion to amend standing rule number two, as follows:

Resolved, That rule two, relating to recess, be amended so as to extend the time from twelve o'clock M. to two o'clock P. M.

Mr. SWING. Mr. President: I move we now adjourn.

Lost.

The PRESIDENT. The question now is on the resolution offered by Mr. Barton.

The resolution was adopted. and the rule amended accordingly.

MOTIONS TO ADJOURN.

Mr. BARBOUR. Mr. President: I move now that this Convention do now take a recess for three days.

Mr. WATERS. I move to amend, that the Convention do now adjourn until ten o'clock to-morrow morning.

The amendment was rejected.

The PRESIDENT. The question is now on the motion of the gentleman from San Francisco, Mr. Barbour, to take a recess for three days.

The ayes and noes were demanded by Messrs. Barbour, Waters, and White.

The roll was called, and the motion was lost by the following vote:

AYES.

Barbour,	Hale,	Reddy,
Barnes,	Hall,	Reed,
Beerstecher,	Heiskell,	Reynolds,
Belcher,	Herold,	Rhodes,
Bell,	Hitchcock,	Ringgold,
Berry,	Hughey,	Schell,
Blackmer,	Inman,	Schomp,
Campbell,	Johnson,	Smith, of 4th District,
Chapman,	Kelley,	Stedman,
Charles,	Kenny,	Steele,
Cowden,	Lampson,	Stuart,
Dean,	Lewis,	Terry,
Dudley, of San Joaquin,	Lindow,	Thompson,
Eagon,	Mansfield,	Townsend,
Edgerton,	McCallum,	Turner,
Estey,	Mills,	Van Dyke,
Farrell,	Nason,	Van Voorhies,
Garvey,	Nelson,	Walker, of Marin,
Glascock,	Noel,	Weller,
Graves,	Overton,	Wellin,
Gregg,	Porter,	Winans,
Hager,	Pulliam,	Mr. President—66.

NOES.

Andrews,	Freud,	Neunaber,
Ayers,	Gorman,	Ohleyer,
Barry,	Grace,	O'Sullivan,
Barton,	Harrison,	Rolfe,
Biggs,	Harvey,	Shoemaker,
Boucher,	Herrington,	Shurtleff,
Brown,	Hilborn,	Smith, of San Francisco,
Burt,	Howard,	Soule,
Caples,	Huestis,	Stevenson,
Condon,	Hunter,	Strong,
Cross,	Joyce,	Swenson,
Crouch,	Keyes,	Swing,
Davis,	Kleine,	Tully,
Dowling,	Laine,	Tuttle,
Doyle,	Larue,	Vacquerel,
Dudley, of Solano,	Lavigne,	Waters,
Dunlap,	Martin, of Santa Cruz,	Webster,
Evey,	McComas,	West,
Fawcett,	McConnell,	Wickes,
Filcher,	Moffat,	White,
Finney,	Moreland,	Wilson, of Tehama,
Freeman,	Morse,	Wyatt—66.

Mr. SHOEMAKER. I move to adjourn until to-morrow.

Mr. REYNOLDS. I appeal to the good sense of the members of this Convention.

The PRESIDENT. The motion is not debatable. The gentleman is out of order.

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The ayes and noes were demanded by Messrs. Waters, White, and Vacquerel.

The roll was called, and the motion to adjourn until to-morrow was lost, by the following vote:

AYES.

Andrews,	Gorman,	Ohleyer,
Ayers,	Grace,	O'Sullivan,
Barbour,	Harrison,	Rolfe,
Barry,	Harvey,	Shoemaker,
Barton,	Herold,	Shurtleff,
Blackmer,	Herrington,	Smith, of San Francisco,
Boucher,	Hilborn,	Soule,
Brown,	Howard,	Stevenson,
Burt,	Hunter,	Stuart,
Campbell,	Kleine,	Swenson,
Caples,	Laine,	Swing,
Chapman,	Larkin,	Townsend,
Charles,	Larue,	Tully,
Cross,	Lavigne,	Vacquerel,
Dowling,	Martin, of Santa Cruz,	Van Dyke,
Dudley, of Solano,	McComas,	Van Voorhies,
Dunlap,	McConnell,	Waters,
Evey,	Moffat,	Webster,
Fawcett,	Moreland,	West,
Filcher,	Morse,	White,
Finney,	Nason,	Wilson, of Tehama,
Freud,	Neunaber,	Wyatt—65.

NOES.

Barnes,	Hale,	Pulliam,
Beerstecher,	Hall,	Reddy,
Belcher,	Heiskell,	Reed,
Bell,	Hitchcock,	Reynolds,
Biggs,	Heustis,	Rhodes,
Boggs,	Hughey,	Ringgold,
Condon,	Inman,	Schell,
Cowden,	Johnson,	Schomp,
Crouch,	Joyce,	Smith, of 4th District,
Davis,	Kelley,	Stedman,
Dean,	Kenny,	Steele,
Doyle,	Keyes,	Strong,
Dudley, of San Joaquin,	Lampson,	Terry,
Eagon,	Lewis,	Thompson,
Edgerton,	Lindow,	Turner,
Estey,	Mansfield,	Tuttle,
Farrell,	McCallum,	Walker, of Marin,
Freeman,	McNutt,	Weller,
Garvey,	Mills,	Wellin,
Glascock,	Nelson,	Wickes,
Graves,	Noel,	Winans,
Gregg,	Overton,	Mr. President—68.
Hager,	Porter,	

MR. EDGERTON. I move we do now adjourn until next Monday at one o'clock.

MR. WHITE. I move to amend by making it to-morrow morning at nine o'clock.

MR. EDGERTON. Mr. President: The motion to adjourn to a day certain, is debatable. Now, sir, there is a vast mass of matter sent up to the desk relating to the Constitution, and it has gone to the printer. It will not be back here for three or four days, and what there is for this Convention to do between this and the proposed day of adjournment, I do not see. We are occupying our time with these frivolous matters, and there is no business before the Convention.

MR. BEERSTECHER. Mr. President: I desire to state why I support this motion. It is upon the ground that there is no business at all for this Convention to do between this time and Monday. There is such a vast amount of matter now in the hands of the printer that it is impossible for him to get it out and place it on our desks before Monday. It is just as well to adjourn now and give the members an opportunity to draw up what amendments and resolutions they may desire to introduce next week. It will expedite business to adjourn, and I am in favor of adjourning.

MR. WHITE. Mr. Chairman: I desire to state the reasons why I oppose this adjournment. We are establishing a precedent for all time if we adopt this proposition. If we adjourn we will lose two days, because the business done here to-morrow will have to be done on Tuesday, and the amount of matter on the desk amounts to nothing, because all these propositions in the hands of gentlemen will have to come in, and they might as well come in now as any time. We had better occupy to-morrow and the day after in doing this, and if some men want to go away, the Convention will grant them the privilege of doing so, but let the Convention go on with its work.

MR. BARNES. Mr. President: In support of this motion to adjourn, I call the attention of the members of the Convention to the fact that many of the propositions coming in to-day are duplicate, and in many instances quadruplicate, all embodying the same idea, and many of them, for what reason I do not know, are simply copies of articles in the Constitution as it stands to-day. You will all remember that every one of these propositions has to go to the printer. The expenses of this printing comes out of the appropriation for this Convention, as I understand it—I believe the Board of Examiners have so decided. Now, as a matter of economy, I appeal to gentlemen if it is not better to stop this flood of matter until we have what has already been introduced printed and laid on our desks. If we meet to-morrow, gentlemen will continue to present propositions, whereas, if we wait until Monday it will be found that the same matter has been embodied in a dozen different propositions. I think we should adjourn. The committees cannot act—nobody can act. It may not come up to the high standard of industry raised by the gentleman from Santa Cruz, Mr. White, who is an active, industrious man, but I think we had better adjourn until Monday, so as to know what we are doing.

MR. MCCALLUM. Mr. President: I have uniformly, until now, voted against these motions to adjourn over; but I shall vote in favor of it now, because I am satisfied that economy, as well as expedition of business, demands it. I don't know whether the form of the motion is to adjourn until Monday, or whether it is in proper form or not. I suggest that the other is the proper form in which to put it, because we shall take the sense of this Convention as to rule seventy-one, as to its suspension as to printing. I say, upon a computation, that the printing in the last two days will amount to two thousand dollars. All this stuff is going to the printer. Now, gentlemen can stay here and work in committee. It is no loss of time, it is a saving of time; and, besides, I say that we should try and see if we cannot get at the business of this Convention in a more expeditious manner than now. Yesterday it was said that that vast mass of resolutions would be the principal part. Why, it was nothing in comparison with to-day. I had an amendment and didn't present it because there was so many. I shall vote for adjournment, upon the two grounds of economy and expedition of business.

MR. BARBOUR. Mr. President: I wish to explain the principal reasons why I shall vote for this adjournment. Like the gentleman from Alameda, Mr. McCallum, I have been opposed to adjourning when in my judgment there was anything to do here. We have reached a point now when it is fair all round, two to each man, having called the roll twice, and each member being allowed to present four propositions, and I say we should pause now. It is not economy now to flood us with any more propositions until we ascertain where we stand and what we are doing. I say, as to actual economy, it is our duty to adjourn now, unless we have some reasonable prospect that there will be no more propositions introduced until the printer has printed those already presented. I think some gentlemen who are opposing this adjournment are piling up expense against this State, by asking that all this stuff be printed. We are entitled to some consideration when we say we want to examine that before anything more is done. It is not time wasted. It is economy to the treasury of this State. We are now in a condition to extract the wheat out of the chaff. We should not pile up any more chaff.

MR. WATERS. Mr. President: Now these gentlemen are all talking over the economy of this adjournment—that it is such a very economical thing. It is a very economical thing, leaving two days work that you can do to-morrow to be done next week. It is a very economical thing for half the members of this Convention, who happen to live in and around San Francisco, to go home for two days. It is not a very economical thing for those delegates who live outside, who will have to hang around and walk the streets like stray dogs, waiting for these gentlemen who have gone home. It is very economical, drawing ten dollars a day or four thousand five hundred dollars for the adjournment; very economical indeed. Now we know there are two questions that might as well be considered to-morrow, that will occupy one or more days next week. Members know that this question of electing reporters is going to come up again, and we will have to decide one way or the other. It is very important that this matter should be decided as soon as possible. I am in favor of reporting the proceedings, but whichever way it is to be decided, it should be settled at once. There is another question that will occupy half a day or a whole day next week, and that is the question of committee clerks, about which I understand there is to be a controversy on this floor. Those questions do not depend upon this question of printing the propositions, and I really think that this adjournment will entail upon this State a loss of four thousand five hundred dollars or more, and in view of the fact that the one hundred days allotted to us is short enough time to complete our work, I am opposed to throwing away two or three days this week, and one day next week, or frittering away the time in any such way. Where is the economy, I ask? Even if we are to be delayed with these propositions again, how much expense will that be to the State? If these gentlemen have these propositions in their hands, adjourning over won't cure it; they will introduce them next week when we meet, just the same, and they will have to be printed, and it will cost no more to print them one time than another. It is the business of this Convention to receive and consider proposed amendments to the Constitution. That is what we are here for. Now, let us look this matter fairly in the face. An adjournment for three days will cost this State four thousand five hundred dollars. We are to draw this money, and I say let us stay here and earn it.

MR. BARBOUR. I have but one word to say. Members have no right to impugn motives to other members. I don't know how the gentleman will occupy himself, but he has no right to assume that I will occupy myself in any other way. When we tried to save ten thousand dollars to the people of this State by making the absentees pay, the gentleman from San Bernardino rises in his seat and urges a technical point of order, and prevents us from making the absentees take their hands out of the treasury. I say he is not in a position to impugn our motives.

MR. CAPLES. Mr. President: There would be great force in the proposition of the gentleman from Alameda, that this vast mass of matter is accumulating here at an enormous expense, if the Convention should rescind the order and stop the flow of propositions. It is entirely competent for this Convention to rescind that rule. Let us go on to-morrow and do all the business instead of laying it over until next week. I am free to admit that if it was not in the power of the Convention to rescind the rule, I would vote to adjourn over until next week, as I see, and every member sees, that this matter is accumulating too fast. I submit to gentlemen that the rule may be rescinded.

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Mr. ANDREWS. It seems to me, Mr. President, that we can certainly do this. The Chairmen of the different committees can call their committees together and have the committees organized. If it is postponed until Monday there will be no organization at that time, and it looks to me to be preposterous to say that this Convention, organized for the purpose of framing a Constitution for the people, can do nothing for two days. It looks to me to be singular that they can do nothing for two days. We can organize the committees, and if we wait until next Monday there will be no organization of committees at that time, until the middle of the week.

Mr. DUDLEY, of Solano. Mr. President: One word. There has been a mass of this matter introduced here, but if we stay here we can rescind this rule and have these propositions sent to the committees, where they can be assorted by the committees, and those worthy to be printed can be printed.

Mr. TULLY. We are going over the same arguments that were offered last Thursday. The same gentlemen argued then, and urged that it would be a matter of economy. It is strange that it is a matter of economy every Thursday afternoon to adjourn till Monday. I think to-morrow can be put in profitably. This reporter business has got to be disposed of. The clerkships have got to be disposed of. And I understand that the gentleman from Alameda is going to suspend the rule, or try to, by which the gentleman from Santa Clara will be allowed to introduce his whole Constitution. If it don't come up to-morrow, it will have to come up on Monday, and be disposed of in some sort of way. I think it is better to stay here and dispose of these subjects. It is not necessary that we should continue to receive this heavy stream of propositions; it is in the power of the Convention to cut them off. I, for one, think we can find profitable employment for to-morrow and next day. If these gentlemen are so anxious to go home, let them ask leave of absence, and I think the Convention will grant it.

Mr. O'SULLIVAN. Mr. President: I am opposed to adjourning for more than twenty-four hours. I came here to serve the people, in the interests of the people of the State of California, and of the City and County of San Francisco, and I intend to work for my ten dollars a day. If gentlemen are so economical, I am sorry to see them throwing out hints about the accumulation of printing, because I think that is the smallest item of expense. That money goes to the support of labor, and I am sorry to see them throwing out hints. There are other holes that money will go to. They don't look to the employment of two or three useless Doorkeepers here.

Mr. CROSS. Mr. President: We have no right to waste two days. There is a great deal of work to be done in the one hundred days. If this adjournment takes place, fifteen days of the session will have gone. We should stay in a body and attend to the work. There are two kinds of economy; economy of work, and economy of money. I think this economy is economy of work.

Mr. LAINE. Mr. President: I desire to call the attention of the Convention to one or two matters. It seems to me we should not adjourn, and I do not desire to criticise anything that has been introduced. There are many propositions in the hands of members in relation to the Constitution, and the quicker they are introduced, the better for the State and the better for us. To-morrow they can all be put in, and then we will have the matter ready, and can go to work, and we never can do anything until they are exhausted. There has been no meeting of the committees, and I desire that the Convention shall not adjourn. The law provides that we shall not adjourn longer than three days. This is three full days and part of the fourth.

The PRESIDENT. The question is on the motion of the gentleman from Santa Cruz, Mr. White, to adjourn until to-morrow, at ten o'clock.

The ayes and noes were demanded by the requisite number.

The roll was called, and the motion prevailed by the following vote, at four o'clock and fifty minutes P. M.:

AYES.

Andrews,	Gorman,	Ohleyer,
Ayers,	Grace,	O'Sullivan,
Barry,	Graves,	Reddy,
Barton,	Harrison,	Rolfe,
Bell,	Harvey,	Schell,
Blackmer,	Herrington,	Schomp,
Boucher,	Hilborn,	Shoemaker,
Brown,	Howard,	Shurtleff,
Burt,	Huestis,	Smith, of San Francisco,
Caples,	Hunter,	Soule,
Chapman,	Inman,	Stevenson,
Charles,	Joyce,	Strong,
Condon,	Keyes,	Stuart,
Cross,	Kleine,	Swenson,
Crouch,	Laine,	Swing,
Davis,	Larkin,	Tully,
Dowling,	Larue,	Tuttle,
Doyle,	Lavigne,	Vacquerel,
Dudley, of Solano,	Mansfield,	Van Dyke,
Dunlap,	Martin, of Santa Cruz,	Waters,
Evey,	McComas,	Webster,
Farrell,	McConnell,	Wellin,
Fawcett,	Moffat,	West,
Filcher,	Moreland,	Wickes,
Finney,	Morse,	White,
Freeman,	Nason,	Wilson, of Tehama,
Freud,	Neunaber,	Wyatt—81.

NOES.

Barbour,	Beerstecher,	Berry,
Barnes,	Belcher,	Biggs,
Boggs,	Hughey,	Reed,
Campbell,	Johnson,	Reynolds,
Cowden,	Kelley,	Rhodes,
Dean,	Kenny,	Ringgold,
Eagon,	Lampson,	Smith, of 4th District,
Edgerton,	Lewis,	Stedman,
Estey,	Lindow,	Steele,
Garvey,	McCallum,	Terry,
Glascock,	McNutt,	Thompson,
Gregg,	Mills,	Turner,
Hager,	Nelson,	Van Voorhies,
Hale,	Noel,	Walker, of Marin,
Hall,	Overton,	Weller,
Heiskell,	Porter,	Winans,
Herold,	Pulliam,	Mr. President—52.
Hitchcock,		

FOURTEENTH DAY.

Sacramento, Friday, October 11th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Gregg,	Ohleyer,
Ayers,	Hager,	O'Sullivan,
Barbour,	Hale,	Overton,
Barnes,	Hall,	Porter,
Barry,	Harrison,	Pulliam,
Barton,	Harvey,	Reddy,
Beerstecher,	Heiskell,	Reed,
Belcher,	Herold,	Reynolds,
Bell,	Herrington,	Rhodes,
Berry,	Hilborn,	Ringgold,
Biggs,	Hitchcock,	Rolfe,
Blackmer,	Holmes,	Schomp,
Boggs,	Howard,	Shoemaker,
Boucher,	Huestis,	Shurtleff,
Brown,	Hughey,	Smith, of 4th District,
Burt,	Hunter,	Smith, of San Francisco,
Campbell,	Inman,	Soule,
Caples,	Johnson,	Stedman,
Chapman,	Joyce,	Steele,
Charles,	Kelley,	Stevenson,
Condon,	Kenny,	Strong,
Cowden,	Keyes,	Stuart,
Cross,	Kleine,	Sweasey,
Crouch,	Laine,	Swenson,
Davis,	Lampson,	Swing,
Dean,	Larkin,	Terry,
Dowling,	Larue,	Thompson,
Doyle,	Lavigne,	Townsend,
Dudley, of Solano,	Lewis,	Tully,
Dunlap,	Lindow,	Turner,
Eagon,	Mansfield,	Tuttle,
Edgerton,	Martin, of Alameda,	Vacquerel,
Estey,	Martin, of Santa Cruz,	Van Dyke,
Evey,	McCallum,	Van Voorhies,
Farrell,	McComas,	Walker, of Marin,
Fawcett,	McConnell,	Waters,
Filcher,	McCoy,	Webster,
Finney,	Moffat,	Wellin,
Freeman,	Moreland,	West,
Freud,	Morse,	Wickes,
Garvey,	Nason,	White,
Glascock,	Nelson,	Wilson, of Tehama,
Gorman,	Neunaber,	Wyatt,
Grace,	Noel,	Mr. President.
Graves,		

ABSENT.

Casserly,	Mills,	Smith, of Santa Clara,
Dudley, of San Joaquin,	Murphy,	Tinnin,
Estee,	O'Donnell,	Walker, of Tuolumne,
Jones,	Prouty,	Weller,
McFarland,	Schell,	Wilson, of 1st District,
McNutt,	Shafter,	Winans.
Miller,		

LEAVE OF ABSENCE.

Leave of absence for two days was granted to Messrs. McFarland, Schell, Dudley, of San Joaquin, Tinnin, and Miller. Leave of absence for three days was granted to Messrs. Miller and Smith of Santa Clara. Leave of absence for one day was granted to Mr. Jones.

The reading of the Journal was dispensed with.

Mr. BARBOUR asked to have corrected the statement in the Journal in regard to the resolution he presented yesterday. The resolution was to memorialize the President of the United States, not Congress.

MILEAGE.

Mr. HILBORN. I ask the indulgence of the Convention to make a motion. The motion is to take up the report of the Committee on Mileage, which was laid on the table yesterday. It has been printed, and is now on the desks of members, and any errors can be easily corrected. I make the motion in order that it may go to the Controller. I move that the report be taken from the table for consideration.

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There being no objection, it was so ordered.

MR. HILBORN. I move that the report be adopted.

MR. ROLFE. I call the attention of the Convention to one error. The report credits me with twelve hundred miles travel, when it should be eleven hundred and seventy-six. I ask that the amount due be reduced from one hundred and eighty dollars to one hundred and seventy-six dollars and forty cents.

The correction was made without objection.

MR. HILBORN also had corrected the mileage of Mr. Tully, reducing it from fifty-three dollars to thirty-eight dollars and forty cents.

The report was adopted.

MR. HILBORN offered the following resolution:

Resolved, That the Controller of State be authorized and directed to draw his warrant, payable out of the appropriation for the expenses of this Convention, in favor of the parties named, and for the amounts set opposite their names, in that report.

Adopted.

LEAVE OF ABSENCE.

MR. EDGERTON introduced the following resolution, out of order:

Resolved, That E. L. Crawford, Minute Clerk, be and he is hereby granted leave of absence on the 14th, 15th and 16th of the present month; provided that he leaves some competent person to attend to the duties of his office, without further expense to the State.

MR. EDGERTON. I would state that Mr. Crawford is under a subpœna to attend a case in El Dorado County.

The resolution was adopted.

PETITION.

MR. BLACKMER presented the following petition from A. W. Allen and several hundred other citizens of San Francisco:

To the Constitutional Convention in Sacramento, California, assembled;
The undersigned citizens of California, respectfully petition your honorable body to so amend the Constitution that no citizen of the State shall be disfranchised on account of sex.

Referred to the Committee on Right of Suffrage.

PRINTING OF PROPOSITIONS.

MR. CAMPBELL. I move to suspend the rules, for the purpose of introducing a resolution to abolish rule seventy-one, which is as follows:

"Four hundred and eighty copies of each proposition or resolution embodying matter proposed to be introduced into the Constitution, shall be printed."

MR. MCCALLUM. I understand that Mr. Campbell gave notice on yesterday that he would make this motion. It is therefore not necessary to suspend the rules.

THE PRESIDENT. It does not come up under this order of business.

MR. ROLFE. I understand this motion is to suspend the rules.

THE PRESIDENT. Yes, in order that the gentleman may introduce his resolution.

The motion to suspend the rules was lost, on a standing vote: ayes, 54, noes, 60.

MR. BARBOUR. I move that the further consideration of the order, subdivision seven, be passed.

MR. LAINE. I object.

RESOLUTIONS AND PROPOSITIONS.

The roll was again called for the introduction of resolutions and proposed amendments to the Constitution.

FRONTAGE TO NAVIGABLE WATERS.

MR. AYERS introduced the following proposed amendment to the Constitution, regarding the frontages of navagable waters:

SECTION —. The right of eminent domain is hereby declared to exist in the State to all frontages on the navigable waters of this State.

SEC. —. No individual, partnership, or corporation, claiming or possessing the littoral frontage, or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable, and that the people shall not be shut out from the same.

Referred to Committee on Harbors, Tide Water, and Navigable Streams.

HOMESTEAD EXEMPTION.

MR. AYERS introduced the following proposed amendment to the Constitution, relative to homestead exemption from forced sale:

SECTION —. No homestead, which is assessed at a less value than $1,500 (one thousand five hundred dollars) in its entirety, shall be sold at forced sale for the recovery of the taxes levied thereon; but property, personal or real, other than that embraced in the homestead, and not otherwise exempt by law from seizure, shall be subject to forced sale for such homestead tax.

Referred to Committee on Land and Homestead Exemption.

MR. NOEL. I move to suspend further action under this head. I notice that very many of these propositions are alike, and I think a great deal of time will be saved to members, as well as a great deal of money, if this present order of business were passed for to-day, until the printer can furnish copies of those already before the Convention.

Lost.

JUSTICES OF THE PEACE.

MR. BARTON introduced the following proposed amendment to the Constitution, relative to the powers of Justices of the Peace:

Resolved, The Legislature shall have power to extend to Justices of the Peace jurisdiction in all civil actions to the amount of five hundred dollars, and all commitments from a Justice's Court for felonious crimes shall go direct to the District Court for a speedy trial.

Read, and referred to Committee on Judiciary and Judicial Department.

TAXATION.

MR. BARTON introduced the following proposed amendment to the Constitution, relative to taxation:

Resolved, Taxation shall be equal and uniform throughout the State; all property shall be taxed according to its real or asserted value, and the word property is hereby declared to include all moneys, bonds, mortgages, credits, stocks, dues, and franchises—everything having a private ownership, real, personal, and mixed, taxing all lands of equal capacity equally, taxing improvements separately.

Referred to Committee on Revenue and Taxation.

MR. VAN DYKE. I rise to a question of order. That last proposition does not conform with the rule which we have adopted. It is not in the shape of a section that can be used.

THE PRESIDENT. The point of order is not well taken.

RIGHT OF PEOPLE TO ASSEMBLE.

MR. BEERSTECHER introduced the following proposed amendment to the Constitution, relative to the right of people to assemble:

SECTION —. The right of the people to peaceably assemble for any except immoral purposes shall in nowise be abridged, nor shall there be any manner of hindrance, molestation, or interference in this right.

Referred to the Committee on Preamble and Bill of Rights.

JUDICIAL AND MORTGAGE SALES.

MR. BEERSTECHER introduced the following proposed amendment to the Constitution, relative to judicial and mortgage sales:

ARTICLE —.

SECTION —. In judicial or mortgage sales of land, or interest in land, there shall be no right of entry until one year after sale. The debtor shall have the right to redeem any time within two years after sale.

Referred to the Committee on Judiciary and Judicial Department.

MALFEASANCE IN OFFICE.

MR. BELL introduced the following proposed amendment to the Constitution, in reference to malfeasance in office, for incorporation in the article on legislative duties:

SECTION —. Malfeasance in public office shall be punished as a felony, and it shall be the duty of the Legislature to provide, by appropriate legislation, for the enforcement of this section.

Referred to the Committee on Legislative Department.

MR. LAINE. I move that hereafter the propositions be only read by title, and referred to the appropriate committees.

THE PRESIDENT. There being no objection, it is so ordered.

EDUCATION.

MR. BLACKMER introduced the following amendments to article nine of Constitution, relating to education:

Amend article nine by introducing the following sections, to wit:

SECTION —. A Superintendent of Public Instruction shall be elected by the qualified electors, at the time and places, in the same manner, and for the same term of office as the Governor. He shall receive a salary equal to that of the Secretary of State, and shall enter upon the duties of his office on the first day of December next after his election.

SEC. —. A County Superintendent of Schools, for each county in the State, shall be elected at the general election for Governor, by a vote of the qualified electors of each county, who shall hold office for four years, but the Legislature shall have power to consolidate two or more adjoining counties into one district of supervision.

SEC. —. The Legislature shall provide for a system of public schools, by which a free school shall be maintained for at least six months, in each school district, every year after the first year in which a school is established, and any school district neglecting to keep up and support such a school may be deprived of its proportion of the interest of the public fund during such neglect.

SEC. —. No public moneys shall ever be appropriated for the support, either directly or indirectly, of any religious sect or denomination whatever, nor for the support of any school not under the direct and entire control of public school officers.

Referred to Committee on Education.

RIGHT OF SUFFRAGE.

MR. BOGGS introduced the following proposed article two for a revised Constitution of the State of California, on the right of suffrage:

ARTICLE II.

RIGHT OF SUFFRAGE.

SECTION 1. Every male citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year next preceding the election, and of the county or district in which he claims his vote six months. After the first day of January, eighteen hundred and eighty, every person who was not a qualified elector prior to that time shall, in addition to the other qualifications required, be able to read and write the English language in order to become an elector, unless his inability to read and write be the result of physical disability.

SEC. 2. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the day of election, during their attendance at such election, going to and returning therefrom.

SEC. 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

SEC. 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while

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employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas; nor while a student at any seminary of learning; nor while kept at any almshouse, or other asylum, at public expense; nor while confined in any public prison.

SEC. 5. No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector.

SEC. 6. All elections by the people shall be by ballot; every ballot voted shall be numbered, and the number recorded by the election officers on the lists of voters, opposite the name of the voter who presents the ballot. The election officers shall be sworn or affirmed not to disclose how any elector shall have voted, unless required to do so in a judicial proceeding. In all cases of contested elections, the ballots cast may be counted, compared with the lists of voters, and examined under such safeguards and regulations as may be prescribed by law.

Referred to Committee on Right of Suffrage.

REVENUE AND TAXATION.

MR. CAPLES introduced the following proposed amendment to the Constitution, on revenue and taxation:

ARTICLE —.

SECTION —. A license tax of not less than one tenth of one percentum shall be imposed upon all sales of capital stock of corporations and joint stock associations whose stock shall have been listed at the stock board.

Referred to Committee on Revenue and Taxation.

BILL OF RIGHTS.

MR. CAPLES offered the following proposed amendment to section eight, article one, of the present Constitution:

Add after "compensation" in eleventh line, "having been first made or secured, except in cases of war, not fire or great public peril, in which case compensation shall be afterwards made."

Amendment to section seventeen, article one: Add after "who are," in first line, "entitled under the laws of the United States to become citizens thereof."

Referred to Committee on Preamble and Bill of Rights.

JUDICIAL OFFICERS.

MR. CROSS introduced the following proposed amendment to section thirteen, of article six:

Resolved, That said section be amended so as to read as follows:

No judicial officer, or Clerk of any Court of record, or any executive officer of any Court, shall charge or receive any fees for performing any duty pertaining to his office.

Referred to Committee on Judiciary and Judicial Department.

MR. LINDOW. I object to the suspension of the reading.

SPEEDY JUDGMENTS.

MR. DOWLING introduced the following proposed amendment to the Constitution, relative to speedy judgments in civil cases:

ARTICLE —.

Judgment in all civil cases shall be rendered within thirty days from the day that said case or cases shall have been placed on the Court calendar, except by the mutual consent of both the plaintiff and defendant that the case or cases may go over to some future day.

Referred to Committee on Judiciary and Judicial Department.

STATE TO BUILD RAILROADS.

MR. DOWLING introduced the following proposed amendment to the Constitution, authorizing the State to build and own railroads:

ARTICLE —.

SECTION —. No charter or franchise of any kind, no right of eminent domain, shall ever be granted to any citizen or citizens, individually or collectively, of this State or any other, for the construction of any railroad, wagon road, or any public highway of trade and travel, other than municipal, in this State.

SEC. —. In the event of circumstances necessitating the construction of such highways, the State alone shall, by virtue of its sovereign authority, authorize the construction of said highways.

SEC. —. Said highways shall belong to the State, and remain forever under its direct control.

SEC. —. The Legislature alone shall have power to order the construction of said highways, given under the great seal of the State, signed by the Governor, the Secretary of State, and Surveyor-General.

SEC. —. The Legislature shall have power to issue State warrants, bonds, or scrip, for the faithful performance of the ——, redeemable in five, ten, fifteen, or twenty years; *provided, however*, that all such warrants, bonds, and scrip, must be issued in the name of the holder, and to none but qualified citizens of the United States.

SEC. —. The rate of interest to be paid by the State on such warrants, bonds, or scrip, shall not exceed six per cent. per annum.

SEC. —. The Legislature shall provide that none but competent engineers and superintendents, under the direction of the Surveyor-General, shall have charge of the work.

SEC. —. The Legislature shall have power to condemn private property, and exercise the right of eminent domain, for the execution and construction of such highways, providing that the rights and privileges of private property shall be respected, and the lawful owner thereof equitably compensated.

SEC. —. A sinking fund shall be created for the payment of the indebtedness incurred in the building, constructing, and equipping the said highway.

Referred to Committee on Corporations other than Municipal.

MINING STOCKS.

MR. EAGON introduced the following proposed amendment to the Constitution, concerning mining stocks and stock brokers:

Mr. President: I propose that the following be made a part of the Constitution of this State:

No corporation, board of trustees or directors, board of brokers, broker, individual, firm, or company shall deal, barter, or trade in or assign any certificate of stock of any mining corporation or company for a less sum of money than the face value of such certificate. No mining corporation shall increase or diminish its capital stock after the adoption of this Constitution. The Legislature shall enact a law making any violation of this provision a felony.

Referred to Committee on Corporations other than Municipal.

ACTS OF THE LEGISLATURE.

MR. EDGERTON introduced the following proposed amendment to the Constitution, relating to the Legislative Department:

Resolved, That the following provisions be adopted in that article of the Constitution which relates to the Legislative Department:

SECTION 1. Every law enacted by the Legislature shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title; but if any subject shall be embraced in a law which shall not be expressed in the title, such law shall be void only as to so much thereof as shall not be expressed in the title. No law shall be revised or amended by reference to its title; but in such case the law revised or section amended shall be reënacted and published at length.

Read and referred to Committee on Legislative Department.

JUDICIAL SYSTEM.

MR. EDGERTON introduced the following proposed amendment, concerning the Judicial Department:

Resolved, That the following provisions be adopted in that article of the Constitution which relates to the Judicial Department—

JUDICIAL DEPARTMENT.

SECTION 1. The judicial powers of the State shall be vested in one Supreme Court, three Courts of Appeal, County Courts, Justices of the Peace, and such Police Courts for cities and towns as may be created by the Legislature, with such inferior jurisdiction as the Legislature may confer upon them.

SEC. 2. The Supreme Court shall consist of nine Associate Justices, seven of whom shall constitute a quorum, and shall have appellate jurisdiction from the three Courts of Appeal, in the following cases:

First—In cases where a construction of the Federal or State Constitution is in dispute.

Second—In cases where one of the Justices of the Court of Appeals dissents from the decision of the majority, and gives a written opinion showing the reasons of his dissent.

Third—In cases where either Court of Appeals overrules a prior decision of the highest Court of the State not previously overruled by the same Court.

Fourth—In cases where one of the Courts of Appeal decide a principle contrary to the decision of one of the other Courts of Appeal.

The concurrence of five of the Justices shall be necessary to render a decision.

SEC. 3. The State shall be divided by the Legislature into three appellate districts, each of which shall have one Court of Appeals, which shall be held by three of the Justices of the Supreme Court. The Court of Appeals shall have appellate jurisdiction in all cases arising in the County Courts for the counties within the respective appellate districts; but cases may be transferred from one Court of Appeals to either of the others whenever it may be deemed proper by a majority of the Justices of the Court, or by virtue of such further regulations as the Legislature may prescribe, or by the consent and written stipulation of the parties to the cause, through their respective attorneys at law.

SEC. 4. There shall be one County Court for each county in the State, and as many more as may be necessary in those counties where the business requires greater judicial force; and each Court shall be held by one Justice.

SEC. 5. The County Court shall have original jurisdiction in all cases arising in law, equity, and probate; in all special cases; and in all criminal cases, excepting where money or property is in controversy and the amount is less in value than three hundred dollars, without interest; and excepting, also, in such cases of misdemeanor as the Legislature may direct to be tried and punished before Justices of the Peace or inferior Courts of cities and towns. The County Courts shall also have appellate jurisdiction from Justices of the Peace, and the inferior Courts of cities and towns, in such cases as the Legislature may prescribe.

SEC. 6. There shall be no terms of the County Courts, but the Courts shall always be open for the transaction of business, excepting on days established by law as non-judicial, and during such vacations as the Legislature may see proper to grant.

SEC. 7. The jurisdictional power of the Justices of the County Courts shall be co-extensive with the State, and they may freely interchange with one another in the performance of their duties. In cases of sickness, absence, or other incapacity of a Justice of the County Court, his Court may be held by any other Justice of a County Court.

SEC. 8. The Supreme Court, the Courts of Appeal, the County Courts, and each of the Justices of all of said Courts, shall have power to issue writs of habeas corpus, injunction, ne exeat, mandamus, quo warranto, certiorari, and all other writs and process which may be necessary in aid of the jurisdiction of the respective Courts; and whenever the apparent justice of a complaint or petition ought to have a remedy administered, and none of the writs heretofore in use affords the proper remedy, it

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shall be the duty of the Court or Justice having jurisdiction to frame a writ which will meet the necessities of the case.

SEC. 9. Each county shall have as many Justices of the Peace as the Legislature may prescribe. Their jurisdiction shall extend to all cases where the matter in controversy does not exceed three hundred dollars, without interest, and to such cases of misdemeanor and special cases as shall be fixed by law.

SEC. 10. The right of trial by jury shall be inviolate in all cases of felony, in such cases of misdemeanor as the Legislature may determine, in all civil actions sounding in tort, and in all cases arising from breach of contract where punitory or exemplary damages are sought to be recovered. But the Legislature shall have power to fix and determine the character and qualification of jurors, the number which may constitute a jury, and the number whose concurrence shall be necessary to render a verdict.

SEC. 11. In counties where there is more than one County Court, the Legislature may prescribe to any one or more of said Courts a preference calendar for any particular class of cases.

SEC. 12. The style of all process shall be: "The people of the State of California."

ELECTION OF JUDGES.

SEC. 13. Justices of the Supreme Court shall be elected by the qualified electors of the State at large, and Justices of the County Courts shall be elected by the qualified electors of the respective counties in which they are to serve, subject, however, in both cases, to the following regulations:

First—For each Justice of the Supreme Court or County Court to be elected, the Governor of the State shall nominate to the two houses of the Legislature the names of two fit and proper persons, who shall be known as judicial proponents.

Second—Each house shall refer the nominations so made to its Judiciary Committee, who shall investigate and report as to the qualifications and fitness of the persons so nominated, whereupon each house shall by ballot vote either to confirm or reject either or all of the proponents.

Third—In case of rejection of a proponent by either house, the Governor shall make another nomination.

Fourth—When the nomination of two proponents shall be confirmed by the two houses of the Legislature, the two proponents so confirmed shall be the candidates for election, and the only qualified candidates for election before the qualified electors entitled to vote for the Justice to be supplied; and the one receiving a majority or plurality of the votes cast to fill the office shall be declared to be elected, and shall be commissioned in due form under the great seal of the State.

Fifth—Where more than one Justice of the Supreme Court, or more than one Justice of the County Court for the same county are to be elected at the same time, the nominations to be made by the Governor shall be twice the number to be elected, without any other designation, direction, or qualification.

SEC. 14. The Justices of the Supreme Court shall hold office during good behavior. The Justices of the County Courts shall hold office for six years from the first day of January after election.

SEC. 15. The Justices of the Supreme Court and County Courts shall not be eligible to hold any other office.

SEC. 16. Immediately after the first election and qualification of the Justices of the Supreme Court, under this Constitution, the Governor of the State shall assign three of said Justices to each of the appellate districts to serve as Justices of the Court of Appeals, but the Justices of the Courts of Appeal shall be permitted to interchange with each other for temporary service whenever they may deem it proper to do so.

SEC. 17. The Supreme Court and the three Courts of Appeal shall meet and hold Court for the transaction of business at such times and places as the Legislature may direct.

SEC. 18. In cases of vacancy by death, absence, resignation, or removal from office, if of a Justice of the County Court, the Governor shall fill the vacancy for the remainder of the existing term; if of a Justice of the Supreme Court, until the first day of January after the next general election succeeding the next meeting of the Legislature after the vacancy occurs.

IMPEACHMENT OF JUDGES.

SEC. 19. Justices of the Supreme Court, of the Courts of Appeal, and of the County Court, may be impeached and removed from office for the following causes:

First—For bribery, partiality, or other corrupt conduct.

Second—For habitual drunkenness.

Third—For ignorance or incompetency.

Fourth—For general or frequent neglect of duty, or unnecessary delays in trying or deciding causes.

Fifth—For any conduct unbecoming a Justice or a gentleman.

SEC. 20. The method of impeaching a Justice shall be by presenting a complaint, containing specific charges, and duly verified by the oaths of two reputable persons, to the Governor of the State.

The complaint shall also contain the names of witnesses who can prove the charges. If the charges are actionable, the Governor shall, in writing, direct the Attorney-General to have a copy of the complaint served upon the accused Justice, and shall, at the same time, constitute a special Court, to be composed of nine members of the bar, to be selected by him, before whom the accused shall be tried, and shall appoint a time and place of trial; *provided*, that when a Justice of the County Court is the accused, the place of trial shall not be in the county where he presides; and when the accused is a Justice of the Supreme Court, or Court of Appeals, the trial shall take place either at the seat of government, or in the City of San Francisco.

The Attorney-General, and such other counsel as he may associate with himself, shall prosecute on behalf of the people. The accused shall have the right to plead, answer, or demur to the complaint, and to be represented by counsel, and shall have all the rights which are usual in the progress of the trial at criminal cases.

He shall also have the right to object to any member of the Court on the ground of personal animosity, ill-feeling, prejudice, or the previous formation and expression of an opinion adverse to the accused; and when such objection is allowed by the majority of the Court, and in any case where, from any proper reason, either or any of the persons constituting the Court are unable to serve, the Governor shall fill such vacancies by the appointment of other members of the bar.

A majority of two thirds of the Court shall be necessary to render a judgment of guilty against the accused Justice.

The proceedings of the Court, together with the pleadings, evidence, and the judgment of the Court, shall be sent to the Governor of the State; and when the judgment is against the accused, it shall be the duty of the Governor to make an order removing the Justice from his office.

The Legislature shall have power to prescribe such additional forms of procedure as may be necessary in such cases.

SEC. 21. The Legislature shall provide for the trial and removal from office of Justices of the Peace by information before the County Courts, for any of the causes prescribed for the impeachment of Justices of the County Courts, and for such other causes as it may deem proper.

Referred to the Committee on Judiciary and Judicial Department.

MR. EDGERTON. I desire to say, in reference to that resolution, that it is not mine, but one prepared by Hon. Solomon Heydenfeldt.

SALARIES OF SUPREME JUSTICES.

MR. EVEY introduced the following proposed amendment to the Constitution, fixing the salaries of the Judges of the Supreme Court and of the District Courts of this State:

The Judges of the Supreme Court shall be allowed a salary of four thousand dollars each per annum, and no more. The Judges of the District Courts shall be allowed a salary of three thousand dollars each per annum, and no more. The Judicial Districts shall contain, as near as possible, one hundred thousand inhabitants.

Referred to the Committee on Judiciary and Judicial Department.

RIGHT OF SUFFRAGE.

MR. FARRELL introduced the following proposition for incorporation in the proposed new Constitution, in relation to elective franchise:

SECTION —. The Legislature shall have power to exclude from the privilege of voting, or being eligible to office, any person convicted of bribery, perjury, or other infamous crime, and no pardon by the Governor shall restore the right of suffrage for holding office to any one convicted of the corrupt use of receiving of money for the purpose of controlling any election, or obtaining any office of profit or trust under the Constitution of this State or the United States.

Referred to the Committee on Right of Suffrage.

REVENUE AND TAXATION.

MR. FARRELL introduced the following proposition for incorporation in the proposed new Constitution, in relation to poll tax:

SECTION —. The levying of taxes by the poll, and the requiring of personal service to the State or public, is grievous and oppressive; therefore, no law or ordinance shall be made levying a poll tax or requiring personal service, except upon military or other public necessity, found and declared to exist in pursuance of law by lawful authority.

Referred to the Committee on Revenue and Taxation.

REPRESENTATION.

MR. FREEMAN introduced the following proposed amendment to the Constitution, relative to representation:

I propose the following section for incorporation in the new Constitution:

SECTION —. Representation shall be apportioned according to population, excluding, however, all persons not entitled to the right of suffrage under this Constitution.

Referred to Committee on Privileges and Elections.

WHO MAY BE ELECTORS.

MR. FREEMAN introduced the following proposed amendment to the Constitution, relative to the right of suffrage:

I propose the following matter for insertion in the new Constitution:

SECTION —. Every male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the State for six months preceding the election, and who shall have been registered for three months in the county or district in which he claims his vote, and who is not an idiot or insane person, and has not been convicted of any infamous crime, shall be entitled to vote at all elections.

Referred to Committee on Privileges and Elections.

MR. AYERS. It is suggested by the reporters of the public press that this reading of the propositions by title only gives no information to the public through the journals as to what matter is contained in the propositions.

RIGHT OF SUFFRAGE.

MR. GRACE introduced the following proposed amendment to the Constitution, in relation to the right of suffrage:

Proposition for incorporation in the article of the new Constitution, relating to suffrage—

SECTION —. No person shall be in the receipt, at the same time, of more than one official salary or compensation; nor shall any increase of salary or compensation, for any office under this Constitution, take effect or apply to the incumbent of said office in possession at time of such increase.

Referred to Committee on Right of Suffrage.

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CORPORATIONS.

Mr. GRACE introduced the following proposition, in relation to corporations other than municipal:

Section —. It shall be unlawful for any director or other officer of any railroad company, or other corporation organized under the laws of this State or of the United States, and doing business within this State, to contract with said company or corporation, either directly or indirectly, by himself or his agents, or to become interested in any contract for the furnishing of supplies or material of any kind, or the execution of any labor or work for the said corporation or company. It shall be the duty of the Legislature to enforce the provisions of this section by appropriate legislation.

Referred to Committee on Corporations other than Municipal.

EXCESSIVE BAIL.

Mr. GREGG introduced the following proposition for changing the "Declaration of Rights:"

Proposed amendment to section six of "Declaration of Rights:"

Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted; but whipping shall not be deemed cruel or unusual as a punishment.

Referred to Committee on Preamble and Bill of Rights."

APPROPRIATIONS FOR SECTARIAN PURPOSES.

Mr. HEUSTIS introduced the following proposed amendment to the Constitution, forbidding the appropriation of public moneys and property for sectarian purposes:

Resolved, That the following be incorporated in the "Declaration of Rights" in the Constitution:

Article —.

Section —. The public school system of this State shall remain free and independent of all sectarian influences or control, and no money shall be appropriated or drawn from the public treasury for the benefit of any religious sect or society, theological institution, or association; nor shall property of any character belonging to the State, or to any county or municipality thereof, be ever appropriated for any such purpose.

Referred to Committee on Preamble and Bill of Rights.

ACTS OF THE LEGISLATURE.

Mr. JOHNSON introduced the following proposition to amend article four of the Constitution:

No law shall be passed except by bill. No bill shall be considered by the Legislature unless referred to a committee, returned therefrom, and printed for the use of the members. Every bill shall be read at length on three different days in each house; all amendments made thereto shall be printed for the use of the members before the final vote is taken on the bill, and no bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the persons voting for and against the same be entered on the Journal, and a majority of the members elected to each house be recorded thereon as voting in its favor; and no amendment to bills by one house shall be concurred in by the other, except in the same manner and with the same formality as above set forth in respect to bills. It shall be, and shall not be otherwise, that every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title; that no law shall be revised or amended by reference to its title, but in such case the Act revised or section amended shall be reenacted and published at length. On the passage of appropriation bills, or on concurring in amendments thereto, a separate vote on any item or items shall, on demand of any member, be had by yeas and nays, and entered accordingly on the Journal, and every such item failing to receive the vote of the requisite majority of the members elected to the house in which the bill is pending shall be stricken therefrom, and each item receiving such majority shall be declared passed. The Governor may disapprove any item or items of appropriation contained in bills passed by the Legislature, and the item or items so disapproved shall be stricken therefrom, unless repassed in the manner prescribed in cases of disapproval of bills. Every order or resolution in which the concurrence of both branches of the Legislature may be necessary, except on questions of adjournment or pertaining to the transaction of business by the houses, shall be presented to the Governor, and before the same shall take effect be approved by him; or being disapproved, shall be repassed, in the manner prescribed in this article for the repassage of bills.

Referred to Committee on Legislative Department.

BANKS.

Mr. JOYCE introduced the following proposed amendment to the Constitution, in relation to banks:

Resolved, That the Committee on Legislation are hereby requested to report the following for insertion in the new Constitution:

That all moneys, valuables, and property of every description held by savings or other banks for the period of seven years, without owner or proper heir to claim the same, shall escheat to this State; and that all such moneys, valuables, and property shall be used, by direction of the Legislature, for charitable purposes only.

Referred to Committee on Corporations other than Municipal.

PUBLIC OFFICERS.

Mr. JOYCE introduced the following proposed amendment to the Constitution, in relation to public officers:

Resolved, That the legislative committee is hereby instructed to report the following proposition:

The Legislature shall have no right to increase the salary of any State, county, town, or municipal officer, nor of any person holding position under State, county, town, or municipal governments, without first submitting the same to the taxpayers having to pay such salaries; and no Treasurer shall have the right to pay out of any treasury in this State more than one salary to any one officer for any duties which may be performed by him or her, as the spirit of our government is opposed to any public officer obtaining more than one salary at the same time; and that all Commissioners shall be elected by the direct vote of the people, by ballot.

Referred to Committee on Legislative Department.

REVENUE AND TAXATION.

Mr. KLEINE introduced the following proposed amendment to the Constitution, in relation to revenue and taxation:

Article —.

Section —. No tax shall be levied upon the rights of citizenship, and the payment of a poll tax as a condition of exercising the right of the ballot is a revolution of the democratic principle and tends to corrupt the legislator, and all such restrictions should be abolished.

Referred to the Committee on Revenue and Taxation.

JUDICIAL SYSTEM.

Mr. LAINE introduced the following: Article six for a revised Constitution of the State of California—Judicial Department.

Article VI.

JUDICIAL DEPARTMENT.

Section 1. The judicial power of the State shall be vested in a Supreme Court, in County Courts, and in Justices of the Peace, and in Recorders' and such other inferior Courts as the Legislature may establish in any incorporated city or town.

Sec. 2. The Supreme Court shall consist of a Chief Justice and four Associate Justices. The presence of three Justices shall be necessary for the transaction of business, except such business as may be done at chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment.

Sec. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State by districts, as hereinafter provided, at the general State elections. The first election for Justices of the Supreme Court shall be held on the first Wednesday in September, in the year eighteen hundred and seventy-nine. The Justices shall hold their offices for the term of twenty years from the first Monday in January next after their election, except those elected at the first election under this Constitution, at which election the Justice elected from the first district shall be elected for four years, the one from the second for eight years, the one from the third for twelve years, the one from the fourth for sixteen years, and the one from the fifth for the full term of twenty years, so that one Justice shall go out of office every four years. The Justice having the shortest time to serve shall be Chief Justice. In case of a vacancy from any cause in the office of Justice of the Supreme Court, the Governor shall appoint some suitable person from the same district as Justice, who shall hold the office for the unexpired part of the term. No Justice of the Supreme Court shall be eligible for reelection. For the purpose of electing Justices of the Supreme Court, the State shall be divided into five districts, and each district shall be composed of six legislative districts. The first district shall be composed of the first, second, third, fourth, fifth, and sixth legislative districts; the second, of the seventh, eighth, ninth, tenth, eleventh, and twelfth; the third, of the thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, and eighteenth; the fourth, of the nineteenth, twentieth, twenty-first, twenty-second, twenty-third, and twenty-fourth; and the fifth, of the twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, and thirtieth legislative districts.

Sec. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity, also in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, amounts to five hundred dollars; also in cases of forcible entry and detainer, and in all probate matters; also in all criminal cases amounting to felony, on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or in the Supreme Court, or before any County Court or Judge thereat.

Sec. 5. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than thirty consecutive days shall be deemed to have forfeited his office.

Sec. 6. The County Courts shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest, amounts to two hundred dollars, and in all criminal cases not otherwise provided for; also in actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance, and all such special cases and proceedings as are not otherwise provided for; also of all matters of probate; and said Courts shall have the power of naturalization and to issue papers therefor. They shall have appellate jurisdiction in all cases arising in Justices', Recorders', and such other inferior Courts as may be established by the Legislature in their respective counties, upon questions of law alone. Said Court shall be always open (legal holidays and non-judicial days excepted), and their original jurisdiction shall extend to all parts of the State. Said Courts and their Judges shall have power to issue writs of

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habeas corpus on petition by or on behalf of any person in actual custody, in their respective counties.

SEC. 7. There shall be in each of the organized counties, or cities and counties of the State, a County Court; for each of which a County Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; *provided*, that in all the said counties, or cities and counties, containing more than fifty thousand inhabitants, there shall be one such County Court and County Judge for every forty thousand inhabitants; and in all such cases said Courts to be numbered from one upwards, in numerical order, as the Legislature shall direct. The County Judges shall hold their offices for the term of twelve years from the first Monday of January next after their election.

SEC. 8. The unfinished business remaining in the Probate Court of the City and County of San Francisco shall be apportioned between the several County Courts therein established, by the Board of Supervisors thereof, in such manner as the Legislature shall direct.

SEC. 9. There shall be one Justice of the Peace elected in each township in the State, and the Legislature shall determine the number of Justices of the Peace to be elected in each incorporated city and town, and shall fix by law the powers, duties, and responsibilities of Justices of the Peace; *provided*, such powers shall not in any case trench upon the jurisdiction of the several Courts of record. The Supreme Court, the County Courts, and such other Courts as the Legislature shall declare to be, shall be Courts of record.

SEC. 10. The Legislature shall fix by law the jurisdiction of any Recorders' or Municipal Courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

SEC. 11. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of record and the Boards of Supervisors in and for their respective counties. The Legislature may also provide for the appointment by the several County Judges of one or more Commissioners in their several counties, with authority to perform chamber business of the Judges of the County Courts, to take depositions, and perform such other duties connected with the administration of justice as may be prescribed by law.

SEC. 12. The times and places of holding the several Courts of record shall be provided for by law. No judicial officer, except Justices of the Peace, Recorders, and Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 13. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

SEC. 14. The Justices of the Supreme Court and County Judges shall severally, during their continuance in office, receive for their services, quarterly, an annual salary, which shall not be increased or diminished during the term for which they shall have been elected. County Judges shall be paid out of the county treasury of their respective counties. The annual salaries of the Justices of the Supreme Court shall be five thousand dollars, and the annual salaries of the County Judges shall be fixed by the Legislature, not to exceed four thousand dollars. No County Judge or Justice of the Supreme Court shall, after the first day of July, one thousand eight hundred and eighty, be allowed to draw or receive any quarter's salary unless they shall severally take and subscribe an oath, before the disbursing officer, that no cause in their respective Courts remains undecided that has been submitted for decision for the period of sixty days. The Legislature shall enforce this provision by appropriate legislation.

SEC. 15. County Judges shall be ineligible to any other office than a judicial office during the term for which they shall have been elected.

SEC. 16. Judges shall not charge juries with respect to matters of fact, nor state the testimony.

SEC. 17. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SEC. 18. The Justices of the Supreme Court shall, before they enter upon the discharge of the duties of their offices, qualify by taking and subscribing the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support and maintain the Constitution of the United States and the Constitution of the State of California, and that I will discharge the duties of the office of a Justice of the Supreme Court to the best of my ability; and that I will not accept any office, State or Federal, nor be a candidate for any office, during the term for which I have been elected Justice of the Supreme Court." Any Justice of the Supreme Court accepting any office, or offering himself as a candidate for any office, during the term for which he may have been elected, shall be guilty of and subject to all the pains and penalties of perjury, shall forfeit his office, and be forever disqualified from holding any office in this State.

SEC. 19. The Justices shall appoint a reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary of twenty-five hundred dollars, payable quarterly.

SEC. 20. The Judges and Justices of the Peace shall not practice law in any Court of the State during their continuance in office.

SEC. 21. A grand jury shall be composed of thirteen jurors, and a concurrence of eight shall be necessary to the making of a presentment or the finding of an indictment.

SEC. 22. In criminal cases, a concurrence of three fourths of the jury is sufficient to find a verdict, except in cases where the punishment is death upon conviction; in such cases, all the jurors must concur to render a verdict.

SEC. 23. In all civil cases, a concurrence of two thirds of the jury is sufficient to render a verdict.

Referred to Committee on Judiciary and Judicial Department.

LEGISLATIVE DEPARTMENT.

MR. LAINE introduced the following: Article four for a revised Constitution of the State of California—Legislative Department:

ARTICLE IV—LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power of this State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California, and the enacting clause of every law shall be as follows: "The People of the State of California, represented in Senate and Assembly, do enact as follows."

SEC. 2. The regular sessions of the Legislature shall be biennial; the first session under this Constitution shall commence on the second Monday in January, one thousand eight hundred and eighty; and thereafter the Legislature shall meet in regular session once in two years, on the second Monday in January. No session shall continue longer than ninety days.

SEC. 3. The members of the Assembly shall be chosen by the qualified electors of their respective districts on the first Wednesday in September, and their term of office shall be four years.

SEC. 4. No person shall be qualified to be a Senator unless he shall have attained the age of thirty years and been eight years a citizen of the United States. No person shall be qualified to be an Assemblyman unless he shall have attained the age of twenty-five years and been four years a citizen of the United States. Senators and Assemblymen shall be qualified electors in the districts they represent.

SEC. 5. Senators shall be chosen for the term of eight years, at the same time and places as members of the Assembly.

SEC. 6. The Senate shall consist of thirty members, and the Assembly of sixty members, to be elected by districts as hereinafter provided. The seats of the fifteen Senators from the odd numbered districts, chosen at the first election under this Constitution, shall be vacated at the expiration of the fourth year, so that one half of the Senate after the first election shall be chosen every four years.

SEC. 7. For the purpose of choosing members of the Legislature, the State shall be divided into thirty districts, as nearly equal in population as may be, and composed of contiguous territory, to be called Legislative Districts; each district shall choose one Senator and two members of the Assembly. The districts shall be numbered from one to thirty inclusive, in numerical order, commencing at the northern boundary of the State and ending at the southern boundary thereof. In the formation of said districts no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts, nor shall a part of any county, or city and county, be united with any other county, or city and county, in forming any district. The first Legislature that shall convene, after the taking and publishing of each and every decennial census or enumeration of the inhabitants of the United States under the direction of Congress, shall adjust said districts so as to preserve them as near uniform in population as may be. Until such adjustment shall be made, the First District shall consist of the Counties of Del Norte, Siskiyou, Modoc, Lassen, Shasta, and Trinity; the Second, of the Counties of Humboldt, Mendocino, and Lake; the Third, of the Counties of Tehama, Butte, and Plumas; the Fourth, of the Counties of Sierra and Yuba; the Fifth, of the County of Nevada; the Sixth, of the Counties of Sutter, Colusa, and Yolo; the Seventh, of the Counties of Placer and El Dorado; the Eighth, of the County of Sacramento; the Ninth, of the County of Sonoma; the Tenth, of the Counties of Marin and Contra Costa; the Eleventh, of the Counties of Amador, Calaveras, and Alpine; the Twelfth, of the Counties of Tuolumne, Mariposa, Mono, and Inyo; the Thirteenth, of the County of San Joaquin; the Fourteenth, of the County of Alameda; the Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-first, Twenty-Second, and Twenty-third, of the City and County of San Francisco; the Twenty-fourth, of the Counties of San Mateo, Santa Cruz, and Monterey; the Twenty-fifth, of the County of Santa Clara; the Twenty-sixth, of the Counties of Stanislaus, Merced, and San Benito; the Twenty-seventh, of the Counties of Fresno, Tulare, and Kern; the Twenty-eight, of the Counties of San Luis Obispo, Santa Barbara, and Ventura; the Twenty-ninth, of the County of Los Angeles; and the Thirtieth, of the Counties of San Bernardino and San Diego.

SEC. 8. Each house shall choose its own officers, and judge of the qualifications, elections, and returns of its own members.

SEC. 9. A majority of each house shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner and under such penalties as each house may provide.

SEC. 10. Each house shall determine the rule of its own proceedings, and may, with the concurrence of two thirds of all the members elected, expel a member.

SEC. 11. Each house shall keep a Journal of its own proceedings, and publish the same; and the yeas and nays of the members of either house on any question shall, at the desire of any three members present, be entered on the Journal.

SEC. 12. Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

SEC. 13. When vacancies occur in either house, the Governor, or the person exercising the functions of the Governor, shall issue writs of election to fill such vacancies.

SEC. 14. The doors of each house shall be open, except on such occasions as, in the opinion of the house, may require secrecy.

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SEC. 15. Neither house shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. 16. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended in the other.

SEC. 17. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it he shall sign it, but if not, he shall return it, with his objections, to the house in which it originated, which shall enter the same upon the Journal, and proceed to reconsider it. If, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two thirds of the members of each house present, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law, in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within ten days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law, in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contain several items of appropriation of money, he may object to one or more items, while approving the other portions of the bill; in such case he shall append to the bill at the time of signing it a statement of the items to which he objects, and the reasons therefor; and the appropriations so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the house in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered, in the same manner as bills which have been disapproved by the Governor.

SEC. 18. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. While sitting for that purpose, the Senators shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two thirds of the members present.

SEC. 19. The Governor, Secretary of State, Controller, Treasurer, Attorney General, Surveyor-General, Justices of the Supreme Court, and County Judges shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office, and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall, nevertheless, be liable to indictment, trial, and punishment, according to law. All other officers shall be tried for misdemeanor in office as the Legislature may provide.

SEC. 20. No Senator or member of Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased, during such term, except such offices as may be filled by election by the people.

SEC. 21. No person holding any office under the United States, or any other power, shall be eligible to any civil office of profit under this State.

SEC. 22. No person who shall be convicted of the embezzlement or defalcation of the public funds of this State shall ever be eligible to any office of honor, trust, or profit, under this State; and the Legislature shall, as soon as practicable, pass a law providing for the punishment of such embezzlement or defalcation as a felony.

SEC. 23. No money shall be drawn from the treasury but in consequence of appropriations made by law. An accurate statement of the receipts and expenditures of the public moneys shall be attached to and published with the laws at every regular session of the Legislature.

SEC. 24. The members of the Legislature shall severally receive for their services five dollars per day. In addition to the above per diem, the members shall be entitled to receive as mileage three dollars for every twenty miles of travel to and from their residences to the place of holding the sessions. Each member shall also receive at each regular session, an additional sum of fifty dollars, which shall be in full for all stationery used, all postage, and all other incidental expenses; and no allowance or emoluments for any purpose whatever, shall be made to, or received by any member of either house for his use, out of the Contingent Fund or otherwise, except as herein expressly provided; and no allowance, extra pay, or emoluments, for any purpose whatever, shall ever be paid to any officer, agent, clerk, servant, or employé of either house of the Legislature, or of any committee thereof, except such per diem as may be provided for by law, not exceeding five dollars per day.

SEC. 25. Every law enacted by the Legislature shall embrace but one object, and shall be expressed in its title; and no law shall be revised or amended by reference to its title, but in such case, the part of the Act revised, or section amended, shall be reenacted and published at length, as revised or amended.

SEC. 26. No divorce shall be granted by the Legislature.

SEC. 27. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery in this State.

SEC. 28. The census taken under the direction of the Congress of the United States, in the year one thousand eight hundred and seventy, and every ten years thereafter, shall be the basis of fixing and adjusting the Legislative Districts.

SEC. 29. No local law shall be passed unless notice of the intention to propose the same to the Legislature shall have been published in the locality to be affected thereby, which notice shall state the substance of the contemplated law, and shall be published at least twenty days in some newspaper of general circulation, in the locality to be affected, prior to its introduction into the Legislature. The evidence of such notice having been published shall be exhibited to the Legislature before such Act shall be passed.

SEC. 30. When a Congressional District shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county, or city and county, shall be divided in forming a Congressional District so as to attach one portion of a county, or city and county, to another county, or city and county; but the Legislature may divide any county, or city and county, into as many Congressional Districts as it may be entitled to by law.

SEC. 31. Corporations may be formed under general laws, but shall not be created by special Act, except for municipal purposes. All general laws and special Acts passed pursuant to this section may be altered from time to time, or repealed.

SEC. 32. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SEC. 33. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued, in all Courts, in like cases as natural persons.

SEC. 34. The Legislature shall have no power to pass any Act granting any charter for banking purposes; but associations may be formed, under general laws, for the deposit of gold and silver; but no such association shall make, issue, or put in circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

SEC. 35. The Legislature of this State shall prohibit, by law, any person or persons, association, company, or corporation from exercising the privileges of banking, or creating paper to circulate as money.

SEC. 36. Each stockholder of corporation or joint stock association shall be individually and personally liable for his proportion of all its debts and liabilities.

SEC. 37. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations.

SEC. 38. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the Journal.

SEC. 39. The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the State officers, the expenses of the government, and of the institutions under the exclusive control and management of the State.

SEC. 40. No bill making an appropriation of money, except the general appropriation bill, shall contain more than one item of appropriation, and that for one single and certain purpose, to be therein expressed.

SEC. 41. No bill shall be considered for final passage unless the same has been reported upon by a committee, and printed for the use of the members.

SEC. 42. Upon the final passage of every bill in each house, the vote shall be taken by yeas and nays, and entered upon the Journal; and no bill shall be passed unless a majority of all the members elected to each house shall vote therefor on its final passage.

SEC. 43. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.

SEC. 44. The Legislature shall have no power to give or to lend, or to authorize the giving or lending of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof in any manner whatever for the payment of the liabilities of any individual, association, municipal or other corporation whatever, nor shall it have power to make any grant or authorize the making of any grant of any public money or thing of value to any individual, municipal or other corporation whatever; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

SEC. 45. The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered or a contract has been entered into and performed in whole or in part, nor to pay or authorize the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made, without express authority of law; and all such unauthorized agreements or contracts shall be null and void.

SEC. 46. All railways heretofore constructed, or that may be hereafter constructed, in this State, are hereby declared to be public highways, and railroad companies common carriers. The Legislature shall pass laws to correct abuses and prevent unjust discriminations and extortions in the rates of freight and passenger tariffs on the different railroads in this State, and shall from time to time pass laws establishing maximum rates of charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties.

SEC. 47. No railroad or other transportation company shall grant any free pass or ticket, or grant any pass or ticket at a discount, to any member of the Legislature, or any State, county, or municipal officer, and the acceptance of any such pass or ticket by a member of the

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Legislature, or by any such officer, shall be a forfeiture of his office, and he shall be subject to the pains and penalties of a bribe-taker.

SEC. 48. In case of a contested election in either branch of the Legislature, only the claimant decided entitled to the seat shall receive from the State per diem, compensation, or mileage.

SEC. 49. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say: changing the names of persons or places; changing county seats, or locating them except upon the organization of a new county; regulating county and township affairs; regulating the practice in Courts of justice; regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and Constables; providing for changes of venue in civil or criminal cases; providing for the election of members of the Boards of Supervisors; summoning and impaneling grand and petit juries; providing for the management of common schools; the opening and conducting of elections, or designating the place of voting; the sale or mortgage of any property belonging to minors or others under disability; the protection of game or fish; chartering or licensing ferries or toll-bridges; remitting fines, penalties, or forfeitures; creating, increasing, or decreasing salaries, fees, percentage, or allowance of public officers during the term for which said officers are elected or appointed; changing the law of descent; authorizing or directing the payment of money by any county, city and county, or other municipal corporation.

Referred to Committee on Legislative Department.

ELECTIVE FRANCHISE AND PRIVILEGES.

MR. LINDOW introduced the following proposed amendment to the Constitution, relative to the elective franchise.

I beg leave to submit the following, in relation to elective franchise and privileges, to be incorporated into the proposed Constitution:

ARTICLE —.

SECTION 1. All elections shall be free and equal.

SEC. 2. All elections shall be by ballot.

SEC. 3. No Chinaman, Asiatic, or any descendant thereof, shall be entitled to the right of suffrage.

SEC. 4. Every male citizen of the United States, of the age of twenty-one years or over, who shall have been a resident of this State for six months, of the county in which he resides for thirty days, of the election district fifteen days preceding any election therein, shall be entitled to vote.

SEC. 5. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest on the day of election, during their attendance at such election, and in going to and returning from the same. No elector shall be obliged to do military duty on the day of election, except in time of war or public danger.

SEC. 6. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas, nor while a student in any institution of learning, nor while kept at any almshouse or other asylum, nor while confined in any public prison; but no person while confined in any prison shall have any right to vote during such confinement. No person who shall have been convicted of any crime which is punishable by imprisonment in a penitentiary shall be entitled to the privileges of an elector.

SEC. 7. No soldier, seaman, or mariner in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed therein.

SEC. 8. No person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States, and who shall not have resided in this State one year next preceding the election or appointment.

SEC. 9. No idiot or insane person shall be entitled to the privileges of an elector.

SEC. 10. Every male citizen of Mexico, who shall have been elected to become a citizen of the United States under the treaty of peace established and ratified at Queretaro, on the thirtieth day of May, eighteen hundred and forty-eight, shall be an elector and citizen of this State, and entitled to all the privileges of a native-born citizen of the United States.

SEC. 11. Every person shall be disqualified from holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward to procure his election.

SEC. 12. The Legislature shall enact laws to support the privilege of free suffrage, prescribing the manner of regulating and conducting elections, and prohibiting, under adequate penalties, all undue influence therein from power, bribery, intimidation, and other improper conduct; *provided*, that no law shall be passed which shall deprive a citizen of his vote at any election where proof of citizenship and residence can be given.

SEC. 13. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall be deprived of holding any office of trust or profit, and of enjoying the right of suffrage under this Constitution; any State officer, member of the Legislature, or any other person holding office, or of any person holding office of profit or trust under the Constitution and the laws made in pursuance thereof, shall be, ipso facto, vacated by the fact of any such person committing the offense mentioned in this article, and the Legislature shall provide by law for ascertaining and declaration of such forfeiture.

SEC. 14. No person holding a lucrative office or appointment under the Government of the United States, or under this State, shall be eligible to the Legislature until he has resigned his position and such resignation has taken effect. Nor shall one person hold more than one lucrative office at one time; *provided*, that officers in the militia to which there is attached no annual salary, and the office of Postmaster, when the compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative.

SEC. 15. No person shall be in receipt at the same time of more than one official salary or compensation beyond that fixed by law at the time of his election or appointment.

SEC. 16. No person who shall hereafter be a collector or holder of public money, or receiver of money as an officer, shall be eligible to any office of trust or profit until he shall have accounted for and paid, according to law, all money for which he is or may be liable.

SEC. 17. All elections by the Legislature, or either house thereof, shall be viva voce.

SEC. 18. General municipal elections shall be held biennially on the first Tuesday after the first Monday in November. At all elections by the people the polls shall be open from six A. M. to seven P. M.

Referred to Committee on Privileges and Elections.

EXECUTIVE DEPARTMENT.

MR. MARTIN, of Santa Cruz, introduced the following proposed article five for a revised Constitution of the State of California, on the Executive Department:

ARTICLE V.

EXECUTIVE DEPARTMENT.

SECTION 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of California.

SEC. 2. The Governor shall be elected by the qualified electors at the time and places of voting for members of the Assembly, and shall hold his office four years from and after the second Monday in January subsequent to his election, and until his successor is elected and qualified.

SEC. 3. No person shall be eligible to the office of Governor who has not been a citizen of the United States, and a resident of this State, five years next preceding the election, and attained the age of thirty-five years at the time of said election.

SEC. 4. The returns of every election for Governor shall be sealed up and transmitted to the seat of Government, directed to the Speaker of the Assembly, who shall, during the first week of the session, open and publish them in presence of both houses of the Legislature. The person having the highest number of votes shall be Governor; but in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint vote of both houses, choose one of said persons so having an equal and the highest number of votes for Governor.

SEC. 5. The Governor shall be Commander-in-Chief of the militia, the army and navy of this State.

SEC. 6. He shall transact all executive business with the officers of government, civil and military, and may require information, in writing, from the officers of the Executive Department upon any subject relating to the duties of their respective offices.

SEC. 7. He shall see that the laws are faithfully executed.

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and laws for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

SEC. 9. He may, on extraordinary occasions, convene the Legislature by proclamation, and shall state to both houses, when assembled, the purpose for which they shall have been convened.

SEC. 10. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

SEC. 11. In case of a disagreement between the two houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

SEC. 12. No person shall, while holding any office under the United States or this State, exercise the office of Governor, or be eligible thereto.

SEC. 13. The Governor shall have the power to grant reprieves and pardons, after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and regulations as may be provided by law. Upon conviction for treason, he shall have the power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. He shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime for which he was convicted, the sentence and its date, and the date of the pardon or reprieve.

SEC. 14. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of California."

SEC. 15. All grants and commissions shall be in the name and by the authority of the people of the State of California, sealed with the great seal of State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 16. The Governor shall receive an annual salary of five thousand dollars, to be paid at stated times, as provided by law, which shall be in full for all services performed by him for the State as Governor, or in any other official capacity, and the Legislature shall have no power to grant him any extra compensation whatever for ex officio service of any kind.

SEC. 17. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties

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of the office, with its emoluments, shall devolve upon the President of the Senate for the residue of the term, or until the disability shall cease.

SEC. 18. A Secretary of State, a Controller, a Treasurer, an Attorney-General, and a Surveyor-General, who shall be ex officio Register of the State Land Office, shall be elected at the same time and places, and in the same manner, as the Governor, whose term of office shall be the same as the Governor. They shall each receive an annual salary of three thousand dollars, to be paid at stated times, as provided by law, which annual salary shall be in full for all services to be rendered by them, of every kind, name, and nature. No person shall be eligible to either of said offices unless he shall have attained the age of thirty years, and been five years a citizen of the United States and resident of this State.

SEC. 19. The Secretary of State shall keep a fair record of the official acts of the Legislative and Executive Departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law.

Referred to Committee on Executive Department.

MODE OF AMENDING AND REVISING THE CONSTITUTION.

MR. MARTIN, of Santa Cruz, introduced the following:

Proposed article ten for a revised Constitution of the State of California—mode of amending and revising the Constitution:

ARTICLE X.

MODE OF AMENDING AND REVISING THE CONSTITUTION.

SECTION 1. Whenever a majority of both houses of the Legislature shall deem it necessary to alter or amend this Constitution, they may propose such alterations or amendments, which proposed amendments shall be published with the laws which have been passed at the same session; and said amendments shall be submitted to the people for their approval or rejection at the next general election; and if it shall appear, in a manner to be provided by law, that a majority of the qualified electors present and voting at such election shall have ratified such alterations or amendments, the same shall be valid to all intents and purposes as a part of this Constitution. If two or more alterations or amendments shall be submitted at the same time it shall be so regulated that the electors shall vote for or against each separately.

SEC. 2. Whenever two thirds of the members elected to each branch of the Legislature shall think it necessary to call a Convention to revise this Constitution, they shall recommend to the electors to vote, at the next election for members of the Legislature, for or against a Convention; and if a majority of electors voting at said election on the proposition for a Convention shall have voted for a Convention, the Legislature shall, at the next session, provide by law for calling the same. The Convention shall consist of as many members as the Assembly, and shall be chosen in the same manner, and shall have the qualifications of Senators. They shall meet within three months after their election for the purpose aforesaid.

Referred to Committee on Future Amendments.

CORPORATIONS.

MR. MCCALLUM introduced the following proposition for an amendment defining and declaring the right of the State to regulate and limit the rates to be charged for freights and fares, and for gas and water, and rates of other service and commodities, by corporations, and making the exercise of that right mandatory:

Amend the Constitution so as to read as follows:

ARTICLE IV.

SEC. 31. Corporations other than municipal may be formed under general laws, but shall not be created by special Act. All laws heretofore passed, or which shall hereafter be passed in pursuance of this section, may be altered, from time to time, or repealed. Laws shall be passed for the regulation and limitation of the rates of freights and fares, and the rates of gas and water, and other services and commodities, performed and furnished by such corporations. In case of the selection of any persons or officers to regulate such rates, they shall be selected as may be provided by law, which shall in no case authorize the naming of any such person or officer by any corporation.

Referred to Committee on Corporations other than Municipal.

EDUCATION.

MR. MCCOMAS introduced the following proposed amendment to the Constitution, relative to education:

ARTICLE IX.

EDUCATION.

SECTION 1. A Superintendent of Public Instruction shall be elected by the qualified electors of this State at the same time the Governor is elected. He shall hold his office for four years from the second Monday in January next after his election. His duties shall be prescribed by law. He shall receive an annual salary of two thousand dollars, to be paid quarterly.

SEC. 2. The Legislature shall encourage, by all suitable means, the promotion of intellectual, scientific, moral, and agricultural improvement. The proceeds of all lands that may be granted by the United States to this State for the support of schools, which may be sold or disposed of, and the five hundred thousand acres of land granted to the new States, under an Act of Congress distributing the proceeds of the public lands among the several States of the Union, approved A. D. one thousand eight hundred and forty-one, and all estates of deceased persons who may have died without leaving a will or heir, and also such per cent. as may be granted by Congress on the sale of lands in this State, shall be and remain a perpetual fund, the interest of which, together with all the rents of the unsold lands, and such other means as the Legislature may provide, shall be inviolably appropriated to the support of common schools throughout the State.

SEC. 3. The Legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each district at least three months in every year, and any district neglecting to keep up and support such a school may be deprived of its proportion of the interest of the public fund during such neglect.

SEC. 4. The Legislature shall take measures for the protection, improvement, or other disposition of such lands as have been or may hereafter be reserved or granted by the United States, or any person or persons, to this State, for the use of a University; and the funds accruing from the rents or sale of such lands, or from any other source for the purpose aforesaid, shall be and remain a permanent fund, the interest of which shall be applied to the support of said University, with such branches as the public convenience may demand, for the promotion of literature, the arts, and sciences, as may be authorized by the terms of said grant. And it shall be the duty of the Legislature, as soon as may be, to provide effectual means for the improvement and permanent security of the funds of said University.

SEC. 5. All instruction in the common schools shall be in the English language, and no other language shall be there taught; nor shall instrumental music be taught in them.

SEC. 6. No religious sect or sects shall ever have use of or control any part of the school or University funds of this State.

SEC. 7. In order that every child in this State may have a fair opportunity to learn the privileges, rights, duties, and obligations pertaining to freemen, the Legislature shall, by appropriate legislation, cause to be published, at the expense of the State, in one well-bound volume of convenient size, the Declaration of American Independence, the Constitution of the United States of America, the Constitution of the State of California, and Washington's Farewell Address, and shall cause the same to be distributed, free of cost, to the children in the common schools, and to be used and taught therein as a text-book, and also in the University of California.

Referred to Committee on Education.

MISCELLANEOUS PROVISIONS.

MR. MCCOMAS introduced the following proposed article eleven, for a revised Constitution, on miscellaneous subjects:

ARTICLE XI.

MISCELLANEOUS PROVISIONS.

SECTION 1. The City of Sacramento is hereby declared to be the seat of government of this State, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding unless the same be approved and ratified by a majority of the qualified electors of the State voting therefor at a general State election, under such regulations and provisions as the Legislature may provide, submitting the question of change to the people.

SEC. 2. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit or enjoy the right of suffrage under this Constitution.

SEC. 3. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, and Justices of the Supreme Court shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States, and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of ——, according to the best of my ability. And no other oath, declaration, or test shall be required as a qualification for any office or public trust, other than those in this Constitution prescribed.

SEC. 4. The county governments now established by law are hereby confirmed. The Legislature may alter them from time to time, or establish new ones, as occasion may require; and the system of county governments shall be as nearly uniform as practicable throughout the State.

SEC. 5. The Legislature shall provide for the election of a Board of Supervisors in each county in this State, to consist of not less than three nor more than five members, and to be elected by districts. The Supervisors shall jointly and individually perform such duties as may be prescribed by law.

SEC. 6. All officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may be hereafter created by law, shall be elected by the people, or appointed, as the Legislature may direct.

SEC. 7. When the duration of any office is not provided for in this Constitution, it may be declared by law, and if not so declared such office shall be held during the pleasure of the authority making the appointment; nor shall the duration of any office, not fixed by this Constitution, ever exceed four years.

SEC. 8. The fiscal year shall commence on the first day of July.

SEC. 9. Each county, town, city, and incorporated village shall make provision for the support of its own officers, subject to such restrictions and regulations as the Legislature may prescribe.

SEC. 10. The credit of the State shall not, in any manner, be given or loaned to or in aid of any individual, association, or corporation; nor shall the State, directly or indirectly, become a stockholder in any association or corporation.

SEC. 11. Suits may be brought against the State in such manner, and in such Courts, as shall be directed by law.

SEC. 12. No contract of marriage shall be invalidated for want of conformity to the requirements of any religious sect. But no marriage

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hereafter contracted in this State shall be valid between the parties thereto unless a public record thereof be made at the time in such manner as may be provided by law.

SEC. 13. All State, county, township, district, and municipal officers, except as herein otherwise expressly provided, shall be elected and hold office for the term of four years from the second Monday in January next after their election.

SEC. 14. All property, real and personal, owned by either husband or wife before marriage, and that acquired by either of them afterwards by gift, or descent, shall be their separate property.

SEC. 15. The homestead, not exceeding five thousand dollars in value, and such other reasonable amount of property as may be determined by law, of all heads of families, shall be exempt from forced sale.

SEC. 16. No perpetuities shall be allowed except for eleemosynary purposes.

SEC. 17. Every person shall be disqualified from holding any office of profit in this State, who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SEC. 18. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 19. Absence from this State on business of the State or of the United States shall not affect the question of residence of any person.

SEC. 20. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution.

SEC. 21. There shall be a general election in this State on the first Wednesday in September in the year eighteen hundred and seventy-nine, for the election of State, county, township, district, and municipal officers; and one such election for the same purpose on the first Wednesday in September every four years thereafter.

Referred to Committee on Miscellaneous Subjects.

MUNICIPAL CORPORATIONS.

MR. NOEL introduced the following proposed amendment to article four of the Constitution, relative to municipal corporations:

SEC. 37. It shall be the duty of the Legislature to provide for the organization of county, city, and town governments. But such municipal corporations shall have no power to contract debts, or incur liabilities in excess of one per centum of the assessed value of the property within the limits of such municipal corporations.

Referred to Committee on City, County, and Township Organizations.

EDUCATION—TEXT-BOOKS.

MR. O'SULLIVAN introduced the following proposed amendment to the Constitution, relating to education:

Resolved, That the following provisions relating to education should be embodied in the new Constitution:

SECTION —. The Legislature, at the first session after the adoption of this Constitution, shall provide by law for the compilation and printing of a complete series of school text-books, all the necessary mechanical work connected therewith to be done in the State Printing Office. The text-books thus compiled and printed shall be the only text-books used in the public schools of this State after the first day of January, eighteen hundred and eighty-one, and shall be furnished to all scholars in said schools free of cost.

SEC. —. There shall be a Department of Agriculture and a Department of Mechanics attached to the State University. And there shall be suitable professors in said University to give practical instruction in agriculture and the mechanical arts.

SEC. —. Lectures shall be delivered, at stated periods, in the State University, the Normal School, and in each one of the public schools of the State, by one of the professors or teachers thereof, upon the subject of labor, its necessity and importance in the promotion of human happiness.

SEC. —. No sectarian instruction shall be imparted in the State University, the Normal School, or any of the public schools of this State, and no sectarian books, or books having a sectarian bias, shall ever be used in the State University or the public schools; nor shall any money ever be appropriated for the support of religious or denominational schools.

Referred to the Committee on Education.

ROAD TAX.

MR. O'SULLIVAN introduced the following proposed amendment to the Constitution, concerning road tax:

Resolved, That the following provision concerning a general road tax should be embodied in the Constitution:

SECTION —. It shall be the duty of the Legislature, after the adoption of this Constitution, to levy a special road tax upon the taxable property of all persons in this State, and appropriate the same to the building of bridges and the improvement of public roads in the different counties of the State, under such rules and regulations as the Legislature shall provide; and no law shall be passed authorizing a poll tax for, or requiring the personal service of any portion of the people on, public roads.

Referred to Committee on Revenue and Taxation.

REVENUE AND TAXATION.

MR. OVERTON introduced the following proposed amendment to the Constitution, relating to revenue and taxation:

Resolved, That the Constitution be so framed as to require all persons to make a statement, on the first Monday of March of each year, under oath, of all property owned or controlled by them in this State subject to taxation.

Referred to Committee on Revenue and Taxation.

MOBS.

MR. REDDY introduced the following resolution to incorporate a new section in the Constitution, under miscellaneous provisions:

ARTICLE XI.

Resolved, That the following section be incorporated in the Constitution:

That any citizen of this State who shall, after the adoption of this Constitution, join any mob or other unlawful assembly of persons for the purpose of destroying human life or property, or who shall knowingly aid or assist those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this Constitution.

Referred to Committee on Miscellaneous Subjects.

LEGISLATIVE DEPARTMENT.

MR. SHOEMAKER introduced the following amendments to article four of the Constitution:

Amend section two, article four, of the Constitution, so as to read as follows:

SEC. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Wednesday after the first Monday of January next ensuing the election of its members, unless the Governor of this State shall, in the interim, convene the Legislature by proclamation. No session shall continue longer than one hundred days.

Amend section three, article four, of the Constitution, so as to read as follows:

SEC. 3. Members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, in November, on the days of Presidential and Congressional elections, or on the even years; and their term of office shall be two years.

Amend section five, article four, of the Constitution, so as to read as follows:

SEC. 5. Senators shall be chosen for the term of four years, at the same time and place as members of the Assembly; and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State, and of the county or district for which he shall be chosen, one year next before his election. Twenty Senators shall be elected at each general election, beginning in eighteen hundred and eighty, and every two years thereafter.

Amend section six, article four, of the Constitution, so as to read as follows:

SEC. 6. The State shall be divided into forty Senatorial Districts, of compact and contiguous territory, as nearly equal in population as may be; and each district shall be entitled to elect one Senator, but no city and county shall be entitled to representation exceeding one fifth the whole number of Senators; no county shall be divided in the formation of a district.

Amend section seven, article four, of the Constitution, so as to read as follows:

SEC. 7. The members of the Assembly shall be apportioned among the several counties on a ratio obtained by dividing the population of the State, as ascertained by the latest United States census, by eighty. Every county containing one ratio, or fractional part thereof exceeding one half, shall be entitled to one member; every city, or city and county, entitled to more than four members of the Assembly, or three Senators, shall be divided into districts; each district to elect its proportion of members of the Senate and Assembly according to its population.

Amend section ten, article four, of the Constitution, so as to read as follows:

SEC. 10. Each house shall determine the rule of its own proceedings, and may, with consent of two thirds of all the members elected, expel a member; to enforce obedience to its process; to punish for contempt and disorderly conduct in its presence.

Amend section sixteen, article four, of the Constitution, so as to read as follows:

SEC. 16. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended in the other; but no bill shall be so altered or amended on its passage through either house as to change its original purpose.

Amend section twenty, article four, of the Constitution, so as to read as follows:

SEC. 20. No Senator or member of the Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit in this State which shall have been created or the emoluments of which shall have been increased by his vote during such term; and in no case without first resigning the office he holds, except such offices as may be filled by election by the people.

Amend section twenty-eight, article four, of the Constitution, so as to read as follows:

SEC. 28. The enumeration of the inhabitants of this State, taken under the direction of the Congress of the United States, shall serve as a basis of apportioning representation in both houses of the Legislature.

Amend section twenty-nine, article four, of the Constitution, so as to read as follows:

SEC. 29. The apportionment of members of the Senate and Assembly shall be fixed by the Legislature, at its first session after the official publication of the census taken under the direction of the Congress of the United States, among the several counties and districts, in pursuance of section six of this article.

Amend section thirty-one, article four, of the Constitution, so as to read as follows:

SEC. 31. Corporations may be formed under general laws, but shall not be created by special Act except for municipal purposes. Each corporation shall be subject to such restrictions as may be prescribed by

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law; and all general laws or special Acts passed pursuant to this section may be altered from time to time, or repealed.

Amend section thirty-seven, article four, of the Constitution, so as to read as follows:

SEC. 37. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit. No city and county, county, city, village, or town, shall ever contract any debt or debts which singly, or in the aggregate, shall exceed five per cent. of the assessed value of the property therein as assessed for State purposes, and then only for purely public purposes.

Amend section thirty-nine, article four, of the Constitution, so as to read as follows:

SEC. 39. No law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment.

Amend article four of the Constitution by adding a new section, to be known and designated as section forty:

SEC. 40. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the State government, interest on the public debt, and for the public schools. All other appropriations shall be made by separate bills, embracing but one subject.

Amend article four of the Constitution by adding a new section, to be known and designated as section forty-one:

SEC. 41. The Legislature may make appropriations of money to institutions organized for the purpose of maintaining orphans who are destitute, but such appropriation shall be applied exclusively to the support of such orphans.

Referred to Committee on Legislative Department.

JUDICIAL DEPARTMENT.

MR. SHOEMAKER introduced the following proposed amendments to article six of the Constitution:

Amend section two, article six, of the Constitution, so as to read as follows:

SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The presence of four Justices shall be necessary for the transaction of business, excepting such business as may be done at chambers; and the concurrence of four Justices shall be necessary to pronounce judgment.

Amend section three, article six, of the Constitution, so as to read as follows:

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at the general election of State officers and members of the Legislature, in November, one thousand eight hundred and eighty. At the first election for Justices of the Supreme Court, three Justices shall be elected, whose terms of office shall be fourteen, twelve, and ten years, respectively, to be determined by lot. Every two years thereafter one Justice shall be elected at the general election for members of the Legislature, and whose term of office shall be fourteen years. The Justice whose commission first expires shall be Chief Justice. Any vacancy occurring in the office of Justice of the Supreme Court, District Court, County and Probate Court, shall be filled by appointment of the Governor until the next general election, when a person shall be elected to serve the balance of the unexpired term, and in order that no inconvenience may result to the public service from the taking effect of this Constitution, no officer, either legislative, executive, judicial, or county, shall be superseded or suspended thereby, until the election and qualification of the several officers provided for by this Convention, in November, eighteen hundred and eighty.

Amend section five, article six, of the Constitution, so as to read as follows:

SEC. 5. Twenty-three judicial districts are hereby constituted, as now defined by law, which may be altered from time to time as the public good may require, by a two-thirds vote of all the members elected to both houses of the Legislature; in each of which there shall be a District Court, and for each of which a District Judge shall be elected by the qualified electors of the district, at the general election for State officers and members of the Legislature. The District Judges shall hold their offices for the term of eight years, from the first day of January next after their election. The Legislature shall have no power to grant leave of absence to a judicial officer, and any such officer who shall absent himself from the State for upwards of thirty consecutive days shall be deemed to have forfeited his office.

Amend section seven, article six, of the Constitution, so as to read as follows:

SEC. 7. There shall be in each of the organized counties of this State a County Court, for each of which a County Judge shall be elected by the qualified electors of the county, at the general election to be held, as provided, for the election of State officers and members of the Legislature. The County Judges shall hold their offices for the term of six years from the first day of January next after their election. Said Courts shall also have power to issue naturalization papers. In the City and County of San Francisco, and in counties of one hundred thousand inhabitants and upwards, the Legislature may separate the office of Probate Judge from that of County Judge, and may provide for the election of a Probate Judge, who shall hold his office for the term of six years.

Amend section fifteen, article six, of the Constitution, so as to read as follows:

SEC. 15. The Justices of the Supreme Court, District Judges, and County Judges, shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected, nor for four months prior to their assuming the duties of their office; *provided*, that County Judges shall be paid out of the county treasury of their respective counties.

Amend section nineteen, article six, of the Constitution, so as to read as follows:

SEC. 19. In order that no inconvenience may result to the public service from the taking effect of this Constitution, no officer shall be superseded thereby, nor shall the organization of the several Courts be changed thereby, nor shall the tenure of any officer be changed, unless it expire in the year one thousand eight hundred and seventy-nine, in which case the term is extended till January first, one thousand eight hundred and eighty-one, and until their successors are elected and qualified.

Referred to Committee on Judiciary and Judicial Department.

SALARIES OF OFFICERS.

MR. SMITH, of San Francisco, introduced the following proposed amendment to the Constitution, in relation to increase of salaries of officials:

ARTICLE —.

SECTION 1. That the increase of salaries, or compensation, of any State, county, or township officers, elected or appointed, in this State, shall be prohibited by law, during the term of office to which he has been appointed or elected, or any part thereof.

Referred to Committee on Legislative Department.

RELIGIOUS TEACHING IN PUBLIC SCHOOLS.

MR. SMITH, of San Francisco, introduced the following proposed amendment to the Constitution, in relation to religious teaching in public schools:

ARTICLE —.

SECTION —. That no sectarian books or sectarian creed shall ever be allowed in any of the public schools, academies, universities, or colleges in this State.

Referred to Committee on Education.

MUNICIPAL CORPORATIONS.

MR. STEDMAN introduced the following proposed amendment to the Constitution, in relation to municipal corporations:

SECTION —. The indebtedness of any municipal corporation shall never exceed in the aggregate five per centum of the value of the property within such corporation, as ascertained from time to time by the tax duplicate thereof, without the consent first obtained to such increase of indebtedness, and the approval of the objects for which the same is created, of at least three fourths of the qualified voters of such corporation, to be ascertained in the mode prescribed by law; and in no case shall such indebtedness exceed ten percentum of such taxable value. In ascertaining such indebtedness, at any time, there shall be included an amount which, at the rate of seven per centum per annum, will produce a sum equal to the aggregate amount payable by such corporation for the rent of property leased to it. This section shall not be construed to prevent any municipal corporation from incurring any indebtedness necessary to complete any work authorized by law and undertaken before the adoption of this Constitution; nor until the first valuation of real estate for taxation after the adoption of this Constitution, to prevent the borrowing of money in anticipation of the collection of assessments actually levied; nor shall the restrictions of this section apply to necessary expenditures for military purposes in time of war.

Referred to Committee on State and Municipal Indebtedness.

TAXATION OF CORPORATIONS.

MR. SWENSON introduced the following proposed amendment to the Constitution, relative to the taxation of corporations:

ARTICLE —.

SECTION —. The power to tax corporations or corporate property shall not be surrendered or suspended by any contract or grant to which the State shall be a party.

Referred to Committee on Revenue and Taxation.

TAXATION.

MR. TULLY introduced the following proposed article thirteen for the revised Constitution of the State of California:

ARTICLE XIII.

TAXATION.

SECTION 1. Taxation shall be equal and uniform throughout the State. All private property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property" as used in this article and section, is hereby declared to include moneys, credits, bonds, stocks, dues, franchises, and all other matters and things capable of private ownership, real, personal, and mixed.

SEC. 2. The Legislature shall cause to be levied and collected, annually, a State poll tax of three dollars for school purposes, from every male inhabitant of this State over twenty-one and under sixty years of age, from which tax no one of said class shall be exempt, except idiots and insane persons; and no other poll tax shall be imposed in this State by the State or any political division thereof.

SEC. 3. No license tax shall be imposed by this State, or any municipality thereof, upon any trade, calling, occupation, or business, except the following, viz.: the manufacture and sale of all kinds of wine, spiritous and malt liquors; shows, theaters, menageries, sleight of hand performances, exhibitions for profit, and such other business and occupations of like character as the Legislature may judge the public peace or good order may require to be under special State or municipal regulation and control.

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SEC. 4. In the assessment and taxation of land the improvements shall be separately assessed, but growing crops shall not be; and uncultivated land shall be assessed and taxed at the same price as cultivated land of the same quality similarly located.

SEC. 5. No corporation, except for benevolent, religious, scientific, or educational purposes, shall be hereafter formed under the laws of this State, unless the persons named as corporators shall, at or before the filing of the articles of incorporation, pay into the State treasury one hundred dollars for the first fifty thousand dollars or less stock, and a further sum of twenty dollars for every additional ten thousand dollars of its capital stock; and no such corporation shall hereafter increase its capital stock without first paying into the State treasury twenty dollars for every ten thousand dollars of increase.

SEC. 6. There shall be a State Board of Equalization in this State, consisting of the Governor, Secretary of State, Controller, Treasurer, and Attorney-General; said Board shall equalize the valuation of the taxable property in the State for State purposes, and perform such duties as may be prescribed by law. The Boards of Supervisors of the various counties of the State shall constitute Boards of Equalization of their respective counties, for county purposes, and discharge such duties as the Legislature may prescribe.

SEC. 7. No agreement, contract, or obligation hereafter made or entered into in this State, shall be of any validity whatever, or be enforced in any of the Courts of this State, or be entitled to record, that provides, directly or indirectly, for the payment of the taxes, or any part of the taxes, of the lender of money, or anything of value, by the borrower, upon the money or things loaned.

SEC. 8. A succession tax shall be imposed and collected upon all legacies and distributive shares derived from the estates of all deceased persons; *provided*, that no child, brother, sister, father, mother, husband, or wife of any deceased person shall pay such succession tax (non-resident aliens excepted) unless the distributive share of such person amounts in the aggregate to more than five thousand dollars in value, in which case all such persons shall pay a tax of one per cent. on the excess of five thousand dollars. All other persons, corporations, and associations (except non-resident aliens and foreign associations and corporations) shall pay a like tax of one per cent. on the value of what they may respectively receive. Non-resident aliens and foreign corporations and associations shall pay a tax of two per cent. on the aggregate value of any distributive share they may respectively receive.

Referred to Committee on Revenue and Taxation.

SCHEDULE.

MR. TULLY introduced the following schedule for a revised Constitution for the State of California:

SECTION 1. All rights, prosecutions, and claims, and all laws in force at the time of the adoption of this Constitution, and not inconsistent therewith, until altered or repealed by the Legislature, shall continue as if the same had not been adopted.

SEC. 2. The Legislature shall provide for the transfer of all records, books, papers, and proceedings from such Courts as are abolished by this Constitution to the Courts provided for herein; and the Courts to which the same are thus transferred shall have the same power and jurisdiction over them as if they had been in the first instance commenced, filed, or lodged therein.

SEC. 3. In order that no inconvenience may result to the public service from the taking effect of this Constitution, no office shall be superseded thereby nor the laws relative to the duties of the several officers be changed until the entering into office of the new officers under this Constitution.

SEC. 4. Every citizen of California declared to be a legal voter by the Constitution hereby revised and amended, and the laws now in force, shall be entitled to vote on the question of the adoption of this Constitution.

SEC. 5. This Constitution shall be submitted to the people, for their ratification or rejection, at a special election to be held on the first Wednesday in May, eighteen hundred and seventy-nine, as provided and directed in the Act of the Legislature calling this Convention.

SEC. 6. This Constitution shall take effect and be in force on and after the fourth day of July, one thousand eight hundred and seventy-nine, at twelve o'clock M.

SEC. 7. The Secretary of State shall cause this Constitution to be published once a week for at least four consecutive weeks next before the first Wednesday in May, eighteen hundred and seventy-nine, in not more than five of the newspapers published in this State; one of such newspapers shall be published in the City and County of San Francisco, one in the City of Sacramento, one in the County of Los Angeles, one in the County of Nevada, and one in the County of Tulare. The Governor shall issue his proclamation giving notice of the said election (for the adoption or rejection of this Constitution) at least two months before the said first Wednesday in May, eighteen hundred and seventy-nine. And the Boards of Supervisors of the several counties in the State shall cause said proclamation to be made public in their respective counties, and general notice of said election to be given for at least thirty days next before said election.

Referred to the Committee on Schedule.

FLAGS IN PROCESSIONS.

MR. TUTTLE introduced the following proposed amendment to the Constitution, concerning declaration of bill of rights:

It shall be unlawful for any foreign flag, foreign emblem, or any banner with any religious device, devices, emblem or emblems thereon, to be exhibited or carried in any public procession in this State.

Referred to Committee on Preamble and Bill of Rights.

PUBLIC OFFICERS.

MR. VACQUEREL introduced the following proposed amendment to the Constitution, relative to public officers:

Resolved, That no person who shall hereafter be a collector or holder of public money, or receiver of money as an officer, shall be eligible to any office of trust or profit until he shall have accounted for and paid, according to law, all money for which he is or may be liable.

Referred to Committee on Miscellaneous Subjects.

COMMON SCHOOL FUND.

MR. WEBSTER introduced the following proposed amendment to the Constitution, relative to providing for a common school fund:

A school tax of five cents per acre shall be annually levied and collected on each and every acre of land owned, claimed, or occupied in this State; said tax, when collected, to be placed in the several county treasuries of the State, to be accredited to the School Fund of the school district wherein raised.

Referred to Committee on Education.

PROTECTION OF LABORERS' AND MECHANICS' WAGES.

MR. WELLIN introduced the following proposed amendment to the Constitution, relative to the protection of laborers' and mechanics' wages:

In all cases of bankruptcy, laborers' wages shall be preferred creditors to the amount of one hundred dollars.

All contracts which shall be hereafter drawn, wherein a monetary consideration is provided or implied, shall stipulate the lawful money of the United States, and all contracts drawn payable in any specific kind of money shall be void and of no legal effect.

The State Prison Commissioners shall be elected by the people.

All aliens shall pay a poll tax of ten dollars.

All State prisoners shall be employed eight hours a day, directly for the benefit of the State, and no prison laborer shall ever be let out by contract.

Referred to Committee on Labor and Capital.

RECOGNITION OF GOD.

MR. WICKES introduced the following proposed amendment to the Constitution, recognizing God:

We, the people of the State of California, declare that government is absolutely inherent in God; that we exercise its functions by Divine ordinance; that we hold it in His fear, and make it mandatory in His name, when lawfully expressed. And upon this basis we establish this Constitution.

Referred to Committee on Preamble and Bill of Rights.

SYSTEM OF EDUCATION.

MR. WICKES introduced the following proposed amendment to the Constitution, in relation to education:

Resolved, That this be incorporated in article on education:

SECTION —. The State shall provide for a liberal system of education, ranging from primary to university grade, and embracing the culture of the mind, body, morals, and manners of the child.

Referred to the Committee on Education.

RIGHTS OF WOMEN.

MR. WHITE introduced the following proposed amendment to the Constitution, relating to the rights of women in the new Constitution:

SEC. 25. The State Library shall be placed in charge of some suitable widow or unmarried woman, to be appointed by the Governor, by and with the advice and consent of the Senate, who shall perform all the duties of Librarian, for which she shall receive the annual salary of two thousand dollars, and be allowed an additional sum of five hundred dollars for the employment of any assistants she may require in the performance of her duties.

SEC. 26. The State Capitol building, including all its offices, furniture, and ornamental grounds, shall be placed in charge of some suitable widow or unmarried woman, to be appointed by the Governor, by and with the advice and consent of the Senate, who shall receive as compensation the annual salary of eighteen hundred dollars, and an allowance of seven hundred dollars per annum for all assistance she may find it necessary to employ in the performance of her duties. And the Legislature shall, by appropriate legislation, provide for the carrying out of the provisions of this section and the section preceding it.

SEC. 27. Women of over twenty-one years of age shall be eligible to any office, whether elective or otherwise, in the educational department of the government; and female teachers shall always be entitled to as high salaries as male teachers of the same grade.

SEC. 28. The Legislature shall provide that at least one half of the employés in the State Printing Office shall be females, if suitable female printers apply there for employment. It shall further provide by law that at least one half of the clerical help in the State offices shall be females, and, as far as may be practicable, in all the public offices in large cities and counties throughout the State.

Referred to the Committee on Miscellaneous Subjects.

BREACH OF TRUST.

MR. WHITE introduced the following proposed amendment to the Constitution, in relation to breach of trust:

SEC. 44. If any one who is a candidate for either house of the State Legislature shall publicly declare his intention to support, advocate, and vote for any particular measure or proposed law, and shall, after election, refuse to support, advocate, or vote for such measure or law, he shall be deemed guilty of a breach of trust; or if such a person make a public declaration that he will oppose, try to defeat, and vote against some particular measure or law, discussed before the people during his candidacy, and shall afterwards support, advocate, or vote for any such

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measure or law, he shall be deemed guilty of a breach of trust, and in either case he shall, upon the sworn complaint of any five of his constituents, be brought to trial before a jury in the District Court of the county in which he resides, and, if convicted as charged, he shall forthwith forfeit his office, be fined a thousand dollars, and be ineligible thereafter to any office of honor, trust, or profit in the State.

SEC. 45. The complaint provided for in the previous section shall be full and specific in its character, and among other necessary allegations allege that the complainants voted for the person complained of, and were induced to do so, in part, because of the public pledges given by him.

SEC. 46. A member of the Legislature, proceeded against as provided for in the two foregoing sections, can claim no exemption from prosecution on account of being a member of the Legislature.

Referred to Committee on Miscellaneous Subjects.

DECLARATION OF RIGHTS.

MR. WILSON, of Tehama, introduced the following proposed Preamble and Declaration of Rights for a revised Constitution of the State of California:

PREAMBLE.

We, the people of California, grateful to Almighty God for our freedom, in order to better secure its blessings to ourselves and posterity, do ordain and establish this revised and amended Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. All men are by nature free and independent, and have many inherent and inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted by them for their protection, security, and benefit, and they have the right to alter or reform the same whenever the public good may require it.

SEC. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties in all civil cases, and in all criminal cases below felony, in the manner to be prescribed by law.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

SEC. 6. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted; *provided*, that whipping shall not be deemed cruel or unusual when inflicted as a punishment for crime; nor shall witnesses be unreasonably detained.

SEC. 7. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great.

SEC. 8. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment and in cases of militia when in active service, and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature), unless on presentment or indictment of a grand jury; and in any trial, in any Court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

SEC. 10. The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

SEC. 11. All laws of a general nature shall have a uniform operation.

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace.

SEC. 13. No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

SEC. 14. Representatives shall be by districts, as hereinafter provided.

SEC. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

SEC. 17. Foreigners who are entitled to become citizens of the United States under the naturalization laws thereof, who now are or may hereafter become bona fide residents of this State, shall enjoy the same rights in respect to the ownership, possession, enjoyment, and inheritance of property as native-born citizens; foreigners not entitled to become citizens under the naturalization laws of the United States, shall not have the right to own any real estate, nor to make a will, nor to take any property by inheritance.

SEC. 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

SEC. 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated, and no warrant shall issue but for probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

SEC. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open Court.

SEC. 21. This enumeration of rights shall not be construed to impair or deny others retained by the people.

SEC. 22. The Legislature shall have no power to make an appropriation, for any purpose whatever, for a longer period than two years.

SEC. 23. No part of this Constitution shall be construed or held to be directory, but the whole thereof is hereby declared to be and intended to be mandatory.

SEC. 24. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, or for the use or benefit of any sectarian school, nor shall any grant or donation of any property ever be made by the State, or by any county, city, city and county, or town, to any creed, church, or sectarian purpose whatever.

SEC. 25. The State shall never assume, become responsible for, or pay the debt or debts of any county, city, city and county, town, or township, or of any corporation whatever.

SEC. 26. Private property shall not be taken for public use without just compensation be first made therefor in money; and such compensation shall be assessed by a jury, without deduction for benefit to any property of the owner.

Referred to Committee on Preamble and Bill of Rights.

FORCED SALES.

MR. WYATT introduced the following proposed amendment to the Constitution, in relation to judicial, or forced sales:

SECTION —. No property shall be sold under judicial, or other forced sale, unless at such sale it bring two thirds of its appraised value, to be ascertained as directed by law.

Referred to Committee on Preamble and Bill of Rights.

PUBLIC LANDS.

MR. WYATT offered the following resolution:

Resolved, That the Surveyor-General of the State be and he is hereby requested to furnish to the President of this Convention, for the information of the members of the Convention, at the earliest day compatible with his public duties, the following information in a tabulated form:

First—The whole number of acres of land which has been certified or listed by the Government of the United States to the State of California by reason of the following grants or donations of land made by the United States to the State, to wit:

Second—The grant commonly known as the swamp and overflowed lands;

Third—The grant commonly known as the five hundred thousand acre grant;

Fourth—The grant of the seventy-two sections, commonly known as the seminary grant;

Fifth—The grant of ten sections, commonly known as the public building grant;

Sixth—The grant commonly known as the sixteenth and thirty-sixth section grant for common school purposes, and the lieu lands granted supplemental to the State grant of school lands;

Seventh—The grant commonly known as the Agricultural and Mechanics' Art College grant;

Eighth—The Yosemite Valley grant;

Ninth—The Mariposa Big Tree Grove grant;

Tenth—The number of acres of land so listed or certified to the State under each of said grants;

Eleventh—What number of acres of land belonging to each of said grants have been sold or disposed of by the State;

Twelfth—What number of acres of land does the State own and hold undisposed of under each of said grants;

Thirteenth—The total cash value received by the State for the lands which have been sold by her under said grants.

Also, what number of acres of land has the State now in possession, or sold or disposed of by virtue of her sovereignty, as salt marsh and tide lands.

Also, the total amount received in cash by the State for the sale of said lands.

Adopted.

NEWSPAPERS.

MR. HUESTIS offered the following resolution:

Resolved, That the Sergeant-at-Arms be and he is hereby instructed to supply the desks of the newspaper correspondents with a copy of all the printed documents ordered by this Convention.

Adopted.

MR. SWENSON offered the following resolution:

Resolved, That Jacob R. Freud, of San Francisco, be and he is hereby added to the Committee on Education.

THE PRESIDENT. The Chair is of opinion that that resolution is out of order at present. The gentleman must give notice if he wishes to change a standing rule. The committees are all appointed under a standing rule, and that rule cannot be changed excepting by one day's notice, and a two-third vote.

MR. BLACKMER. I move that it be referred to the Committee on Rules and Order of Business.

MR. ROLFE. I rise to a point of order. I believe it is out of order to consider that at all.

THE PRESIDENT. The point of order is well taken. The motion is out of order.

THE RULES.

MR. CAMPBELL, pursuant to notice, offered the following resolution:

Resolved, That rule sixty be and the same is hereby amended by striking out the words and figures "except rules fifty, fifty-one, fifty-two, fifty-three, and fifty-five."

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MR. CAMPBELL. The object is merely to have the right to suspend the rules, the same as any of the others, by a two-third vote.

The ayes and noes were demanded, and the resolution was lost by the following vote:

AYES.

Ayers,	Harvey,	McCoy,
Biggs,	Heiskell,	McNutt,
Blackmer,	Hilborn,	Moffat,
Boggs,	Hitchcock,	Nason,
Brown,	Holmes,	Ohleyer,
Burt,	Howard,	Pulliam,
Campbell,	Heustis,	Schomp,
Caples,	Hunter,	Shoemaker,
Charles,	Inman,	Stuart,
Condon,	Kelley,	Thompson,
Cross,	Keyes,	Tully,
Crouch,	Laine,	Van Dyke,
Dean,	Larkin,	Van Voorhies,
Dudley, of Solano,	Larue,	Webster,
Eagon,	Lewis,	Wickes,
Filcher,	Martin, of Alameda,	Wilson, of Tehama,
Freeman,	McCallum,	Winans,
Glascock,	McComas,	Wyatt—55.
Graves,		

NOES.

Andrews,	Gregg,	Reed,
Barbour,	Hale,	Reynolds,
Barnes,	Herold,	Rhodes,
Barry,	Herrington,	Ringgold,
Barton,	Johnson,	Shurtleff,
Beerstecher,	Joyce,	Smith, of 4th District,
Belcher,	Kenny,	Smith, of San Francisco,
Bell,	Kleine,	Stedman,
Boucher,	Lampson,	Steele,
Chapman,	Lavigne,	Stevenson,
Cowden,	Lindow,	Strong,
Davis,	Mansfield,	Sweasey,
Dowling,	Martin, of Santa Cruz,	Swenson,
Doyle,	McConnell,	Swing,
Dunlap,	Mills,	Townsend,
Edgerton,	Moreland,	Turner,
Estey,	Morse,	Tuttle,
Evey,	Nelson,	Vacquerel,
Farrell,	Neunaber,	Walker, of Marin,
Fawcett,	Noel,	Waters,
Finney,	O'Sullivan,	Wellin,
Freud,	Overton,	West,
Garvey,	Porter,	White,
Gorman,	Reddy,	Mr. President—73.
Grace,		

STATIONERY FOR CORRESPONDENTS.

MR. REYNOLDS offered the following resolution:

Resolved, That the Committee on Mileage and Contingent Expenses shall furnish to the Secretary of State, a list of all the accredited newspaper correspondents who have been assigned seats on the floor of this Convention, which list shall contain the name of such correspondent and the newspaper by whom accredited, and that the Secretary of State be and he is hereby authorized to furnish to such newspaper correspondents on such list such stationery as they may require for their newspaper correspondence, not exceeding in value ten dollars to each.

MR. REYNOLDS. I move that the resolution be adopted. I think it but fair that the Convention extend to the newspaper correspondents the usual courtesy extended by all legislative bodies. The Legislature has been in the habit of allowing them fifteen and twenty dollars worth, but in order to meet the views of this Convention, which seem to be in the line of curtailing expenses, I have inserted the sum of ten dollars.

MR. LARKIN. I would rise to a point of order. I think that is proper for the Committee on Mileage and Contingent Expenses.

MR. FAWCETT. I make the further point of order that it is not within the power of this Convention to appropriate money to private men and purposes. I ask for a ruling of the President upon that point.

THE PRESIDENT. The Chair is informed that it is the usual practice of the Legislature to make this kind of appropriations, yet I should myself think it would not be within the power of the Convention to make them. I think it is not within the power of the Convention to make such an appropriation. As at present advised, I should sustain the point of order, that the resolution is out of order.

PROPOSED CHANGE OF RULE.

MR. WINANS. I rise for the purpose of presenting for the consideration of this body a series of resolutions of vital consequence, in my judgment, in determining the character of our future deliberations and action in this body. In order to pass the resolutions it would be necessary to modify part of the existing rules. The resolutions, therefore, would not be strictly in order, nor even the reading of them, without giving the requisite notice, but as I have occupied very little of the attention of this body, and as it is desirable that I should express the character and purpose of the resolutions, in order that gentlemen may determine whether they will modify the rules to adopt them or not, I ask leave not only to read the resolutions, but to state their character and object, and I hope that the gentlemen will grant it on the present occasion. The resolutions are as follows:

Resolved, That the form and order of the present Constitution shall be adopted by this Convention in the new Constitution formed by it, to the following extent: that the new Constitution shall consist of a preamble, to be followed by twelve consecutive articles, which shall be numbered, entitled, and have sequence respectively in the same manner, and comprise the same objects, as the twelve articles of the present Constitution. That to these shall be added such new articles, numbered in proper order after said twelve, as this Convention shall adopt, after which shall follow the schedule as the final division of the new Constitution.

Resolved That the said preamble and articles shall be considered and acted upon by the Convention in the order and sequence aforesaid, and no one of them nor any subject-matter belonging to any one of them, shall be adopted or discussed until all other articles and matters pertaining to those having priority as aforesaid shall have been disposed of in their order.

Resolved, That for the purpose of giving effect and enforcement to the resolutions aforesaid, the several committees having charge of the matters embraced in said preamble and twelve articles shall make their reports in the order herein named, and none of said committees shall report upon the subject-matter of any of said articles until all the articles having priority thereto, as aforesaid, shall have been considered and disposed of by this Convention; and that the other committees having charge of matters not embraced in the said articles shall report afterwards and in such order as the Convention shall determine.

Resolved, That all rules inconsistent with the foregoing resolutions shall be modified, or so far as necessary revoked, to the extent of insuring conformity therewith.

MR. WINANS. The object of these resolutions is apparent on the face of them, it appears to me, but it is a subject that requires some thought.

In the first place, sir, we want to make as few changes in the present Constitution as can be made with consistency. No man wants to change the present Constitution just for the sake of change, or unless such change is necessary. No change is necessary in the form, plan, or order of the present Constitution. We have there the departments into which they are divided, and all the regular sequence and order, such as usually obtains in the framing of a fundamental compact. Let us determine to adhere to that order and form so far as it extends, and then apply new propositions where they belong, to the extent of the changes we propose to make.

Again, as regards the proposition that the committee shall make reports in the order named in the present Constitution. The object of that is to prevent confusion. There will be the direst and most inextricable entanglement if things proceed in the order which is now dictated. If members will reflect they will see that not only will committees come in with articles not existing in consecutive form but articles thrown pell mell, one coming in precedent to another where it should follow it. Not only that, but under the fifteen day rule the articles of the respective committees will come in by piecemeal. A committee has referred to it a certain subject-matter. That committee is compelled to report in fifteen days, and the consequence is that there will come in here from one committee one thing and from another something else, all thrown together confusedly into one disjointed mass. Such a plan will never work. It is to obviate that that I proposed the method suggested in these resolutions—that each subject be disposed of before we proceed to the next. That will not consume more time, because it will take the same period of time to discuss these relative propositions and articles in their proper order, as to discuss them in disorder and disconnection and in unnatural sequence. It would take a much longer time to dispose of them under the present rule. If the objection be urged that this calls upon committees to report in regular order, and that they can be compelled to do so, I answer that they can just as well report in order as to report pell mell. Moreover, the questions raised, excepting perhaps the declaration of rights, are those which will involve but little contest or confusion. They are not likely to be the debatable points of the conflict which will be presented here and which will array the antagonism of this body.

Again, sir, in regard to the reports of the other committees that constitute committees on subjects existing in the present Constitution. This aims at no disparagement, and involves no destruction of their purposes. In a regular turn every subject will come up and be debated. Every subject will have the attention bestowed on it which this body is willing to bestow. In view of these facts I have proposed these resolutions, the result of which will be of incalculable benefit.

As regards the modification of the rules, I do not see that there can be any impropriety in that. We have now, perhaps, too many rules. Our rules were formed upon legislative precedents rather than upon the parliamentary law at large. They are to meet the wants of this Convention, and they will grow as time develops them and the deliberations of this body progress. If they stand in the way of these resolutions, and to the extent to which they do, then we should amend the two thirds rule which prevents a real expression of the views of this Convention. Our plan should be to reach the will of the majority. I ask the members, inasmuch as it cannot be reached until another day, to give consideration to this whole subject, and see if in their judgment it will not be well to adopt the suggestion before we get entirely lost in the confusion which will ensue if we continue under the present rule.

THE PRESIDENT. The resolution will lie on the table for one day.

MR. HAGER. Mr. President: With the consent of the Convention, I would like to say a few words in regard to that proposition. It is entirely unnecessary that we should pass any such resolution, because we have a committee appointed now on that very matter—the Committee on Revision and Adjustment; and when any proposition comes in here reported by a committee, and is adopted, it will go to that committee for adjustment. The Committees on the Legislative Department, on Preamble and Bill of Rights, on the Judiciary and Judicial Department, on Miscellaneous Subjects, may report the same matter, but of course, it will only be incorporated in the Constitution under one head. Now, take the Constitution of the State of Pennsylvania, which I think is quite a model; there all the different subjects are branched off in a way that will be a guide to us here when we come to arrange the matter. After the Convention has adopted them, they go to this committee to be arranged in their proper place; but to endeavor to do it through the committees generally, would be useless; it is impossible. It cannot be done in the way proposed by the resolution.

MR. WINANS. I move that these resolutions be referred to the Committee on Rules and Order of Business, with instructions to report as speedily as possible.

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THE PRESIDENT. The gentleman has already given notice of his resolutions, and they will be on the table one day.

MR. WINANS. I withdraw that notice, and ask that they go to the Committee on Rules and Order of Business.

THE PRESIDENT. The gentleman will be out of order, because he has announced that the resolutions will alter or change the rules. He must, therefore, give one day's notice.

MR. LAINE. I am in favor of having them immediately printed, so that we can see them at once.

THE PRESIDENT. They are not before the body.

MR. WINANS. I suppose they should be printed.

THE PRESIDENT. Not before they are acted on by the Convention.

NOTICE.

MR. WINANS. I hereby give notice that, on the next day of session of this Convention, I shall move the adoption of the following resolutions, or, if necessary, the revocation of those rules which prevent their enforcement if adopted:

Resolved, That the form and order of the present Constitution shall be adopted by this Convention, in the new Constitution formed by it, to the following extent: that the new Constitution shall consist of a preamble, to be followed by twelve consecutive articles, which shall be numbered, entitled, and have sequence, respectively, in the same manner, and comprise the same subjects as the twelve articles of the present Constitution; that to these shall be added such new articles, numbered in proper order after said twelve, as this Convention shall adopt, after which shall follow the schedule as the final division of said new Constitution.

Resolved, That said preamble and articles shall be considered and acted upon by this Convention in the order and sequence aforesaid, and no one of them, nor any subject-matter belonging to any one of them, shall be adopted or discussed until all other articles and matter pertaining to them, having priority as aforesaid, shall have been disposed of in their order.

Resolved, That for the purpose of giving effect and enforcement to the rules aforesaid, the several committees having charge of the matters embraced in the said preamble and twelve articles shall make their reports in the order herein named, and none of said committees shall report upon the subject-matter of any of said articles until all the articles having priority thereto, as aforesaid, shall have been considered and disposed of by this Convention, and that the other committees having charge of matter not embraced in said articles shall report afterwards and in such order as this Convention may determine.

Resolved, That all rules inconsistent with the foregoing resolutions shall be modified, or, so far as necessary, revoked, to the extent of insuring conformity therewith.

NEWSPAPERS.

MR. REYNOLDS offered the following resolution:

Resolved, That each member of this Convention be and he is hereby authorized to order not more than —— daily newspapers or their equivalent cost in weeklies, to be furnished to each member on his order; and that he shall furnish the Committee on Mileage and Contingent Expenses with a list of the same. Said committee shall audit all bills for newspapers so furnished at the end of each four weeks of the Convention.

MR. BEERSTECHER. I move to amend the resolution so that it shall read that "each gentleman shall pay for his own newspapers."

MR. LARKIN. I move to lay the resolution on the table.

Carried.

NOTICES.

MR. WEST. Mr. President: I hereby give notice that I shall move, at the next session of this Convention, to amend rule seventy-three, by amending subdivision eight to read: "On Education, to consist of thirteen members."

Laid over one day, under the rule.

MR. NOEL. Notice is hereby given that I will move, on the twelfth instant, to amend rule fifty-two, so that it shall read: "Propositions and resolutions mentioned in the last foregoing rule shall embrace but one subject. They shall be read once by title when introduced, and then referred without debate to the appropriate committee."

Laid over for one day, under the rule.

MR. McCALLUM. Notice is hereby given that I will, on to-morrow, or as soon as the motion can be heard thereafter, move to strike out rule sixty, and insert as follows:

Rule 60.—No standing rule or order of the Convention shall be rescinded or changed without a vote of a majority, and one day's notice being given therefor, but a rule or order may be suspended temporarily by a two-thirds vote of the members present.

Laid over for one day under the rule.

PAY DURING ABSENCE.

MR. REYNOLDS offered the following resolution:

Resolved, No member shall receive pay for any week day on which he has not actually attended the Convention, except in case of sickness, or when he is absent on committee duty, or upon adjournment over of the Convention.

THE PRESIDENT. The Chair decides that resolution out of order.

MR. REYNOLDS. I appeal from the decision of the chair.

MR. HUESTIS. I move to lay the appeal of the gentleman on the table.

MR. REYNOLDS. I hope the gentleman will do me the favor to withdraw that motion to lay on the table. This appeal has been taken once or twice.

MR. HUESTIS. I will grant it. I withdraw the motion.

MR. REYNOLDS. I thank the gentleman.

THE PRESIDENT. The Chair decides the resolution out of order, on the ground that it is in violation of the statute.

MR. HUESTIS. Can one member appeal from the decision of the Chair?

MR. STEDMAN. I also appeal.

MR. BARNES. I second the appeal.

THE PRESIDENT. The question is, Shall the decision of the Chair stand as the judgment of the Convention?

Messrs. Barbour, Stedman, and Barnes called for the ayes and noes.

MR. EAGON. I would ask for information. My judgment is, that a motion of this character a few days ago was indefinitely postponed, upon the motion of the gentleman from Humboldt, and consequently a matter of this kind cannot arise in this Convention again.

MR. REYNOLDS. I will state, for the information of the gentleman, that that was an entirely different motion. That was a question upon adopting a rule.

THE PRESIDENT. This question, having been indefinitely postponed, cannot be revived, except by a majority vote of the Convention permitting it to be revived.

MR. BARNES. I would like to inquire if there is any lawful authority for the statement made by the gentleman from Amador, Mr. Eagon, that this matter was indefinitely postponed. It appears to be assumed that it was. I take issue with the gentleman upon that proposition. The question came up upon the adoption of a rule, and in such a form that it can be taken up again. I would like to have it come up, and be voted on once squarely.

THE PRESIDENT. The present incumbent of the Chair was not in the Chair when the question came up before, but is informed that it was indefinitely postponed.

MR. REYNOLDS. No such proposition as this. There never has been a vote taken upon it yet.

THE PRESIDENT. That question can only be decided by an examination of the Journal.

MR. BARNES. My recollection of that matter is, that when the proposition was advanced, it was decided by the President that it was out of order, just as it has been decided this morning.

MR. BARBOUR. That was on the question of adopting the rule proposed by the gentleman from San Francisco, and the laying on the table of the appeal. There was no motion to indefinitely postpone. That was upon rule sixty-five, and it was postponed to be inserted as rule seventy-three.

MR. LAINE. My recollection is quite distinct that this matter was indefinitely postponed three days ago.

MR. BEERSTECHER. That is my recollection.

THE PRESIDENT. The Chair can only decide that this question has been indefinitely postponed; but that it is within the power of the Convention, by a majority vote, to take it up again.

MR. REYNOLDS. Mr. President: There was never any motion made or entertained to indefinitely postpone this question.

THE PRESIDENT. The gentleman is out of order. The motion is out of order.

MR. REYNOLDS. I move now that we take up this motion.

NOTICE.

MR. NOEL. I give notice that I will move, on the fourteenth instant, to amend rule fifty-two, so as to read: "Resolutions and propositions mentioned in the last foregoing rule shall embrace but one subject; they shall be read once by title when introduced, and then referred, without debate, to the appropriate committee."

ABOUT PAY.

MR. TULLY offered the following resolution:

Resolved, That any gentleman on this floor wishing to donate his per diem may be allowed to do so.

MR. REYNOLDS. I ask for the reading of my resolution.

The Secretary read:

Resolved, No member shall receive pay for any week day on which he has not actually attended the Convention, except in case of sickness, or when he is absent on committee duty, or upon adjournment over of the Convention.

MR. VAN DYKE. Won't it be necessary to reconsider the vote by which that proposition was laid on the table?

MR. REYNOLDS. That motion was not laid on the table. The appeal was laid on the table.

THE PRESIDENT. The question now is whether the Convention will take up this resolution.

The question was put, and the Convention refused to take up the resolution.

ADJOURNMENT.

MR. EDGERTON. I move that the Convention adjourn until two o'clock on Monday.

MR. WHITE. I move to lay the motion on the table.

THE PRESIDENT. That is the first time the Chair ever heard a motion to lay a motion to adjourn on the table. [Laughter.]

MR. EDGERTON'S motion to adjourn until Monday was lost.

The hour having arrived, the Convention took a recess till one o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at one P. M., the President pro tem. in the chair.

Roll call dispensed with.

PAY DURING ABSENCE.

MR. STEDMAN. Mr. President: I have a resolution to offer, and before it is read I would ask that no gentleman move to lay it on the table, because I desire to have a vote on it:

Resolved, That after Saturday, October twelfth, no certificates of pay to any officer or member shall cover any period of absence from any session, with or without leave of the Convention, except in case of sickness, or on committee duty, or where any officer who may be absent shall provide a substitute.

MR. STEDMAN. I move that the resolution be adopted, and I call for the ayes and noes.

MR. ROLFE. I move that the resolution be indefinitely postponed.

MR. CAMPBELL. Under the rule the resolution cannot be voted on. It has to be referred and take its regular course.

THE PRESIDENT pro tem. The point of order is well taken.

MR. STEDMAN. I move that the resolution be referred to the Committee on Rules.

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MR. TULLY. I raise the point of order that the subject has been ruled out two or three times. This Convention has no control over the pay or per diem of the members of the Convention.

THE PRESIDENT. The resolution will go to the Committee on Rules.

MR. WELLIN offered the following resolution:

Resolved, That a fine of ten dollars be and is hereby imposed upon members for each and every day's absence from this Convention, except in case of sickness or absence on committee duty.

MR. FILCHER. I would like to inquire what order of business we are working under.

THE PRESIDENT pro tem. Miscellaneous. [Laughter.]

MR. HUESTIS. I move that the resolution offered by the gentleman from San Francisco, Mr. Wellin, be referred to the Committee on Rules and Order of Business.

Carried.

PAY OF PAGES.

MR. HILBORN presented the following report:

MR. PRESIDENT: Your Committee on Mileage and Contingent Expenses, to whom was referred resolution twenty-seven, respecting the payment of eighteen dollars to W. F. Germaine, for services as Page during the temporary organization of this Convention, have had the same under consideration, and herewith report the same back, with a recommendation that it be adopted.

Also, resolution number thirty-five, respecting the payment of fifteen dollars to Edwin H. Morris, for services as Page up to the date of the permanent organization, and recommend that the same be adopted.

S. G. HILBORN, Chairman.

MR. BEERSTECHER. I would inquire whether these Pages were appointed by the Governor to do this duty?

MR. HILBORN. I will say that the other young gentleman was one of the Pages of the Assembly, and they were designated by the Governor to perform that duty until the organization of the Convention. They performed that duty, and these resolutions simply provide for their pay.

MR. BEERSTECHER. I move that the resolutions be re-referred to the committee, and that they make a further report as to how much has already been expended on the Pages, and how many Pages have already been paid. I believe six or eight have already been paid.

MR. HILBORN. The committee have no information to that effect. This is the only resolution that has been before our committee. I am satisfied that these young gentlemen were designated by the Governor.

MR. HAGER. If he has certified to that fact, I suppose that is all that can be done. The Chairman says that the Governor has certified to their appointment. Now, it matters not whether we pay six or eight, if he has gone through the regular channel.

MR. HILBORN. I am informed that there are only two who have been previously paid; that there were four during the temporary organization.

The motion to recommit was lost.

The resolutions were adopted.

ADDITION TO COMMITTEE.

MR. FILCHER offered the following resolution:

Resolved, That the name of William P. Grace, of San Francisco, be added to the Committee on State Institutions and Public Buildings.

MR. FILCHER. Mr. Grace is a builder and an architect, and his services on the Committee would be valuable. I ask the reference of the resolution to the Committee on Rules and Order of Business.

So ordered.

REPORTING OF THE DEBATES.

MR. HILBORN presented the following report:

MR. PRESIDENT: Your Committee on Mileage and Contingent Expenses, to whom were referred Resolutions numbers twenty-three, twenty-four, and twenty-five, all relating to the employment of Phonographic Reporters for this Convention, have had the same under consideration, and herewith report the same back, with a recommendation that they be not passed.

In the opinion of this committee, it is not expedient to report the proceedings of this Convention at the expense of the State

It is impossible to ascertain the exact cost of reporting and printing our proceedings, but the sum would necessarily be very large.

If the Constitution which this body shall frame is rejected by the people, then the reports would be useless, and the money they cost will be thrown away. If, on the other hand, we are successful in framing a Constitution which is adopted by the people, then private enterprise will produce a report of our proceedings which is likely to be better than one produced under direction of this Convention, and without expense to the State.

S. G. HILBORN, Chairman.

MR. LARKIN. I move the adoption of the report and the concurrence of this Convention with the report.

MR. ROLFE. I move as an amendment that the resolutions be referred to the Committee on Printing and Reporting, with instructions to ascertain what expense will be involved. As I understand it similar instructions were given this Committee on Mileage and Contingent Expenses, which I see they have not complied with. From the reading of the report the committee do not appear to have complied with the instructions of the Convention. If I remember, the instructions were that they should ascertain the probable cost. They seem only to report their ideas as to the propriety of reporting the debates at all. If we ascertain the probable cost by a careful investigation by the proper committee, it may be that the Convention will conclude to have a report of the proceedings of the Convention, at least of the debates subsequent to the present time—I mean a report of the debates when we get to work on the Constitution itself. I therefore make the motion that it be referred to the Committee on Printing and Reporting, with instructions to report the probable cost.

MR. BIGGS. I am very much opposed to the motion. That question has been brought up time and again before this Convention. It has been voted down repeatedly. I hope the report will be adopted. This house has had several votes on that. There was over a hundred members voted against a Phonographic Reporter. It has been re-referred and re-referred. I think by the time this Convention gets through printing all the propositions for amendments to this Constitution, they will have a great deal to pay for, and there will not be much left to pay reporters. I am opposed to the motion of the gentleman from San Bernardino, Mr. Rolfe, and insist on the motion being adopted by the gentleman from El Dorado, Mr. Larkin.

The motion to refer was lost.

ADJOURNMENT.

MR. EAGON. Mr. President: With the indulgence of the Convention, before we enter into the calling of the ayes and noes on the adoption of the report, I desire to make a motion, and state my reasons for it. It is a motion that when we adjourn to-day, we adjourn to meet at two o'clock P. M. on next Monday. Now, sir, I wish to say a word as to why I make this motion. It is well known that there are gentlemen here who have business to attend to at home, and others who desire to see their families, and we have been here now for two weeks. There is no particular necessity for remaining in session to-morrow, and all we do is heaping additional expenses upon the State. These gentlemen desire to be away for a day, and if there is no important business to be done, I do not think that our constituents would think it wrong at all for us to adjourn, for the purpose of attending to our private business. It is not expected that we, as representatives of the people on this floor, are to neglect entirely our own business. We ought to have a little time to go to our homes, and I believe that the people of the State will be well satisfied with our action in that respect. I hope that this motion will prevail at this time.

MR. BEERSTECHER. I rise to a point of order. A motion to adjourn to a particular time is not a privileged question. There is a motion before the house already.

MR. EAGON. I asked the privilege of the house to make the motion if there was no objection.

MR. BEERSTECHER. I object.

THE PRESIDENT pro tem. The motion was made without objection. The Chair will put the question. All those in favor of the motion will, when their names are called, say "aye;" those opposed, "no."

The roll was called, and the motion prevailed by the following vote:

AYES.

Ayers,	Heiskell,	Ohleyer,
Barbour,	Herold,	Overton,
Barnes,	Hilborn,	Porter,
Barry,	Hitchcock,	Pulliam,
Barton,	Howard,	Reed,
Belcher,	Hughey,	Reynolds,
Berry,	Inman,	Ringgold,
Biggs,	Johnson,	Rolfe,
Blackmer,	Joyce,	Schomp,
Boggs,	Kelley,	Shoemaker,
Boucher,	Kenny,	Smith, of 4th District,
Brown,	Keyes,	Smith, of San Francisco,
Campbell,	Laine,	Soule,
Chapman,	Lampson,	Stedman,
Charles,	Larue,	Steele,
Cowden,	Lavigne,	Strong,
Dean,	Lewis,	Stuart,
Dudley, of Solano,	Lindow,	Swenson,
Dunlap,	Mansfield,	Thompson,
Eagon,	Martin, of Alameda,	Townsend,
Edgerton,	Martin, of Santa Cruz,	Turner,
Farrell,	McCallum,	Vacquerel,
Fawcett,	McFarland,	Van Dyke,
Freud,	McNutt,	Van Voorhies,
Garvey,	Mills,	Walker, of Marin,
Glascock,	Moffat,	Waters,
Grace,	Morse,	Wellin,
Gregg,	Nelson,	West,
Hager,	Neunaber,	Winans,
Hale,	Noel,	Mr. President—91.
Harvey,		

NOES.

Andrews,	Gorman,	Reddy,
Beerstecher,	Harrison,	Rhodes,
Bell,	Herrington,	Shurtleff,
Burt,	Holmes,	Stevenson,
Caples,	Huestis,	Sweasey,
Condon,	Hunter,	Swing,
Cross,	Kleine,	Tully,
Crouch,	Larkin,	Tuttle,
Davis,	McComas,	Webster,
Dowling,	McCoy,	Wickes,
Doyle,	Moreland,	White,
Evey,	Nason,	Wilson, of Tehama,
Filcher,	O'Sullivan,	Wyatt—40.
Finney,		

REPORTING THE DEBATES.

[MR. EDGERTON in the chair:]

MR. BROWN. I would like to hear read the resolutions under which the committee have made this report.

THE SECRETARY read the resolutions which had been referred to the Committee on Mileage and Contingent Expenses, as follows:

(Offered by MR. MCFARLAND:)

WHEREAS, It is of the greatest importance that the notes of the proceedings of this Convention should be taken in full, in order that the same may be published in case the Constitution shall be adopted by the people; therefore, be it

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Resolved, That one official reporter shall be elected, who shall have power to appoint one assistant each to receive a per diem of ten dollars.

The duties of the official reporter and his assistant shall be to take down in shorthand, verbatim, all the debates and proceedings of the Convention, from the beginning to the end.

The official reporter shall be required to give a good and sufficient bond in the sum of ten thousand dollars that he will, upon the order of this Convention, at any time, or upon the order of the Legislature, or upon the request of any member of this Convention, write out in full or in part, as may be directed, the debates and proceedings of the Convention, at a cost not to exceed twenty cents per folio for transcribing.

(Offered by MR. SMITH, of Kern:)

Resolved, That there be elected by this Convention an official shorthand reporter, whose duty it shall be to report such debates as may be made upon the following leading questions, to wit:

1st. Chinese Immigration.
2d. Taxation and Finance.
3d. The Judiciary.
4th. State and Municipal Indebtedness.
5th. Education.
6th. State, County, and Township Organization.
7th. Railroads and other Corporations.
8th. Water and Water Rights.
9th. Suffrage.

Provided, the expense of such reporting shall not exceed six thousand dollars for the session of the Convention.

(Offered by MR. McCALLUM:)

Resolved, That a Phonographic Reporter and an assistant should be appointed to report and transcribe the proceedings of this Convention; *provided*, that such services can be obtained on satisfactory terms to the Convention.

Resolved further, That the committee heretofore appointed on Phonographic Reporters is hereby instructed to ascertain on what terms such services can be obtained, and report thereon by resolution or otherwise as soon as practicable; such report to include the per diem, the amount per folio for transcribing and cost of indexing, and if printed, when and on what terms can the same be placed on the desks of the members.

MR. BARNES. I think, and all the gentlemen will agree with me, that resolutions of this character, when submitted to a committee, are entitled to fair treatment. I mean fair treatment in the parliamentary sense. The resolutions, all of them, look favorably upon the appointment of an official reporter. None of them are against it; and the committee was requested by the resolutions, if I understand them, to inquire and report to this Convention what the cost of this thing shall be. Now I submit, Mr. President, that this has not been done. The committee have ignored the resolutions, and have undertaken to dispose of the question in a manner in accordance with their own views. These gentleman were not requested to give us their opinion as to whether it was desirable or undesirable to have official reporters of this Convention. They were simply required to find out and let us know what it would cost to do the work. I hope that the report will not be accepted. I move that the report of the committee be recommitted, with instructions to them to comply with the orders of this Convention.

MR. McCALLUM. The committee had a perfect right, so far as that is concerned, to report as they have reported. The gentleman from the First District, Mr. Barnes, is in error in supposing that the first of the resolutions offered by me had been adopted. I drew that resolution, and the intention was to adopt the first resolution first, and after that had been adopted then adopt the second, and have the committee named ascertain the facts referred to in the second resolution. But, as to the reference to the Committee on Contingent Expenses, they had the right to report as they have, because the Convention had not adopted anything in regard to their action. I have said nothing upon this question so far, and desire to say but a word now. It is not true that there has been any test vote upon this question. The only question was, "That the Convention now proceed to elect a Phonographic Reporter," and upon which the gentleman from the First District, and all those who favor having the reports, with scarcely an exception, voted "no," on the proposition that we were then to proceed to an election of a reporter. I was opposed to that, with many others, because I believed we ought to know the terms that could be obtained. Therefore I offered this resolution which was last read, which, if gentlemen will remember, was substantially this: that a Phonographic Reporter and his assistant shall be selected, provided their services can be obtained on satisfactory terms to the Convention. Then follows the second resolution, providing that the committee heretofore appointed upon this subject should be required to ascertain the cost of such transcribing, the cost of indexing, which we never learned anything about heretofore, the cost of the whole work of the reporting of the Convention. It does not propose that we shall have a reporter under any circumstances, but only in case his services can be obtained on satisfactory terms. If it did I would vote against it.

If this motion to adopt the report is lost, I propose to call up my resolutions, so that we can take a test vote, which we have never yet had, on the proposition whether we are going to have a Phonographic Reporter on any terms.

The idea that if the Constitution should be adopted then private enterprise will get out something in the shape of a report—that private enterprise could possibly reach it—seems to me to be very inconsistent in itself. It would be absolutely impossible.

Now, Mr. President, when the Constitution is adopted it will be too late. If reporters are to be elected in any Constitutional Convention, of course it must be decided beforehand whether the report ought to be made. It is a thing which necessarily you must take your chances on, whether the Constitution will be adopted or not. My distinguished friend seems to rely upon the argument that it is doubtful whether the Constitution will be adopted, but if we wait until that is decided, then the question can never come up as to whether there ought to have been a report or not. It must be decided now if the report is to be made; and so far as the probabilities are concerned, I take occasion to say that I entertain not one doubt about the adoption of the Constitution which will be presented to the people by this Convention, unless the two extremes in this Convention should fail to agree upon any document to submit to the people.

MR. McFARLAND. Mr. President: I believe I introduced the first resolution which was referred to the committee. That resolution simply provides that two reporters shall be elected; that they shall keep shorthand notes of all the proceedings and debates of the Convention; that they shall report the whole or any part in longhand writing when required either by this Convention or by the Legislature, or by any member of the Convention. Now, that is all that it provides. There is no question about the cost. It is simply twenty dollars a day. Now, the report of the committee, to the effect that if we want a report hereafter private enterprise will furnish it, is certainly, upon its face, foolish. We cannot get a report of the proceedings of this Convention after the Convention is over, unless you have taken it during the progress of the Convention.

Now, this proposition does not include the transcribing or the publication. It simply provides for a state of things upon which hereafter, if you choose, you can have the reports transcribed and published. If you adopt the report of the committee, you simply prevent any foundation for any reports hereafter, whether the Constitution be adopted or whether it be not adopted. The proposition is simply to employ two shorthand reporters at twenty dollars a day to take down the debates and proceedings, to be transcribed and published in whole or in part hereafter, as the Convention may order, or the Legislature, or any particular member who desires to have any particular portion of it transcribed. That is all there is of the proposition. We know what it will cost. If we choose to have it transcribed and published hereafter, that is a matter for the future.

MR. LARKIN. We understand it fully. If we are going to do anything, let's do it. Let us fix it positively for a definite sum. Now, I look upon my motion as one that will bring a test vote. I move to indefinitely postpone the whole subject-matter.

THE PRESIDENT. The question is on the motion to recommit, upon the ground that the report is not in compliance with the resolutions referred to the committee. The merits of the question are not under discussion.

MR. BROWN. We have heard that there has been nothing presented by this committee, in accordance with the instructions which they received as to that resolution. Now it is highly probable to me that several of the members of this body were absent when the instructions were given. That committee was required to ascertain the amount of expense, not only of reporting, but of transcribing; and it was the wish of the members of this body to know, so far as could be ascertained, the entire expense connected with this work. The committee are supposed to have investigated, and they find the expense to be beyond what they had anticipated. They say they cannot tell what the expense will be, but that it will be large. And then they advise something, perhaps, that was not exactly required—that we have none such. Now, I am under the impression it was their right, as they could not give us the cost, to tell us what they had learned of the extent of expense.

MR. AYERS. I think, Mr. President, if this Convention requires the information which these resolutions call for, that the subject-matter should be referred to the proper committee. I think that the Committee on Mileage and Contingent Expenses have made all the examination they could make. I do not suppose that that committee was appointed with a view to their knowing anything about these technical questions. I submit—I will not do it myself, because I am a member of that committee—that this whole matter can be cleared up if some gentleman will move to refer it to the Committee on Reporting and Printing. If not, I think you had better discharge that committee.

MR. McCALLUM. That is the motion I wish to make; that this whole matter be referred to the Committee on Reporting and Printing.

MR. BARNES. I accept the amendment.

MR. JOHNSON. Mr. President: There is no question but that the foundation of our constitutional structure should be upon the basis of economy. I fully approve of that position, but at the same time there are other matters to be considered. We sit here as a Constitutional Convention, not as a mere legislative body; not for a day; not to enact ephemeral laws, but to frame a Constitution, which, if adopted, is to govern the people of California to-day and their descendants. There is no telling, sir, how long this Constitution, if it is ratified by the people, may last. It may last for half a century. Those rude miners who sat in Convention in eighteen hundred and forty-nine, came together and put forth a Constitution which has stood the test of nearly thirty years. Now, I am not in favor of the great State of California standing in the background. I fully realize the fact that those great imperial States of this Union that have recently adopted Constitutions, have also had their debates published for future reference, and it seems to me that our State should take the same position, unless this economical spirit prevails to such an extent as to preclude us from voting for a Phonographic Reporter. Now, it is said that some gentlemen may erect monuments for themselves; that they are desirous of having these debates published for that purpose. Well, that might to some extent be proper, but that argument would not govern me at all.

THE PRESIDENT. The question is on referring the whole matter to the Committee on Reporting and Printing.

MR. JOHNSON. I am in favor of referring these resolutions to that committee, and it occurs to me that the resolution of the gentleman from Sacramento, Mr. McFarland, is the only tangible one that has been suggested before this Convention. I shall, therefore, vote to recommit and against the adoption of the report.

MR. HALE. Mr. President: I wish to add one word to what has been said on behalf of the recommitment of this subject-matter of reporting. The specific reason that I wish to assign is, that the house is not full to-day. There are a very large number of members excused

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one way and the other—probably thirty members absent. Mr. President, I have not any doubt whatever that when this Convention really expresses its judgment upon the subject by a majority vote, it will favor the adoption of a reasonably economic plan of reporting the debates of this Convention. I believe that every member of this body who will stop to reflect upon the subject and realize what they are about to do, will make up their minds that it is their duty to preserve in some official, authentic form the proceedings and debates of this Convention. It is, I think, certain that the committee whose report we are now considering or dealing with, failed, no doubt, through misapprehension, to obey the behests of the Convention. They were instructed to ascertain certain matters of fact. They neglected to do so. Now, the committee to whom it is proposed to send this matter is a standing committee. It is in the exact line of their duty, and if they have any duties to perform, they are such as is proposed to assign them. They will give such a report as the Convention desires, and when this Convention is full—when these members are present and we can have a fair discussion upon this question, I do not doubt that we shall adopt the wisdom and foresight of all the other States and preserve in an authentic form the proceedings and debates of this Convention. I therefore trust that this motion will prevail and that this matter will be sent to an appropriate committee.

MR. BEERSTECHER. I desire to say why I favor sending this matter to this committee. This is not an expression as to whether we favor phonographic reporting, or whether we repudiate it. It is merely to have a full examination on the subject, and to have a full report, and to be able to vote intelligently; and therefore I favor referring this matter to the Committee on Phonographic Reporting. I shall vote in that way.

MR. BARBOUR. I propose to vote against this motion. I want to come to a square vote upon the report of the committee. I say we have already had the sense of the Convention on this subject. The gentleman from San Francisco, Mr. Hager, offered a resolution, that in the opinion of this Convention the debates ought to be reported, and it was voted down by over one hundred votes. Now we have it again, in the shape of a report of a committee. That brings the matter squarely before the Convention, and I want to vote on it.

MR. HAGER. I do not want to debate this matter. I have said heretofore that the Act of the Legislature calling this Convention is equivalent to an instruction to this Convention to employ Phonographic Reporters. About the printing, there is no instruction. Now, this motion is merely to get information. Now, what gentleman here can refuse to receive information, where the Legislature has instructed him that he might employ Phonographic Reporters. You don't want a report; you don't want to know what it will cost: but you want an expression from this Convention before the members understand anything about it. Why not refer this matter, and have all the information we can obtain, before we act finally? I say that I will not vote to print this report now; but I do say that there is something in the idea that we should, under this Act, take this report, and let the Legislature print it hereafter if they see fit. The object of the motion is simply to gain information, and I cannot see why any gentleman should object.

MR. BIGGS. The Legislature says they may do thus and so. That is the language of the law. And if gentlemen want their speeches taken down in shorthand, I say let them pay out of their own pockets. The Convention of the State of Ohio spent one hundred and seventy-five thousand dollars.

THE PRESIDENT. The question is on the motion to recommit to the Committee on Reporting and Printing.

MR. BIGGS [standing in the main aisle]. I trust that this Convention will vote that motion down.

[Cries of "louder!" "louder!"]

MR. ROLFE. I rise to a point of order. The gentleman is out of his place in the Convention.

THE PRESIDENT. The point of order is well taken.

MR. FAWCETT. I only ask leave to remind this Convention that this whole matter has been in the hands of the Committee on Reporting and Printing before, and that the house is in possession of all the facts which the present resolution contemplates. They reported that the expense of taking the reports would be two thousand dollars; of transcribing, not to exceed six thousand dollars, and the printing about ten thousand dollars—making in all eighteen thousand six hundred dollars and some cents. That information has been in the possession of this Convention for the past week. The indexes have not been reported upon——

MR. AYERS. I will remind the gentleman——

MR. FAWCETT. Except the cost of making the indexes, a comparatively small item; perhaps one thousand dollars.

MR. FILCHER. It seems to me that it is useless to recommit this matter of reports. If this Convention desires the reports taken, they know they can get it at ten dollars a day each for the reporter and his assistant. If they wish a longhand report of these proceedings, it has already been stated on the best authority that it can be obtained, and the cost. If they also wish to have that longhand report printed, it has been stated, in terms as clear as the noonday sun, what the cost of a printed copy will be. These points have all been looked into and investigated by the Committee on Reporting and Printing, and they have reported to this body, separately and in both, each of these items. It seems to me if this Convention wishes to vote upon this matter they should be sufficiently posted now to decide positively pro or con. If they wish reports, let us have them now. If they are determined to have no reports on any terms, I say let some vote or other decide the matter, and end it at once. I hope the motion to refer will not carry, because every point has already been laid before the Convention.

The ayes and noes were demanded, and the motion to refer was lost by the following vote:

AYES.

Andrews,	Howard,	Reed,
Ayers,	Huestis,	Rolfe,
Barton,	Inman,	Schomp,
Beerstecher,	Johnson,	Shoemaker,
Blackmer,	Lampson,	Shurtleff,
Brown,	Mansfield,	Smith, of 4th District,
Burt,	Martin, of Santa Cruz,	Stedman,
Cross,	McCallum,	Steele,
Dudley, of Solano,	McComas,	Stevenson,
Dunlap,	McConnell,	Strong,
Eagon,	McCoy,	Stuart,
Edgerton,	McFarland,	Swing,
Finney,	NcNutt,	Thompson,
Garvey,	Mills,	Townsend,
Gregg,	O'Sullivan,	Van Dyke,
Hale,	Porter,	Waters,
Harvey,	Prouty,	Wellin,
Heiskell,	Reddy,	Wilson, of Tehama—55.

NOES.

Barbour,	Grace,	Morse,
Bell,	Hall,	Nason,
Berry,	Harrison,	Nelson,
Biggs,	Herold,	Neunaber,
Boucher,	Herrington,	Reynolds,
Caples,	Hilborn,	Rhodes,
Chapman,	Hitchcock,	Ringgold,
Charles,	Holmes,	Smith, of San Francisco,
Condon,	Hughey,	Soule,
Cowden,	Hunter,	Sweasey,
Crouch,	Joyce,	Swenson,
Davis,	Kelley,	Tully,
Dean,	Kenny,	Tuttle,
Dowling,	Kleine,	Vacquerel,
Doyle,	Laine,	Van Voorhies,
Evey,	Larkin,	Webster,
Farrell,	Larue,	West,
Fawcett,	Lavigne,	Wickes,
Filcher,	Lewis,	White,
Freud,	Lindow,	Winans,
Glascock,	Moffat,	Wyatt—64.
Gorman,	Moreland,	

Mr. Barnes, "aye," paired with Mr. Turner, "no."

MR. ANDREWS. I move that this mattor be postponed until Tuesday next, at two o'clock.

The ayes and noes were demanded by Messrs. Larkin, Tully, and White.

The roll was called, and the motion lost, by the following vote:

AYES.

Andrews,	Harvey,	Reed,
Ayers,	Heiskell,	Rolfe,
Barry,	Hilborn,	Shoemaker,
Barton,	Huestis,	Shurtleff,
Blackmer,	Inman,	Smith, of 4th District,
Charles,	Johnson,	Stevenson,
Cross,	Lampson,	Strong,
Dudley, of Solano,	Martin, of Santa Cruz,	Stuart,
Dunlap,	McCallum,	Swing,
Edgerton,	McConnell,	Thompson,
Filcher,	McCoy,	Townsend,
Garvey,	McFarland,	Van Dyke,
Gregg,	Mills,	Waters—41.
Hale,	Reddy,	

NOES.

Barbour,	Harrison,	Neunaber,
Beerstecher,	Herrington,	O'Sullivan,
Bell,	Hitchcock,	Porter,
Berry,	Holmes,	Prouty,
Biggs,	Howard,	Rhodes,
Boucher,	Hughey,	Ringgold,
Brown,	Hunter,	Schomp,
Burt,	Joyce,	Smith, of San Francisco,
Caples,	Kelley,	Soule,
Chapman,	Kenny,	Stedman,
Condon,	Kleine,	Steele,
Cowden,	Laine,	Sweasey,
Crouch,	Larkin,	Swenson,
Davis,	Larue,	Tully,
Dean,	Lavigne,	Tuttle,
Dowling,	Lewis,	Vacquerel,
Doyle,	Lindow,	Van Voorhies,
Evey,	Mansfield,	Webster,
Farrell,	McComas,	Wellin,
Fawcett,	McNutt,	West,
Finney,	Moffat,	Wickes,
Freud,	Moreland,	White,
Glascock,	Morse,	Wilson, of Tehama,
Gorman,	Nason,	Winans,
Grace,	Nelson,	Wyatt—76.
Hall,		

Mr. Barnes, "aye," paired with Mr. Turner, "no."

MR. MCFARLAND. I move that this Convention do now adjourn.

MR. WHITE. Ayes and noes.

Lost.

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THE PRESIDENT. The question recurs on the adoption of the report.

MR. ANDREWS. Mr. President: It seems to me that there is a disposition to force this matter, and it looks to me as scarcely proper to do so. Scarcely more than half of the Convention are now present. I am perfectly prepared to vote upon this question, just as well prepared to vote upon it as I will be at any time. I believe that the merits of this question are now before the Convention. I think that this question should be disposed of. I think so just as much as any delegate now present in this Convention, but I think that when it is disposed of that it should be disposed of fairly. I think the members absent from the Convention have a right to a voice in relation to this question. I believe that they will have a voice in this question, and I ask why force it now, at this time, when it will not amount to saying what the voice of this Convention is—the Convention which the people of the State of California have elected to decide upon a question, when they are not here represented upon this floor? It seems to me that it is unfair to urge this vote under these circumstances and at this time. Mr. President, when this Convention is full, when all the members entitled to vote, and that the people have elected as their agents, are present, then it will be a body of representative men of the State of California. It will be a body of men who have been here from the first settlement of the State. Many, I might say almost a majority of this Convention, are pioneers of the State of California, and they are representatives of the State of California, and they have been a part of the history of the State. The men who have been elected by the people as their agents to frame a Constitution for this State are the representatives of the State of California. I believe that they represent more than the people of the State of California, and come nearer representing the sentiments of the nation than any other Convention that has ever assembled in the United States. Then why, Mr. President, should we not preserve all the history of this Convention—I mean all the work of the Convention, and the debates upon propositions embodied in the Constitution which we are about to propose to the people for their ratification? I say why shrink from preserving that history? Gentlemen have talked about economy in relation to this question. It seems to me, Mr. President, that instead of its being economy for us to fail to preserve the debates of this Convention, it would be a piece of unjustifiable waste. I hope, in the first place, that this Convention, at this time, will be fair enough at least to let us dispose of this question when we have a Convention nearer full than the Convention is at the present time.

MR. BEERSTECHER. I understand the question to be whether we shall take a vote upon the report of the committee. The gentleman says that there are not a sufficient number of delegates here to take a just and equitable vote upon that question. I call the gentleman's attention to the fact that the vote just taken by ayes and noes shows that there are one hundred and seventeen delegates present, of which number seventy-six voted "no." Therefore, if but one more delegate, not present here, should vote "no" upon this question, a majority would be against phonographic reporting—an absolute majority of the whole Convention. Although I was in favor of referring this matter to the Committee on Phonographic Reporting and Printing, yet as that vote was lost by an overwhelming majority, I do not see why the report of the committee should be deferred. There is more than a quorum here. There are at least one hundred and seventeen members here now that are prepared to vote upon this question. Of course it can be called up at any time, but why the report should not be disposed of is more than I can see.

MR. TULLY. This question has been before the Convention some three or four times. The same ideas and the same arguments have been advanced. I do not think that it will do any good to prolong this contest, and I hope that the friends of this measure—those who are in favor of adopting the report of the committee—will remain here until they accomplish that object; and believing that the minds of this Convention are made up, I move the previous question.

MR. BARBOUR. Second the motion.

MR. SWING. Mr. President: I shall vote against the adoption of the report. It does seem to me that the gentlemen who are in favor of not having the debates in this Convention printed, on the ground of economy, have occupied a great deal of time discussing this proposition. Now, I believe this: that whether this Constitution be adopted or not by the people of this State, that it is their right to have the debates and proceedings of this Convention in full. I believe that it would be a matter of economy, and would be so regarded by the people, to know the record which these members have made in this Convention, to guide them in selecting officials in the future. I am in favor of every man in this Convention standing upon his record. I am not in favor of suppressing that record, but I am in favor of giving an official report of it to the people of the State of California. It is the right of the people to have it, and it is not our right, as their representatives, to suppress what may be done here, and give them a bare skeleton of what has taken place. They have delegated this power to us, and shall we simply give them the bare Constitution itself, or shall we also give them that of which it is made, that they may see and be able to judge of that Constitution hereafter?

MR. LAINE. I have said nothing upon this question, but I desire to say a word or two. Now, it has been my fortune to wade through a number of constitutional debates, and I have found them, in the main, trashy and worthless. I have found men inveighing—advocating one way and voting another; and the best speech we can make to the people of the State of California—the one that will make or mar—is the Constitution that we hand them, not to exceed forty pages. I do not propose to suppress anything. Every word and every vote goes out upon the wings of the wind. It is printed in every quarter of the State. We cannot justify it by any sort of talk we may have here. The question simply turns upon this proposition: will the cost and expense of doing this thing pay the people? In my judgment, it will not. In my judgment, there is not one man, woman, or child out of every ten thousand that would ever read it. I have no doubt that political hucksters, when they went before the people for office, might use it, so as to twist and turn it to the convenience of some political character. But when the people of this State instruct me to vote away their money, or to so act that it may be spent in reporting useless debates, then I will obey, or resign; but I do not believe the intelligent voters of this State demand anything of the kind. They do demand that we should give them a Constitution that, in all its parts, shall guard their liberties and secure their rights. If we can do this, I shall be content.

MR. MCFARLAND. There may be some gentleman like the gentleman from Santa Clara, whose simple word is enough to carry a proposition; there may be some gentleman whose personal force is so great that when he simply says, "I vote for this Constitution," it is enough for the people. But there are many of us whose reputation has not such standing, and it certainly is important to the people to see, if they desire to see, what reasons are given for or against any particular proposition that we want put into the Constitution. Now, sir, the gentleman says that everything we say here will go out upon the wings of the wind. That is a very practical expression, but it is not true. The proceedings of this Convention are not reported so that they go out upon the wings of the wind. There is but one paper that pretends to give anything like a report, and its report is by no means full, though it gives as full reports as a newspaper can be expected to do. But I call the attention of the gentleman to the fact, that no single debate which has occurred here so far, has ever been fully reported in that paper, simply because the paper was not able to do it without being paid. Now I call attention to the exciting debate upon the election of a gentleman to fill the place of the gentleman from San Francisco who resigned, Mr. Morris. It was an exciting discussion. It turned out that the gentleman who happened to speak first upon that question were reported very fully in that paper, but when you come to the end of the debate, you find that some are not reported at all. The gentleman from Marin, Mr. Shafter, made perhaps, as lengthy and interesting a speech as was made upon that question, and he was reported in two lines. Not because that paper had any desire to do any injustice to that gentleman, but because when he made these remarks, there was not time, nor space, nor labor enough to transcribe and print them. I do not believe that these reports are going to be published in full in any paper.

I desire to call the attention of the Convention again to this fact. If you adopt the report of this Committee you simply vote down every proposition that has been presented, and you vote down with others the proposition contained in the first resolution, that we should appoint reporters to take down in shorthand all the proceedings and debates, leaving the entire question of printing and transcribing for future action, or, if the Convention thinks fit, no action at all. The proposition is to employ two shorthand reporters to take down in shorthand all the proceedings and debates in an official form, and place them so that they may be transcribed and printed if this body, or the Legislature, thinks it necessary. And yet you vote down that proposition with all others, by adopting this report. You say you are opposed to putting the proceedings and debates of this Convention in any shape where at any future day, or among any future people, they can ever be resurrected. That is what you say when you vote to adopt this report, and I do not want gentlemen to understand that by voting against this report, they vote in favor of any expense for transcribing or printing. The original proposition which I introduced was simply to provide that they shall give bonds that they will keep a faithful record of all the proceedings and debates, to be by them transcribed upon the order of the Convention, or upon the order of the Legislature, or upon the request of any member of this Convention. That is the proposition, and there is no expense to it except twenty dollars a day, and if you adopt the report, you vote that down, with all the other propositions about the reporting and printing.

MR. LARKIN. So far as a record of our votes here is concerned, we have a Journal there, and that Journal will be printed, with every vote upon every important question. Every gentleman's name will be called, and, if he is here, he will have an opportunity there to leave his mark. I shall insist upon the ayes and noes on all important propositions, and I believe in men standing upon the record. But I believe we can make a record there better than the reports of a shorthand reporter. We have also directed, by resolution, every proposition submitted to the Convention printed. Members can keep them on file, and in this way make a record of our acts, without publishing in full the debates which, according to the statement of the Chairman of the Committee on Reporting and Printing, will cost eighteen thousand six hundred dollars, beside the indexes.

MR. AYERS. The printing was ten thousand five hundred dollars, two volumes, and there was the printing of the Journal included in that report.

MR. LARKIN. My experience as a legislator is, that these things are never settled. There were claims came in against this State, there were claims from every county of the State, and it has spent thousands and thousands of dollars for these old claims. The Legislature will be asked to have volumes of these debates printed. You continue the rule to print every proposition submitted here by every member in the Convention, and you will print the Journal, and you cannot tell how much you are going to spend for all this work.

MR. AYERS. This Convention has already refused even to print the Journal.

MR. LARKIN. I am in favor of printing that Journal.

MR. AYERS. You voted it down yesterday.

MR. LARKIN. That Journal ought to be printed.

MR. AYERS. If we print the Journal, to lay on our desks, it would only cost a little more to have it in book form. One thousand and fifty dollars for printing in book form, and about two hundred dollars extra to lay it on our desks. After the matter is set up, it will cost very little

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more to put it in book form. That was the idea yesterday, and you voted it down.

MR. LARKIN. I am in favor of printing the Journal, but that is not the question here. There is the place for us to get upon the record.

MR. McFARLAND. It astonishes me to hear some gentlemen eternally talking about their records. Who has been talking about any record of individual action? I have not said anything about my record. The gentleman from El Dorado seems to think that his record is the most important thing to get before the people of this State. I do not understand that we are here for the purpose of making individual records. If a man is looking for office, he can certainly make a record by his vote. The object in keeping these reports in some permanent form is to show the reasons that are assigned for the adoption or rejection of any proposition, not that the gentleman from El Dorado voted one way or the other. I do not care a continental how he votes, and I do not know that the people of the State care particularly. When gentlemen are looking for political preferment they seem to be very particular how their record is going to be. The idea of making a personal record never entered my mind. I do not care about the gentlemen's records. They can make their records if they choose. The gentleman from El Dorado has the habit of calling for the ayes and noes on every proposition, and he can put himself on the record whenever he wants to. I do not suppose that the people of this State care particularly about us, except so far as our actions go in regard to framing a Constitution, but I do understand that they may desire to know the reasons given—not by me, or the gentleman from El Dorado, or by anybody else—why a certain provision should be adopted, or why it should not. It is not to make a record. These gentlemen have records now. They have been in the Legislature long enough to have records, and if they have none now they never will have. [Laughter.] I do not care anything about their records, nor anybody else's record.

MR. FILCHER. While I was opposed to any further reference to this subject, and am in favor of a speedy settlement of the question, I did hope, and I do hope now, that when this Convention places itself finally upon history upon this subject, that it will be right: that the conclusion will be a credit to the intelligence of this body.

Mr. President, it seems to me that the importance of preserving a record of the proceedings and debates of this Convention cannot be overestimated. Why, sir, the very thought that the great and wealthy State of California shall refuse to follow the precedent so well established by the older States, of preserving a record of debates on so important a matter as this, is to me astonishing. To my friends on the other side of the house who have determined to set their vote on this question as an evidence of their desire for economy—as one portion of their record to which they hope to point to in future days as evidence of their economical tendencies—I wish to say that perhaps the day may yet come when that economy may be considered penuriousness if not selfishness. It is not economy at all times to refuse to spend a dollar. We might, sir, by curtailing the expenses by a few dollars here to-day, involve the State in a tenfold expenditure hereafter. I know, sir, that a verbatim report of these proceedings is being taken down, and I know that it is the intention that a verbatim report of these proceedings and debates will be taken, whether this Convention decides to have an official report or not. And, Mr. President, when some future Legislature, considering that we have not shown a wise disposition, decides that these reports are of great value to the people of California, and the question comes up of purchasing a longhand report of these proceedings from the parties who are now taking them, these parties will have less judgment than I am disposed to give them credit for, if they do not make California pay for the whistle. But we can now secure to the State a State right, for two thousand dollars or less, to that which California may, perhaps, within ten years or less, pay forty or fifty thousand dollars for. Then the judgment of the people of the State of California will be that we were penurious, short-sighted, and unintelligent.

While, sir, I would save the State every dollar that I can, yet I do not think that a disposition to be selfish in this matter and withhold from this appropriation a few thousand dollars for so important a purpose, is any evidence of my desire for economy. I am anxious to see these gentlemen who are so firmly opposed to this proposition in the future, when some question has arisen on the construction of the new Convention, involving perhaps millions to themselves and their children, attempting to justify themselves for their votes to-day. The expenditure of two thousand dollars to-day out of this appropriation of one hundred and fifty thousand dollars, set apart for our use, will secure these reports; and I say, Mr. President, that it is more in the line of economy to expend this amount than it is to say that no report in which the State has an interest shall be taken. In regard to the newspaper reports, I will ask my friends who are now favoring the adoption of this report, are you willing to stand by the reports that will be given in the paper that has the ability and the facilities for giving more fully the reports of the proceedings of this Convention than any other? Are you willing to leave it to the monopolists and the conductors of that paper? I say, sir, if it is your record you wish to preserve, you had better have it from an official standpoint. It is of little consequence what any member on this floor may or may not say, except that it may be valuable in the future as a matter of reference. I believe that this State has produced some great minds, and I believe there are minds on this floor to-day, sir, who will be able to give to the civilized world new and brilliant ideas on this immigration question, on the corporation question, on the question of taxation, and on many other important questions that will be discussed here—ideas that will be valuable, not only to the people of the State and nation to-day, but to generations yet to come. I appeal to members, when they vote finally upon this question, to bear in mind some of these points. Expand your ideas, if you can, upon this question, and look beyond to-day. Do not stop for the selfish consideration of two thousand dollars, but preserve these reports, and you will receive the approbation, not only of the people of this State, but of the world. I hope this report will not be adopted. Let us at least secure a shorthand report of the proceedings and debates which the State shall own, and leave the matter of printing to the future if you desire. We will then have a report, the property of the State, with the privilege of going to it individually if we wish, and with the privilege of the State demanding a longhand report and making the most of it whenever such a demand shall be deemed advisable.

MR. DOWLING. This question has occupied a good deal of the time of this Convention already—not but what it is important. I know this question of phonographic reporting deserves consideration, but, Mr. President, I believe that twenty thousand or thirty thousand dollars saved to the State of California will be better appreciated by the taxpayers of this State than all the windy speeches that can be made during the session. I think retrenchment is not a taking disease. I am sorry that certain gentlemen have not taken the disease. When any man gets up on this floor and tells me that the reporting business of this Convention will be received with approbation by the people of the State, in preference to economy, I believe that man is belying his own intelligence. He knows well that it will not. I would like to have every man to see his speeches in full, but we are not here to glorify ourselves. Mr. President, by dispensing with these reports we will coincide with the views of the people of the State of California. Already the newspapers of San Francisco, and all the principal papers published in the State, have spoken plain and earnest regarding this business.

MR. CONDON. I move the previous question. Seconded by Messrs. Barbour, Gorman, Tully, and Larue.

The main question was ordered.

The ayes and noes were demanded, and the report adopted by the following vote:

AYES.

Ayers,	Gregg,	Nason,
Barbour,	Hall,	Nelson,
Barton,	Harrison,	Neunaber,
Beerstecher,	Herold,	O'Sullivan,
Bell,	Herrington,	Prouty,
Berry,	Hilborn,	Rhodes,
Biggs,	Hitchcock,	Ringgold,
Boucher,	Huestis,	Schomp,
Burt,	Hughey,	Smith, of San Francisco,
Caples,	Hunter,	Soule,
Chapman,	Joyce,	Stedman,
Condon,	Kelley,	Sweasey,
Cowden,	Kenny,	Swenson,
Crouch,	Kleine,	Thompson,
Davis,	Laine,	Tully,
Dean,	Larkin,	Tuttle,
Dowling,	Larue,	Vacquerel,
Doyle,	Lavigne,	Van Voorhies,
Dudley, of Solano,	Lindow,	Webster,
Evey,	Martin, of Santa Cruz,	Wellin,
Farrell,	McComas,	West,
Fawcett,	McFarland,	White,
Freud,	McNutt,	Wilson, of Tehama,
Glascock,	Moffat,	Wyatt—76.
Gorman,	Moreland,	
Grace,	Morse,	

NOES.

Andrews,	Holmes,	Shoemaker,
Barry,	Howard,	Shurtleff,
Blackmer,	Inman,	Smith, of 4th District,
Brown,	Johnson,	Steele,
Charles,	Lampson,	Stevenson,
Cross,	Lewis,	Strong,
Dunlap,	McCallum,	Stuart,
Edgerton,	McCoy,	Swing,
Filcher,	Mills,	Townsend,
Finney,	Overton,	Van Dyke,
Garvey,	Porter,	Waters,
Hale,	Reddy,	Wickes,
Harvey,	Reed,	Winans—41.
Heiskell,	Rolfe,	

Mr. Barnes, "no," was paired with Mr. Turner, "aye."

The votes of Messrs. Ayers, Huestis, McFarland, and Gregg were changed from "no" to "aye," for the purpose of giving notice of a motion to reconsider.

MR. HUESTIS. I now give notice that on Monday next I will move a reconsideration of this vote.

RESOLUTIONS.

MR. WINANS offered the following resolution:

Resolved, That it be referred to the Committee on Rules to inquire and report the expediency of adding Mr S. B. Thompson to the Committee on Education.

Referred to the Committee on Rules and Order of Business.

MR. SHOEMAKER offered the following resolution:

Resolved, That Mr McCoy, of Nevada County, be added to the Committee on Water and Water Rights.

Referred to the Committee on Rules and Order of Business.

MR. BEERSTECHER offered the following resolution:

Resolved, That the action taken October tenth, upon the report of the Committee on Mileage and Contingent Expenses upon the resolution of Mr Beerstecher, providing that the Journal of this Convention shall be printed each day and laid upon the desks of the members, be reconsidered.

THE PRESIDENT. The Chair rules the resolution out of order.

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Mr. BEERSTECHER. I give notice that I will call it up on Monday.

Mr. TULLY. I move we adjourn.

The motion prevailed, and at four o'clock P. M. the Convention stood adjourned until Monday, October fourteenth, at two o'clock P. M.

SEVENTEENTH DAY.

SACRAMENTO, Monday, October 14th, 1878.

The Convention met pursuant to adjournment at two o'clock P. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hale,	O'Sullivan,
Ayers,	Harrison,	Porter,
Barbour,	Harvey,	Prouty,
Barry,	Heiskell,	Pulliam,
Barton,	Herold,	Reddy,
Beerstecher,	Herrington,	Reed,
Belcher,	Hilborn,	Ringgold,
Bell,	Hitchcock,	Rolfe,
Biggs,	Holmes,	Schomp,
Blackmer,	Howard,	Shoemaker,
Boggs,	Huestis,	Shurtleff,
Boucher,	Hughey,	Smith, of 4th District,
Brown,	Hunter,	Smith, of San Francisco,
Burt,	Inman,	Soule,
Campbell,	Joyce,	Steele,
Caples,	Kelley,	Stevenson,
Chapman,	Keyes,	Strong,
Charles,	Kleine,	Sweasey,
Condon,	Lampson,	Swenson,
Cowden,	Larkin,	Swing,
Cross,	Larue,	Terry,
Crouch,	Lavigne,	Thompson,
Davis,	Lewis,	Tinnin,
Dowling,	Lindow,	Townsend,
Doyle,	Mansfield,	Tully,
Dunlap,	Martin, of Santa Cruz,	Turner,
Eagon,	McCallum,	Tuttle,
Edgerton,	McComas,	Vacquerel,
Estee,	McConnell,	Van Dyke,
Estey,	McCoy,	Van Voorhies,
Evey,	McFarland,	Walker, of Tuolumne,
Farrell,	McNutt,	Webster,
Fawcett,	Miller,	Weller,
Filcher,	Moffat,	Wellin,
Finney,	Moreland,	West,
Freeman,	Morse,	Wickes,
Freud,	Nason,	White,
Garvey,	Nelson,	Wilson, of Tehama,
Gorman,	Neunaber,	Winans,
Grace,	Noel,	Wyatt,
Gregg,	Ohleyer,	Mr. President.

ABSENT.

Barnes,	Johnson,	Rhodes,
Berry,	Jones,	Schell,
Casserly,	Kenny,	Shafter,
Dean,	Laine,	Smith, of Santa Clara,
Dudley, of San Joaquin,	Martin, of Alameda,	Stedman,
Dudley, of Solano,	Mills,	Stuart,
Glascock,	Murphy,	Walker, of Marin,
Graves,	O'Donnell,	Waters,
Hager,	Overton,	Wilson, of 1st District.
Hall,	Reynolds,	

LEAVE OF ABSENCE.

One day's leave of absence was granted Messrs. Hugh Walker, Hunter, Stedman, Reynolds, Charles Martin, of Alameda, Kenny, Johnson, Murphy, and Dudley, of Solano. Leave until Friday was granted to Mr. Stuart; for one week to Mr. Waters, and for three days to Mr. Laine.

The Journal of Friday was read and approved, the reading of that part relating to propositions introduced being dispensed with, on motion of Mr. Rolfe.

COURTESY TO CORRESPONDENTS.

Mr. TINNIN offered the following resolution:

Resolved, That the Sergeant-at-Arms be instructed to furnish accredited newspaper reporters assigned desks on the floor, two copies of all papers and documents printed by the Convention.

Adopted.

A WHOLE CONSTITUTION.

Mr. LARKIN. I desire to ask a suspension of the rules, to permit Mr. McConnell to present a Constitution that he has prepared. We do not ask that it be read or printed, but that it be referred to different committees. It is so subdivided as to be referred.

There being no objection, Mr. McConnell sent up the following proposed new Constitution, and it was referred to the appropriate committees:

ARTICLE I.

BILL OF RIGHTS.

SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

SEC. 3. The right of trial by jury shall be secured to all and remain inviolate forever; but a jury trial may be waived by the parties, in all civil cases, in manner to be prescribed by law. If three fourths agree upon a verdict, it shall be taken as the verdict of the jury in all cases.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require its suspension.

SEC. 6. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted; nor shall witnesses be unreasonably detained.

SEC. 7. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great.

SEC. 8. No person without his written consent shall be held to answer for a capital, or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the Legislature), unless on presentment or indictment of a Grand Jury; and, in any trial in any Court whatever, the party accused shall be allowed to appear and defend in person and with counsel, as in civil actions. The Legislature may fix, at not less than nine, the number of Grand Jurors to form a panel, or to find an indictment. No person shall be subject to be twice put in jeopardy for the same offense; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken or damaged for public use without just compensation first made. The presentment or indictment mentioned in this section may be amended by the Court in matter of form, in such manner as the Legislature may provide by statute.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right, and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments for libels, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted, and the jury shall have the right to determine the law and the fact.

SEC. 10. The people shall have the right freely to assemble together to consult for common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

SEC. 11. All laws of a general nature shall have a uniform operation upon the same class of subjects.

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be maintained by this State in time of peace.

SEC. 13. No soldier shall in time of peace be quartered in any house without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

SEC. 14. No person shall be imprisoned for debt in any civil action, or mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

SEC. 15. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall be passed.

SEC. 16. Foreigners who are, or who may hereafter become bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property, as native born citizens.

SEC. 17. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

SEC. 18. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches shall not be violated; and no warrant shall issue but for probable cause, supported by oath or affirmation particularly describing the place to be searched, and the persons and things to be seized.

SEC. 19. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open Court.

SEC. 20. As every freeman to preserve his independence (if without a sufficient estate), ought to have some profession, calling, trade, or farm, whereby he may honestly subsist, there can be no necessity for, nor use in establishing offices of profit, the usual effects of which are dependence and servility, unbecoming freemen, in the possessors or expectants, creating faction, contention, and discord among the people. But if any man is called into public service to the prejudice of his private affairs, he has a right to a reasonable compensation; and whenever an office through increase of fees or otherwise becomes so profitable as to occasion many to apply for it, the profits ought to be lessened by the Legislature. And if any officer shall knowingly and willfully take

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greater fees than the law allows him, it shall ever after disqualify him from holding any office in this State.

SEC. 21. This enumeration of rights shall not be construed to impair or deny others retained by the people.

ARTICLE II.

RIGHT OF SUFFRAGE AND ELECTIONS.

SECTION 1. Every male citizen, twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections:

First—He shall have been a citizen of the United States at least six months.

Second—He shall have resided in the State twelve months immediately preceding the election.

Third—He shall have resided in the election precinct, where he shall offer to vote, three months immediately preceding the election.

SEC. 2. No idiot or insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector.

SEC. 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas; nor while a student at any seminary of learning; nor while kept at any almshouse, or other asylum, at public expense; nor while confined in any public prison; nor shall any person in the military, naval, or marine service of the United States, by reason of being stationed in any military or naval station within the State, be considered a resident of this State.

SEC. 4. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

SEC. 5. Electors shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

SEC. 6. The general election shall be held on the Tuesday next following the first Monday in November, A. D. one thousand eight hundred and seventy-nine, and every four years thereafter, unless the Legislature, by statute, fix a different time.

SEC. 7. All elections by the people shall be by ballot. All elections by persons, in a representative capacity, shall be viva voce.

SEC. 8. A plurality of the votes given at any election shall constitute a choice, where not otherwise directed in this Constitution.

SEC. 9. Any person who shall give, or promise or offer to give, to any elector, any money, reward, or other valuable consideration, for his vote at an election, or for withholding the same, or who shall give, or promise to give, such consideration to any other person or party for such elector's vote, or for the withholding thereof, and any elector who shall receive or agree to receive, for himself or for another, any money, reward, or other valuable consideration, for his vote at an election, or for withholding the same, shall thereby forfeit the right to vote at such election; and any elector whose right to vote shall be challenged for such cause before the election officers, shall be required to swear or affirm that the matter of the challenge is untrue, before his vote shall be received.

SEC. 10. Any person who shall, while a candidate for office, be guilty of bribery, fraud, or willful violation of any election law, shall be forever disqualified from holding an office of trust or profit in this State; and any person convicted of willful violation of the election laws, shall, in addition to any penalty provided by law, be deprived of the right of suffrage absolutely, for a term of four years.

SEC. 11. In trials of contested elections, and proceedings for the investigation of elections, no person shall be permitted to withhold his testimony upon any ground; but such testimony shall not afterwards be used against him in any judicial proceeding, except for perjury in giving such testimony.

ARTICLE III.

DISTRIBUTION OF POWERS.

SECTION 1. The powers of the Government of the State of California shall be divided into three separate departments—the Legislative, the Executive, and Judicial—and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SECTION 1. The Legislative power of the State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California.

SEC. 2. The enacting clause of every statute shall be: "The People of the State of California, represented in Senate and Assembly, do enact as follows."

SEC. 3. The sessions of the Legislature shall be quadrennial, and shall commence on the Tuesday next after the first Monday of January, in the year following the election of its members. No session shall continue longer than one hundred and twenty days.

SEC. 4. Members of the Assembly shall be chosen quadrennially at the general election in the year eighteen hundred and seventy-nine, and every four years thereafter, by the qualified electors of their respective Assembly Districts; and their terms of office shall be four years from the day of their election.

SEC. 5. Senators shall be chosen at the same time and place as members of the Assembly, by the qualified electors of their respective Senatorial Districts. The term of Senators shall be eight years from the day of their election.

SEC. 6. Senators and members of the Assembly shall be electors in the districts which each shall represent, respectively; and each shall be a resident of his district for two years next before the election at which he shall be chosen.

SEC. 7. The number of members of the Senate shall be forty and of the Assembly eighty. After the population of the State exceeds one million, the Legislature may, by statute, increase the number of the Assembly to not exceeding one hundred and twenty. When the number shall be increased, the rule of apportionment herein prescribed shall not apply to the excess over eighty until each county shall be allowed one member of the Assembly.

SEC. 8. The Legislature, at its session in the year eighteen hundred and eighty, must divide the State into Senatorial Districts of compact contiguous territory, as nearly equal in population as may be. At the next general election thereafter, forty Senators shall be elected, one half of whom shall hold office for the term of eight years and the other half for the term of four years, to be determined by lot at the first session of the Legislature thereafter.

SEC. 9. At the same time the Legislature must divide the State into eighty Assembly Districts of compact contiguous territory, as nearly equal in population as may be.

SEC. 10. In forming a Congressional, Senatorial, or Assembly District, a county shall not be divided so as to attach one portion of a county to another county.

SEC. 11. The Senatorial and Assembly Districts formed in eighteen hundred and eighty must be changed and the representation reapportioned by the Legislature in the year eighteen hundred and ninety-two, and every twelve years thereafter: and if any Legislature upon which is devolved the duty of making such change and reapportionment fails to perform it, the Governor of the State, within sixty days after the adjournment of such Legislature, must make such change and reapportionment and declare it by proclamation.

SEC. 12. Every apportionment shall be based upon the number of votes cast at the Presidential election which occurred next before such apportionment.

SEC. 13. When vacancies occur in either house, the Governor shall issue a proclamation calling an election to fill the same, unless a general election will intervene between the vacancy and the next session of the Legislature.

SEC. 14. The members of both houses shall, in all cases except for treason, felony, violation of oath of office, or surety of the peace, be privileged from arrest during the session of the Legislature, and for fifteen days before and after; and no member of either house shall be punished criminally, or be made to pay damages, for words spoken in debate or speech in such house.

SEC. 15. Members of the Legislature, and its officers, shall receive such salary or per diem and mileage for regular and special sessions as shall be previously fixed by law; and no other compensation whatever, whether for services on committee or otherwise, shall be allowed; *provided*, the per diem of the members of the Legislature shall not exceed five dollars; *and provided further*, an appropriation may be made to members only of a sum, in lieu of all allowances, for postage, express charges, newspapers, stationery, or other similar matter, not exceeding thirty dollars to each at any session. No member of either house, or officer or employé of either house, shall, during the term for which he may have been elected or appointed, receive any increase of salary or mileage under any law or resolution passed during such term.

SEC. 16. The sessions of the Legislature shall be public, but either house may by rule exclude from the floor of such house persons other than its members.

SEC. 17. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as it may prescribe.

SEC. 18. The Senate and Assembly respectively shall choose its own officers, judge of the qualifications and election of its members; have power to determine the rules of its proceedings, to punish for contempt in its presence, to enforce obedience to its process, to protect its members against violence, to punish its members and others for bribery or offers to bribe a member in the discharge of his duties as such, with the concurrence of two thirds to expel a member, but not a second time for the same cause, and shall have all other powers necessary for the Legislature of a free State. A member expelled for corruption shall not thereafter be eligible to an election as a member of either house, and punishment for bribery, contempt, or disorderly behavior shall not bar an indictment for the same offense.

SEC. 19. The Legislature shall provide, by statute, for taking the testimony in contests for seats in either house; such statutes must prescribe that all testimony shall be taken before the time fixed for the regular meetings of the Legislature. All such contests must be finally determined within one week after the organization of the two houses.

SEC. 20. The Legislature shall prescribe by law the number, duties, and compensation of the officers and employés of each house, and no payment shall be made from or authorized to be made out of the State treasury for services connected with the sessions of the Legislature, unless such service be first authorized and the compensation fixed by statute.

SEC. 21. The Senate, at the beginning of the regular sessions, and at such other times as may be necessary, shall elect one of its members President pro tempore, who may preside over the Senate during the absence of the Lieutenant-Governor.

SEC. 22. Each house shall keep a Journal of its proceedings, and publish the same. Three members may call for the yeas and nays on any question, and when so called the vote of each member voting shall be recorded in the Journal.

SEC. 23. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended in the other.

SEC. 24. No bill shall be passed into a statute until it has been printed

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in the house where it originated, for the use of both houses, and referred to and returned from a committee in each house, and read once at length in each house.

Sec. 25. No statute shall embrace more than one subject, and that shall be expressed in its title.

Sec. 26. No statute shall be amended by reference to its title; but, in such case, the statute or section amended shall be reenacted and published at length.

Sec. 27. Every bill which may pass the Legislature shall, before it becomes a statute, be presented to the Governor, and such further proceedings had thereon as provided in section fourteen of article five of this Constitution.

Sec. 28. Lotteries, and the sale of lottery policies or tickets, within this State, are unlawful. All lottery policies, or tickets, or prizes drawn in lotteries within this State, are forfeited to the State, to be recovered by action brought in the name of the people of the State, by the Attorney-General, and shall go to the common school fund of the State.

Sec. 29. No person who shall have been or shall be convicted for embezzlement of public funds or defalcation in any public office, shall be eligible to any civil office of trust or profit in this State, and the Legislature shall pass statutes providing for the punishment of such embezzlement and defalcation as a felony.

Sec. 30. The Legislature shall not pass any local or special statute authorizing the creation, extension, or impairing of liens; regulating the affairs of counties, cities, townships, road, or school districts; changing the names of persons or places; changing the place of trial in civil or criminal cases; authorizing the laying out, opening, altering, or maintaining roads, highways, streets, alleys, or sewers; relating to ferries or bridges; vacating roads, town plats, streets, or alleys; relating to cemeteries or other public grounds; authorizing the adoption or legitimation of children; locating or changing county seats; incorporating towns or cities; for opening and conducting elections, or fixing or changing places of voting; granting divorces; confirming the deeds or certificates of acknowledgment of married women; confirming any void judicial proceeding, tax, or assessment, or any grant founded thereon; erecting new townships or other territorial divisions in a county; creating offices or prescribing the powers and duties of officers in counties, cities, townships, or districts; changing the law of succession or descent; regulating the practice or production of or rules of evidence in any judicial proceeding or inquiry before Courts or other tribunals, or providing for or changing methods for the collection of debts or enforcing of judgments; regulating fees of office; affecting the estates of minors or others under disabilities, except after notice to all parties in interest, which shall be recited in the special Act; remitting fines, penalties, or forfeitures, or refunding of moneys legally paid into the treasury; regulating labor, trade, mining, or manufacturing; creating corporations, or amending, renewing, or extending their charters; granting to any corporation, association, or person, any special or exclusive privilege or immunity, or the right to make a railroad; nor shall any local or special bill be passed unless notice of the intention to apply therefor shall have been published in the locality where the matter or the thing to be effected may be situated, which notice shall be at least sixty days prior to the introduction into the Legislature of such bill, and in the manner to be provided by statute; the evidence of such notice having been published shall be exhibited in the Legislature before such Act shall be passed.

Sec. 31. No Act shall be passed giving extra or additional pay, or relief, or compensation, to any public officer, servant, employé, or agent of, or contract under this State, or any department thereof, or of or under any county or city in this State.

Sec. 32. No Act shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment.

Sec. 33. No Act of the Legislature shall limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property. In cases of death from injuries received by or through the carelessness, negligence, or willful misconduct of any person or corporation, the right of action shall survive, and the Legislature shall prescribe by and for whose benefit such shall be prosecuted. Until the Legislature shall so prescribe, such right of action shall survive to, and may be prosecuted by, the personal representavies of the deceased. No Act shall prescribe any limitations of time within which suits may be brought against corporations for injuries to person or property, or for other causes different from those fixed by general laws regulating actions against natural persons.

Sec. 34. No State office shall be continued or created for the inspection or measurement of any merchandise, or manufacture, or commodity; but the Legislature may, by general law, provide for such inspection and measurement by municipal or county officers.

Sec. 35. The Legislature shall pass no statute agreeing to pay, or providing for the payment from the State treasury, or by any municipal corporation, of any bonds or other obligations of any person or corporation, or to provide for the payment of any interest on such bonds or obligations; and shall pass no statute loaning or authorizing the loan of the credit of the State, or any municipal corporation, to any person or corporation.

Sec. 36. The Legislature shall never grant, or authorize extra compensation, fee, or allowance, to any public officer, agent, servant, or contractor, after service has been rendered or contract made, nor authorize the payment of any claim or part thereof hereafter created against the State, under any agreement or contract made without express authority of law; and all such unauthorized agreements shall be null and void; *provided*, this section shall not extend to and prevent appropriations for expenditures incurred in suppressing insurrection or repelling invasion.

Sec. 37. The Legislature shall have no power to release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to this State, or to any municipal corporation therein.

Sec. 38. The Legislature shall protect, by statute, from forced sale, a certain portion of the homestead and other property of all heads of families.

Sec. 39. The Legislature shall, by statute, protect the wages of labor, provide for liens of mechanics and laborers, and for the exemption of a reasonable amount of property from execution and forced sale.

Sec. 40. Any statute concerning corporations may at any time be altered, amended, or repealed; and all corporations shall, if required by statute, conform to any such alteration or amendment, or be dissolved by such repeal.

Sec. 41. The Legislature shall not pass any statute under which any corporation for banking purposes shall be established; but associations and corporations may be formed under general laws for the deposit and loan of gold and silver; but no such association or corporation shall make, issue, or put in circulation any bill, check, certificate, ticket, promissory note, or other paper, or the paper of any bank to circulate as money; and the Legislature shall prohibit by law the creation of paper to circulate as money.

Sec. 42. The term "corporation," as used in the Constitution, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and be subject to action in all Courts in like cases as natural persons.

Sec. 43. When the Legislature is convened in special session by proclamation of the Governor, there shall be no legislation on subjects not designated in such proclamation.

Sec. 44. The presiding officer of each house shall, in presence of the house over which he presides, sign bills and joint resolutions passed in such house, immediately after the titles of such bills have been publicly read. The fact of signing shall be entered in the Journal.

Sec. 45. Neither house, without the consent of the other, shall adjourn for more than three days, nor to any other place than that in which they may be sitting. In case of a disagreement between the two houses, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper, provided it be not beyond the time fixed for the meeting of the next Legislature.

Sec. 46. No money shall be drawn from or paid out of the Treasury of State, except it be pursuant to and in accordance with a specific appropriation for a particular purpose made by statute, and then only on warrants drawn by the proper officer; and no appropriation shall be made for more than four years.

Sec. 47. All general appropriation bills shall be sent to the Governor for his signature at least ten days before the close of the session.

Sec. 48. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Superintendent of Public Instruction, the Justices of the Supreme Court, and District Judges, shall be liable to impeachment for misdemeanor in office. All other officers under this Constitution may be tried by jury, on indictment for misdemeanor in office, and if convicted, be removed from office and disqualified from holding any office of honor or profit.

Sec. 49. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. Each Senator, at the time the Senate shall resolve itself into a Court of Impeachment, shall swear (or affirm), that he will do impartial justice between the accuser and the accused, uninfluenced by party feeling. No person shall be convicted on such impeachment without the concurrence of two thirds of the Senators elected, and the judgment on conviction shall extend only to removal from office and disqualification to hold office thereafter. A majority of the Senators elected may affix the penalty, but such judgment on impeachment shall not be a bar to indictment for the same offense.

Sec. 50. No Senator or member of the Assembly shall be elected or appointed to any civil office of profit in this State during the term for which he shall have been elected, or for one year thereafter, which office shall have been created, or the emoluments of which shall have been increased during his term of office.

Sec. 51. Any member of the Legislature who shall solicit, demand, receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation, or person, any money, office, appointment, employment, testimonial, reward, thing of value, enjoyment, or of personal advantage or promise thereof, or the influence of another to obtain for himself any office of honor or profit for his vote or official influence, or for withholding the same, or with an understanding expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit or demand any such money or other advantage, matter, or thing aforesaid, for another as the consideration of his vote or official influence, or for withholding the same, or shall give or withhold his vote or influence in consideration of the payment or promise of such money, advantage, matter, or thing, to another, shall be held guilty of bribery within the meaning of this Constitution and the Penal Code, and shall incur the penalties provided in such Code, and be subject to such further punishment as shall be provided by statute.

Sec. 52. Any person who shall directly or indirectly offer, give, or promise any money, thing of value, testimonial, privilege, or personal advantage to any officer, legislative, executive, or judicial, to influence him in the performance of any of his public or official duties, shall be deemed guilty of bribery, and punished as provided by statute.

Sec. 53. The offense of corrupting of members of the Legislature, or of public officers of this State, or of any municipal division thereof, and any occupation or practice of solicitation of such member or officers to influence their official action, shall be defined by law, and shall be punishable by fine and imprisonment.

Sec. 54. Any person may be compelled to testify in any lawful inves-

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tigation or judicial proceedings against any person who may be charged with having committed the offense of bribery or corrupt solicitation, and shall not be permitted to withhold his testimony upon the ground that it may criminate himself, or subject him to public infamy; but such testimony shall not be used against him in any judicial proceeding, except for perjury in giving such testimony; and any person convicted of either of the offenses aforesaid, shall, as part of the punishment therefor, be disqualified from holding any office of honor or profit in this State.

SEC. 55. The Legislature shall not act upon any amendment proposed to the Constitution of the United States, until at least one general election intervene between the time such amendment is proposed and the time of the action thereon.

ARTICLE V.

EXECUTIVE DEPARTMENT.

SECTION 1. The Executive Department of this State shall consist of a Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, and Superintendent of Public Instruction, who shall each be independent of the other, and have and exercise the powers prescribed for him in this Constitution and by statutes.

SEC. 2. The Governor shall be elected by the qualified electors of the State, at the general election in the year eighteen hundred and seventy-nine, and every four years thereafter.

SEC. 3. No person shall be eligible to the office of Governor who is not over the age of thirty years, and who has not been a citizen of the United States, and a resident of the State, for four years next preceding his election.

SEC. 4. The Governor shall hold his office during four years from the first Tuesday after the first Monday in January next ensuing his election, and shall not be eligible to the office for the next succeeding term.

SEC. 5. The returns of every election for Governor shall be sealed up and indorsed, "Election returns for Governor," and by the County Clerks of the different counties be transmitted to the Secretary of State, who shall safely keep the same unopened, and deliver them to the Speaker of the Assembly. The Speaker shall, in the presence of both houses of the Legislature, on the day next after the organization of both houses, open such returns and publish them. The person having the highest number of votes shall be Governor; but in case any two or more have an equal, and the highest number of votes, the Legislature shall, by joint vote of both houses, choose one of said persons for Governor.

SEC. 6. The Governor shall be Commander-in-Chief of the army, navy, and militia of the State, except when they are called into actual service of the United States.

SEC. 7. The Governor shall transact all executive business with the officers of the Federal Government and with Governors of other States. He shall see that the laws are faithfully executed, and he may require information, in writing, from all other executive officers of the State upon any subject relating to the business of their respective offices.

SEC. 8. When any State executive office, other than Governor or Lieutenant-Governor, shall become vacant, the Governor shall fill such vacancy, for the unexpired term, by appointment; and if any vacancy occur in any judicial office in this State, other than Justice of the Peace, the Governor shall fill such vacancy, by appointment, as prescribed in Article VI of this Constitution. In other cases the Legislature may provide, by statute, for filling vacancies in office, and if no such provision shall exist, and a vacancy occur, the Governor shall fill the same, by appointment, for the unexpired term. The Governor shall report to the Senate all appointments for State offices, and all appointments to judicial offices, for its confirmation, at the earliest practicable time, and if the Senate shall refuse to confirm such appointment, a vacancy shall then occur, to be filled as provided in this section.

SEC. 9. The Governor may, on extraordinary occasions, convene the Legislature in special session, by proclamation, which proclamation shall designate the subject upon which legislation is desired.

SEC. 10. The Governor shall communicate by message to the Legislature at every session the condition of the State, and from time to time recommend to its consideration such measures as he may deem expedient.

SEC. 11. The Governor shall have power to remit fines and forfeitures imposed as a punishment for crimes, to grant reprieves, commutations of sentences, and pardons, except in cases of impeachment, and cases of disqualification from holding office, or enjoying the right of suffrage, declared by this Constitution as a punishment for crime. But no pardon shall be granted, or sentence commuted, except upon the recommendation, in writing, of the Lieutenant-Governor, Secretary of State, and Attorney-General, or a majority of them, after full hearing, upon due public notice of time and place; and such recommendations, and the reasons therefor, shall be filed in the office of the Secretary of State.

SEC. 12. There shall be a seal of this State kept in the office of the Secretary of State, to be used by him and the Governor to authenticate papers and documents issued by them, or either of them, to be called "The Great Seal of the State of California," and all grants and commissions shall be in the name and by the authority of the people of the State of California, sealed with said seal, signed by the Governor, and countersigned by the Secretary of State.

SEC. 13. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the power and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military forces of the State not in the actual service of the United States.

SEC. 14. Every bill which shall have passed both houses shall be presented to the Governor. If he approve, he shall sign it; but if he shall not approve, he shall return it, with his objections, to the house in which it shall have originated, which house shall enter the objections at large upon their Journal and proceed to reconsider it. If, after such reconsideration, two thirds of all the members elected to that house shall agree to pass the bill, it shall be sent, with the objections, to the other house, by which likewise it shall be reconsidered, and if approved by two thirds of all the members elected to that house, it shall be a law; but in such cases the vote of both houses shall be determined by ayes and noes, and the names of the members voting for and against the bill shall be entered on the Journals of each house respectively. If any bill shall not be returned by the Governor within ten days after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature, by their adjournment, by limitation, or otherwise, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of State, and give notice thereof, by public proclamation, within thirty days after such adjournment.

SEC. 15. The Governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items of appropriation disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

SEC. 16. The Lieutenant-Governor, Treasurer, and Attorney-General, shall each have the same qualifications as the Governor; each shall be elected at the same time and places, and their terms of office shall be the same as that of the Governor.

SEC. 17. The Controller, Secretary of State, Surveyor-General, and Superintendent of Public Instruction, shall each have the same qualifications as the Governor, and shall be elected at the general election in the year eighteen hundred and seventy-nine, and every four years thereafter.

SEC. 18. Each of the officers mentioned in the preceding section shall hold his office during four years from the first Tuesday after the first Monday in January next ensuing after his election.

SEC. 19. The Lieutenant-Governor shall be President of the Senate, but shall only have a vote therein when the Senate is equally divided, and he shall perform such other duties as may be prescribed by statute. In case of the death, conviction, or impeachment, absence from the State, failure to qualify, resignation, or other disability of the Governor, the powers, duties, obligations, and emoluments of the office for the remainder of the term, or until the disability be removed, shall devolve upon the Lieutenant-Governor.

SEC. 20. In case of a vacancy in the office of Lieutenant-Governor by his death, assumption of the office of Governor, conviction on impeachment, or for any other cause, the powers, duties, and emoluments thereof for the remainder of the term, or until the disability be removed, shall devolve upon the President pro tempore of the Senate; and the President pro tempore of the Senate shall, in like manner, become Governor if a vacancy or disability shall occur in the office of Governor while he is acting Lieutenant-Governor, but his seat in the Senate shall become vacant whenever he shall become Governor.

SEC. 21. The Secretary of State shall keep a record of all official acts of the Governor, preserve the archives and papers pertaining to the office of Governor, and the Legislature, and shall perform such other duties as may be prescribed by statute.

SEC. 22. The emoluments of all State officers shall be fixed prior to to the election to such office, and such emoluments shall not be increased or diminished during such term, nor shall any additional pay be allowed for additional services required of such officer.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of this State shall be vested in a Supreme Court, District Courts, Courts of Justices of the Peace, and in such Municipal Courts as shall be established by statute for cities, or consolidated cities and counties.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The presence of four Justices shall be necessary for the transaction of business in Court, and the concurrence of four Justices shall be necessary to pronounce a judgment.

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at the general election next after the adoption of this Constitution, and each shall take his seat on the first Tuesday after the first Monday in January next after his election. The full term of Justices of the Supreme Court is fourteen years; at the meeting of such Justices on the said Tuesday next after the first Monday in January, they shall so classify themselves by lot that the term of one Justice shall expire every two years, and his successor shall be elected at the general election next preceding the expiration of such term, or at an election for Congressmen.

SEC. 4. At the election for Justices of the Supreme Court next after the adoption of this Constitution, no elector shall vote for more than four persons for Justices of the Supreme Court.

SEC. 5. If a vacancy occur in the office of Justice of the Supreme Court from other causes than the expiration of a full term, the Governor shall fill such vacancy by appointment, and the appointee shall hold until the election and qualification of his successor. At the next general election after such vacancy, it shall be filled by election, and the person so elected hold office from the first Tuesday after the first Monday in January next ensuing until the expiration of the unexpired term.

SEC. 6. No Justice appointed or elected to fill an unexpired term shall

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be Chief Justice. The Justice not so appointed, or elected, having the shortest term to serve, shall be Chief Justice.

SEC. 7. The jurisdiction of the Supreme Court is of two kinds:

First—Original; and,

Second—Appellate.

SEC. 8. The original jurisdiction of the Supreme Court extends to the issuance of writs of mandate, review, prohibition, and habeas corpus.

SEC. 9. The appellate jurisdiction of the Supreme Court extends:

First—To all civil cases and special proceedings arising in the District Courts;

Second—To all criminal actions amounting to a felony;

Third—To the issuance of all writs necessary to the exercise of its appellate jurisdiction; and,

Fourth—To such other cases and proceedings as the Legislature may by general statute prescribe.

SEC. 10. Each county is a judicial district. District Judges shall be elected by the qualified electors of their respective districts, at the general election next after the adoption of this Constitution, and shall hold their respective offices for the term of six years, and until their successors shall be elected and qualified.

SEC. 11. If a vacancy occur in the office of District Judge from causes other than the expiration of a full term, the Governor shall fill such vacancy by appointment, and the appointee shall hold until the election and qualification of his successor. At the next general election after such vacancy it shall be filled by election, and the person so elected shall hold office from the Tuesday after the first Monday in January next ensuing, for the term of six years.

SEC. 12. Every county containing less than twenty thousand inhabitants shall elect one District Judge; counties containing more than twenty thousand inhabitants may elect such further number of District Judges as shall be prescribed by statute, not exceeding one for every twenty thousand inhabitants, and one for such fraction as shall exceed ten thousand.

SEC. 13. In districts where there shall be more than one, a presiding Judge shall be elected by lot, who shall distribute the labor to be performed by each.

SEC. 14. Each District Court shall be held by one District Judge, and when two or more Judges are elected for one county, Courts shall be held separate, but the judgments and orders of each shall be entered and enforced, as of the District Court of such county.

SEC. 15. The jurisdiction of the District Court is of two kinds:

First—Appellate; and,

Second—Original.

SEC. 16. The appellate jurisdiction of the District Courts extend:

First—To all cases arising in Justices' Courts.

Second—To such cases and proceedings arising in Municipal Courts as the Legislature may prescribe.

SEC. 17. The original jurisdiction of District Courts extend:

First—To all civil actions for relief formerly given in Courts of equity.

Second—To all civil actions in which the subject of litigation is not capable of pecuniary estimation.

Third—To all civil actions in which the subject of litigation is capable of pecuniary estimation, which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars.

Fourth—To actions to prevent or abate a nuisance.

Fifth—To actions of forcible entry and detainer.

Sixth—To proceedings in insolvency.

Seventh—To probate cases and proceedings.

Eighth—To all other special proceedings.

Ninth—To inquiring, by the intervention of a Grand Jury, of all public offenses committed or triable within the district.

Tenth—To the trial of all indictments.

Eleventh—To such other cases and proceedings as the Legislature may prescribe.

SEC. 18. The Legislature shall determine the number of Justices of the Peace to be elected in each city and township of the State, and fix by law their powers, duties, and responsibilities: but such powers shall not, in any case, trench upon the jurisdiction of the several Courts of record. The Supreme Court, and District Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.

SEC. 19. The jurisdiction of Municipal Courts established by statute for cities, and consolidated cities and counties, shall extend only to the trial of misdemeanors, and to the trial of cases arising under ordinances of such cities, or cities and counties.

SEC. 20. The Legislature shall provide for the election of a Clerk of the Supreme Court, of County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensations. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties. The Legislature may also provide for the appointment, by the several Courts of record, of one or more Commissioners, with authority to perform chamber business, and also to take depositions, and to perform such other business connected with the administration of justice as may be prescribed by statute.

SEC. 21. The time and place of holding the terms of the Supreme Court shall be provided for by statute. The District Courts shall always be open for the transaction of business.

SEC. 22. No judicial officer, except Justices of the Peace and Commissioners, shall receive to his own use any fees or perquisities of office.

SEC. 23. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient; and all opinions shall be free for publication by any person.

SEC. 24. The Justices of the Supreme Court and District Judges, shall severally at stated times during their continuance in office, receive for their services out of the State Treasury a compensation which shall not be increased or diminished after their election, or during the term for which they shall have been elected.

SEC. 25. The Justice of the Supreme Court, and the District Judges, shall be ineligible to any other office than a judicial office during the term in which they shall have been elected, and shall, before entering upon their office, in addition to the oath of office, take and subscribe an oath that they will not, during such term, accept any Federal office.

SEC. 26. Judges shall not charge juries with respect to matters of fact, but they may state the testimony and declare the law.

SEC. 27. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SEC. 28. The Supreme Court now in existence is continued until the first Monday in July, eighteen hundred and eighty; but after the first Monday in January, eighteen hundred and eighty, its power shall only extend to the determination of such cases or proceedings pending therein as may have been submitted for decision prior to that time.

SEC. 29. The Justices of said Court in commission at the time this Constitution takes effect, may hold their office as Justices thereof, until the first Monday in July, eighteen hundred and eighty.

SEC. 30. If any Justice of said Court is elected a Justice of the Supreme Court, created by this article, his office as a Justice of the Supreme Court now in existence, shall become vacant on the first Monday in January, eighteen hundred and eighty; and the Governor shall, by appointment, fill the vacancy.

ARTICLE VII.

MILITIA.

SECTION 1. The Legislature shall provide by law for organizing and disciplining the militia, in such manner as they shall deem expedient, not incompatible with the Constitution and the laws of the United States.

SEC. 2. Officers of the militia shall be elected or appointed in such a manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor.

SEC. 3. The Governor shall have power to call forth the militia to execute the laws of the State, to suppress insurrections and repel invasions.

ARTICLE VIII.

TAXATION AND FINANCE.

SECTION 1. Taxation shall be equal and uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and taxes shall be levied and collected under general laws. All property shall be taxed in proportion to its value. All property subject to taxation shall be listed for that purpose at its cash value, to be ascertained as provided by statute. All things and choses in action, subject to ownership, sale, devise, descent, distribution, or assignment, shall be deemed property for purposes of taxation. Property owned by the United States, by this State, or by a municipal corporation under the laws of this State, growing crops, and stock under six months of age shall be exempt from taxation.

SEC. 2. The present bonded debt of this State is valid, and the Legislature shall provide by statute for the payment thereof.

SEC. 3. The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, which shall singly or in the aggregate, with all previous debts and liabilities, exceed the sum of three hundred thousand dollars, except in case of war to repel invasion or suppress insurrection.

SEC. 4. The Governor, Controller, and Treasurer shall, jointly, during the first week after the organization of the Legislature, exhibit to the Assembly detailed estimates of the sums of money necessary to be raised and expended during the four years next after the first day of July of that year.

SEC. 5. The Controller shall determine and publish when the limit of the public debt, allowed by this Constitution, has been reached, and all other or further obligations of the State shall be void.

SEC. 6. Neither the credit of the State, nor of any municipal corporation authorized under the laws thereof, shall be pledged or loaned to any individual, company, corporation, or association; nor shall the State, or any municipal corporation, become a joint owner of, or a stockholder in, any company, corporation, or association; nor shall the State, or any municipal corporation, become bound to pay any bond, or interest on any bond, or other obligation, of any individual, association, or corporation; and no county, or other municipal corporation under the laws of this State, shall incur any obligation to raise money for the construction of any work not exclusively under the control of public officers.

SEC. 7. The Legislature must, at its first session after the adoption of this Constitution, by statute provide for a State Board of Equalization, and fix its powers and duties.

ARTICLE IX.

MUNICIPAL CORPORATIONS.

SECTION 1. Municipal corporations under the laws of this State are:

First—Counties;

Second—Cities; and

Third—Consolidated cities and counties.

SEC. 2. The Legislature shall establish a system of county and city government, which shall be as nearly uniform as practicable.

SEC. 3. The boundaries of counties shall be established by statute, and no statute shall be passed changing a county boundary, until it be shown to the Legislature that a notice was published in some newspaper of general circulation in the counties to be affected by such change, at least thirty days before the last general election, stating that application would be made to the Legislature for such change.

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SEC. 4. The compensation of county officers shall be regulated by law. Salaries of county officers and pay allowed by law shall not be increased or diminished during the time for which they shall be elected.

SEC. 5. The Legislature shall provide by statute for a strict accountability of all county, township, and city officers, for all public moneys coming into their hands.

SEC. 6. Township officers are Justices of the Peace and Constables, and each shall have such power and be subject to such duties and obligations as are prescribed in this Constitution or by statute.

SEC. 7. The Legislature shall provide by statute for such offices as may be necessary in administering the affairs of school districts, road districts, swamp land districts, or other division created by statute.

SEC. 8. Cities with charters already given, shall remain such under their present charters, subject to amendment, or shall become incorporate under general laws.

SEC. 9. No debt shall be incurred by any municipal corporation, except in pursuance of an order or ordinance previously made therefor, by the municipal authorities, which order or ordinance shall provide for the payment thereof.

SEC. 10. Private property shall not be liable to be taken or sold for the payment of the corporate debts of a municipal corporation.

SEC. 11. The Legislature may vest the corporate authorities of cities, or consolidated cities and counties, with power to make local improvements, by special assessment, or by special taxation of contiguous property, or otherwise. For all other corporate purposes, all municipal corporations may be vested with authority to assess and collect taxes; but such taxes shall be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

ARTICLE X.

PRIVATE CORPORATIONS.

SECTION 1. Corporations may be formed under general laws, but shall not be created by special Act. All general laws passed pursuant to this section may be altered, from time to time, or repealed.

SEC. 2. Each stockholder shall be individually and personally liable for all debts and liabilities of a corporation created or incurred while he remains such stockholder.

SEC. 3. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the Legislature from taking the property and franchises of corporations and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State.

SEC. 4. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

SEC. 5. No corporation shall engage in any business other than that expressly authorized in its charter; nor shall it take or hold any real estate except such as may be necessary and proper for its legitimate business.

SEC. 6. No corporation shall issue stocks or bonds except for money, labor done, or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the two thirds in value of the stock first obtained at a meeting to be held after sixty days notice given in pursuance of law.

SEC. 7. No railroad or telegraph company shall consolidate with or hold an interest in the stock or bonds of any other railroad or telegraph company, nor shall the same persons be officers in corporations owning competing lines of railroads or telegraphs.

SEC. 8. No railroad or telegraph company shall lease or in any manner manage or control the railroad or telegraph line of another company.

SEC. 9. All individuals, associations, and corporations shall have equal right to have persons and property transported over railroads; and no undue or unreasonable discrimination shall be made in charges for, or in facilities for transportation of freight or passengers within the State or coming from or going to any other State. Persons and property transported over any railroad shall be delivered at any station, at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station; but excursion and commutation tickets may be issued at special rates.

SEC. 10. The Legislature shall pass statutes to correct abuses and prevent unjust discrimination and extortion in the rates of freights and fares on the railroads in this State, and provide for the enforcement of such statutes by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of property and franchises.

SEC. 11. Every railroad corporation organized in this State shall maintain an office therein where transfers of its stock shall be made, and where its books shall be kept for inspection by any stockholder or creditor of such corporation, in which books shall be recorded the amount of capital stock subscribed or paid in, and by whom, the names of the owners of its stock, and the amounts owned by them respectively, the transfers of said stock, and the names and places of residence of its officers.

SEC. 12. All railroads shall be public highways, and all railroad companies shall be common carriers. Any corporation organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads in other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad; and shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination, in such manner as may be prescribed by general statute.

SEC. 13. No President, Director, officer, or employé of any railroad company shall be interested directly or indirectly in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company.

SEC. 14. Any public officer of or in this State, legislative, executive, or judicial, who shall accept or use a free pass or free ticket, or a pass or a ticket paying therefor less than the usual rates, from any railroad company or other transportation company, or who shall ride on or over any railroad for less than the usual rate of fare, shall be ineligible to all offices of honor or trust in this State, and shall lose his said office, and the Legislature shall provide for the punishment of such act as a felony.

SEC. 15. The Legislature shall provide by statute for the punishment as a felony of any officer or employé of any railroad company or other transportation company who shall give, or offer to give, to any public officer of or in this State, legislative, executive, or judicial, a free pass or free ticket, or a pass or ticket for a less price than the usual rates, or who shall knowingly permit such officer to ride in or over such railroad without paying therefor the usual rates.

SEC. 16. No foreign corporation shall do any business in this State without having one or more known places of business, and an authorized agent or agents in the same, upon whom process may be served.

ARTICLE XI.

EDUCATION.

SECTION 1. A Superintendent of Public Instruction shall be elected by the qualified electors, at the same time and place, and in the same manner, and for the same term of office, as the Governor. He shall receive a salary equal to that of Secretary of State.

SEC. 2. A County Superintendent of Schools, for each county in the State, shall be elected at the general election of Governor and Superintendent of Public Instruction, by a vote of the qualified electors of each county, and shall hold office for the term of four years.

SEC. 3. The Legislature shall provide for a system of public schools by which a free public school shall be maintained for at least six months in each school district in every year after the first year in which a school is established.

SEC. 4. There shall be a State Board of Education, consisting of two members from each Congressional district, who shall be nominated by the Governor and confirmed by the Senate, for a term of four years. The State Superintendent shall be ex officio a member of this Board.

SEC. 5. The Legislature shall encourage, by all suitable means, the promotion of education among the people. The proceeds of the sale of the five hundred thousand acres of land granted to the new States under an Act of Congress approved A. D. eighteen hundred and forty-one, and of the sale of sixteenth and thirty-sixth sections of township lands reserved for school purposes, shall constitute an inviolable school fund, the income from which shall be apportioned by the Superintendent of Public Instruction to each school district pro rata, according to the number of school census children.

SEC. 6. No public moneys shall ever be appropriated for the support, directly or indirectly, of any religious sect or denomination whatever, nor for any school not under the direct and entire control of public school officers.

SEC. 7. The revenue derived from the State School Fund, and from the State school tax, shall be applied exclusively to the support of primary and grammar schools.

ARTICLE XII.

MODE OF AMENDING AND REVISING THE CONSTITUTION.

SECTION 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly, and if the same are agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their Journals, with the ayes and noes taken thereon, and shall be published for three months before the next general election. In his proclamation calling such election, the Governor shall submit such proposed amendments to the qualified electors of the State for adoption or rejection, and if a majority of the votes cast shall be for the adoption of such amendment or amendments, it or they shall become part of this Constitution.

SEC. 2. And if, at any time, two thirds of the Senate and Assembly shall think it necessary to revise and change this entire Constitution, they shall recommend to the electors, at the next election for members of the Legislature, to vote for or against a Convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at the next session, provide by law for calling a Convention, to be holden within six months after the passage of such law; and such Convention shall consist of a number of members not less than that of both branches of the Legislature. The Constitution that may have been agreed upon and adopted by such Convention shall be submitted to the people, at a special election to be provided for by law, for their ratification or rejection. Each voter shall express his opinion by depositing in the ballot-box a ticket, whereon shall be written or printed the words, "For the new Constitution" or "Against the new Constitution." The returns of such election shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the votes so certified to him. If, by such examination, it be ascertained that a majority of the whole number of votes cast at such election be in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California.

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ARTICLE XIII.

SECTION 1. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly aid or assist in any manner those thus offending, shall not be allowed to hold any office of profit, or to enjoy the right of suffrage under this Constitution.

SEC. 2. Members of the Legislature, and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of—— according to the best of my ability."

And no other oath, declaration, or test, shall be required as a qualification for any office or public trust.

SEC. 3. All officers whose election or appointment is not provided for by this Constitution, and all officers whose office may hereafter be created by law, shall be elected by the people or appointed, as the Legislature may direct.

SEC. 4. No person shall be elected or appointed to, or hold any office created by, this Constitution, who is not an elector and resident of this State. No person shall be elected or appointed to, or hold any district, county, or local office created by this Constitution, unless he is an elector and resident of the district, county, or other political division for which he is elected or appointed. And every judicial officer must reside at the place where the sessions of the Court of which he is a member are held.

SEC. 5. When the duration of any office is not provided for by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment; nor shall the duration of any office not fixed by this Constitution ever exceed four years.

SEC. 6. The fiscal year shall commence on the first day of July.

SEC. 7. Each county, city, and incorporated town, shall made provision for the support of its own officers, subject to such restrictions and regulations as the Legislature may prescribe.

SEC. 8. Suits may be brought against the State in such manner and in such Courts as shall be directed by law.

SEC. 9. The seat of government shall not be removed from Sacramento except by operation of a statute enacted for that purpose and ratified by a majority of the votes cast at the next general election after the passage of such statute.

SEC. 10. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise, or descent, shall be her separate property, and laws shall be passed more clearly defining the rights of the wife in relation as well to her separate property, as to that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

SEC. 11. No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

SEC. 12. No perpetuities shall be allowed except for eleemosynary purposes.

SEC. 13. Every person shall be disqualified from holding any office of profit in this State, who shall have been convicted of having given or offered a bribe to procure his election or appointment.

SEC. 14. No person holding lucrative office under the United States or any other power, shall be eligible to any office of honor, trust, or profit in this State; but officers in the militia who receive no annual salary, and local officers and Postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed persons holding lucrative offices.

SEC. 15. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be supported by laws regulating elections, and prohibiting, under adequate penalties, all undue influence thereon from power, bribery, tumult, or other improper practice.

SEC. 16. Absence from this State on business of the State, or of the United States, shall not affect the question of residence of any person.

SEC. 17. If this Constitution is adopted by the people, the Legislature of which the members of the Assembly are elected at the general election, in the year eighteen hundred and seventy-nine, shall meet on Tuesday after the first Monday in January, eighteen hundred and eighty.

SEC. 18. The Legislature, at its first session, or as soon as may be after the adoption of this Constitution, shall pass such laws as may be necessary to carry the same into full force and effect.

SEC. 19. All persons in office in this State at the time of the adoption of this Constitution, shall hold their respective offices until the term for which they have been elected or appointed shall expire, and until their successor shall be duly qualified, unless otherwise provided in this Constitution.

SEC. 20. At the general election next after the adoption of this Constitution, there shall be elected in the City and County of San Francisco seven Judges of the District Court of said city and county.

SEC. 21. The Legislature, at the first session after the adoption of this Constitution, shall fix and determine the compensation of the Justices of the Supreme Court and of the Judges of the several Judicial Districts of the State, and the provisions of section twenty-four of article six shall not be deemed inconsistent herewith.

SEC. 22. All existing Courts shall continue in existence until the first Monday in July, eighteen hundred and eighty, without abridgment of their present jurisdiction and powers, unless otherwise provided in this Constitution.

SEC. 23. All actions and proceedings pending in the District, County, and Probate Courts of the several counties of this State, and in the Municipal Criminal Court of San Francisco, on the first Monday in July, eighteen hundred and eighty, shall be transferred to, and tried and determined in, the District Court of the county in which such actions or proceedings are pending.

SEC. 24. All actions or proceedings pending and undetermined in the Supreme Court now in existence, on the first Monday in July, eighteen hundred and eighty, must be transferred for determination to the Supreme Court created by this Constitution.

SEC. 25. All rights, prosecutions, claims, and contracts existing, and all laws in force, at the time of the adoption of this Constitution, and not inconsistent therewith, until altered or repealed by the Legislature, shall continue as if this Constitution had not been adopted.

SEC. 26. In all laws which shall be in force on the first Monday in July, eighteen hundred and eighty, and in which the words "Probate Court," "Probate Judge," "County Court," "County Judge," "Municipal Criminal Court of San Francisco," and "Judge of the Municipal Criminal Court of San Francisco" appear, such words shall have the same effect as if written "District Court" and "Judge of the District Court" respectively.

SEC. 27. The Legislature shall provide for establishing and opening public and private roads; and in awarding damages for private property taken for such purpose, the benefits that shall accrue to the owners of land so taken from the establishing of such roads shall be considered in estimating such damages.

SEC. 28. The Legislature may pass laws permitting the owners or occupants of land to construct drains and ditches for agricultural and sanitary purposes across the lands of others.

SEC. 29. No money collected by taxation in this State shall be placed in the hands of or be controlled by any religious sect, or by any person other than an officer duly elected or appointed under the laws thereof.

SEC. 30. Neither this State nor any municipal corporation under the laws thereof, shall hereafter issue any bonds with coupons or other evidence of debt-bearing interest, except that the State may issue such evidence of debt only pursuant to section three of article eight of this Constitution.

SEC. 31. The salary of any public officer in this State shall not exceed five thousand dollars per annum.

AMENDMENT TO RULE.

MR. NOEL offered the following amendment to rule fifty-two:

Rule 52.—Propositions and resolutions mentioned in the last foregoing rule shall embrace but one subject; they shall be read once by title, when introduced, and then referred, without debate, to an appropriate committee.

MR. NOEL. The only alteration proposed is to dispense with the reading of the propositions when they are introduced. It simply provides that they shall be read by title, and referred to the appropriate committees, without debate.

MR. BEERSTECHER. I rise to a point of order. We are now under section seven, introduction of propositions.

THE PRESIDENT. We have passed that, and have got down to the sixth order of business, general orders.

MR. BEERSTECHER. I understood that the roll was to be called.

THE PRESIDENT. No one called for the calling of the roll, and it was passed to the next head. The question is, on the adoption of the amendment offered by Mr. Noel.

The amendment was adopted.

MODE OF PROCEDURE.

MR. WINANS. I desire to call up my resolution in reference to the mode of procedure in our deliberations.

MR. BELCHER. I move that the gentleman's resolution be printed, and that it be made the special order for to-morrow, at two o'clock.

MR. ESTEE. I would suggest that we suspend the rule. We will have to suspend the rule if we consider it now.

MR. WINANS. I move that the rules be suspended for the purpose of considering this question now.

MR. ROLFE. It seems to me that we do not half of us know what the rules are. There was a resolution that they be printed and laid on our desks. I have not seen them or heard of them since. I simply rise more to make inquiry than anything else.

THE PRESIDENT. I understand that the amendments have not been printed.

MR. ESTEE. It has been impossible to print them while so many motions to amend were pending. When the Convention concludes that they have got about enough rules, then we will have them printed. They are standing in type now waiting for more rules.

MR. BELCHER'S motion prevailed.

MR. WEST. I move that clause eight, in rule seventy-three, be amended by striking out "nine" and inserting "thirteen," as the number of members of the Committee on Education.

MR. BEERSTECHER. I rise to inquire whether the motion made by Mr. Larkin, to introduce this voluminous mass of matter, was to have it printed, or whether it was merely to be introduced here and not printed.

THE PRESIDENT. What, Mr. McConnell's Constitution?

MR. BEERSTECHER. Yes, this Constitution.

THE PRESIDENT. Not to be printed.

MR. BEERSTECHER. I move that we do now return to section seven, of rule seventeen, relating to the introduction of resolutions and propositions relating to the Constitution. I make this motion because I know that there are a number of persons who have propositions to

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introduce, and the rule was passed without really giving them an opportunity to introduce them. Of course it was without any intention.

THE PRESIDENT. The gentleman is out of order.

PRINTING OF PROPOSITIONS.

MR. CAMPBELL offered the following:

Resolved, That rule seventy-one be and is hereby repealed; but nothing herein contained shall be construed to prevent the printing of any resolution or proposition heretofore presented.

MR. CAMPBELL. I think we have certainly had enough printing done. Every gentleman has had an opportunity to have printed four propositions. Our tables are now incumbered with a mass of matter, in many cases mere copies of existing provisions of the Constitution; in many cases mere repetitions of propositions made in twenty different forms, and substantially alike. It does seem to me that it is a waste of time and money to go any further in this matter of printing propositions that may be presented here. There will be an opportunity for gentlemen, when the several committees report, if their propositions are rejected, to present them to the Convention in the form of amendments, and then they will be printed. It seems to me useless to go on and print them now. Many gentlemen seem to be under the impression that unless they present propositions now, and unless those propositions are printed now, that they will be cut off forever from any opportunity to introduce what they may deem beneficial propositions. But that is entirely a mistake. Every proposition that they desire to make can be presented here, referred to the appropriate committee, and after that committee has acted upon it, if they do not choose to adopt it, the gentleman offering any such proposition will have an opportunity of presenting it here in the form of an amendment to the report of the committee. It seems to me that we ought to repeal this rule.

MR. BEERSTECHER. When the matter of rule seventy-one, in relation to printing the propositions that were introduced here, came up for consideration, it occupied the time of this Convention for over two hours. It was then determined, after mature deliberation, and after a number of persons had spoken upon the subject, that these propositions should be printed. We have had, as the gentleman from San Francisco, Mr. Estee, has said, such a change in the rules of order that it has been impossible to print——

MR. NOEL. I rise to a point of order. Under rule sixty this proposition must lie over one day.

THE PRESIDENT. The resolution is offered in accordance with previous notice. The gentleman from San Francisco will proceed.

MR. BEERSTECHER. As stated by the gentleman from San Francisco, Mr. Estee, the changes have been so frequent, and the propositions to change so numerous, that it has been impossible to furnish this Convention with a properly corrected set of rules. Not a day comes but a dozen propositions come floating in here to change the standing rules. These rules were referred to a committee of competent and qualified persons, and, after deliberation, they were reported upon here in the Convention, discussed at length, and adopted. They were the sense of the Convention at that time, and I cannot see at this time why these rules should be changed, and more particularly this rule in relation to printing the propositions that are introduced here. If this rule is abrogated or wiped out, many of the propositions that are introduced will be consigned to oblivion, because sending the propositions to these committees is equivalent to consigning them to oblivion forever. Therefore, I hope that the resolution of the gentleman from Alameda, Mr. Campbell, will be promptly voted down. I hope we will stand by the rule as it now reads—that four hundred and eighty copies of the propositions be printed. It is the only true way; it is the only proper way. Every man that introduces a resolution introduces it in good faith, and in just exactly such a manner as he is able to introduce it. It ought to be recognized by the Convention. Every individual member of this Convention ought to have an opportunity of examining every proposition that is brought before the Convention and examining the propositions at leisure; not only the members but the reporters of the press should have a chance to get them and canvass them and report on them for their papers. It is the only method that we have now in order to give the people any light upon the subjects that are introduced here. I hope the resolution will be promptly voted down.

MR. NOEL. I move to refer the resolution to the Committee on Rules.

MR. WEST. I move to amend by referring the matter to the Committee on Reporting and Printing.

THE PRESIDENT. The Committee on Printing would have nothing to do with that proposition. It is simply a resolution in reference to one of the rules.

MR. WEST. It is the opinion of many members that there are questions involved in this matter that might be considered by the Committee on Printing. It is suggested that the form of printing these propositions might be changed so that it would not be so expensive.

MR. CAMPBELL. I do not see what light we can get by any reference to either of these committees. It seems to me to be a perfectly plain proposition. We have been for three days, I think, receiving these propositions. They have come in in vast volumes, and it is time, I think, that we should stop printing the same matter, substantially, over and over again, and wasting the money of the State on what can be productive of no benefit whatever. Now, the gentleman is entirely mistaken in saying that any proposition which any gentleman may have to make will be smothered, because it is not printed now and laid on our desks now. I have a great many propositions that I shall make at the proper time, but if every gentleman undertook to have printed every amendment that he desires to have made to the Constitution, there would not be enough money in the entire appropriation to pay for the printing of what would be introduced by one hundred and fifty-two members. There will be an ample opportunity when the committees come in and report upon the several subjects. Their reports will be printed. If the proposition which any gentleman desires to engraft on the Constitution is not found in this report, he will have an ample opportunity to present his proposition in the form of an amendment. It will be taken up and discussed in Committee of the Whole. There will be no smothering or concealment about it, and none is possible. My only object is to stop the printing of this mass of resolutions coming in on the same subject, with the same things stated over and over again, and the enormous expense which is entailed. Let gentlemen present their propositions, have them referred to the appropriate committees, and then, if they are not adopted by the committee, move them as amendments in Committee of the Whole.

MR. NOEL. I rise to a point of order, in regard to the amendment to my motion. Rule twenty reads: "Every proposition or resolution shall be referred to the appropriate standing committee, as indicated by its name given herein." I submit that the Committee on Rules and Order of Business is the appropriate committee to refer this to, and that the amendment to my motion is out of order. If the resolution is referred, it must be to the appropriate committee, and that committee is the Committee on Rules and Order of Business.

THE PRESIDENT. The Chair did not entertain the motion to refer to the Committee on Reporting and Printing as an amendment, but as a separate motion. The first question is on the motion to refer to the Committee on Rules and Order of Business. If that motion is lost, the question will be on the motion to refer to the Committee on Reporting and Printing.

MR. BARBOUR. I hope the Convention will not refer this question. There is nothing to refer to the Committee on Rules. I think the gentleman could accomplish his object by having the rules amended so that propositions which have been already printed, as will appear by an examination of those printed, shall not be printed again. I am in favor of adhering to the rule calling for the printing of the propositions, but I agree with the gentleman that we should not have these propositions printed over and over again. Let him propose an amendment to the rule, so that whenever a proposition is introduced, which appears to be substantially the same as one already introduced, it shall not be printed.

MR. VAN DYKE. I hope that the resolution of the gentleman from Alameda, Mr. Campbell, will be adopted. If that rule is repealed, it does not prevent this body from ordering the printing of any proposition the importance of which may demand it. But to repeal it will prevent the printing of a great many, to say the least, immature and ill-considered propositions, and it certainly will do no harm if they are smothered. But, Mr. President, if these propositions are not printed, it does not follow that they will be smothered. They will go to the proper committees and will receive that fair treatment and consideration which their importance may demand. If the proper committees fail to approve, in whole or in part, those propositions so referred, the mover can renew the proposition in the shape of an amendment, and then they can be ordered printed. It strikes me that this matter was not maturely considered, with all due respect to the gentlemen. I think it was not maturely considered. I think we have made a mistake in sending all these propositions out. It will entail a large bill of expense. The gentlemen who speak long and loud in reference to extravagance should bear this in mind. I hope that the motion to repeal the rule will prevail, and then, if any proposition of importance is presented, it can be printed by order of the Convention.

MR. ESTEE. The Committee on Rules and Order of Business are not desirous of examining this or any other proposition that this house does not wish should go to them, but there are other committees in this body and by-and-by when other resolutions are introduced, and when this house undertakes to determine which is the appropriate committee to refer them to, I apprehend that members of this body will call attention to rule twenty and claim that a certain reference was contrary to rule twenty, and contrary to the rights of this body. I maintain that the whole proposition is out of order, unless this rule is suspended. All questions of this character must be referred to a standing committee of this house, under rule twenty, and under a special rule that all questions relative to the rules should be referred to the Committee on Rules and Order of Business. I raise the point of order that this question should be referred to the Committee on Rules and Order of Business as a standing committee of this house. When the President passes upon that I desire——

THE PRESIDENT. The Chair rules that the motion of the gentleman from Alameda, Mr. Campbell, will go to the Committee on Rules and Order of Business, under the previous order of the Convention.

NOTICE.

MR. EDGERTON. I give notice that I will, on to-morrow, move the following amendment to rule seventy-one:

"But no proposition, so far as the same contains the matter in the existing Constitution, shall be printed; nor shall any proposition be printed which is in substance the same as one already printed."

REFERRED.

MR. McCALLUM. I gave notice, on yesterday, that I would move to amend rule sixty. After the ruling of the Chair in the case of Mr. Campbell's resolution, I ask that my motion go to the Committee on Rules.

THE PRESIDENT. It is so ordered.

REPORTING THE DEBATES.

MR. HUESTIS. In accordance with the notice given on Friday, I now move to reconsider the vote by which the Convention adopted the report of the Committee on Mileage and Contingent Expenses, in regard to the matter of reporting the proceedings and debates of this Convention.

MR. NOEL. I move to lay the motion on the table.

The motion prevailed.

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REFERENCE.

Mr. WEST. I ask that my motion in reference to rule seventy-three be referred to the Committee on Rules and Order of Business.

So ordered.

RESOLUTIONS AND PROPOSITIONS.

Mr. WHITE. I move that we now return to the seventh order of business, seventh subdivision of rule seventeen, relative to the introduction of resolutions and propositions relating to the Constitution.

Carried.

MODE OF SUBMITTING THE CONSTITUTION.

Mr. BARBOUR offered the following resolution, relative to the mode of submitting the proposed new Constitution to the people:

Resolved, That it is competent for this Convention, in addition to submitting for ratification or rejection the Constitution it may draft, to submit separate propositions to be inserted therein, provided a majority of the electors of this State so decide by their votes at the election to be held on such submission.

Mr. BARBOUR. I move its reference to the Committee of the Whole.

Mr. CAMPBELL. It seems to me that the Committee on Judiciary and Judicial Department is the proper committee to refer that to. I move, as an amendment, that it be referred to the Committee on Judiciary and Judicial Department.

Mr. BARBOUR. Is the question on referring to the Committee of the Whole?

The PRESIDENT. That is the first question.

Mr. McCALLUM. That is the order in which the question must be put; first to the Committee of the Whole, and then to a standing committee. Now I submit, in one word, that the resolution involving, as it does, so great a legal question as is presented in that resolution, ought to go to the Committee on Judiciary. It might involve the success or the defeat of the work of this whole Convention. I understand that it is thought, notwithstanding the action of the Legislature, that we may submit any portion of the Constitution or a separate proposition, but the Committee on Judiciary, in my judgment, ought to pass upon all such questions.

Mr. CAPLES. It seems to me, Mr. President——

The PRESIDENT. It is not debatable.

Mr. McCALLUM. I ask the Chair under what rule he is deciding?

The PRESIDENT. Under the rule under which we are working.

Mr. ESTEE. I raise the point of order, that under rule twenty all questions of this kind must go to a standing committee.

The question was put, and Mr. Barbour's motion was lost on a standing vote; ayes, forty-three, noes, eighty-four.

The resolution was then referred to the Committee on Judiciary.

WAREHOUSES.

Mr. BEERSTECHER introduced the following proposed amendment to the Constitution, relative to subjecting warehouses to legislative control:

ARTICLE —.

SECTION 1. All buildings or other structures used exclusively or partially for the storage of grain or other property, for a direct compensation, or where such storage is incidental to some other compensatory transaction, and whether the property stored be kept separated or not, are declared to be public warehouses, subject to legislative control as to rates of storage and otherwise.

SEC. 2. The owner, lessee, or manager of every public warehouse shall make weekly statements, under oath, before an authorized officer; shall keep a copy of such statement posted in a conspicuous place in said warehouse; shall file a copy of such statement without delay in the office of the County Clerk of the county wherein such warehouse may be; and, also, file a copy with the Secretary of State. Such statement shall set forth the amount and grade of each kind of grain, and of other property, in such warehouse; what warehouse receipts have been issued, and to whom; which are, at time of statement, outstanding. On the copy posted in the warehouse there shall be daily noted all changes that occur in the quantity and grade of property on storage.

SEC. 3. The owners, consignees, and holders of warehouse receipts shall have the right to examine such property, and all books and records relating thereto, and every citizen, within business hours of any day, shall have a right to examine the statement mentioned in section two of this article.

SEC. 4. Railroad companies and other common carriers shall weigh grain and other property at place of shipment, and receipt for full amount, and shall be responsible for the delivery of such amount, to the owner or consignee, at the place of destination.

SEC. 5. Railroad companies receiving and transporting grain and other property shall deliver the same, without delay, to any consignee thereof, or to any public warehouse or other place of deposit to which it may be consigned, without compensation other than the regular freight rates; *provided*, such consignee, public warehouse, or other place of deposit can be reached by any track owned, leased, or used, or which can be used, by such railroad companies; and railroad companies shall permit connections to be made with their tracks, so that any consignee, public warehouse, or other place of deposit may be reached by the cars running on said railroads.

SEC. 6. The Legislature shall provide, by law, for the inspection of grain and other products used for food.

SEC. 7. The Legislature shall pass all necessary laws to give full effect to this article of the Constitution, which shall be liberally construed, so as to protect producers and shippers. And this article shall not be construed to deny the Legislature the power to prescribe, by law, other and further remedies, as may be found expedient, or to deprive any person of existing common law remedies.

Referred to Committee on Miscellaneous Subjects.

REVENUE AND TAXATION.

Mr. BEERSTECHER introduced the following proposed amendment to the Constitution, relative to revenue and taxation:

ARTICLE —.

SECTION 1. Taxation, except as hereinafter provided, whether imposed by the State, county, or other political corporate bodies, shall be equal and uniform. All property, both real, personal, and mixed, shall be taxed in proportion to its true and full value, to be ascertained by law. No species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value.

SEC. 2. The property, real and personal, of the State, of counties, and other corporate subdivisions of the State, shall be exempt from taxation.

SEC. 3. The property, real and personal, of blind and of deaf and dumb persons, to the value of five thousand dollars; the wearing apparel, household furniture, and utensils of every family, to the value of three hundred dollars; the tools of every laborer, miner, and mechanic, to the value of two hundred dollars; the farming implements and team of every cultivator of land (farmer), to the value of five hundred dollars, and all growing crops, shall be exempt from taxation. There shall be no poll tax levied or collected in this State.

SEC. 4. All laws exempting property from taxation, other than the property above enumerated, shall be void.

SEC. 5. No county, or subdivision of the State, nor the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes, nor shall commutation for taxes be authorized in any form.

SEC. 6. The Legislature shall, by general laws, vest in the corporate authorities of counties and subdivisions of the State the power to levy, assess, and collect the necessary taxes other than State taxes.

SEC. 7. The rolling stock and all movable property, also all credits, and all certificates of stock, belonging to and held by any railroad company or corporation in this State, shall be considered personal property, and taxed as such. All other property owned and held by any such company or corporation shall be considered real estate, and taxed as such.

SEC. 8. Mining and other stocks shall be assessed and taxed at their ruling money value at the time of assessment.

SEC. 9. All property employed in banking shall bear a burden of taxation equal to that imposed on like property of private persons, and all notes and bills discounted or purchased, moneys loaned, and all property, effects and dues, without deduction, shall be taxed.

SEC. 10. The property of all corporations, whether heretofore, or hereafter incorporated, shall be subject to taxation, the same as other property.

SEC. 11. When property is mortgaged, the amount of money borrowed on such mortgage shall be deducted from the actual value of the property, and the amount of the mortgage assessed to the mortgagee. If the mortgagee fail to pay the tax levied on the mortgage, the mortgagor shall; and in such case the mortgagor shall deduct the amount so paid from the interest or principal due or to become due on said mortgage.

SEC. 12. All agricultural lands of equal producing capacity, whether cultivated or wild, improved or unimproved, shall be subject to the same rate of taxation, regardless of improvements.

SEC. 13. All property, over and above the value of five thousand dollars, owned by any one person, or by any company, corporation, or copartnership, shall be subject to a graduated progressive tax, on an ascending scale, to be assessed on each additional five thousand dollars or less.

SEC. 14. No tax shall be levied except in pursuance of a law which shall distinctly state the object of the same, to which object, only, such tax shall be applied.

SEC. 15. Taxes for county, city, town, and school purposes may be levied on all subjects of taxation, but the valuation of property therefor shall not exceed the valuation of the same property for State purposes. For county purposes the annual rate on property, in counties having five million dollars or less, shall not, in the aggregate, exceed fifty cents on the hundred dollars' valuation; in counties having five million dollars, and under ten million dollars, said rate shall not exceed fifty cents on the hundred dollars' valuation; in counties having ten million dollars, and under twenty million dollars, said rate shall not exceed thirty-five cents on the hundred dollars' valuation; in counties having over thirty million dollars, said rate shall not exceed thirty cents on the hundred dollars' valuation. For city and town, or city and county (where city and county are united) purposes, the annual rate on property in cities and towns having thirty thousand inhabitants or more, shall not, in the aggregate, exceed one hundred cents on the hundred dollars' valuation; in cities and towns having less than thirty thousand and over ten thousand inhabitants, said rate shall not exceed sixty cents on the hundred dollars' valuation; in cities and towns having less than ten thousand and more than one thousand inhabitants, said rate shall not exceed fifty cents on the hundred dollars' valuation; and in towns having one thousand or less inhabitants, said rate shall not exceed twenty-five cents on the hundred dollars' valuation. For school purposes the annual rate on property shall not exceed fifty cents on the hundred dollars' valuation; *provided*, that the annual rates for school purposes may be increased in districts formed of cities and towns, or cities and counties, to an amount not to exceed one dollar on the hundred dollars' valuation, on condition that a majority of the voters, voting at an election held to decide the question, vote for said increase. For the purpose of erecting public buildings, the rates of taxation herein limited may be increased, when the rate of such increase and the purpose for which it is intended shall have been submitted to a vote of the people, and two thirds of the qualified voters voting at such election shall vote therefor.

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SEC. 16. No county, or other political division of the State, shall be allowed to become indebted in any manner, or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of two thirds of the voters thereof voting at an election to be held for that purpose, nor in cases requiring such assent shall any indebtedness be allowed to be incurred to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes, previous to the incurring of such indebtedness; *provided*, that with such assent, any county may be allowed to become indebted to a larger amount for the erection of a Court-house or jail; *and provided further*, that any county or other political corporation, incurring any indebtedness, requiring the assent of the voters as aforesaid, shall, before or at the time of so doing, provide for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for payment of the principal thereof within fifteen years from the time of contracting the same.

SEC. 17. Private property shall not be taken and sold for the payment of the corporate debt of a municipal corporation.

SEC. 18. Real estate shall be appraised at least once every two years, and personal property every year, in such manner as may be provided by law, at its true value in money.

SEC. 19. All moneys collected for taxes must be deposited in the public treasury immediately after collection, and they shall never be retained in the hands or under the control of any Tax Collector, nor deposited in any place but the public treasury.

Referred to Committee on Revenue and Taxation.

EDUCATION.

MR. BLACKMER introduced the following proposed amendment to article nine of the present Constitution, relating to education:

SECTION —. The Legislature shall encourage, by all suitable means, the promotion of education among the people. The proceeds of the sale of the five hundred thousand acres of land granted to the new States under an Act of Congress approved A. D. eighteen hundred and forty-one, and of the sale of the sixteenth and thirty-sixth sections of township lands reserved for school purposes, shall constitute an indivisible school fund, the income from which shall be apportioned by the Superintendent of Public Instruction to each county, pro rata, according to the number of school census children therein.

SEC. —. The revenue derived from the State School Fund, and from the State school tax, shall be applied exclusively to the support of primary and grammar schools. In addition to these schools the public school system may include high schools, evening schools, normal schools, and technical schools, which may be established by the Legislature, or by municipal or district authority.

SEC. —. The funds arising from the sale of any lands or scrip which have been or may hereafter be granted to this State by the Congress of the United States, for any educational purposes whatever, shall forever be kept as separate and distinct funds, to be used, under the control of legislative enactments, exclusively for the purposes for which they were set apart in the several Acts granting the same, any statute law to the contrary notwithstanding.

Referred to Committee on Education.

LAW OF SUCCESSION.

MR. BLACKMER introduced the following proposed provision, relating to the law of succession:

ARTICLE —.

SECTION 1. It shall be the duty of the Legislature, at the session next succeeding the adoption of this Constitution, to so change the law of succession that, upon the death of either husband or wife, the community property, without administration, shall belong to the survivor, subject to such regulations as the Legislature may by statute law provide.

Referred to Committee on Miscellaneous Subjects.

LEGISLATIVE DEPARTMENT.

MR. BROWN introduced the following proposed amendment to section thirty-two of Legislative Department:

Resolved, That to control railroads it shall be imperative on the Legislature of this State to regularly examine, during each session of the same, the books of the Central Railroad Company, and to examine witnesses as to the cost of that road, and of all other railroads in this State. It shall be imperative on the Legislature that on any railroad one hundred miles in length, built in part or entirely by aid of the State or nation, the profit of such company or companies shall be so fixed as to approximately yield, so near as can be calculated, not more than ten per cent per annum on the actual cost of the road.

Referred to Committee on Legislative Department.

JURY SYSTEM.

MR. CAPLES introduced the following proposed amendment to the Constitution, in relation to the jury system:

ARTICLE —.

SECTION —. Grand Juries shall consist of seven jurors, and the concurrence of five shall be sufficient for the finding of an indictment or making a presentment.

SEC. —. Trial juries shall consist of five jurors, and the concurrence of three shall be sufficient to render a verdict, except in cases where, upon conviction, the penalty would be death, in which case the jury shall be composed of seven jurors, and a concurrence of the whole be necessary to the finding of a verdict.

Referred to Committee on Judiciary and Judicial Department.

ABROGATION OF THE JURY SYSTEM.

MR. CAPLES introduced the following proposition, in relation to the abrogation of the jury system:

ARTICLE —.

SECTION —. In all cases, civil and criminal, the Judge or Judges shall render the decision without the intervention of a jury.

Referred to Committee on Judiciary and Judicial Department.

EDUCATION.

MR. CHAPMAN introduced the following proposed amendment to the Constitution, relative to a system of education:

ARTICLE —.

SECTION 1. A Superintendent of Public Instruction shall be elected by the qualified electors, at the same time and place, in the same manner, and for the same term of office as the Governor. He shall receive a salary equal to that of Secretary of State.

SEC. 2. A County Superintendent of Schools, for each county in the State, shall be elected at the general election of Governor and Superintendent of Public Instruction, by vote of the qualified electors of each county, and shall hold office for the term of four years; *provided*, the Legislature may authorize two or more counties to unite in one district and elect one Superintendent in said district, the same as in the counties.

SEC. 3. The Legislature shall provide for a system of public schools, by which a free public school shall be maintained for at least six months in each school district in every year after the first year in which a school is established.

SEC. 4. There shall be a State Board of Education, consisting of two members from each Congressional District, who shall be nominated by the Governor and confirmed by the Senate, for a term of four years. The State Superintendent shall be ex officio a member of this Board.

SEC. 5. The Legislature shall encourage, by all suitable means, the promotion of education among the people. The proceeds of the sales of the five hundred thousand acres of land granted to the new States, under an Act of Congress approved A. D. eighteen hundred and forty-one, and of the sales of the sixteenth and thirty-sixth sections of township lands reserved for school purposes, shall constitute an inviolable school fund, the income from which shall be apportioned by the Superintendent of Public Instruction to each school district, pro rata, according to the number of school census children.

SEC. 6. No public moneys shall ever be appropriated for the support, directly or indirectly, of any religious sect or denominational school whatever; nor for any school not under the direct and entire control of public school officers.

SEC. 7. The revenue derived from the State School Fund, and from the State school tax, shall be applied exclusively to the support of primary and grammar schools.

Referred to Committee on Education.

TAXATION.

MR. CHAPMAN introduced the following proposed amendment to the Constitution, relative to taxation:

Assessors of town, county, district, or State taxes, shall be elected by the qualified electors of the town, county, or district in which the property taxed for town, county, or district purposes is situated; *provided*, that vacancies may be filled by appointment according to general laws.

Referred to the Committee on Revenue and Taxation.

CONSTITUTIONALITY OF LAWS.

MR. CONDON introduced the following proposed amendment to the Constitution, relative to the constitutionality of laws:

SECTION —. No laws shall be considered unconstitutional unless unanimously so decided by the Supreme Court of the State.

Referred to the Committee on Judiciary and Judicial Department.

PARDONING POWER.

MR. CONDON introduced the following proposed amendment to the Constitution, in relation to pardoning power:

SEC. 20. The Legislature shall provide by law for the election of three State Wardens, to be elected by districts of equal population as near as may be practicable, but no county shall be divided in forming such districts. These State Wardens shall hold their office for six years each, except as hereinafter provided, and shall have charge and management of the two State Prisons, and the two Insane Asylums, Asylum of the Deaf and Dumb, and all other charitable and penal institutions conducted and supported by the State, under such regulations and provisions as the Legislature shall prescribe by law. The districts from which the Wardens shall be elected shall be numbered, beginning with the most southern one, one, two, and three.

SEC. 21. The first election for State Wardens shall be at the first general election held under this Constitution, and they shall be inaugurated on the same day thereafter as the Governor and other State officers are to be inaugurated. The Warden for District Number One shall hold his office for a term of two years; the Warden for District Number Two shall hold his office for a term of four years; and the Warden for District Number Three shall hold his office for a term of six years, and thence afterwards all their successors in office shall hold office for a term of six years, except Wardens elected to fill vacancies, and they shall only hold office for the unexpired part of the term of their predecessors.

SEC. 22. The State Wardens shall receive an annual salary for their services of three thousand dollars a year, and such clerical assistance as the Legislature shall deem necessary; but no clerk in their employment shall ever receive a higher compensation than eighteen hundred dollars per annum.

SEC. 32. The Board of State Wardens shall constitute a Board of Pardons, and the Governor of the State shall never pardon any person

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convicted of crime except at the unanimous request of the Board of Pardons.

SEC. 33. The Legislature shall give effect to a judicious system of credits, for good behavior, to convicts in the State Prison, to be carried out by the State Wardens.

SEC. 34. The Legislature shall, if practicable, provide a system of labor for the convicts which shall make them self-supporting, but not in any way that shall seriously conflict with the free labor of mechanics.

Referred to Committee on Pardoning Power.

BRIBING LEGISLATORS.

MR. DOWLING introduced the following proposed amendment to the Constitution, authorizing the State to grant rewards:

SEC. —. The Legislature shall provide that a reward of ten thousand dollars, United States gold coin, shall be paid out of the State treasury to any member of the Assembly or the Senate of the State of California who shall produce such evidence as will convict any person or persons of having offered a bribe to any member of the Legislature, to any Judge of the Supreme Court, or to any District Judge of the State of California.

SEC. —. Any member of the Legislature giving such information will be exonerated from all collusion in or with the person offering said bribe.

Referred to Committee on Legislative Department.

APPRENTICE LAW.

MR. DOWLING introduced the following proposed amendment to the Constitution, authorizing the State to found an apprentice law:

SEC. —. Persons apprenticed to any trade, or calling, business, or profession, shall serve the specified time according and in compliance with a written or printed agreement, stating the terms on which the said apprenticeship is based.

SEC. —. The Governor of the State shall sign, and cause to be issued, a State certificate of apprenticeship to any and all apprentices who shall have served, in compliance with the stipulated agreement, the term of five years, in the State of California.

SEC. —. The person or persons to whom the apprentice is bound shall be considered, by law, his or her guardian, and shall not inflict any harsh, arbitrary, or cruel treatment on the said apprentice.

SEC. —. The term harsh, arbitrary, or cruel treatment does not imply to chastisement reasonably expected from parents on disobedient children.

SEC. —. The maximum term of apprenticeship shall not exceed five years.

SEC. —. The apprentice shall be diligent, obedient, and respectful to his or her guardian.

SEC. —. The guardian shall be kind, affable, and courteous to his or her apprentice.

SEC. —. The agreement entered into by the guardian and apprentice shall be signed by a Notary Public and two witnesses.

SEC. —. At the expiration of the term of apprenticeship, the State shall give a premium of ($200) two hundred dollars to said apprentice; *provided*, that the stipulations of agreement shall have been complied with.

SEC. —. No person shall be apprenticed to any trade, calling, business, or profession, who shall not have attained the age of —— years.

Referred to Committee on Legislative Department.

MEMBERS OF THE LEGISLATURE.

MR. FARRELL introduced the following proposition for incorporation in the proposed new Constitution, in relation to the Legislative Department:

SECTION —. No member of the Legislature shall vote upon any question in which he, individually, or any corporation for which he is agent or attorney, is directly interested.

Referred to Committee on Legislative Department.

RELIGION IN SCHOOLS.

MR. FARRELL introduced the following proposed amendment to the Constitution, in relation to education:

Proposition for incorporation in the proposed new Constitution, in relation to education:

SECTION —. No political, sectarian, or partisan test shall ever be allowed or exercised in the appointment or employment of officers or instructors in any of the public schools or State institutions of learning; and no religious or other sect, denomination, or class, shall ever have any exclusive right to, or control of, any part of the school or educational funds of this State.

Referred to Committee on Education.

APPROPRIATIONS.

MR. FAWCETT introduced the following proposed amendment to the Constitution, prohibiting the appropriation of money by the Legislature from county and city treasuries, etc.:

Incorporate the following section in the Constitution:

SECTION —. The Legislature shall not, by special law, appropriate any money from the treasury of any county, city, district, or other political or municipal subdivision, nor allow or direct the allowance of any claim or demand against the same.

Referred to the Committee on Legislative Department.

DECLARATION OF RIGHTS.

MR. FAWCETT introduced the following proposed amendment to the preamble and Bill of Rights:

Amend section sixteen, article one, of the Constitution, as follows:

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, or impairing the remedy for the enforcement of the same, or changing the rules of evidence or measure of damages so as to destroy or impair existing rights of action, shall ever be passed.

Referred to Committee on Preamble and Bill of Rights.

ABOLITION OF FINES.

MR. FREUD introduced the following proposed amendment to the Constitution, relative to the penalty for crimes:

SECTION —. The penalty for all crimes shall be imprisonment; and punishment by money fines is hereby abolished. Imprisonment shall be proportioned to the character and degree of the crime.

Referred to the Committee on Preamble and Bill of Rights.

SPECIAL LEGISLATION.

MR. FREUD introduced the following proposed amendment to the Constitution, relative to special legislation:

SECTION —. The Legislature shall not pass local or special laws in any of the following cases:

1. Granting any corporation, association, or individual, any special or exclusive privilege, immunity, or franchise.

2. Creating, increasing, or decreasing salaries, fees, or allowances of public officers during the time for which said officers are elected or appointed.

3. Creating offices, or prescribing the powers or duties of officers, in cities, counties, townships, or other municipal corporations.

4. Regulating or changing city, county, or township affairs, or appointing commissioners to transact the same.

5. Authorizing or directing the payment of money by any city, county, township, or other municipal corporation.

6. Restricting any town, city, or school district from supporting high schools, or causing instruction to be given in branches of study additional to those defined by State law.

7. Laying out, opening, closing, altering, or working streets, roads, or highways.

Referred to the Committee on Legislative Department.

SESSIONS OF THE LEGISLATURE.

MR. GRACE introduced the following proposition, in relation to Legislative Department:

SECTION —. The regular sessions of the Legislature shall be held once in every four years, and shall commence on the first Monday succeeding the first Tuesday in January next ensuing after the election of its members, which regular session shall be limited to one hundred days.

SEC. —. No special session of the Legislature, convened by proclamation of the Governor, shall continue longer than fifty days.

SEC. —. All laws, before taking effect, shall be submitted to the people for ratification.

Referred to the Committee on Legislative Department.

TAXATION.

MR. HERRINGTON introduced the following proposed amendment to the Constitution, relating to revenue and taxation:

Mr. President: I offer the following relating to revenue and taxation and suggest that it be incorporated as sections of an article in the new Constitution, to be known as Revenue and Taxation:

SECTION —. The following property is exempt from taxation:

First—The property of the widow and orphan, to the value of one thousand dollars, when no greater amount in value is owned by such widow or orphan.

Second—Lands exclusively used as public cemeteries.

Third—Growing crops.

Fourth—The lands and improvements thereon belonging to any person, not exceeding six acres in any incorporated city, town, or village, or sixty acres elsewhere, constituting the foundation of any college or university at which the degree of Master or Bachelor of Arts or Science, or its equivalent, is authorized by law to be conferred on male or female graduates, when used exclusively for educational purposes.

Fifth—The property of the United States and of this State, and of any municipality or political subdivision of this State, when used for public purposes.

Sixth—Money secured by mortgage on real estate. But the mortgagor, and his grantees of the lands mortgaged, may rebate from the mortgage debt on settlement an amount for taxes paid upon said lands equal to the taxes which should have been paid or payable upon the amount secured thereby, if the money so secured had been taxed as so much cash on hand; and the Legislature shall provide for the recovery, by the mortgagor and his grantees, of the lands mortgaged, and by the executors and administrators of each of them, from the mortgagee and his assigns, the amount of such taxes, with interest, when payment of the mortgage debt is made without rebate. Also, for the recovery by them of all money and property that may have been given, paid, or transferred by the mortgagor, other than interest, as a bonus or otherwise, to obtain the credit, security, or loan; and no contract, law, or obligation shall ever be a bar to such recovery, or be valid or binding for any future payments or transfers of money or property for such loan, security, or credit.

The Legislature shall provide a uniform rule for taxing all cash on hand, solvent debts and credits, all investments in stocks and bonds, and shares in banks, joint stock companies, and associations, and all real and personal property, except as otherwise herein provided, according to their true value in money; *provided*, investments in the bonds of the State, or of any municipality or political subdivision thereof, shall be taxed as the Legislature shall determine; *and provided further*, that all improvements on real estate shall be assessed separately from the lands on which they are located; and all lands of the State shall be graded and regraded every four years into three or more grades, as from time to time the Legislature shall determine. All lands of the same grade shall be taxed at the same valuation; and the valuation of each grade shall

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be determined by the State Board of Equalization, by a general average from the aggregate true cash values of all the lands of the State belonging to such grade, as returned by the Assessors for each county or assessment district of the State. And all assessments made for local purposes must be made upon the basis of the last preceding assessment of such lands for State and county purposes.

SEC. —. No poll tax shall ever be imposed upon a citizen or one who can become a citizen of the United States.

Referred to Committee on Revenue and Taxation.

APPLICATION OF LAWS.

MR. HOLMES introduced the following proposed amendment to the Constitution, relative to Legislative Department:

Mr. President: I offer the following, determining the nature and application of laws to be enacted upon certain subjects, and suggest that it be incorporated as a section of an article of the Constitution, to be known as Legislative Department:

SECTION —. Laws relating to the following subjects shall be general in their nature and application: The succession to property; the formation of private corporations, and defining and regulating their powers, duties, and responsibilities; Courts of justice, public boards, and officers; the election and appointment of State, district, county, and township officers, filling vacancies in office, and designating places of voting; rights and remedies afforded to litigants; and proceedings to enforce the same in Courts of justice; the management and disposition of estates of deceased persons by executors and administrators, and of wards by their guardians; killing and taking game and fish; crimes and punishments; changing the boundaries of counties, and the names of persons and places; granting divorces; compensating State officers; the exercise of public rights, franchises, and privileges; grand and petit juries, and the formation thereof.

Referred to Committee on Legislative Department.

ROADS AND HIGHWAYS.

MR. HOLMES introduced the following proposed amendment to the Constitution, relating to public roads and highways:

Resolved, That there be introduced a clause, as follows, in the new Constitution:

SECTION —. That whenever real estate belonging to private persons or corporation shall hereafter be taken for public roads or highways, the county in which such roads or highways shall be made shall pay the actual value of such real estate so taken, the valuation of said land taken for such purposes to be ascertained by twelve disinterested electors of the county; and from and after such valuation has been paid or tendered to the owner of such real estate, or guardian of the same, the action shall be final, and there shall be no appeal, and the fee-simple title of such real estate shall become vested in such county.

Referred to Committee on Judiciary and Judicial Department.

MISCELLANEOUS.

MR. HUGHEY introduced the following proposed amendment to the Constitution:

Resolved, That the following sections be incorporated in the new Constitution:

ARTICLE —.

SECTION —. There shall be hereafter no voluntary transfer, distribution, or sale of real property, unless all taxes thereon have been paid.

SEC. —. The making of profit out of State, county, city and county, or other municipal corporation money, or using the same for any purpose not authorized by law, is a felony, and shall be punished as such.

SEC. —. The State shall never assume, pay, or become responsible for, the debts or liabilities of, or in any manner give, loan, or extend its credit to or in aid of, any county, city and county, or other municipal corporation, or to any quasi-public or private corporation or individual; nor shall the State, or any county, city and county, or other municipal corporation thereof, grant any subsidy to any public, quasi-public, or private corporation, association, or individual.

Referred to Committee on Judiciary and Judicial Department.

BILL OF RIGHTS.

MR. HUGHEY introduced the following proposed amendment to the Constitution, concerning Bill of Rights:

Resolved, That the following section be incorporated in the new Constitution:

ARTICLE —.

BILL OF RIGHTS.

SECTION —. Each county, city and county, or other municipal corporation of this State, shall be the sole judge and controller of its local sanitary, moral, and police government; and each shall for itself determine whenever any thing or things, person or persons, are a nuisance or a menace, and detrimental to the morals and rights of its citizens.

SEC. —. Each county, city and county, or other municipal corporation, shall have the right to suppress, and remove from its borders, all things or persons so declared to be nuisances, or detrimental to the rights and morals of its citizens.

Referred to Committee on Preamble and Bill of Rights.

EXECUTIVE DEPARTMENT.

MR. JOYCE introduced the following amendment to article five, to take the place of sections one, two, and three, of the present Constitution:

Resolved, That the following amendments to article five, sections one, two, and three, of the present Constitution, be incorporated in the new Constitution:

SECTION 1. The Executive Department shall consist of a Governor, Lieutenant-Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Superintendent of Public Instruction, and Attorney-General, who shall each hold his office for the term of two years from and after the first Monday in December, eighteen hundred and seventy-nine, and until their successors are elected and qualified.

SEC. 2. No person shall be eligible to the office of Governor, Lieutenant-Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Superintendent of Public Instruction, and Attorney-General, who shall not have attained the age of thirty years, and been for five years next preceding their election a citizen of the United States and of this State. Neither the Governor, Lieutenant-Governor, Secretary of State, Auditor of Public Accounts, Superintendent of Public Instruction, nor Attorney-General shall be eligible to any other office, commissionership, or position of trust, during the period for which they shall have been elected.

Referred to Committee on Executive Department.

CHINESE DEAD.

MR. KLEINE introduced the following proposed amendment to the Constitution, relative to the exportation of human remains:

ARTICLE —.

SECTION 1. It shall be a criminal offense to send from this to any foreign country the bones or remains of any alien after the person has been interred for a period of two months or more.

Referred to Committee on Chinese.

COMMON SCHOOLS.

MR. LARUE introduced the following proposed amendment to the Constitution, relating to a system of common schools:

Amend section two, article nine, of the Constitution, so as to read as follows:

SECTION 2. The Legislature shall provide for a system of common schools by which a school shall be kept up and supported in each district at least six months in every year. No district shall be deprived of its portion of the interest in the public fund unless through willful neglect to comply with the law.

Referred to Committee on Education.

CREATION OF DEBTS.

MR. LARUE introduced the following proposed amendment to the Constitution, relative to the creation of debts. Amend article eight of the Constitution by adding a new section, to be known and designated as section two, and to read as follows:

SEC. 2. No debt shall be authorized to be created on any county, city and county, or town, or municipal corporation, in excess of five per cent. of the assessed valuation of the property therein, as equalized in pursuance of law; and no authority shall be given to donate, appropriate, or devise any money, or to loan the credit of any such county, city and county, or town, or municipal corporation, in aid of any private corporation, association, or person. The Legislature shall enforce this article by appropriate legislation. All public debts heretofore authorized and contracted for, in pursuance of law, are hereby made binding upon the State, county, or municipality contracting the same.

Referred to the Committee on Legislative Department.

DIVORCES.

MR. LINDOW introduced the following proposed amendment to the Constitution, in relation to divorces:

ARTICLE —.

SECTION 1. No person from whom a divorce has been obtained shall, during the lifetime of the person obtaining the divorce, be again allowed to contract a marriage; such divorces to be obtained by civil action, in the District Courts only, for causes provided by law.

Referred to Legislative Committee.

SALARY OF THE GOVERNOR.

MR. LINDOW introduced the following proposed amendment to the Constitution, relative to the Executive Department:

ARTICLE —.

SECTION 1. The Governor of this State shall receive an annual salary of five thousand dollars ($5,000), and shall be ineligible to hold any additional office of trust or profit in the gift of this government during his term of office as Governor.

Referred to the Committee on Executive Department.

EXEMPTION FROM FORCED SALES.

MR. MANSFIELD introduced the following proposition, to exempt from forced sale for taxes the property exempt by law from sale on execution:

Resolved, That provision be made in the revised Constitution to exempt from forced sale for delinquent taxes all property exempt from sale by law on execution.

Referred to Committee on Revenue and Taxation.

APPOINTMENT OF JUDICIAL OFFICERS.

MR. MANSFIELD introduced the following proposition, to appoint all judicial officers, except Justices of the Peace, and fix their term of office:

Resolved, That section three, of article six, of the present Constitution, be so amended and revised in the new Constitution as to provide for the appointment of all judicial officers, except Justices of the Peace, and to fix their terms of office during good behavior.

Referred to Committee on Judiciary and Judicial Department.

GENERAL PROVISIONS.

MR. MARTIN, of Santa Cruz, introduced the following proposed amendments to the Constitution:

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ARTICLE —.

SECTION 1. The Legislature shall not, in any manner, create any debt or debts, liability or liabilities, which shall, singly or in the aggregate, with any previous debts or liabilities, exceed the sum of three hundred thousand dollars, except in case of war, to repel invasion or suppress insurrection, unless the same shall be authorized by some law for some single object or work, to be distinctly specified therein, which law shall provide ways and means for the payment of the interest of such debt or liability as it falls due, and also to pay and discharge the principal of such debt or liability within twenty years from the time of the contracting thereof, and shall be irrepealable until the principal and interest thereon shall be paid and discharged; but no such law shall take effect until, at a general election, it shall have been submitted to the people and have received a majority of all the votes cast for and against it at such election; and all money raised by authority of such law shall be applied only to the specific object therein stated, or to the payment of the debt thereby created; and such law shall be published in at least one newspaper in each judicial district, if one be published therein, throughout the State, for three months next preceding the election at which it is submitted to the people.

SEC. 2. The City of Sacramento is hereby declared the seat of government of this State, and shall so remain until changed by law; but no law changing the seat of government shall be valid or binding, unless the same be approved and ratified by a majority of the qualified voters of the State voting therefor at a general State election, under such regulations and provisions as the Legislature may provide submitting the question of change to the people.

SEC. 3. The Legislature shall provide for the election of a Board of Supervisors in each county in the State, to consist of five members, to be elected by districts. The Supervisors shall jointly and individually perform such duties as may be prescribed by law, legislative or otherwise.

SEC. 4. The Supervisors shall be elected at general State elections, and shall hold their office for two years.

SEC. 5. The fiscal year shall commence on the first day of January of each year.

SEC. 6. No contract of marriage shall be invalidated for want of conformity to the requirements of any religious sect. But no marriage hereafter contracted in this State shall be valid unless celebrated before some public officer, priest, or minister of the gospel, and a public record thereof made, as shall be provided by law.

SEC. 7. The homestead, not exceeding five thousand dollars in value, and such other reasonable amount of property as may be determined by law, of all heads of families, shall be exempt from forced sale.

SEC. 8. The Legislature shall provide, by law, that no person shall act as juror oftener than once in six months.

SEC. 9. All property, either real or personal, owned by either husband or wife before marriage, and that acquired by either of them afterwards, by gift, devise, or descent, shall be their separate property.

SEC. 10. A plurality of votes given at any election shall constitute a choice, when not otherwise directed in this Constitution.

SEC. 11. Each county, town, city, and incorporated village shall make provision for the support of its own officers, subject to such restrictions and regulations as the Legislature may prescribe.

SEC. 12. When the Legislature is called together by a proclamation of the Governor for an extra or special session, each member shall receive one hundred and fifty dollars, which shall be in full compensation for all services and mileage of such special session; and any member who neglects to attend such session, without reasonable excuse, shall forfeit his office, and shall never thereafter be eligible to a seat in the Legislature of this State.

SEC. 13. The Supervisors of the various counties of this State shall receive for their services an annual salary of one hundred and fifty dollars, and one dollar for every twenty miles of travel from their place of residence to the county seat and back, and this shall be in full for all services rendered by them; and they shall hold such sessions for business as may be prescribed by the Legislature.

SEC. 14. The compensation of any officer or employé under the Government of this State shall neither be increased or decreased during the term for which such officer or employé is elected or appointed.

SEC. 15. None of the State officers shall be entitled to a deputy, but they shall be entitled to whatever clerical assistance is necessary to the proper fulfillment of their duties; but no clerk in any of the State offices shall receive a higher salary per annum than eighteen hundred dollars, and no clerk shall be employed without the consent of the Legislature, which shall be expressed by an appropriation for compensation.

SEC. 16. Each house of the Legislature, when in session, shall be entitled to three clerks, and no more, except at the first session, when they may employ five. Each clerk shall be entitled to a per diem pay of five dollars. They shall employ no Pages, Postmasters, or letter carriers. Each house shall be entitled to a Sergeant-at-Arms, and one Assistant Sergeant-at-Arms, and one Porter or Janitor, and the per diem pay of any one of these employés shall not exceed five dollars.

SEC. 17. The Legislature shall designate by law a safe mode of transmitting taxes, collected in the various counties of the State, to the State Treasurer, which shall make it unnecessary for the County Treasurer to visit the State Capitol for the purpose.

SEC. 18. In all cases where land is sold under a foreclosure of a mortgage upon real estate, the owner of the land shall have one year to redeem the mortgaged premises, by paying the cost of foreclosure and seven per cent. interest on the amount of the judgment, and the right of possession of the premises for the entire year.

SEC. 19. Where real estate is sold for taxes, the owner of the property sold shall have the right of possession for one year, and of redemption for the same time, by paying ten per cent. additional on the taxes at the time of redemption.

SEC. 20. The trial and determination of contested elections of Electors of President and Vice-President, members of the Legislature, and of all public officers, whether State, judicial, municipal, or local, shall be by the Courts of law, or by one or more of the law Judges thereof. The Legislature shall, by general law, designate the Courts and Judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto; but no such law assigning jurisdiction, or regulating its exercise, shall apply to any contest arising out of an election held before its passage.

SEC. 21. The Legislature shall, by suitable enactments of law, prevent, as far as possible, the monopoly of public lands by individuals, associations, or corporations, for speculative purposes.

SEC. 22. The Legislature may aid and encourage four agricultural societies in the State—one for each Congressional District—to be located in each district as may be directed by law, but the annual appropriation to any such society shall not exceed two thousand dollars; but no agricultural society shall in future be recognized as the State Agricultural Society, nor shall any money be appropriated out of the State treasury for any such society.

SEC. 23. After the adoption of this Constitution no person in the State shall take by will or devise more than one thousand acres of land, and no deed made by the maker immediately before death, for the purpose of evading this prohibition, shall be valid.

SEC. 24. The Governor may, by proclamation, convene the Senate at any time he may need their advice, without convening the Assembly, and at such sessions each Senator shall be entitled to one hundred dollars, as compensation for his services, and no more.

SEC. 25. The Legislature shall, by provision of law, remove the State Library to a suitable building in the City of San Francisco, reserving only such books at the State Capitol as treat of the laws of the United States, the laws of California, and those of all other States of the Union.

SEC. 26. The State Library, when located in San Francisco, shall be free to all, under such regulations as shall be prescribed by law.

SEC. 27. Until the State is out of debt, no money shall be appropriated out of the State treasury for any addition to the State Library, nor to any further improvements of the State Capitol or State Capitol grounds.

SEC. 28. The Governor of the State, and all other officers of the State whose duties shall require them to travel from place to place in fulfilling those duties, shall be allowed, in addition to their annual salary, the actual traveling expenses paid out by them.

SEC. 29. All warrants on the treasury shall be drawn by the Governor, countersigned by the Secretary of State, and indorsed with these words, "Drawn in accordance with law," which indorsement shall be signed by the Attorney-General.

SEC. 30. The Legislature shall provide for the appointment of three Bank and Insurance Commissioners, with full power to investigate the affairs of saving banks, insurance companies, and all moneyed institutions of a public character; the Commissioners to be appointed by the Governor, by and with the consent of the Senate. Their compensation shall be fixed by law, and shall be paid by the banks and insurance companies, in the manner prescribed by law.

SEC. 31. The Bank and Insurance Commissioners shall report to the Governor, as often as once in six months, the condition of the various banks and insurance companies of the State, and he shall take such action thereon as he shall deem for the public good.

Referred to Committee on Miscellaneous Subjects.

JUDICIAL DEPARTMENT.

MR. MARTIN, of Santa Cruz, introduced the following proposed amendment to the Constitution, in relation to the Judicial Department:

SECTION 1. The judicial power of the State shall be vested in a Supreme Court, in District Courts, and in Justices of the Peace, and one Police or Criminal Court for each incorporated city or town that has a population of over fifty thousand inhabitants, and no more than one such Court, except at the unanimous request of the Legislative Department of such incorporated city or town.

SEC. 2. The Supreme Court shall consist of a Chief Justice and four Associate Justices. The presence of three of these Justices shall be necessary for the transaction of business, except such business as may be done in chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment.

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State at general State elections.

SEC. 4. The Chief Justice shall be elected by a vote of the State at large, and the four Associate Justices by single districts, which shall be for the present the same as the Congressional Districts, and thence afterward by districts such as the Legislature may from time to time form to preserve, as much as possible, equality in population between said districts.

SEC. 5. The term of office of the Chief Justice and four Associate Justices shall be ten years, dating from their inauguration, and any Chief Justice or Associate Justice who shall be reelected at the expiration of his first term, shall hold his office thereafter during good behavior, but not after he reaches the age of seventy-one years.

SEC. 6. The first election for Justice of the Supreme Court shall be at the general election in September, eighteen hundred and seventy-nine, and thence afterwards, when such elections shall be required, on the first Monday after the first Tuesday in November, and inaugurated in office on the second Monday after the first Tuesday in January subsequent to their election.

SEC. 7. When a vacancy shall occur in the Supreme Court, by death, resignation, or from any cause whatever, the vacant place or places shall be filled by election, at the next ensuing general State election, but if such election is more than six months from the date of the vacancy occurring, the Governor shall fill the place by appointment, and the appointee shall hold his place until a successor shall be elected and qualified, as herein provided.

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SEC. 8. The Supreme Court shall have appellate jurisdiction in all cases in equity, also in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, amounts to five hundred dollars; also, in cases of forcible entry and detainer, and in all probate matters; also, in all criminal cases amounting to felony, on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or in behalf of any person held in actual custody, and may make such writs returnable before himself, or in the Supreme Court, or before any District Court or Judge thereat. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than thirty consecutive days shall be deemed to have forfeited his office. The District Courts shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest, amounts to two hundred dollars, and in all criminal cases not otherwise provided for; also in actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance, and all such special cases and proceedings as are not otherwise provided for; also, of all matters of probate; and said Courts shall have the power of naturalization and to issue papers therefor. They shall have appellate jurisdiction in all cases arising in Justices' and such other inferior Courts as may be established by the Legislature in their respective counties, upon questions of law alone. Said Courts shall be always open (legal holidays and non-judicial days excepted), and their original jurisdiction shall extend to all parts of the State. Said Courts and their Judges shall have power to issue writs of habeas corpus, on petition by or on behalf of any person in actual custody, in their respective counties. There shall be in each of the organized counties, or cities and counties, of the State, a District Court, for each of which a District Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; *provided*, that in all the said counties, or cities and counties, containing more than fifty thousand inhabitants, there shall be one such District Court and District Judge for every forty thousand inhabitants, and in all such cases said Courts to be numbered from one upward, in numerical order, as the Legislature may direct. The District Judges shall hold their offices for six years, dating from the second Monday after the first Tuesday in January next after their election.

SEC. 9. Any District Judge, who shall be twice reëlected, shall hold his office during good behavior after the second reëlection, but not after he shall have reached the age of seventy-one years.

SEC. 10. The Justices of the Supreme Court and District Judges shall severally, during their continuance in office, receive for their services (quarterly) an annual salary, which shall not be increased or diminished during the term for which they shall have been elected. District Judges shall be paid out of the county treasury of their respective counties. The annual salary of the District Judges shall be fixed by the Legislature, not to exceed three thousand six hundred dollars in districts having more than thirty thousand inhabitants, and not to exceed two thousand dollars in districts having less than twenty thousand inhabitants. No district Judge or Justice of the Supreme Court shall, after the first day of July, eighteen hundred and eighty, be allowed to draw or receive any quarterly salary, unless they shall severally take and subscribe an oath before the disbursing officer that no case in their respective Courts remains undecided, that has been submitted for decision for the period of sixty days. The Legislature shall enforce this provision by appropriate legislation.

SEC. 11. District Judges shall be ineligible to any other office than a judicial office during the term for which they shall have been elected, except in cases of resignation, and then not until two years after such resignation.

SEC. 12. Judges shall not charge juries with respect to matters of fact, nor state the testimony.

SEC. 13. The style of all processes shall be, "We, the People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SEC. 14. The Justices of the Supreme Court shall be ineligible to any other office, State or Federal, during the term for which they shall have been elected, except in cases of resignation, and then not until two years after such resignation.

SEC. 15. The Justices shall appoint a reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary of eighteen hundred dollars, payable quarterly.

SEC. 16. The Legislature shall fix by law the jurisdiction of any Criminal Court authorized to be established in large cities, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

SEC. 17. The unfinished business remaining in the Probate Court of the City and County of San Francisco shall be apportioned between the several District Courts therein established, by the Board of Supervisors thereof, in such manner as the Legislature shall direct.

SEC. 18. There shall be one Justice of the Peace elected in each township in the State, and the Legislature shall determine the number of Justices of the Peace to be elected in each incorporated city and town, and shall fix by law the powers, duties, and responsibilities of Justices of the Peace; *provided*, such powers shall not in any case trench upon the jurisdiction of the several Courts of record. The Supreme Court, the District Courts, and such other Courts as the Legislature shall declare to be, shall be Courts of record.

SEC. 19. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of record and the Boards of Supervisors in and for their respective counties. The Legislature may also provide for the appointment, by the several District Judges, of one or more Commissioners in their several counties, with authority to perform chamber business of the Judges of the District Courts, to take depositions, and perform such other duties connected with the administration of justice as may be prescribed by law.

SEC. 20. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person. The times and places of holding the several Courts of record shall be provided for by law.

Referred to the Judiciary Committee.

SPEEDY DECISIONS.

MR. MCCALLUM introduced the following proposed amendment to the Constitution, in relation to more speedy decisions in the Courts:

Proposed amendment to article three, to require more speedy decisions in the Courts. Add to the end of section one:

But the Legislature may provide that causes tried and submitted in the Courts shall be decided within a specified time, or, on failure, conditions as to resubmission of such cause.

Referred to Committee on Judiciary and Judicial Department.

APPOINTMENT OF ASSESSORS.

MR. MORELAND introduced the following proposed amendment to the Constitution, relating to the appointment of Assessors and Collectors of revenue:

ARTICLE —.

SECTION —. Supervisors of each county shall appoint, in each township thereof, an Assessor and Collector of revenue for such township, whose duties shall be prescribed by law, and who shall hold their offices for two years. No Assessor shall succeed himself in office.

Referred to Committee on Revenue and Taxation.

SUFFRAGE AND ELECTIONS.

MR. NEUNABER introduced the following proposed amendment to the Constitution, in relation to suffrage and elections:

SECTION 1. All elections shall be free and equal.

SEC. 2. All votes shall be by ballot.

SEC. 3. No alien Chinaman shall ever have the right of suffrage.

SEC. 4. Every male citizen of the United States of the age of twenty-one years, who shall have been a resident of this State one year, of the county ninety days, and of the election district thirty days preceding any election therein, shall be entitled to vote.

SEC. 5. Electors shall, in all cases except treason, felony, or breach of the peace, be privileged from arrest on the day of election, during their attendance at such election, and in going to and returning from the same. No elector shall be obliged to do military duty on the day of election, except in time of war or public danger.

SEC. 6. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas, nor while a student in any seminary of learning, nor while kept at any almshouse or other asylum, nor while confined in any public prison; but no person while confined in any prison, or supported in any public asylum, shall have any right to vote during such confinement or support. No person who has been or hereafter shall be convicted of bribery, perjury, or other infamous crimes, shall be eligible to the Legislature, or to any office of profit or trust in this State.

SEC. 7. No soldier, seaman, or mariner, in the army or navy of the United States, shall be deemed a resident of this State in consequence of being stationed therein.

SEC. 8. No person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States, and who shall not have resided in this State one year next preceding the election or appointment.

SEC. 9. No idiot, insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector.

SEC. 10. Every male citizen of Mexico, who shall have elected to become a citizen of the United States under the treaty of peace exchanged and ratified at Queretaro, on the thirtieth day of May, eighteen hundred and forty-eight, shall be an elector and citizen of this State, and entitled to all the privileges of a native-born citizen of the United States.

SEC. 11. Every person shall be disqualified from holding office during the term for which he may have been elected who shall have given or offered a bribe or rewards to procure his election.

SEC. 12. The Legislature shall enact laws to support the privilege of free suffrage, prescribing the manner of regulating and conducting elections, and prohibiting, under adequate penalties, all undue influence therein, from power, bribery, tumult, and other improper conduct, and shall continue the present registration law, with such amendments, from time to time, as they may think wise and beneficial.

SEC. 13. Every person who shall give or accept a challenge to fight a duel, or who shall knowingly carry to another person such challenge to go out of this State to fight a duel, shall be ineligible to any office in this State.

SEC. 14. No person holding a lucrative office or appointment under the Government of the United States, or under this State, shall be eligible to the Legislature, nor shall one person hold more than one lucrative office at the same time; *provided*, that officers in the militia, to which there is attached no annual salary, and the office of Postmaster,

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when the compensation does not exceed one hundred dollars per annum, shall not be deemed lucrative.

Sec. 15. No person, who shall hereafter be a collector or holder of public money, or receiver of money as an officer, shall be eligible to any office of trust or profit until he shall have accounted for and paid, according to law, all money for which he is or may be liable.

Sec. 16. No person shall be in the receipt, at the same time, of more than one official salary or compensation.

Sec. 17. All elections by the Legislature, or either house thereof, shall be viva voce.

Referred to Committee on Right of Suffrage.

MILITIA.

Mr. NEUNABER introduced the following proposed amendment to the Constitution, in relation to the militia:

Section 1. The Legislature shall provide by law for the organization and discipline of the militia in such manner as they shall deem expedient, not incompatible with the Constitution and laws of the United States.

Sec. 2. Except in cases of war or insurrection, the Legislature shall not authorize to be expended, or appropriate, more than twenty-five thousand dollars, in any one year, for organizing and disciplining the militia, which shall include all salaries, all rents and disbursements of every character relating to the militia of the State, and the care of the arms belonging to the State.

Sec. 3. The Governor shall have power to call forth the militia to execute the laws of the State, to repress insurrection, and repel invasion.

Referred to Committee on Military Affairs.

CORPORATIONS.

Mr. O'DONNELL introduced the following proposed amendment to the Constitution, concerning corporations:

Section —. Individual citizens are hereby declared to be entitled to the same privileges as corporations in respect to the exercise of the right of eminent domain, and the taking of private property for public uses. Railroad corporations in possession of any part of the public lands, not necessarily required for conducting the business of such corporation, shall, on demand, deliver to any citizen a conveyance of any part of such lands not exceeding one hundred and sixty acres, upon payment of the market value thereof; and such citizen shall be entitled to all the privileges of lands to his use as are now or may be conferred upon corporations by law.

Referred to Committee on Corporations.

LOBBYING.

Mr. O'SULLIVAN introduced the following proposed amendment to the Constitution, for the prevention of lobbying:

Section —. Any Act passed by the Legislature, the passage of which can be proved to have been influenced by personal solicitation of members on the part of any person or persons interested in the same, shall be void.

Sec. —. Members of the Legislature, before the expiration of their terms of office, shall make affidavit before the Governor that in all their legislative acts they have been uninfluenced by bribes or personal solicitation.

Sec. —. Committees shall be appointed by the Legislature for investigation and inquiry into the merits of Acts pending before that body: and persons interested in a bill may appear before said committees either to advocate or oppose them.

Sec. —. Any member of the Legislature proven to have been influenced in his vote or action upon any matter pending before the Legislature, by any reward or promise of future reward, shall be guilty of felony, and upon conviction thereof, in addition to such punishment as may be provided by law, shall be disfranchised and forever disqualified from holding any office of public trust.

Sec. —. Any person who seeks to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means, shall be guilty of lobbying, which is hereby declared a felony; and it shall be the duty of the Legislature to provide, by law, for the adequate punishment of this crime.

Sec. —. Any person who shall have been convicted of lobbying shall forever thereafter be excluded from the precincts of the Capitol; and the Legislature shall provide, by law, for the expulsion and punishment of lobbyists.

Referred to Committee on Legislative Department.

ELIGIBILITY FOR OFFICE.

Mr. O'SULLIVAN introduced the following proposed amendment to the Constitution, concerning ineligibility to office of certain persons, and State, county, and municipal officers:

Section —. No minister of the gospel, priest, or preacher of any denomination whatsoever, shall be eligible to any office of trust or profit in this State; *provided, however*, that persons who have abandoned those callings may thereby become eligible.

Sec. —. No State, county, or municipal officer shall hold any other office of emolument—commissionership or otherwise—during his term of office.

Sec. —. The Legislature shall, in addition to other penalties, provide for the removal from office of county, city, town, and township officers, on conviction of willful, corrupt, or fraudulent violation or neglect of official duty.

Sec. —. The compensation of no State, county, or municipal officer shall be increased during his term of office; nor shall the term of any office be extended for a longer period than that for which such officer was elected or appointed.

Referred to Committee on Miscellaneous Subjects.

REPRESENTATION.

Mr. PORTER introduced the following proposed amendment to the Constitution, relating to representation:

Resolved, That section fourteen, of article one, of the present Constitution, be amended so as to read as follows:

Representation shall be apportioned according to population; *provided*, that no one county, or city, or city and county, shall have a greater representation in the Senate than the one sixth of all the Senators.

Referred to Committee on Apportionment and Representation.

SCHEDULE.

Mr. SHOEMAKER introduced the following proposed amended Schedule to the revised Constitution:

That no inconvenience may arise from the changes in this Constitution, and in order to carry the same into complete operation, it is hereby declared that:

Section 1. This Constitution shall take effect on the first day of January, one thousand eight hundred and eighty-one, for all purposes not otherwise provided therein.

Sec. 2. All laws in force in this State at the time of the adoption of this Constitution, not inconsistent therewith, and all rights, prosecutions, claims, and contracts, as well of individuals as of bodies corporate, until altered or repealed, shall continue as if the same had not been adopted.

Sec. 3. The Legislature shall provide for the removal of all causes which may be pending when this Constitution goes into effect, to Courts created by the same.

Sec. 4. Every citizen of this State, who was a legal voter at the time of the adoption of the "old Constitution," shall have the right to vote under this Constitution.

Sec. 5. At the general election in the year one thousand eight hundred and eighty, twenty Senators shall be elected, whose term shall be four years from and after their election. At the general election in the year one thousand eight hundred and eighty-two, twenty Senators shall be elected, whose term of office shall be four years, to succeed the twenty Senators who were elected at the election in September, eighteen hundred and seventy-seven, whose term is hereby extended until the election of their successors. In each of the above-named elections, members of the Assembly shall be elected, whose term of office shall be two years. Vacancies shall be filled as provided by law for the unexpired terms.

Sec. 6. All State officers, whether elective or appointed, whose terms would expire in eighteen hundred and seventy-nine, shall be continued until the election and qualification of their successors in office.

Sec. 7. All county officers, except those in the City and County of San Francisco, shall be continued until the election and qualification of their successors to be elected in the year one thousand eight hundred and eighty.

Sec. 8. The terms of the Justices of the Supreme Court, District Judges, and Judges of Courts of record, and all other Courts not specified, shall be continued for one year, or until their successors are elected and qualified, in order to bring the election of such officers in the even year.

Sec. 9. If this Constitution shall be ratified by the people of California, the Legislature shall assemble at the seat of government on the first Monday in January next succeeding their election, and in order to complete their organization, the Senate shall elect a President pro tempore until the Lieutenant-Governor shall be installed in office.

Sec. 10. On the organization of the Legislature, it shall be the duty of the Secretary of State to lay before each house a copy of the abstract made by the Board of Canvassers, and if called for, the original returns of the election, in order that each house may judge of the correctness of the report of said Board of Canvassers.

Sec. 12. The Legislature shall, at its first session after the adoption of this Constitution, or as soon thereafter as may be expedient, pass such laws as may be necessary to carry the same into full force and effect.

Sec. 13. All State and Judicial officers heretofore elected, sworn, or affirmed, or in office, and all State and county officers, whether elected or commissioned, shall severally, within one month after the adoption of this Constitution, take and subscribe an oath or affirmation to support this Constitution.

Referred to Committee on Schedule.

PUBLICATION OF LAWS.

Mr. SHOEMAKER introduced the proposed following amendment to the Constitution, limiting publication of laws, decrees, etc., to the English language:

Amend section twenty-one, article eleven, of the Constitution, so as to read as follows:

Sec. 21. All laws, decrees, regulations, and provisions, which from their nature require publication, shall be published only in the English language.

Referred to Committee on Legislative Department.

WATER RIGHTS.

Mr. G. V. SMITH, of Kern, introduced the following amendment to regulate water rights, and to provide Commissioners therefor:

Section —. The waters of the State, flowing in the natural channels, and in the lakes and bays thereof, or which may be diverted therefrom by canals, ditches, aqueducts, and pipes, belong to the right of eminent domain; and the private use of such waters shall always be subordinate to their public use, and subject to the control of the State. The Legislature shall provide, by general laws, for a just and equitable system or systems for the use and distribution of such waters, which shall prevent waste or imposition, and shall regulate and protect the private and public use thereof; and for that purpose the Legislature may

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create a Board of State Commissioners, or County Commissioners, or both, and declare their powers, duties, and responsibilities.

Referred to Committee on Water and Water Rights.

OFFICIALS.

MR. H. W. SMITH, of San Francisco, introduced the following proposed amendment to the Constitution, in relation to officials:

ARTICLE —.

SECTION —. All State, county, or township officers, elected or appointed, shall be ineligible for any additional office of trust or profit.

Referred to Committee on Executive Department.

GRADUATED TAXATION.

MR. SWENSON introduced the following proposed amendment to the Constitution, relative to taxation:

SECTION —. Every person or corporation in this State shall pay an additional yearly tax, for State, county, and town purposes, of five per centum on each three hundred acres of land, over and above two thousand acres, owned or controlled by them.

Referred to Committee on Revenue and Taxation.

SALARIES.

MR. THOMPSON introduced the following proposed amendment to the Constitution, relating to salaries:

ARTICLE —.

Resolved, That the Constitution should embrace the following provisions in relation to salaries of teachers, clerks, and officers in this State:

SECTION 1. No Sheriff shall receive a salary exceeding five thousand dollars per annum.

SEC. 2. No Mayor of any city shall receive a salary exceeding three thousand dollars per annum.

SEC. 4. No Tax Collector shall receive a salary exceeding five thousand dollars per annum.

SEC. 5. No teacher of any public school shall receive a salary exceeding two thousand dollars per annum.

SEC. 6. No City, County, or State Treasurer shall receive a salary exceeding three thousand dollars per annum.

SEC. 7. No clerk, or deputy, shall receive a salary exceeding two thousand dollars per annum, where salary is payable out of any State or county treasury.

SEC. 8. No Superintendent of Public Instruction, or Schools, shall receive a salary exceeding two thousand four hundred dollars per annum; and no Deputy Superintendent a salary exceeding one thousand eight hundred dollars.

SEC. 9. No Police Judge of any city of this State shall receive a salary exceeding three thousand dollars per annum. Nor shall any appointee of any Board of Supervisors, or Board of Education, receive a salary exceeding two thousand dollars per annum.

SEC. 10. No municipal officer, State or county, shall receive a salary exceeding two thousand dollars per annum, other than the above named, except Governor, who shall not receive a salary exceeding five thousand dollars per annum. And the District, Supreme Court, and other Judges, shall not receive a salary higher than they are at present receiving.

SEC. 11. The above article shall be enforced by appropriate legislation to enforce and carry out the same.

Referred to Committee on Legislative Department.

REVENUE AND TAXATION.

MR. TOWNSEND introduced the following proposed amendment to the Constitution, in relation to revenue and taxation:

Resolved, That article eleven, section thirteen, be amended so as to read as follows:

ARTICLE XI.

SEC. 13. That all property within this State, except the property of the United States, of the State, and of municipal corporations, be subject to taxation. Taxation shall be equal and uniform throughout the State, and no one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value. Lands and improvements shall be taxed separately, but every tax due upon the improvements shall be a lien upon the land upon which such improvements shall be, whether such improvements be assessed to the owner of such land or not. All lands and improvements thereon, all moneys, goods, chattels, real or personal, investment in bonds, stocks, and other personal property, except growing crops, shall be taxed in proportion to their unincumbered value, to be ascertained as directed by law; but Assessors and Collectors of town, county, and State taxes shall be elected by the qualified electors of the district, county, or town in which the property taxed for State, county, or town purposes is situated. The owner of any lands incumbered by lien of mortgage, trust deed, or other security for debt, shall, in the first instance, pay all taxes against the same, and which are a lien upon the same; but so much of any such tax paid by such owner as is equal to the fractional part that such debt bears to the unincumbered value thereof, shall be a credit upon such debt as of the day such tax shall be so paid; and the owner of money, goods, chattels, real and personal, bonds, stocks, and other taxable personal property, shall, in the first instance pay all taxes assessed against the same; but so much of any such tax so paid by such owner as is equal to the fractional part that the unsecured debts of such owner, evidenced by notes or promises in writing, bears to the assessed value thereof, shall be a credit upon such debts as of the day such tax shall be so paid.

Referred to the Committee on Revenue and Taxation.

LEGISLATIVE DEPARTMENT.

MR. TOWNSEND introduced the following proposed amendment to the Constitution, relative to the Legislative Department:

Resolved, That article four, sections two, three, five, six, sixteen, and seventeen, be amended so as to read as follows:

ARTICLE IV.

SEC. 2. The sessions of the Legislature shall be quadrennial, and shall commence on the first Monday of January next ensuing the election of its members, unless the Governor of the State shall, in the interim, convene the Legislature by proclamation. No session shall continue longer than ninety days.

SEC. 3. Members of the Assembly and Senate shall be chosen quadrennially, by the qualified electors of their respective districts, on the first Wednesday in September, unless otherwise ordered by the Legislature, and their term of office shall be four years.

SEC. 5. Members of the Assembly and Senate shall be qualified electors in their respective counties and districts which they represent, and no person shall be a member of the Assembly or Senate who has not been a citizen, inhabitant, and qualified elector, for one year next before his election, of the State and of the county or district for which he shall be chosen.

SEC. 6. The number of Senators shall not be less than one third nor more than one half of that of the members of the Assembly.

SEC. 16. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended in the other. No bill shall be introduced in either house on and after the tenth day next preceding the day fixed for the final adjournment of the Legislature, nor shall any bill be passed by either house after twelve o'clock, noon, of the last day of any session; but veto messages may be considered up to the hour of final adjournment.

SEC. 17. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, which shall enter the same upon the Journal, and proceed to reconsider it. If, after such reconsideration, it again passes both houses, by yeas and nays, by a majority of two thirds of the members of each house, it shall become a law, notwithstanding the Governor's objections. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevent such return. The Governor may approve any appropriation, and disapprove any other appropriation, in the same bill, by signing the bill and designating the appropriation disapproved, and sending a copy of such appropriation, with his objections, to the house in which it originated; and the same proceedings shall be had on that part disapproved as on other bills disapproved by him.

Referred to the Committee on Legislative Department.

JUDICIAL DEPARTMENT.

MR. TULLY introduced the following proposed amendment to the Constitution, relating to the Judicial Department:

SECTION 1. The judicial power of this State shall be vested in a Supreme Court, in District Courts of Appeals, in District Courts, and in Justices of the Peace.

SEC. 2. The Supreme Court shall consist of nine Justices, one of whom shall be commissioned by the Governor as Chief Justice. The presence of seven Justices shall be necessary for the transaction of business, except such as may be done at chambers; and the concurrence of five Justices shall be necessary to pronounce a judgment.

SEC. 3. The Justices of the Supreme Court shall be elected by the qualified electors of the State, at the general elections, for the term of fifteen years; *provided*, that whenever more than one Justice is to be elected at the same time, each elector may vote for only one half the number to be elected, if an even number, or if an odd number, then for only one more than a half the number to be elected.

SEC. 4. The Supreme Court shall have appellate jurisdiction, upon questions of law, in all cases which involve the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three thousand dollars; and also, in all criminal cases amounting to felony; and also to determine all such questions of constitutional or statutory construction and law as may be sent to it by a District Court of Appeals. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition on behalf of any person held in actual custody, and may make such writ returnable before himself, or the Supreme Court, or before any District Court of Appeals, or before any District Judge in the State.

SEC. 5. The State shall be divided into nine judicial districts, subject to alteration from time to time by the Legislature; *provided*, that the number thereof shall not be increased. There shall be four District Judges in each judicial district, except the first, in which there shall be nine District Judges. The District Judges shall be elected at the general elections, for the term of twelve years; *provided*, that whenever more than one Judge is to be elected at the same time, in the same district, each elector may vote only for one half the number to be elected, if an even number, or if an odd number, then for only one more than a half.

SEC. 6. Terms of the District Court shall be held in each county of the State by a single Judge, and when so held shall have original jurisdiction in all cases; *provided*, that in the First District one or more of said Judges, to be designated by the Governor, shall have exclusive

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jurisdiction in all criminal cases, jurisdiction of which shall not have been vested by the Legislature in Justices of the Peace.

SEC. 7. The Chief Justice of the Supreme Court shall assign one of the Justices of the Supreme Court to each judicial district, who shall, with at least two District Judges, hold the District Court of Appeals in his district; *provided*, that in the absence of the Justice of the Supreme Court, the District Court of Appeals may be held by three or more District Judges. The Justice of the Supreme Court, or, in his absence, the senior District Judge of the district, shall preside in the District Court of Appeals.

SEC. 8. The District Court of Appeals shall have appellate jurisdiction in all cases commenced in the District Courts or Courts of Justices of the Peace. And no appeal shall be allowed to the Supreme Court except from the District Court of Appeals.

SEC. 9. The District Courts of Appeals shall hear and determine all motions for a new trial made in the District Courts; and when a new trial is granted it may proceed and try the case de novo. No appeal shall be allowed to the Supreme Court from an order granting or refusing a new trial.

SEC. 10. The Legislature shall determine the number of Justices of the Peace in each city and township of the State, and fix, by law, their powers, duties, and responsibilities; *provided*, that their jurisdiction shall not extend to any criminal case amounting to felony, or to any civil case in which the amount or value of the property in controversy exceeds three hundred dollars. The Supreme Court and the District Courts shall be Courts of record.

SEC. 11. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officials, and shall fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties. The Legislature may also provide for the appointment, by the District Court of Appeals, in each judicial district, of one or more Commissioners for each county in the district, with authority to perform chamber business of the District Judges, and also to take depositions and acknowledgments.

SEC. 12. The times and places of holding the terms of the several Courts shall be provided by law.

SEC. 13. No judicial officer, except Justices of the Peace and Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 14. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient; but all opinions shall be free for publication by any person.

SEC. 15. The Justices of the Supreme Court and District Judges shall severally receive, at stated times, for their services, a compensation which shall not be increased or diminished during the term for which they shall have been elected; *provided*, that the Justices of the Supreme Court first elected under this Constitution shall receive an annual salary of six thousand dollars each; and the District Judges first elected under this Constitution shall receive an annual salary of five thousand dollars each.

SEC. 16. The Justices of the Supreme Court and the District Judges shall be ineligible to any other than a judicial office during the term for which they shall have been elected.

SEC. 17. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

SEC. 18. The style of all process shall be, "The people of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SEC. 19. The Supreme Court shall prescribe uniform rules of practice for all Courts of record in the State.

SEC. 20. The City and County of San Francisco shall constitute the First Judicial District; [here will follow the other districts].

Referred to the Committee on Judiciary and Judicial Department.

CHINESE.

MR. TUTTLE introduced the following proposed amendment to the Constitution, in relation to Chinese:

SECTION 1. Any corporation receiving its charter or act of incorporation by or under the laws of this State, shall forfeit such charter and all legal rights thereunder, if it ever employs, in any capacity whatever, foreigners who are not eligible to become citizens of the United States under the laws of Congress. This section shall be enforced by appropriate legislation.

SEC. 2. The Governor of the State shall, by proclamation, forbid the entrance into this State, from and after the fourth day of July, eighteen hundred and eighty, of any foreigner who is ineligible, under the laws of Congress, to become a citizen of the United States; and the Legislature shall empower the Governor, in case of disobedience of his proclamation, to expel by force any such foreigner who shall have arrived in the State after the fourth day of July, eighteen hundred and eighty, upon giving him thirty days' notice of the intention to expel him; *provided*, that nothing in this section shall authorize the Governor or any other State officer to forcibly resist any law officer, or the civil or military power of the United States.

SEC. 3. If, by any law of Congress, or by any active interference in the government of the United States, the Governor should be prevented from expelling the class of foreigners named in the preceding section in the manner prescribed in said section, he shall have the constitutionality of such laws of Congress, or of such interference of the government of the United States in the affairs of the government of the State of California, tested in the United States Supreme Court, and yield obedience to the decision of said Court if it should be adverse to the State of California.

Referred to Committee on Chinese.

TAXATION.

MR. TUTTLE introduced the following proposed amendment to the Constitution, in relation to taxation:

SECTION 1. The taxing power shall be exercised by the Legislature for State purposes, and by counties and incorporated cities and towns when authorized by the Legislature.

SEC. 2. Taxes shall be levied and collected for public purposes only, and shall be uniform, and levied and collected by general laws; and in order to insure a just levy and collection there is hereby constituted a State Board of Equalization, composed of the Secretary of State, Secretary of Interior Affairs, and Attorney-General, which shall have the power to revise all levies of taxes for the purposes of State, and the Tax Collectors throughout the State shall be governed by the rules and regulations prescribed by the Board of Equalization; and the Board of Supervisors of their respective counties, and cities and counties, shall be a Board of Equalization for such counties, or cities and counties.

SEC. 3. The Legislature shall provide for an annual tax sufficient to meet all necessary appropriations for the ordinary expenses of the State Government, including any portion of the State debt becoming due or the interest thereon, the support of all State officers, and all institutions under the care and management, and for the necessary support of the public schools, as may be provided by law; but no State tax levied in any one year shall exceed twenty cents on the one hundred dollars of property taxed.

SEC. 4. The several counties of the State, and consolidated cities and counties, shall have the right to levy a tax for necessary county purposes, but no such tax, for any one year, shall exceed thirty cents on the one hundred dollars of property; *provided*, that a reasonable additional tax may be levied by a unanimous vote of the Supervisors of any county, or consolidated city and county, to pay debts already legally incurred.

SEC. 5. Taxes collected for State purposes shall be paid into the State treasury, and all taxes collected for county, and city and county purposes, shall be paid into the county treasury.

SEC. 6. Every person and corporation shall pay taxes in proportion to the value of his, her, or its property within the State, except as hereinafter provided.

SEC. 7. All real estate shall be taxed, and in the assessment of land for taxation the improvements shall be separately assessed, and uncultivated land, whether fenced or unfenced, shall be taxed at the same price as cultivated land of the same quality similarly located.

SEC. 8. All personal property of every character and description, that has a cash value in the market, shall be assessed and taxed at its market value, except as herein provided. All bonds and mortgages shall be taxed to the owner of the same. All money, whether on hand or on deposit, in charge of others, shall be taxed to the owner. All solvent debts shall be assessed and taxed to the party to whom they are owing, but no debts due on open account with farmer, mechanics, and tradespeople shall be subject to taxation. All mining stock shall be taxed. All water stocks and gas stocks shall be taxed at their market value. All railroad stock shall be taxed at its market value. All the property, real and personal, of corporations, except as hereinafter provided, shall be assessed and taxed.

SEC. 9. In assessing the property of any person for taxation, all his debts, of every description, owing to any one within the limits of the State, except those owed on open running accounts to merchants, traders, and professional men, shall be deducted from the total amount of property found in his possession and ownership, and the surplus only shall be assessed for taxation.

SEC. 10. No corporation, except for benevolent, religious, scientific, or educational purposes, shall be hereafter formed under the laws of this State, unless the persons named as corporators shall, at or before the filing of the articles of incorporation, pay into the State treasury one hundred dollars for the first fifty thousand dollars of its stock, and a further sum of twenty dollars for every additional ten thousand dollars of its capital stock, and no such corporation shall hereafter increase its capital stock without first paying into the State treasury twenty dollars for every ten thousand dollars of increase.

SEC. 11. No license tax shall be imposed by this State on any municipality thereof, upon any trade, calling, occupation, or business, except the following: The manufacture and sale of all kinds of wine, spirituous and malt liquors, shows, theaters, menageries, sleight of hand performances, exhibitions for profit, and such other business and occupations of like character as the Legislature may judge the public peace or good order may require to be under special State or municipal regulation and control.

SEC. 12. A succession tax shall be imposed and collected upon all legacies and distributive shares derived from the estates of all deceased person; *provided*, that no child, brother, sister, father, mother, husband, or wife of any deceased person shall pay such succession tax (non-resident aliens excepted) unless the distributive share of such person amounts in the aggregate to more than five thousand dollars in value, in which case all such persons shall pay a tax of one per cent. on the excess of five thousand dollars. All other persons, corporations, and associations (except non-resident aliens and foreign associations and corporations) shall pay a like tax of one per cent. on the value of what they may respectively receive. Non-resident aliens and foreign corporations and associations shall pay a tax of two per cent. on the aggregate value of any distributive share they may respectively receive.

SEC. 13. The net yearly proceeds of all newspapers published in the State shall be taxed as personal property.

SEC. 14. The Legislature shall, by law, exempt five hundred dollars' worth of every one's property from taxation.

SEC. 15. The following property, and no other, in addition to the amount named in the preceding section, shall be exempt from taxation:

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Property belonging to the State, lands ceded to or belonging to the United States, buildings for free public schools, buildings for religious worship and the land upon which they stand and immediately surrounding the same, to an extent not exceeding one acre, provided said building and land are occupied and used exclusively for religious, literary, or educational purposes. Property, real and personal, held for or by any incorporated library society or free public library, or any free public library society, provided said property is held exclusively for library purposes; or land for the aid or support of poor, friendless children, or for the aid or support of the aged poor, or for a free hospital for the sick or disabled, or any fund given or held for the purpose of free public education. Also, all bonds and securities issued and exempt from taxation by the laws of the United States. Also, money lent to farmers and secured by mortgage on the farm of the borrower, to the amount of three thousand dollars to any one farmer, and no more. Also, money lent on growing crops, when secured by a mortgage of the crop, to the amount of one thousand dollars, and no more. The type, presses, and furniture of all newspaper establishments. The pipes and all other fixtures of water and gas companies. The railroad beds and rolling stock of all railroad companies.

SEC. 16. For the first year, and no longer, that any person is engaged in the business of farming or cultivation of the soil, all of his or her property of every kind and description shall be exempt from taxation.

Referred to Committee on Revenue and Taxation.

PARDONING POWER.

MR. VACQUEREL introduced the following proposed amendment to article five, section thirteen, of the Constitution of California:

SEC. 13. The Governor shall have power to grant reprieves, commutations, and pardons, after convictions, for all offenses, subject to such regulations as may be prescribed by law relative to the manner of applying therefor. But when a criminal has been sentenced to death, and the execution should fail to take place on the day set, said sentence shall be commuted and another penalty inflicted.

Referred to Committee on Pardoning Power.

RIGHT OF SUFFRAGE.

MR. WELLIN introduced the following proposed amendment to the Constitution, relative to the right of suffrage:

ARTICLE —.

Any alien who shall hereafter declare his intention of becoming an American citizen, and take out his first papers, shall enjoy all the rights of a citizen except the right to vote or hold office.

Referred to Committee on Right of Suffrage.

TAXATION.

MR. WELLIN introduced the following proposed amendment to the Constitution, relative to taxation:

All companies incorporated within the State of California whose stock is of high and unknown value, or held privately as a close corporation, shall be assessed upon the full par value of their stocks.

All foreign incorporations doing business in the State of California shall be taxed upon the amount of capital used within the State to carry on such business.

All railroads shall be assessed upon their roadbed for the full amount of the cost of constructing such roadway.

Farm utensils in actual use, farm houses, fences, fruit trees, and forest trees planted by the people, and all growing crops, shall be exempt from taxation.

For non-payment of taxes, State, county, or incorporated towns shall sell such property as the tax becomes delinquent upon, such sales and deeds of conveyance to be governed by Acts of the Legislature. Farming, mineral, and timber lands, for non-payment of tax, shall revert to the State.

Referred to Committee on Revenue and Taxation.

MORAL INSTRUCTION IN THE PUBLIC SCHOOLS.

MR. WICKES introduced the following proposed amendment to the Constitution, relative to the standard of moral instruction in our public schools: To article on education:

SECTION —. The standard of moral instruction in our public schools shall be that set forth in the Bible, precluding sectarianism.

Referred to Committee on Education.

CORPORATIONS.

MR. WHITE introduced the following proposed amendment to the Constitution, in relation to corporations other than municipal:

ARTICLE —.

SECTION 1. The Legislature shall provide by law for the election of a Board of Commissioners, to be known as "The Railroad and Harbor Commissioners."

SEC. 2. Three Commissioners shall constitute the Board, and they shall be elected by single districts, to hold their office for six years, except as hereinafter provided. The districts shall be equal in population, or near as may be, and shall be numbered, beginning with the most southern one, one, two, and three.

SEC. 3. The Commissioners shall be elected on the same day with all other State officers, and inaugurated in like manner on the same day. The Commissioner of District Number One shall hold his office for two years; the Commissioner of District Number Two shall hold his office for four years; the Commissioner of District Number Three shall hold office for the full term of six years, and thence afterwards all their successors shall hold office for a term of six years, except Commissioners elected to fill vacancies, and they shall only hold office for the unexpired part of the term of their predecessors.

SEC. 4. The duties of the Board of Harbor and Railroad Commissioners shall be as follows, subject to such alteration and change by the Legislature, from time to time, as may be found necessary for the public good: they shall perform all the duties now performed by the Board of State Harbor Commissioners, and all the duties in relation to railroads that are assigned to them by this Constitution or by any enactment of the Legislature. The said Board of Commissioners shall receive an annual salary of three thousand dollars each, which shall be in full compensation for all services rendered. They shall be entitled to the services of one or two clerks, as the fulfillment of their duties may require. Such clerks shall not receive a higher compensation for their services than eighteen hundred dollars per annum.

SEC. 5. Railways heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and railroad companies common carriers.

SEC. 6. Any railroad corporation or association, organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right, with its road, to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination.

SEC. 7. The exercise of the right of eminent domain shall never be abridged or so construed as to prevent the Legislature from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State.

SEC. 8. The Legislature shall pass no law for the benefit of a railroad or other corporation, or any individual or association of individuals, retrospective in its operation, or which imposes on the people of any county or municipal subdivision of the State a new liability in respect to transactions or considerations already past.

SEC. 9. No railroad or other transportation company shall grant any free pass or ticket, or grant any pass or ticket at a discount, to any member of the Legislature, or any State, county, or municipal officer, and the acceptance of any such pass or ticket by a member of the Legislature, or by any such officer, shall be a forfeiture of his office, and he shall be subject to the pains and penalties of a bribe-taker.

SEC. 10. The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals; and the Legislature shall pass no law exempting any such property from execution and sale.

SEC. 11. No law shall be passed by the Legislature granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained.

SEC. 12. No railroad corporation in existence at the time of the adoption of this Constitution shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.

SEC. 13. No President, Director, officer, agent, or employé of any railroad company shall be interested, directly or indirectly, in furnishing material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company.

SEC. 14. It shall not be lawful in this State for any railway company to charge for freight or passengers a greater amount for the transportation of the same for a less distance than the amount charged for any greater distance.

SEC. 15. Every railroad or other corporation, organized or doing business in this State under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of business, where transfers of stock shall be made, and where shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, the names of the owners of the stock, the amounts owned by them respectively, the amount of stock paid and by whom, the said transfer of stock, with the date of transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The Directors of every railroad company shall hold one meeting annually in this State, public notice of which shall be given thirty days previously, and shall report annually, under oath, to the Governor of the State, all of their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law.

SEC. 16. The Railroad Commissioners provided for in this Constitution shall have absolute power to fix the rates of fares and freights of all railroads in this State, and shall regulate and establish them as in their judgment shall seem just and fair to the railroad owners and to the public generally.

SEC. 17. Once in each year the Railroad Commissioners shall readjust the rates of fares and freights of all railroads in the State, and cause a printed schedule of such rates and fares to be properly framed and hung in a conspicuous place at every railroad depot and every railroad station in the State.

SEC. 18. The Railroad Commissioners shall perform all duties in relation to the railroads, other than those prescribed in the last two sections, as may be required of them by law.

SEC. 19. All railroad companies shall be responsible for all damages to life or property that may occur on their roads, through carelessness or any neglect whatever.

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Sec. 20. The foregoing provisions in relation to railroad companies and corporations shall be enforced by appropriate legislation.

Sec. 21. Every chapter and section of an Act of the State Legislature, entitled "An Act to create the office of Commissioner of Transportation, and to define its powers and duties, to fix the maximum charges for transporting passengers and freights on certain railroads, and to prevent extortion and unjust discrimination thereon," approved April first, eighteen hundred and seventy-eight, except chapter three of said Act, shall be null and void, and of no validity whatever from and after the adoption of this Constitution by the people of the State.

Referred to the Committee on Corporations other than Municipal.

EXECUTIVE DEPARTMENT.

Mr. WHITE introduced the following proposed amendment to the Constitution, in relation to Executive Department:

Section 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of California.

Sec. 2. The Governor, and all State and county officers, shall be elected by the qualified electors of the State of California, as hereinafter provided.

Sec. 3. No person shall be eligible to the office of Governor who has not been a citizen of the United States, and an elector of the State of California, for five years next preceding his election.

Sec. 4. The returns of the election of Governor, and all State officers, shall be sealed up and transmitted to the seat of government, directed to the President of the Senate, who shall open and publish them in presence of the Senate. The person having the highest number of votes for each office shall be declared elected; but in case that any two or more persons shall be found to have an equal and the highest vote for the same office, the Senate shall, by vote, choose one of said persons so having an equal and the highest number of votes for that office.

Sec. 5. The State Senate shall convene at the Capitol of the State on the second Monday after the first Tuesday in every January that is subsequent to a general election, for the purpose of opening the returns and declaring the result, as prescribed in the preceding section.

Sec. 6. The Governor shall be Commander-in-Chief of the militia, the army, and navy of this State.

Sec. 7. He shall transact all executive business with the officers of government, civil and military, and may require information, in writing, from the officers of the Executive Department upon any subject relating to the duties of their respective offices.

Sec. 8. He shall see that the laws are faithfully executed.

Sec. 9. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

Sec. 10. He shall communicate, by message, to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

Sec. 11. In case of a disagreement between the two houses, with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

Sec. 12. No person shall, while holding any office under the United States, or this State, exercise the office of Governor, or be eligible thereto.

Sec. 13. There shall be a seal of this State, which shall be kept by the Governor and used by him officially, and shall be called "The Great Seal of the State of California."

Sec. 14. All grants and commissions shall be in the name and by the authority of "The People of the State of California," sealed with the great seal of the State, signed by the Governor and countersigned by the Secretary of State.

Sec. 15. The Governor shall receive an annual salary of five thousand dollars, to be paid at stated times, as provided by law, which shall be in full for all services to be performed by him for the State, as Governor, or in any other official capacity, and the Legislature shall have no power to grant him an extra compensation whatever for any ex officio service of any kind.

Sec. 16. In cases of impeachment of the Governor, his removal from office, death, or inability to discharge the powers and duties of the said office, resignation, or absence from the State, the power and duties of the office, with its emoluments, shall devolve upon the President of the Senate, or in case there shall be no President of the Senate, or if from any cause he be disqualified to act, then it shall devolve on the Speaker of the Assembly.

Sec. 17. A Secretary of State, a Treasurer, and Attorney-General, and a Secretary of Interior Affairs, shall be elected at the same time and place and in the same manner as the Governor, and their qualification for office shall in all respects be similar to that of the Governor; they shall each receive an annual salary of three thousand dollars, to be paid at stated times, as provided by law, which annual salary shall be in full for all services to be rendered by them of every kind, name and nature, as may be prescribed by law.

Sec. 18. The Secretary of State shall keep a fair record of the Executive Department of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform all other duties as may be assigned to him by law, including many of those now performed by the Controller. The Secretary of Interior Affairs shall perform the duties now assigned to the Surveyor-General and Registrar of the Land Office, and all other duties that may be assigned to him by law. The Treasurer shall take charge of all moneys belonging to the State in such manner as shall be directed by law. The Attorney-General shall be the legal adviser of the Governor, and shall conduct the legal business of the State as may be prescribed by law.

Sec. 19. The first election for Governor, Secretary of State, Secretary of Interior Affairs, Treasurer, Attorney-General, and all State and county officers, shall be on the first Wednesday in September, eighteen hundred and seventy-nine; and they shall be qualified and enter on the discharge of their official duties on the second Monday after the first Tuesday in January, eighteen hundred and eighty, and their term of office shall extend to the second Monday after the first Tuesday in January, eighteen hundred and eighty-five. The second election under this Constitution for State and county officers shall be on the first Tuesday after the first Monday in November, eighteen hundred and eighty-four; and all subsequent such elections shall be every four years therefrom.

Sec. 20. All State and county officers shall be inaugurated in office on the second Monday after the first Tuesday in January subsequent to their election.

Sec. 21. The term of all State and county officers, other than those of the judiciary and County Supervisors, shall be for the term of four years.

Sec. 22. When any office shall, from any cause, become vacant, and no rule is provided by the Constitution or laws for filling such vacancy, the Governor shall have power to fill such vacancy by appointment for the unexpired term, or until the next general election

Sec. 23. The Governor shall have power to grant reprieve or stay of execution of the sentences in all criminal cases after conviction, but no such reprieve or stay of execution shall extend beyond sixty days, except on a unanimous recommendation of the Board of Pardons, as hereinafter provided for.

Sec. 24. The Governor shall nominate, and by and with the advice and consent of the Senate (a majority of all the Senators elected concurring, by ayes and noes), appoint all officers whose offices are established by this Constitution, or which may be created by law, and whose appointment or election is not otherwise provided for; and no such officer shall be appointed or elected by the Legislature, or by any legislative enactment.

Sec. 25. The Governor shall have power to remove any officer whom he may appoint, in case of incompetency, drunkenness, or malfeasance in office, and to declare such office vacant, and to fill the same as is herein provided in other cases of vacancy.

Sec. 26. The Governor may, on extraordinary occasions, convene the Legislature by proclamation, stating therein the purpose for which they are convened, and the Legislature shall enter on no business except that for which they shall be called together.

Sec. 27. No person, after being rejected by the Senate, shall be again nominated for the same office at the same session, unless at the request of the Senate, or be appointed to the same office during the recess of the Senate.

Sec. 28. An account shall be kept by the officers of the Executive Department, and of all the public institutions of the State, of all the money received or disbursed by them, severally, from all sources, and for every service performed, and an annual report thereof, under oath, at the end of each fiscal year shall be made to the Governor; and any officer or State employé who makes a false report shall be guilty of perjury, and punished accordingly, and the Governor shall transmit all such reports to the Legislature at each of its regular sessions, and at extra sessions whenever he may deem it for the public good to do so.

Sec. 29. The Governor may at any time require information in writing, under oath, from all persons holding office under the State Government in any capacity whatever, upon any subject relating to the condition, management, receipts, expenses, and disbursements of their respective offices.

Sec. 30. The Governor shall have unquestioned liberty at all times, either personally or by an expert, to examine the books and accounts of any person holding office under the State Government, relating to the business of such office.

Sec. 31. The Governor shall have the right to be present at any meeting that shall be held for the transaction of business by any Board of Commissioners created by the constitutional laws of this State for State administration purposes.

Sec. 32. The Governor shall have power to suspend any officer, other than those of the judiciary, holding position in any capacity under the State Government, for incapacity, drunkenness, or malfeasance in office, and fill the office by temporary appointments; but any officer so suspended, who shall have been elected by the people, shall receive from the Governor a written statement of the charges against him, and he shall have, if he demand it, a speedy jury trial to determine the truth of the charge as set forth by the Governor, and if the jury in such a case shall find the Governor's charges true, the suspension shall be perpetual, and the person suspended shall be fined one thousand dollars, to go to the School Fund, and the Governor shall forthwith appoint a suitable person to fill the place, as provided in all cases of vacancy; but if the jury shall find the Governor's charges not true, the person suspended shall forthwith be restored to his office, without any reduction from its original emoluments.

Sec. 33. All civil officers, except members of the Legislature, shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be,) that I will support the Constitution of the United States of America, and the Constitution of the State of California, and that I will faithfully discharge the duties of ——."

Sec. 34. For any reasonable cause which shall not be sufficient ground for impeachment, the Governor may remove any Justice of the Supreme Court, or any District Judge, and retire them from office; *provided*, that in all such cases three fourths of the State Senate shall approve his doing so, in such manner as shall be prescribed by law.

Referred to Committee on Executive Department.

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SWAMP LAND DISTRICTS.

MR. BARTON introduced the following proposition relating to swamp land districts in this State:

Resolved, That a proposition be engrafted in the new Constitution as follows:

SECTION 1. That all votes for assessment for the purpose of reclamation, in reclamation land districts in this State, be based on the actual number of residents, or settlers, in such districts, and not on the basis of acres in such districts, as at present provided.

Referred to the Committee on Agriculture.

TERMS OF OFFICE.

MR. SHOEMAKER introduced the following proposed amendment to the Constitution, relative to term of office when not provided for. Amend section seven, article eleven, of the Constitution, so as to read as follows:

SEC. 7. When the duration of any office is not provided for by this Constitution, it may be declared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment. When the duration of any office is fixed by this Constitution, or any law under it, the incumbent shall be entitled to serve the full time he is commissioned to serve, if he behaves himself.

Referred to the Committee on Legislative Department.

THE STATE CREDIT.

MR. SHOEMAKER introduced the following proposed amendment to the Constitution, prohibiting the credit of the State being given or loaned. Amend section ten, article eleven, of the Constitution, so as to read as follows:

SEC. 10. The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual, association, or corporation, directly or indirectly; nor pledge its faith and credit to, or in aid of, any county, city, city and county, or town; neither shall the State, directly or indirectly, become a stockholder in any association or corporation.

Referred to the Committee on Legislative Department.

STATE BOARD OF EQUALIZATION.

MR. SHOEMAKER introduced the following proposed amendment to article eleven of the Constitution, providing a State Board of Equalization. Amend article eleven of the Constitution by adding a new section, to be known as section twenty-three, and to read as follows:

SEC. 23. The Governor, Controller, and Treasurer shall constitute a State Board of Equalization, with power to revise assessments made by County and District Assessors, in such manner as may be prescribed by law.

Referred to Committee on Legislative Department.

CORPORATIONS.

MR. O'DONNELL introduced the following proposed amendment to the Constitution, concerning corporations:

SECTION —. Every association organized for banking purposes shall keep on deposit with the State Treasurer, as security to actual depositors, bonds of the United States equal in amount of the total amount of deposits in said banking association.

Referred to Committee on Corporations.

On motion of Mr. Noel, at three o'clock and forty-five minutes P. M., the Convention adjourned.

EIGHTEENTH DAY.

SACRAMENTO, Tuesday, October 15th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Eagon,	Inman,
Ayers,	Edgerton,	Johnson,
Barbour,	Estee,	Jones,
Barry,	Estey,	Joyce,
Barton,	Evey,	Kelley,
Beerstecher,	Farrell,	Kenny,
Belcher,	Fawcett,	Keyes,
Bell,	Filcher,	Kleine,
Biggs,	Finney,	Lampson,
Blackmer,	Freeman,	Larkin,
Boggs,	Freud,	Larue,
Boucher,	Gorman,	Lavigne,
Brown,	Grace,	Lewis,
Burt,	Gregg,	Lindow,
Campbell,	Hale,	Mansfield,
Caples,	Hall,	Martin, of Alameda,
Chapman,	Harrison,	McCallum,
Charles,	Harvey,	McComas,
Condon,	Heiskell,	McConnell,
Cowden,	Herold,	McCoy,
Cross,	Herrington,	McFarland,
Crouch,	Hilborn,	McNutt,
Davis,	Hitchcock,	Miller,
Dean,	Holmes,	Mills,
Dowling,	Howard,	Moffat,
Doyle,	Huestis,	Moreland,
Dudley, of San Joaquin,	Hughey,	Morse,
Dunlap,	Hunter,	Murphy,
Nason,	Schomp,	Turner,
Nelson,	Shurtleff,	Tuttle,
Neunaber,	Smith, of 4th District,	Vacquerel,
Noel,	Smith, of San Francisco,	Van Dyke,
O'Donnell,	Soule,	Van Voorhies,
O'Sullivan,	Steele,	Walker, of Tuolumne,
Porter,	Stevenson,	Webster,
Prouty,	Strong,	Wellin,
Pulliam,	Sweasey,	West,
Reddy,	Swenson,	Wickes,
Reed,	Swing,	White,
Reynolds,	Terry,	Wilson, of Tehama,
Rhodes,	Thompson,	Winans,
Ringgold,	Tinnin,	Wyatt,
Rolfe,	Townsend,	Mr. President.
Schell,	Tully,	

ABSENT.

Barnes,	Hager,	Smith, of Santa Clara,
Berry,	Laine,	Stedman,
Casserly,	Martin, of Santa Cruz,	Stuart,
Dudley, of Solano,	Ohleyer,	Walker, of Marin,
Garvey,	Overton,	Waters,
Glascock,	Shafter,	Weller,
Graves,	Shoemaker,	Wilson, of 1st District.

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Ohleyer, Stedman, and Walker, of Marin. Two days' leave was granted to Mr. Glascock.

Journal of yesterday read and approved.

PETITIONS—RIGHT OF SUFFRAGE.

MR. BLACKMER presented the following petition from nine hundred and ninety-five citizens of this State, from the Counties of Santa Barbara, Ventura, and Los Angeles:

To the Constitutional Convention in Sacramento, California, assembled:

The undersigned, citizens of California, respectfully petition your honorable body to so amend the Constitution that no citizen of this State shall be disfranchised on account of sex.

LOCAL OPTION.

MR. HALE presented the following petition, signed by O. Keeler and one hundred and fifty other citizens of Ophir, Placer County, California:

To the honorable gentlemen, the members of the Constitutional Convention now assembled:

We, the residents and taxpayers of the State of California, fully realizing the importance of this session and the arduous duties and responsibilities that necessarily rest upon each individual member of said body in the exercise of the powers vested in him; and realizing that many grave questions will present themselves to any body of men who shall assemble to consider such great facts as must necessarily arise in the framing of a Constitution to govern and direct the people of any country, State, or district, and especially our own loved and endeared State of California, where Nature has been so lavish, and Providence so wise.

And yet, with all our boasted advantages of climate, productions, mineral wealth, scenery, etc., we have observed with sorrow and pain the rapid and constant increase of crime and the alarming tendency toward idleness, with all its attendant elements of misery, wretchedness, and want, and in vain do we try to blind ourselves to the frequent necessity of enlarging our State Prisons and lunatic asylums, for even now they are crowded to their utmost capacity. And believing that no greater question can present itself to your honorable body than the education and protection of society, and while we cheerfully submit to and pay the taxes levied upon us for educational and other purposes, we believe that it is unwise and inexpedient to spend millions of dollars for education and then admit of the manufacture and traffic of that which destroys the mental faculties and poisons and destroys the mind. While we have explicit confidence in the judgment and integrity in those we have chosen to represent us, and believing that it will be their highest aim to carry out the will of the people they represent when such will is made known; therefore we would petition your honorable body:

That you will insert in the Constitution a clause, granting to the people the right to say whether they will allow the sale of intoxicating liquors in their midst or not, (better known as Local Option), or a Civil Damage Law, or both.

And your petitioners will ever pray.

Referred to the Committee on Legislative Department.

MR. SCHELL presented the following petition from Samuel M. McLean and many other citizens of Stanislaus County:

To the honorable the Constitutional Convention of the State of California:

We, the undersigned, respectfully petition your honorable body to insert in the new Constitution of this State, a clause similar to that now in force in the State of Texas, to wit:

SECTION —. The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, voting precinct, town or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.

SAMUEL M. McLEAN, M. D., and many others.

MR. SOULE presented a petition, signed by a large number of citizens of Lassen County, the same as the above presented by Mr. Schell.

REPORT OF COMMITTEE ON RULES.

MR. ESTEE, from the Committee on Rules and Order of Business, made the following report:

MR. PRESIDENT: Your Committee on Rules and Order of Business, to whom was referred a number of proposed amendments, report the same back with recommendations as follows:

First—Resolution number thirty-eight, offered by Mr. Filcher, providing that W. P. Grace be added to the Committee on State Institutions and Public Buildings, recommend that the resolution be indefinitely postponed.

Second—Resolution number forty, offered by Mr. Shoemaker, providing that Mr. McCoy be added to the Committee on Water and Water Rights, recommend that the resolution be indefinitely postponed.

Third—Resolution number thirty-nine, offered by Mr. Winans, suggesting that Mr Thompson be added to the Committee on Education, recommend that it be indefinitely postponed The Committee respectfully suggests that under rule six all appointments on committees rests with the President of the Convention.

Fourth—Resolutions numbers thirty-six and thirty-seven, offered by Messrs. Stedman and Wellin, respectively, that no member shall be allowed pay for any day

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absent with or without leave except in case of sickness or on committee duty. Your committee recommend that the two resolutions last named be indefinitely postponed. The Political Code provides that members of the Legislature shall receive ten dollars per day for the session, and the Act creating this Convention provides that the members thereof shall receive the same per diem as members of the Legislature; hence the pay of members of this Convention is fixed by law.

Fifth—Your committee recommends the adoption of the resolution offered by Mr. West, that the Committee on Education be increased from nine to thirteen members.

Sixth—Your committee recommends that the resolution offered by Mr. Campbell, to amend rule sixty by striking out the words and figures, "except rules fifty, fifty-one, fifty-two, fifty-three, and fifty-five," and to repeal rule seventy-one, be indefinitely postponed.

Seventh—Your committee again earnestly protests against the daily changing of the rules of this Convention; such practice, instead of facilitating business, clogs the wheels of legislation, and too frequently is done to meet individual cases rather than to expedite the general business of legislation.

Eighth—Your committee also recommend the indefinite postponement of the resolution offered by Mr. Noel, that rule seventy-one be repealed.

Ninth—Your committee recommend that rule forty-one, offered by McCallum, providing that rule sixty be changed so that a majority only, instead of two thirds, can change the rules, be indefinitely postponed; also,

Resolved, That the Controller be and is hereby authorized and directed to draw his warrant in favor of J. Steppacher for the sum of —— dollars, for services as Clerk of the Committee on Rules, payable out of the appropriation for this Convention, and that the State Treasurer be and is hereby authorized to pay the same.

M. M. ESTEE,
Chairman of Committee on Rules and Order of Business.

The resolution was referred to the Committee on Contingent Expenses.

MR. GRACE. I don't know what authority they have to employ a clerk.

MR. ESTEE. That will come up when the Committee on Contingent Expenses report.

THE PRESIDENT. The question is on the report of the Committee on Rules and Order of Business.

MR. GRACE. I supposed we were to have no clerks.

THE PRESIDENT. That matter will come up when the report comes from the Committee on Contingent Expenses.

MR. BEERSTECHER. I move that the report of the Committee on Rules and Order of Business be received and adopted.

MR. NOEL. I would like to have a decision of the question.

THE PRESIDENT. Every clause of the report will come up in time. The Secretary will read the first clause.

THE SECRETARY read, without objection, to the end of the sixth clause.

MR. CAMPBELL. Is the question now on the adoption of that clause?

THE PRESIDENT. The clause is now open to any amendment.

MR. CAMPBELL. I presume we can have the question divided, so we can vote on the two propositions separately. I ask to have it so divided.

THE PRESIDENT. The report has been taken up clause by clause, and the Chair pauses so that any amendment may be moved. We have passed to this clause now, and if the gentleman desires, he can move an amendment.

MR. CAMPBELL. I move to amend, by adopting the amendment which provides that two thirds of the Convention may suspend these rules, just as any other rule may be suspended; that we shall not be compelled, if a single member objects, to adhere to the rule for the time being. It provides that the rules may be suspended by a two-thirds vote; and certainly it is proper that they should be suspended. I move, therefore, that the report be so amended, and that that amendment be adopted.

MR. BEERSTECHER. As I understand the report of the committee upon the resolution heretofore offered by Mr. Campbell, it is not only to amend rule sixty so as to admit of a suspension of these rules by a two-thirds vote, but it is also to strike out rule seventy-one, in relation to printing.

MR. CAMPBELL. That is a separate proposition by itself. This is a proposition in regard to amending rule sixty, by striking out of it the words and figures "except Rules 50, 51, 52, 53, and 55." If that motion is adopted, then the Convention will be able to suspend these rules by a two-thirds vote. At present it cannot suspend them at all. And that is the whole object of my amendment now. The amendment in regard to rule seventy-one is a separate amendment.

MR. BEERSTECHER. As I stated yesterday, I see no occasion to change my opinion. These rules were well considered, well digested, thoroughly examined by the Convention, and adopted. The matter has been referred back to the committee. They have again examined the rules, and they report that the rules remain as they now are. I hope that the amendment of the gentleman from Alameda, Mr. Campbell, will be voted down; and I hope that we will be able to settle these rules, and not spend hours and hours debating them, and wasting money in that way at the rate of five dollars a minute.

MR ESTEE. The Committee on Rules and Order of Business, in recommending the indefinite postponement of the resolution of the gentleman from Alameda, only carried out the view expressed by the committee when the rules were adopted. They have seen no reason to change their views and they did not think the Convention had changed its views relative to the necessity of protecting minorities in the Convention. The rule proposed to be amended was rule sixty. It provides that "no rule or order of the Convention shall be rescinded or changed without a vote of two thirds and one day's notice being given of the motion therefor; but a rule or order may be suspended temporarily by a vote of two thirds of the members present, except rules fifty, fifty-one, fifty-two, fifty-three, and fifty-five." Rule fifty-five provides: "In forming a Committee of the Whole Convention, the President may preside or appoint a member to preside. Propositions or resolutions relating to the Constitution shall be committed to a Committee of the Whole Convention and shall be read in Committee of the Whole by sections. All amendments shall be noted and reported to the Convention by the Chairman. After report, the proposition or resolution shall again be subject to amendment before the final question is taken." The point in that rule is that the humblest member on the floor has the right individually to demand that every proposition to be engrafted in the Constitution should be disposed of or heard in the Committee of the Whole. One individual member has a right to demand it, and it is a right that this committee and this Convention heretofore considered a necessary right: that is, that the Committee of the Whole should give consideration to all these propositions. Now the gentleman proposes to set that aside at any moment and not let the minority go into Committee of the Whole to consider and carefully examine questions of constitutional law. I hope that the amendment of the gentleman from Alameda, Mr. Campbell, will not be adopted, and that the report of the committee will be.

Now, sir, there is a rule of the Assembly and Senate that all rules may be suspended temporarily by a two-third vote, except the third reading of a bill; that a bill should not be read a third time on the day it was introduced. The point is that a bill should not be rushed through the day of its presentation, so that members would be able to give it full and fair consideration. Rule fifty-five is of the same character. The reason for going into Committee of the Whole is to place it in the reach of any member to demand that the Convention go into Committee of the Whole upon any proposition before it is disposed of. The gentleman from Alameda is going to leave it to a two-third vote; then, after an eloquent speech has been made by the gentleman from Alameda, or some other gentleman, the Convention might be carried away and refuse to go into Committee of the Whole, and thereby deprive a minority of the right that they ought to have. I hope that the report of the committee will be adopted.

MR. MCCALLUM. The theory on which these rules are presented and adopted is this: that this Convention, the first week of its session, is so much wiser than the majority of the Convention that to be overruled it must require two thirds of the Convention when it shall have had more experience. The resolution proposed to be changed, and it is one of a great deal of consequence, is that two thirds of this Convention may change a standing rule—two thirds may suspend a standing rule. Argument proceeds upon the ground that a majority having decided that that should be the rule, must not be overruled, even by a unanimous vote; and this Convention, more than once, has done this inconsistent thing, from the very necessity of the case overruling its own standing rule upon that subject.

There seems to be a sensitiveness about changing these rules. Here are seventy odd of them, an unusually large number. Assuming that the Committee on Rules have a vast amount of experience and wisdom, yet it is barely possible that experience has shown that some of these rules ought to be changed. What is there so sacred about rules fifty, fifty-one, fifty-two, fifty-three, and fifty-five that two thirds of the Convention might not suspend any, one, or all of them? The idea upon which the rule as it stands proceeds is that the majority of the Convention is not to be trusted, and the argument seems to be addressed to what is assumed to be a minority of the Convention, to be careful of their rights, or they might lose something by what the majority, or even two thirds, of the Convention might do—for that is all the amendment asks. For my part, I do not know who the minority or who the majority of this Convention are. I expect that minorities or majorities may assume various positions. I do not know who will be associated in the majority, or who will be associated in the minority; and when gentlemen talk about the minority in the Convention, I must confess that I do not know to whom that language is addressed. I proceed upon the idea that two thirds of this Convention may be as wise as a majority of the Committee on Rules, and as a majority of the Convention itself was at the beginning of the session when the rules were adopted. That is all that the amendment of my colleague asks, and that is that rule sixty may be so changed that these other rules, the same as all the balance, may be suspended by a two-third vote. The difficulty has come up here again and again with reference to the printing of these propositions. Here is a mass of propositions laid upon our tables, printed at an expense of some two thousand dollars to the State. Some of these resolve, in general terms, that "the Chinese must go," and others that "land-grabbing must be stopped," at an expense of about ten dollars for each lot, and in the aggregate about two thousand dollars has already been expended.

MR. BEERSTECHER. I have a statement from the printer here in relation to the cost of the printing and paper of the whole matter—that the printing that has been done up to this time, the total cost of the whole matter, does not exceed eight hundred dollars.

MR. MCCALLUM. I do not object to the interruption, but I would inquire if that includes what we ordered yesterday?

MR. BEERSTECHER. Up to this morning at ten o'clock.

MR. MCCALLUM. It is well known that there was a great deal of matter ordered printed yesterday. Perhaps two thousand dollars may be too high, but certainly eight hundred dollars does not indicate it. This rule fifty-two, requiring the printing of propositions, is one of the very propositions which cannot be suspended even by a two-third vote. It cannot, under rule sixty be suspended at all. There is the proposition introduced by Mr. McConnell, which, by his consent, was not printed, but that consent is in violation of rule sixty, which says that rule fifty-two cannot be suspended at all. That whole Constitution ought to be printed, four hundred and eighty copies of it.

MR. FAWCETT. Does rule fifty-two require the printing of propositions?

MR. MCCALLUM. It is rule seventy-one. That is correct. The gentleman is correct about that. These other rules, fifty, fifty-one, fifty-two, fifty-three, and fifty-five, are the rules which, by rule sixty, cannot be suspended even by an unanimous vote. Now, sir, I believe that that amendment ought to be adopted. There ought to be no rule that this Convention cannot suspend by a two-third vote.

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MR. O'DONNELL. I move the previous question.

THE PRESIDENT. The Committee on Rules and Order of Business recommends the indefinite postponement of the amendment. The gentleman from Alameda moves that the Convention non-concur with the committee.

The motion of Mr. Campbell was lost.

THE SECRETARY read the seventh and eighth clauses.

MR. NOEL. I move that we non-concur in the recommendation of the committee in regard to the eighth clause.

Lost.

The Secretary concluded the reading of the report.

THE PRESIDENT. The question is on the adoption of the whole report.

The report was adopted.

RESOLUTIONS AND PROPOSITIONS.

THE PRESIDENT. The next order of business is the introduction of resolutions and propositions relative to the Constitution. The Secretary will call the roll.

MR. LARKIN. I think the Convention could do away with the calling of the roll. That rule at first I was in favor of. At the present time it is not necessary. There will be but few propositions.

MR. BEERSTECHER. We have got a rule here, a standing rule, that requires the roll to be called, and this standing rule cannot be changed without one day's notice. I object to changing it without notice.

MR. LARKIN. My recollection of that resolution is that it was simply a resolution, and not a standing rule of this Convention.

MR. GRACE. I move that the resolution, as sent up, be read.

THE PRESIDENT. The recollection of the Chair is that that rule was only to hold good until otherwise ordered by the Convention. It is competent for the Convention to dispense with that resolution at any time.

MR. ESTEE. It was not one of the standing rules of this body; it was a rule temporarily adopted.

MR. BARBOUR. I offered that resolution. It is competent for a simple majority now to dispense with it. I move that the resolution be suspended.

Carried.

ADDITION TO COMMITTEE.

THE PRESIDENT appointed as additional members of the Committee on Education, Messrs. Blackmer, Thompson, Martin, of Alameda, and Freud.

INDEPENDENT MILITARY ORGANIZATIONS.

MR. BEERSTECHER introduced the following proposed amendment to the Constitution, relative to independent military organizations:

ARTICLE —.

MILITIA.

SECTION —. Citizens of this State shall have the right to associate and form military organizations, other than militia, which organizations shall be independent. This shall, however, in nowise affect the right of the State to the services of the citizens in time of public danger.

Referred to Committee on Military Affairs.

TAXATION.

MR. BEERSTECHER introduced the following proposed amendment to the Constitution, relative to taxation:

SECTION —. Every solvent debt shall be taxed as personal property of the creditor, and the amount thereof shall be deducted from the assessed valuation of the property of the debtor; *provided, however*, that in all taxation of solvent debts, the debtor shall first pay the tax and shall then deduct the amount so paid as tax from the principal sum owing, or from the interest due or to become due on said principal sum; *provided further*, that every contract or agreement whereby a debtor agrees to pay the taxes of the creditor upon a debt is void.

SEC. —. Every corporation or joint stock company having certificates of capital stock issued, shall be assessed and pay tax upon such stock at its true value; such corporation or company shall first pay such tax, and the amount paid as tax shall be a demand in favor of such corporation or company against such stock and the owners thereof, and shall be a lien on said stock and have priority over all other liens and demands; *provided, however*, that where such corporation or company own real estate or personal property subject to assessment and taxation under the laws of this State, and such property being actually assessed and taxed within this State, then the assessed valuation of such property shall be deducted from the assessed valuation of such capital stock, and the said capital stock taxed upon the basis of value after such deduction; *provided further*, that a failure to promptly pay such tax by such corporation or company shall work a forfeiture of their corporate charter.

LIQUOR TRAFFIC TAXATION.

SEC. —. The business of manufacturing and selling intoxicating liquors of every name and nature shall be subject to legislative regulation, by general laws having effect throughout the State, but this shall not be construed as giving to any Legislature the authority to enact prohibition laws. An annual tax of not less than two hundred dollars shall be imposed upon the traffic in intoxicating liquors, to be paid by every person or firm, or corporation, who shall carry on or be engaged in the business of selling or disposing of such liquors, otherwise than for medicinal, chemical, or mechanical purposes, for each place where such business is carried on by such person, firm, or corporation. Said tax shall be paid into the treasury of the county, city, village, or township where such business is carried on, and appropriated as the Legislature shall by general law provide. The sale or other disposition of such liquors to minors, persons under guardianship, insane and idiotic persons, paupers, and common drunkards is wholly prohibited. Every person who shall carry on or engage in the business of traffic taxed as aforesaid in this section, without having first paid the tax imposed, or otherwise violate any provision of this section, shall be guilty of a misdemeanor, and, on conviction, be punished by fine or imprisonment, or both, as may be prescribed by law, and every sale, until the tax is paid, shall subject the party to such penalty; and all necessary laws shall be passed to enforce the provisions of this section.

Referred to Committee on Revenue and Taxation.

LIBEL.

MR. MURPHY introduced the following proposed amendment to article one, section nine, of the Constitution, in relation to libels:

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions on indictments for libels the trial of the case shall take place in the county in which the alleged libel was first published, unless the venue to another county shall be ordered by due process of law. The truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

Referred to Committee on Legislative Department.

CHINESE.

MR. O'DONNELL introduced the following proposed amendment to the Constitution, relative to Chinese:

SECTION —. Each county, town, city, and incorporated village shall make provision for the support of its own officers, subject to such restrictions and regulations as the Legislature may prescribe, and every city, town, and village shall have power to adopt such police regulations for the exclusion and removal of persons of Asiatic descent as the public good may require.

Referred to the Committee on Chinese.

GRAND JURY SYSTEM.

MR. MANSFIELD introduced the following propositions to modify the present Grand Jury system:

1. Prosecutions for crimes and misdemeanors may be begun by indictment found by a Grand Jury, or by information laid before a Justice of the Peace.

2. The Grand Jury shall consist of fifteen men, and an indictment may be found upon the concurrence of nine of their number.

3. The Grand Jury shall be ordered by the County Judge, at his discretion, but not oftener than once in each year.

4. An information is a writing, verified by a person called a prosecutor, charging another with the commission of a crime or misdemeanor, and setting forth the facts necessary to constitute the offense.

5. Such information may be presented to a Justice of the Peace, and when such Justice has not jurisdiction to try the offense charged, there shall be had a preliminary examination, in which defendant shall have right to be heard by himself and counsel.

6. Should it appear that the offense charged has been committed, and the Justice be satisfied of defendant's guilt, he shall adjudge and bind the defendant to appear before the Court having jurisdiction of the offense.

7. Upon this information, and the judgment of the Justice thereon, being filed in the Court having jurisdiction, the District Attorney shall file in such Court a complaint signed by him, officially, charging the defendant with the offense for which he is held to answer. This complaint shall state the facts necessary to constitute a cause of action.

8. Upon such complaint the defendant may be tried.

9. After the defendant has been bound to appear, and within ten days thereafter, or at any time prior to filing the complaint, he shall have the right to be heard on a writ of habeas corpus before a Judge of a Court of record, and if such Judge shall find, on reviewing the evidence taken at the preliminary examination, that the defendant has been held without reasonable or probable cause, he shall order the defendant discharged, and the District Attorney shall not further prosecute the proceeding.

10. Should the information be dismissed by the Justice after a hearing on a preliminary examination, or the defendant be so discharged on habeas corpus, no second information shall be prosecuted against the defendant on the same charge, unless the second information be approved and signed by the District Attorney of some Court having jurisdiction to try the case.

11. A person may be prosecuted by indictment for any offense of which the District or County Court has jurisdiction, although the information has been dismissed by a Justice, or the defendant discharged on habeas corpus.

Referred to Committee on Legislative Department.

FUTURE AMENDMENTS.

MR. WHITE introduced the following proposed amendment to the Constitution, in relation to future amendments:

SECTION 1. There shall be a Constitutional Convention at the State Capital, in the year one thousand nine hundred and three (1903), to review, and, if deemed best, amend this Constitution.

SEC. 2. The Convention shall consist of one hundred and three members, all to be elected by single districts, as near equal in population as may be.

SEC. 3. Each member of the Convention shall receive six hundred dollars, and the same mileage as may be then paid to members of the Legislature, which shall be in full compensation for services.

SEC. 4. The Legislature shall, at the proper time, carry out this pro-

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vision of this Constitution by appropriate legislation, and provide by law that the new or amended Constitution shall be submitted to the electors of the State for their approval or rejection.

Sec. 5. Whenever two thirds of the members elected to each branch of the Legislature shall think it necessary to alter or amend this Constitution, they may propose such alterations or amendments, which proposed amendments shall be published with the laws which have been passed at the same session; and said amendments shall be submitted to the people, for their approval or rejection, at the next general election; and if it shall appear, in a manner to be provided by law, that a majority of the qualified electors present and voting at such election shall have ratified such alterations or amendments, the same shall be valid to all intents and purposes as a part of this Constitution. If two or more alterations or amendments shall be submitted at the same time, it shall be so regulated that the electors shall vote for or against each separately.

Referred to Committee on Future Amendments.

EXECUTIVE DEPARTMENT.

Mr. SCHELL introduced the following proposed amendment to the Constitution, relating to the Executive Department:

Resolved, That the following amendment to section fourteen, article five, of the Constitution, be incorporated in the new Constitution:

Section —. There shall be a seal of the State, to be called "The Great Seal of the State of California," which shall be kept and used by the Governor officially; and the one heretofore in use shall continue to be the great seal of the State.

Referred to Committee on Executive Department.

CHINESE TAX.

Mr. O'DONNELL introduced the following proposed amendment to the Constitution, revenue and taxation:

Section seventeen, of article first, of the Constitution, is amended as follows:

Sec. 17. Foreigners (of Caucasian descent) who are or who may hereafter become bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property as native-born citizens.

Sec. —. The Legislature shall, by appropriate enactments, discourage the importation of Chinese coolies into the State of California.

Section fourteen, of article eleven, of the Constitution, is amended as follows:

Sec. 14. Taxation of all property, except articles of Chinese manufacture, shall be equal and uniform throughout the State; all real and personal property, except property owned by Mongolians, shall be taxed in proportion to its value, to be ascertained as directed by law.

Sec. 15. No poll tax shall be levied or collected from the citizens of this State, but the Legislature shall have power to provide for the collection of such tax from aliens by law.

Referred to Committee on Revenue and Taxation.

IMPORTATION OF COOLIES, ETC.

Mr. O'SULLIVAN introduced the following proposed amendment to the Constitution, relative to the importation of coolies, criminals, paupers, lepers, and immoral women prohibited.

Section —. Importations of persons under the name of "coolies," or any other designation, or the adoption of any other system of peonage whereby the helpless and unfortunate may be reduced to practical bondage, shall never be authorized or tolerated by the laws of this State.

Sec. —. Persons engaging in the importation of "coolies," or men or women bound by contract to labor or service for a specified time, shall be deemed guilty of felony; and persons employing such "coolies," by contract, to labor for a specified time in this State, shall also be deemed guilty of felony.

Sec. —. Every contract whereby the compensation for the labor of any person is made payable to any person, company, or corporation, other than the one performing the labor, is hereby declared void; *provided*, that it shall be lawful for parents to secure for themselves and receive the wages of their minor children.

Sec. —. The importation of criminals, paupers, lepers, and immoral women from foreign countries is forever prohibited. And any ship, the captain and owner of any ship, and the consignees of the same, shall be held responsible for an infraction of this provision, and must transport back to the port whence they were brought said foreign criminals, paupers, lepers, and immoral women.

Sec. —. The Legislature, at the first session after the adoption of this Constitution, shall provide, by suitable enactments, for the effectual enforcement of the provisions of sections ——, ——, ——, and ——.

Referred to Committee on Legislative Department.

EMPLOYMENT OF CHAPLAINS.

Mr. O'SULLIVAN introduced the following proposed amendment to the Constitution, prohibiting the employment of Chaplains in State institutions:

Section —. No person shall ever be employed as a Chaplain in any department of the State Government, or in any of the public institutions of this State; and no money shall ever be appropriated out of the State treasury for the payment of persons to recite prayers or to give religious teaching of any character.

Referred to Committee on Legislative Department.

APPROPRIATIONS.

Mr. EVEY introduced the following proposed amendment to the Constitution, relative to the Legislative Department:

All bills making appropriations of money out of the treasury for the pay of members and officers of the General Assembly, and for the salaries of the officers of the government, shall contain no provision on any other subject.

The compensation of the members of the General Assembly shall be five hundred dollars each per session, except extra session, and for then they shall each be allowed one hundred dollars, and ten cents a mile in going to and returning from the seat of government.

Referred to the Committee on Legislative Department.

UNAPPROPRIATED WATERS.

Mr. BROWN introduced the following proposed amendment to the Constitution, relative to the unappropriated waters of the lakes and rivers of this State:

Resolved, That the unappropriated waters of the lakes and rivers of this State belong to the public, and such waters may be appropriated by individuals and companies. Priority of appropriation of water entitles individuals or companies to a priority of right to the amount of water appropriated by them. The uses of waters shall be controlled by legislative enactments.

Referred to the Committee on Water and Water Rights.

UNIFORM TAXATION.

Mr. GRACE introduced the following proposed amendment to the Constitution, in relation to revenue and taxation:

Taxation shall be equal and uniform throughout the State; all property in the State, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law. The word "property," as used in this article and section, is hereby declared to include moneys, notes secured by mortgage or otherwise, credits, bonds, stocks, dues, franchises, and all other matters and things capable of being converted into money, either real or personal.

Referred to Committee on Revenue and Taxation.

FRANCHISE.

Mr. SWEASEY introduced the following proposed substitute for section one, article two, of the present Constitution:

Every citizen of the United States, of the age of twenty-one years, who shall have been a resident of this State one year next preceding the election, and the county or district in which he or she resides for the term of ninety days, shall be entitled to vote at all elections which are now or may be hereafter authorized by law; *provided*, that no Court in this State shall issue any naturalization papers within thirty days of any general election.

Sec. 7. That the Legislature shall pass and amend, from time to time, such laws as may be necessary to preserve the purity of elections and the free exercise of the vote by ballot.

Referred to the Committee on Right of Suffrage.

LEGISLATIVE DEPARTMENT.

Mr. GORMAN introduced the following proposed amendment to the Constitution, relative to the Legislative Department:

The Legislature shall pass such laws governing counties, cities, towns, and other corporations, as will restrict their powers of taxation, borrowing money, and contracting debts and loaning their credit so as to prevent abuses in taxation, and all propositions for extraordinary debts shall be, by consent of the people, expressed through the ballot-box.

Referred to Committee on Legislative Department.

ELECTION OF UNITED STATES SENATORS.

Mr. GRACE introduced the following proposed amendment to the Constitution, in relation to Legislative Department:

Section —. It shall be the duty of the Legislature to provide for all future elections of United States Senators, from this State, to be by direct vote of the people.

Referred to Committee on Legislative Department.

ABOLITION OF GRAND JURIES.

Mr. HUESTIS introduced the following proposed amendment to the Constitution, abolishing Grand Juries:

Resolved, That the following provision be adopted in that article of the Constitution which relates to Grand Juries:

Section —. The Grand Jury system is hereby abolished; and in lieu thereof the Legislature shall devise and provide, by legislative enactment, a more economical and expeditious system of criminal procedure.

Referred to Committee on Preamble and Bill of Rights.

JURY SYSTEM.

Mr. HUESTIS introduced the following proposed amendment to the Constitution, concerning the jury system:

Resolved, That the following provision be adopted in that article of the Constitution which relates to the jury system:

Section —. The right of trial by jury shall be inviolate in all cases of felony, in such cases of misdemeanor as the Legislature may determine, in all civil actions sounding in tort, and in all cases arising from breach of contract, where punitory or exemplary damages are sought to be recovered. In all actions, civil and criminal, six persons shall constitute a full jury. The Legislature shall fix and determine the character and qualifications of jurors, and the number whose concurrence shall be necessary to render a verdict in civil actions. Juries may be waived in all cases, civil or criminal.

Referred to the Committee on Preamble and Bill of Rights.

PRIVILEGES AND ELECTIONS.

Mr. LAVIGNE introduced the following proposed amendment to the Constitution, in relation to privileges and elections:

Resolved, That no person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States,

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and who shall not have resided in this State one year next preceding to the election or appointment.

Referred to the Committee on Privileges and Elections.

WATER RIGHTS.

MR. LAVIGNE introduced the following proposed amendment to the Constitution, in relation to water rights:

Resolved, That the Legislature shall provide for reasonable rates to be charged for the use of the water taken from natural lakes and streams by individuals or corporations.

Referred to the Committee on Water Rights.

TAXATION OF STOCK.

MR. J. WEST MARTIN, of Alameda, introduced the following proposed amendment to the Constitution, relative to the exemption of indemnity capital stock of corporations from taxation:

Resolved, That the capital stock of savings bank corporations, where the same constitutes a guarantee capital that cannot be withdrawn or diminished until all trusts and deposits are fully paid and discharged, shall not be taxed.

Referred to the Committee on Corporations.

TAX ON CHINESE.

MR. O'DONNELL introduced the following proposed amendment to the Constitution, relative to the Chinese:

SECTION —. The Legislature shall provide by law for the exclusion of aliens of Asiatic descent from this State, and for that purpose may impose such taxes upon the Chinese population as they may deem expedient, and may provide such other measures as they may deem necessary to discourage Asiatic immigration.

Referred to Committee on Legislative Department.

CORPORATIONS.

MR. O'DONNELL introduced the following proposed amendment to the Constitution, relative to corporations:

SECTION —. Every association or corporation doing an insurance business, or issuing policies of insurance upon real estate, shall be required by law to pay to the insured the full amount of losses sustained by him upon any property insured, not exceeding the full amount mentioned in policy of insurance.

Referred to Committee on Corporations other than Municipal.

CONTENTS AND ORDER OF THE CONSTITUTION.

MR. McCONNELL introduced the following resolution, relative to contents and order of the articles of the Constitution:

Resolved, That the Constitution framed by this Convention, when complete, shall consist of fourteen articles, entitled as follows: Article One—Bill of Rights; Article Two—Right of Suffrage and Election; Article Three—Distribution of Powers; Article Four—Legislative Department; Article Five—Executive Department; Article Six—Judicial Department; Article Seven—Militia; Article Eight—Taxation and Finance; Article Nine—Municipal Corporations; Article Ten—Private Corporations; Article Eleven—Education; Article Twelve—Mode of Amending and Revising the Constitution; Article Thirteen—Miscellaneous Provisions; Article Fourteen—Schedule. And that any provision reported to this Convention from a committee shall be marked by such committee to take its place as a section in an appropriate article.

Referred to Committee on Preamble and Bill of Rights.

APPORTIONMENT AND REPRESENTATION.

MR. STRONG introduced the following proposition, in relation to representation and apportionment:

SEC. 29. The Senators and members of the Assembly provided for in this Constitution shall be apportioned among the several counties and districts to be established by law, according to the number of inhabitants; *provided, however*, that in any and all apportionments made under this Constitution, each and every county of the State shall be entitled to at least one representative in the Assembly.

Referred to Committee on Apportionment and Representation.

SUFFRAGE.

MR. McCOMAS introduced the following proposed amendment to the Constitution, proposing a new section for the Constitution, in relation to suffrage:

SECTION —. Suffrage is hereby declared to be a duty of citizenship, which shall be enforced by proper legislation.

Referred to Committee on Right of Suffrage.

STOCK DEALING.

MR. DOWLING introduced the following proposed amendment to the Constitution, entitled "A proposition to authorize the State to bridle stock swindling:"

SECTION —. All mining, railroad, water, gas, bank, or other incorporated company's stock, incorporated under and in compliance with the incorporation laws of this State, shall be considered negotiable paper.

SEC. —. All stockholders of any incorporated company under the laws of this State shall be entitled to a vote or voice in the management of the same, and shall also be permitted to examine the condition of the property.

Referred to Committee on Corporations.

MINING BUREAU.

MR. DOWLING introduced the following proposed amendment to the Constitution, relative to the appointment of a Mining Bureau:

SECTION —. The Legislature shall provide for the creation of a Mining Bureau, whose duty it shall be to give true and authentic information to the public concerning the condition and merit of mines incorporated under the mining laws of California.

Referred to Committee on Mining.

TAXATION.

MR. HOWARD introduced the following proposed amendment to the Constitution, in relation to taxation:

WHEREAS, It is estimated that nearly one sixth of the value of the entire property of the United States is invested in United States bonds, or evidences of debt, exempt from taxation by an Act of Congress, but as the exemption does not extend to the profits accruing on the bonds; therefore,

ARTICLE —.

SECTION 1. The Legislature shall impose an income tax on all United States bonds held or owned by citizens or residents of the State.

SEC. 2. The Legislature shall provide for an income tax on money loaned on mortgage, or other evidence of debt, to be paid by the creditor only, but the owner of the property mortgaged shall be assessed on the same on the value, after deduction of the amount of the mortgage.

SEC. 3. The Legislature shall impose an income tax on all State, county, and municipal bonds.

SEC. 4. The Legislature shall provide for a tax upon corporations on the franchise and the income received, and the separate property of the corporation.

SEC. 5. On all lands not necessary for the business of the corporation, which have been received from the Federal or State Governments as subsidies, the Legislature shall impose an increased or progressive tax of —— per cent.

Referred to the Committee on Revenue and Taxation.

ADJOURNMENT.

MR. INMAN. I move that when this Convention adjourns, it adjourn to meet to-morrow morning at ten o'clock.

MR. EDGERTON. I ask the gentleman to withdraw that motion and allow me to introduce a resolution which, if adopted, will cover his views.

MR. INMAN. I would like to get to work in the committees.

MR. BIGGS. I see we have a special order for two o'clock to-day, and we must attend to it.

MR. INMAN. I withdraw my motion.

ARRANGEMENT OF BUSINESS.

MR. EDGERTON offered the following:

Resolved, First, that after this day, and until Wednesday, the twenty-third day of the present month, all that part of rule seventeen after the sixth order of business be and the same is hereby suspended; second, that from and after this day, and until such twenty-third instant, the Convention adjourn each day immediately after concluding the sixth order of business, for the purpose of enabling the standing committees to consider the subjects referred to them and to mature a plan of action concerning the same; third, that immediately after such adjournment said committees proceed to hold daily sessions for the disposal of the business before them, and that on such twenty-third instant, or sooner if practicable, they report such plan to the Convention for its action.

MR. EDGERTON. That rule, if adopted, will be our order of business until one week from to-morrow. After to-day we meet, and this will be the order of business: "Roll call; reading and approval of the Journal; presentation of petitions and memorials; communications from State officers; reports of standing committees; and reports of select committees." It suspends the remainder of the rule. It also temporarily suspends another rule—I forget which it is, now—which provides that each standing committee shall report within fifteen days from the day of reference.

THE PRESIDENT. Rule twenty.

MR. EDGERTON. Now, sir, in my judgment, if that resolution be adopted it will greatly facilitate the business of this body. We have been five days receiving propositions relative to the Constitution, and there certainly is, by this time, enough material upon the tables of the various committees from which to extract some plan to present for the action of this body.

MR. HERRINGTON. I rise to a point of order. The proposition is to change a standing rule. There has been no notice given of it.

MR. EDGERTON. The last part of rule sixty says that any rule may be temporarily suspended.

THE PRESIDENT. The point of order is not well taken.

MR. EDGERTON. This rule provides merely for the temporary suspension of these rules until next Wednesday. The resolution also conveys the instruction that immediately upon the adjournment the committees go to work during the daytime and perfect and mature some plan of action by that day, or sooner if practicable. Now the resolution does not preclude any gentleman from sending to the desk any proposition that he has in his mind. It facilitates the business of the Convention in this, that, if the committee covers the views of any gentleman, it saves him the necessity or the trouble of sending up a proposition. If it does not, any gentleman, either in Committee of the Whole, or afterwards in Convention, can send up any proposition he pleases by way of amendment to the plan reported. Such a mode of procedure was adopted, I believe, in the Convention in Pennsylvania. After the propositions were received, I think they broke up for some fifteen or twenty days, to give the various committees an opportunity to look over the various propositions and out of them to extract some plan and present it for the action of the Convention. I hope the resolution will be adopted.

MR. VAN DYKE. I entirely agree with the proposition in this resolution. I think it will expedite the transaction of our business. Our committee has met three evenings and there is a rule that prevents us meeting during the session of the Convention, and some of our members are on other committees, and it will be utterly impossible for the com-

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mittee to discharge their duties unless the Convention takes a recess during the day.

Mr. BEERSTECHER. As there is a special order of business for two o'clock, namely, the consideration of the resolution offered by the gentleman from San Francisco, Mr. Winans, I therefore move the resolution offered by the gentleman from Sacramento, Mr. Edgerton, be made the special order of business at three o'clock this afternoon. That will give each member an opportunity of considering the subject until that time.

The motion prevailed.

CLERK.

Mr. EDGERTON offered the following resolution:

Resolved, That the Committee on Revenue and Taxation be and is hereby authorized to employ a clerk at a compensation of five dollars per day for each day that he is actually employed.

It was referred to the Committee on Contingent Expenses.

NIGHT WATCHMAN.

Mr. DUNLAP offered the following resolution:

Resolved, That the President of this Convention appoint a Night Watchman, whose duties shall be to take charge of this chamber, and see that no unauthorized persons enter the same. Said Night Watchman shall not permit any books or papers to be taken from members' desks without orders from the owners thereof. Said Night Watchman shall receive the same compensation as is now paid to the Door keepers of this Convention.

Mr. TINNIN. That question has been up once before, and it is an established rule of this Convention that all matters of this kind shall go to the Committee on Contingent Expenses. I hope that the Convention will not depart from that rule.

The PRESIDENT. The subject has been referred and reported back to the Convention.

Mr. HILBORN. There was some resolution of this kind which was referred to the Committee on Contingent Expenses. They reported back in favor of the employment of a Night Watchman, and designated a particular person. It came in here, and other persons were suggested as amendments to the report. After some discussion the whole matter was laid on the table, where it now rests. I move that the resolution lie on the table, with the report of that committee, to be brought up at the same time with it.

Carried.

COST OF PRINTING.

Mr. BARTON offered the following resolution:

Resolved, That the Superintendent of State Printing be requested to furnish this Convention, at the earliest day possible, a statement showing the cost to date of printing the resolutions and propositions relating to the new Constitution that have been presented to this Convention.

Mr. BARTON. I move its adoption.

Mr. BEERSTECHER. I move that it be referred to the Committee on Printing.

The PRESIDENT. It is not necessary that it should go to any committee.

The resolution was adopted.

CORRESPONDENTS IN COMMITTEE MEETINGS.

Mr. BEERSTECHER offered the following:

Whereas, The delegates here assembled are the agents and servants of the sovereign people of this State, and as such their actions should at all times be open to public scrutiny and criticism; therefore,

Resolved, That the accredited newspaper reporters and correspondents of the press reporting the proceedings of this Convention be privileged to be present at all regular meetings of standing committees.

Mr. BEERSTECHER. I move the adoption of that resolution. I understand that some of the regular accredited reporters have been denied admission to the committee rooms; and I hope that the newspaper reporters and the newspaper correspondents will have the privilege of entering to any of the committee rooms and attend the deliberations of every committee of this body, in order that the work of this Convention may be given to the people at large; and the only way to do that is to allow the newspaper reporters and the newspaper correspondents full liberty and full privilege of attending the meetings of this Convention, both as a whole or in committee; and I move the adoption of the resolution.

Mr. INMAN. It seems to me that belongs to the committees. Each committee has a right to decide for itself. I have no objection to the reporters being in any committee where I am, but it is not a question that belongs to the Convention.

Mr. VAN DYKE. I would like to have an expression of the Convention.

Mr. EDGERTON. I hope the resolution, with all respect to the author, will not be adopted. It certainly misconceives the very object of these committees. They are designed for the purpose of private deliberation and consultation; for informal interchange and comparison of views; and many things occur in committee that are perfectly proper that no gentleman desires to have in the newspapers. I never have heard of such proceedings in a deliberative body.

Mr. GRACE. I don't want anything to pass through these committee-rooms or through this body but what the public may know. Everything that I do, or that any delegate does, I think the world is entitled to know it, and I am in hopes that the reporters will be allowed in the committee-rooms and that everything that is done there by members, their constituents may know. This is a Convention of the people for the purpose of making a Constitution for the people, to be ratified by the people, to make a government for the people, and we want the people to know what we are doing, and we don't want to do anything that we are ashamed of.

Mr. INMAN. I have no objection to reporters coming into any committee-room, and I don't want to be misunderstood, but I deny the right of this Convention to say who shall be there as reporters. It is a thing unheard of. I am not ashamed of what I do any more than the gentleman. I am perfectly willing that this State shall know. I am not a stickler for any proposition and I hope that this Convention will take that view of it. I do not care who knows what I do. I don't do anything in the dark and I don't suppose any gentleman proposes to.

Mr. ROLFE. I am not ashamed of anything I do, but I do not believe in this Convention prescribing a rule for these committees that was not prescribed for the Convention by the Legislature. The Legislature, in its wisdom, has provided in the statute that its sessions shall be open, except when the Convention shall be disposed to hold secret sessions. I do not suppose that there is a legislative body in the United States but what has the same provision. It is the practice in the Congress of the United States. I do not propose to hold any secret sessions, but I am opposed to prescribing a rule to the committees of this Convention which is not prescribed to the Convention itself.

Mr. FILCHER. In order that the resolution may not be mandatory and yet arrive at an expression, I move to amend the resolution so that it shall read: "It is the sense of this Convention that the meetings of the standing committees should be open to reporters." Then if any committee should choose not to admit reporters, that committee itself will be responsible for its action and not this Convention. If, on the other hand, a committee should choose to admit them, it would be privileged to do so. I would like to have an expression of this body on that subject, and to arrive at that expression, I would ask the gentleman to so change the resolution as to read: "Resolved, that it is the sense of this Convention that the meetings of the standing committees should be open to reporters."

Mr. BEERSTECHER. I accept the amendment.

Mr. GREGG. I move to lay the whole proceeding on the table.

Mr. ESTEE. I would like to have it include, also, the Constitutional Club organized by my colleagues, the delegates from San Francisco; and, with that amendment, I would be well pleased to vote for it.

The ayes and noes were demanded by Messrs. Beerstecher, Filcher, and Inman.

The roll was called, and the motion prevailed by the following vote:

AYES.

Andrews,	Hall,	Prouty,
Barton,	Harvey,	Pulliam,
Belcher,	Hitchcock,	Reddy,
Biggs,	Holmes,	Reed,
Blackmer,	Huestis,	Rhodes,
Boggs,	Inman,	Rolfe,
Boucher,	Johnson,	Schell,
Brown,	Jones,	Schomp,
Burt,	Kelley,	Shurtleff,
Campbell,	Keyes,	Steele,
Chapman,	Lampson,	Stevenson,
Cowden,	Larue,	Swing,
Crouch,	Lewis,	Terry,
Dudley, of San Joaquin,	Mansfield,	Thompson,
Dunlap,	Martin, of Alameda,	Townsend,
Eagon,	Martin, of Santa Cruz,	Tully,
Edgerton,	McConnell,	Turner,
Estee,	McCoy,	Van Voorhies,
Estey,	McFarland,	Walker, of Tuolumne,
Fawcett,	McNutt,	Wilson, of Tehama,
Finney,	Miller,	Winans,
Garvey,	Mills,	Wyatt,
Gregg,	Porter,	Mr. President—70.
Hale,		

NOES.

Ayers,	Herrington,	Neunaber,
Barbour,	Hilborn,	O'Donnell,
Beerstecher,	Howard,	O'Sullivan,
Berry,	Hughey,	Reynolds,
Caples,	Hunter,	Ringgold,
Condon,	Joyce,	Smith, of 4th District,
Cross,	Kenny,	Smith, of San Francisco,
Davis,	Kleine,	Soule,
Dean,	Larkin,	Strong,
Dowling,	Lavigne,	Sweasey,
Evey,	Lindow,	Swenson,
Farrell,	McCallum,	Tinnin,
Filcher,	McComas,	Tuttle,
Freeman,	Moffat,	Vacquerel,
Freud,	Moreland,	Van Dyke,
Gorman,	Morse,	Webster,
Grace,	Murphy,	Wellin,
Harrison,	Nason,	West,
Heiskell,	Nelson,	White—59.
Herold,		

PAY OF PAGE.

Mr. ESTEE offered the following resolution:

Resolved, That the Controller of State shall issue his warrant, and the Treasurer shall pay to Willie Campbell the sum of eighteen dollars, for six days' pay as Page, for services rendered before his appointment.

Referred to the Committee on Contingent Expenses.

CHINESE.

Mr. O'DONNELL. I wish to offer this resolution:

Resolved, That it is incumbent upon this Convention to incorporate in the Constitution a section which shall forever disqualify aliens——

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THE PRESIDENT. It is out of order.

MR. BARBOUR offered the following:

WHEREAS, The member of this Convention from Santa Barbara, Mr. Eugene Fawcett, is the present incumbent of the office of District Judge of the Seventh Judicial District; therefore,

Resolved, That the Committee on Privileges and Elections be and they are hereby instructed to inquire into the eligibility of said member and his right to a seat in this Convention, and report thereon at an early day.

MR. HOWARD. I suggest that the resolution should go to the Judiciary Committee.

THE PRESIDENT. It will be so ordered.

MR. O'DONNELL. I send up my resolution again.

THE PRESIDENT. The gentleman is out of order. We passed that order of business some time ago.

MR. McCALLUM. Do I understand the Chair to rule that the resolution goes to the Committee on Judiciary? As I understand it, where there is a difference as to which committee a resolution shall be referred to, it is for the Convention to decide, and not the President.

THE PRESIDENT. Undoubtedly so. But there was no objection to its being referred to the Committee on Judiciary.

MR. McCALLUM. The resolution itself asks that it go to the Committee on Privileges and Elections.

THE SECRETARY read the resolution.

MR. McCALLUM. Now, I am in favor of the motion made by General Howard, but I think that where a question of reference arises the Convention ought to decide.

THE PRESIDENT. That is very true. The Chair was not aware that the gentleman had moved a reference to the Committee on Privileges and Elections. If it is desired the question will be put.

The motion to refer to the Committee on Privileges and Elections was lost, on a standing vote, by a vote of 54 ayes to 61 noes.

THE PRESIDENT. The question now recurs on the motion to refer to the Committee on Judiciary.

MR. DUDLEY, of San Joaquin. I raise the point of order that the Act calling the Convention provided that no member should be expelled until after the report of a special committee appointed to investigate charges. There is a provision in the Act for appointing a committee where a question of eligibility arises. It reads as follows: "The Convention shall have the power to expel any of its members, and to punish its members and officers for disorderly behavior, by imprisonment or otherwise; but no member shall be expelled until the report of a committee appointed to inquire into the facts alleged as the grounds of his expulsion shall have been made." I hold that it is the duty of the Chair to inquire into the facts as alleged in the resolution.

MR. VAN DYKE. That is with reference to eligibility.

THE PRESIDENT. The point of order is not well taken. The motion is to refer to the Judiciary Committee.

The motion to refer to the Judiciary Committee prevailed, and it was so referred.

MOTIONS AND RESOLUTIONS.

MR. HILBORN. Mr. President: I wish to send up two resolutions:

Resolved, That the Superintendent of State Printing be directed to print and revise the rules of the Convention and the list of committees and names of members on each committee at once, and out of its order.

MR. ESTEE. It is already in the hands of the printer and being revised.

MR. HILBORN. It is a rule that matter is printed in the order in which it is received, and there is other matter in ahead of this. It is essentially necessary to have this at once and ahead of the other. The purpose of the resolution is that it shall be printed in advance of the useless mass of matter now in.

The resolution was adopted.

MR. EDGERTON. This order of business seems to be exhausted, and I ask leave to send up a resolution a little out of order, concerning the articles of the existing Constitution.

MR. O'DONNELL. I object.

THE SECRETARY read as follows:

Resolved, That so much of the existing Constitution as relates to the preamble and declaration of rights be referred to the Committee on Preamble and Bill of Rights; that so much of the same as relates to the right of suffrage be referred to the Committee on the Right of Suffrage; that so much of the same as relates to the legislative department be referred to the Committee on Legislative Department; that so much of the same as relates to the executive department be referred to the Committee on Executive Department; that so much of the same as relates to the judicial department be referred to the Committee on Judiciary and Judicial Department; that so much of the same as relates to the militia be referred to the Committee on Military Affairs; that so much of the same as relates to the State debt be referred to the Committee on State and Municipal Indebtedness; that so much of the same as relates to education be referred to the Committee on Education; that so much of it as relates to the mode of amending and revising the Constitution be referred to the Committee on Future Amendments; that so much of the same as relates to miscellaneous provisions, excepting taxation, be referred to the Committee on Miscellaneous Subjects; that so much as relates to the schedule be referred to the Committee on Schedules.

MR. EDGERTON. Mr. President: I, for one, am in favor of the standing committees retaining, as far as possible, the existing Constitution. I am very much enamored of it; positively opposed to laying irreverent hands on it. I observe that other Constitutional Conventions have adopted similar resolutions.

MR. BARBOUR. I move to amend by providing that the whole Constitution be referred to the committees and they be allowed to use as much of it as they see fit.

THE PRESIDENT. The question is whether the gentleman shall have leave to introduce the resolution out of order.

MR. O'DONNELL. I object.

THE PRESIDENT. The question is, shall the gentleman have leave to introduce the resolution.

Leave was granted.

THE PRESIDENT. The question is now on the adoption of the resolution.

The resolution was adopted.

ADJOURNMENT.

MR. McFARLAND. I move to adjourn until two o'clock to-day.

MR. ESTEE. I move to amend by adjourning until to-morrow at ten o'clock, so as to give the committees a chance to do some work.

MR. McFARLAND. I accept the amendment.

THE PRESIDENT. The question is on adjournment.

The motion was lost.

MR. BLACKMER. I move that the Convention take a recess until two o'clock.

MR. ESTEE. I move to amend, that the Convention do now adjourn.

THE PRESIDENT. The first question is on the motion to adjourn.

MR. MURPHY. I think some disposition should be made of the special order, and I move to make it the special order for to-morrow at eleven o'clock.

MR. EDGERTON. I hope these motions to adjourn will be voted down. These special orders have got to be provided for.

THE PRESIDENT. It is not debatable. The motion is to adjourn.

The motion was lost.

THE PRESIDENT. If there is no objection the Convention will now take a recess until two o'clock, under the rule.

AFTERNOON SESSION.

The Convention reassembled at two P. M. Mr. Murphy in the chair. Roll call dispensed with.

THE SPECIAL ORDER.

THE PRESIDENT. The first thing in order is resolution number forty, by Mr. Winans, which is made the special order for two o'clock. The Secretary will read the resolution.

THE SECRETARY read the resolution as follows:

Resolved, That the form and order of the present Constitution shall be adopted by this Convention, in the new Constitution formed by it, to the following extent: That the new Constitution shall consist of a preamble, to be followed by twelve consecutive articles, which shall be numbered, entitled and have sequence, respectively, in the same manner and comprise the same subjects as the twelve articles of the present Constitution; that to these shall be added such new articles, numbered in proper order after said twelve, as this Convention shall adopt, after which shall follow the schedule as the final division of said new Constitution.

Resolved, That said preamble and articles shall be considered and acted upon by this Convention in the order and sequence aforesaid, and no one of them, nor any subject-matter belonging to any one of them, shall be adopted or discussed until all other articles and matter pertaining to them, having priority as aforesaid, shall have been disposed of in their order.

Resolved, That for the purpose of giving effect and enforcement to the rules aforesaid, the several committees having charge of the matters embraced in the said preamble and twelve articles shall make their reports in the order herein named, and none of said committees shall report upon the subject-matter of any of said articles until all the articles having priority thereto, as aforesaid, shall have been considered and disposed of by this Convention, and that the other committees having charge of matter not embraced in said articles shall report afterwards and in such order as this Convention may determine.

Resolved, That as rules inconsistent with the foregoing resolutions shall be modified, or, so far all necessary, revoked, to the extent of insuring conformity therewith.

MR. WINANS. Mr. President: Under the system which now exists and the confusion into which the system may expand, I can see no prospect for the future but confusion and disorder. Nearly or quite three hundred resolutions and amendments have now been proposed, of every variety of character, quality, and kind, belonging to every department of constitutional propositions, sought to be incorporated together, and by virtue of the rule of this body, they having been sent to committees, required to report them within fifteen days, they will all come into the Convention in a rude, incongruous, ill-assorted mass, and when they reach here they will demand action, according to their several priorities. The consequence will be, unless this change is wrought, that this body will be tossed on a sea of turbulence and utter confusion. There can be no such thing as harmonizing matters under this system. One man brings up his proposition, which embraces a section on the Chinese question. Another man attempts to get the floor in order that he may bring up the subject of taxation, and so on, and men who have special topics of their own to look after pay little attention to anything else. Now, sir, we must not ignore the old Constitution entirely. We are proceeding at present to the demolition of all that exists, and attempting to make something entirely new.

We should not go so far as to entirely ignore the present document which now stands as the Constitution of the State. I think we should preserve it in all its forms and features, as far as it is possible, in the making up of the new instrument. To that end I have proposed, in this resolution, that the articles of the Constitution be taken up in their respective orders as they now exist. The main object of this resolution is to consider every article to be put in the new Constitution by itself, in all its parts and departments, and finish that particular article before entering upon the consideration of another. That is the only method, in my judgment, whereby we can secure order and form of procedure, and it will certainly quicken our action and expedite the business of the Convention.

Then, there is a part of this plan that every article shall be considered in its proper place, and all there is to be said and done in reference to it shall be done while it is the subject of debate, so that we can pass rapidly from one to another. Let us not work blindly, grasping blindly after results that cannot be attained. If we do not adopt such a mode of procedure, you will find that it will be up-hill work. If a skillful artisan were about to construct a model of the human body, he would not first form a portion of an arm, and then a toe, and then a foot, and then a section of the spine, and then a fragment of the leg, but he would finish it in its proper order of joining, making member by member, and

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then adjust the members together, and form a harmonious whole. This is the course of action for us to pursue.

Objection has been made by the minority of the Committee on Rules and Order of Business that this resolution required committees to report in a stated order. As far as that proposition is concerned, it is not a vital point with me. If some committees are ready to report before others, upon an entire subject or article of the Constitution, then their report can be considered when it comes up. But the main object is to consider and dispose of one subject entirely before entering upon the consideration of another. This is the main purpose of this resolution, and if that purpose is carried out, I am satisfied the Convention will never see the day when it will have occasion to regret its act.

Mr. LARKIN. I desire to retain in the present Constitution every item that is good, and every item that satisfies the people. But the resolution before us, that is proposed by the gentleman from San Francisco, Mr. Winans, I believe will delay action in this Convention—will hinder the work of this Convention, hinder the committees, and may block the work of the Convention entirely.

It has been charged repeatedly that certain gentlemen on this floor desire to defeat this Constitution, and obstruct the business of the Convention. I hope the gentleman from San Francisco is not one of them; but these resolutions will, I am certain, delay action in the Convention. There can be no final act upon any proposition submitted here from any committee. This Convention has met to frame a Constitution. As far as this proposition is concerned—as far as the distinguished gentleman has illustrated his remarks—it is to make one harmonious whole by commencing at the first provision to be embodied in the Constitution. Now, I see no reason for the adoption of this resolution at this particular time. If all the committees had reported, then such a resolution might be in order. If we had all the subjects framed, it might not be improper for this Convention to say in what order they should be joined together. While everything is in chaos here, while the committees are filled with propositions and resolutions, let us go on with the work, and let each committee stick to its duty, and not by any delay postpone the action of this Convention until the funds are exhausted and we are compelled to return home without making a Constitution. We want no delays here. Let us vote down the proposition and go on with the work, and then come together in Committee of the Whole and consider each proposition, and adjust it so that it will be in harmony, one section with the other.

We want no final action by any committee; no final action upon any proposition submitted now, because we may change our views upon many of the questions to come before us. I hope the resolution will be voted down, for it will be sure to delay the Convention in its work.

Mr. BEERSTECHER. Mr. President: I am opposed to this resolution, because I think the adoption of this resolution would clog the wheels of the Convention and result in an absolute loss of time. The resolution, taken as a whole, provides:

"That for the purpose of giving effect and enforcement to the rules aforesaid, the several committees having charge of the matters embraced in the said preamble and twelve articles shall make their reports in the order herein named."

That would be, first, the Committee on Preamble and Bill of Rights, the Committee on the Right of Suffrage, the Committee on the Distribution of Powers, the Committee on Legislative Department, and so on to the end. I don't believe it is good policy to have every committee in this body wait the action of any other committee.

Mr. WINANS. As I stated, I am perfectly willing to modify the resolution to that extent. Alter that, and allow each committee to report when it is ready.

Mr. BEERSTECHER. The difficulty is that the resolution, according to the statement of the gentleman from San Francisco, Mr. Winans, is acknowledged to be defective, and of course it is not proper to ask us to vote for it in its present condition. Farther, Mr. President, it seems to me that a resolution of that character is entirely unnecessary. The gentleman from Sacramento, Mr. Edgerton, this morning introduced a resolution which was adopted, which particularly specified that particular matters should be sent to particular committees designated for such matters, and that they should be sent nowhere else. Consequently, the Committee on Declaration of Rights has nothing else to do, save solely and alone to consider subjects relating to the declaration of rights. The Committee on Legislative Department has nothing to do but to consider subjects relating to the legislative department. Mr. Edgerton's resolution provides for the matter that these committees shall consider these specific things and nothing else; and when these committees are ready to report, they will come before this house and bring their report, and the house will act on it. Of course the house will not act on two reports at the same time. That proposition is absurd. It is just as absurd as that two bodies can occupy the same space at one time, for this house to act upon two reports at one time. When a report is brought in, the house will take it up and consider it seriatim on one day, or whenever it is necessary, and I think the resolution of the gentleman from Sacramento provides for the whole matter, and I hope the resolution as offered by the gentleman from San Francisco will be voted down. I don't see any analogy between the arms and toes of a human form and this Constitution. We propose to take up reports as they come in. If we provide that a committee can only report in the order it is designated upon any particular schedule, the consequence will be that if another committee is ready to report, it cannot report because the schedule will not allow it, and the consequence is, we would be obliged to adjourn from time to time waiting for the report of the proper committees.

Mr. O'DONNELL. I move that the resolution be laid on the table.

The PRESIDENT. The motion is to lay the resolution on the table. The motion prevailed and the resolution was tabled.

RECONSIDERATION.

Mr. EDGERTON. Mr. President: I move to reconsider the vote by which the resolution was passed this morning in relation to the different articles in the Constitution. There seems to be some misunderstanding of the effect. I do this in order to enable me to withdraw the resolution in order to make an amendment or correction.

Mr. INMAN. What is the object?

Mr. EDGERTON. There are some matters in the Legislative Department that properly belong to the Committee on Bill of Rights, and it takes away from the Committee on Bill of Rights and sends to the Committee on Legislative Department, matters properly within its jurisdiction. And it is the same way as to other committees, and the object is to correct it in that particular.

The PRESIDENT. The question is on reconsidering the vote by which the resolution was adopted.

The motion to reconsider prevailed.

Mr. EDGERTON. I ask leave to withdraw the resolution for the purpose of correcting it.

The PRESIDENT. There being no objection, the gentleman will have leave to withdraw the resolution.

SPECIAL ORDER.

Mr. ESTEE. Mr. President: I move that we take up the next special order, set for three o'clock.

The PRESIDENT. There being no objections, the special order for three o'clock will be taken up. The Secretary will read the resolution.

The SECRETARY read the resolution, as follows:

Resolved, First—That after this day, and until Wednesday, the twenty-third day of the present month, all that part of rule seventeen after the sixth order of business be and the same is hereby suspended.

Second—That from and after this day, and until such twenty-third instant, the Convention adjourn each day immediately after concluding the sixth order of business, for the purpose of enabling the standing committees to consider the subjects referred to them, and to mature a plan of action concerning the same.

Third—That immediately after such adjournment, said committees proceed to hold daily sessions for the disposal of the business before them, and that on such twenty-third instant, or sooner if practicable, they report such plan to the Convention for its action.

The PRESIDENT. The question is on the adoption of the resolution. The resolution was adopted.

ADJOURNMENT—PROPOSITIONS.

Mr. AYERS. I move that the Convention do now adjourn.

Mr. HAGER. Before adjourning, Mr. President, I ask leave to introduce some propositions.

The PRESIDENT. There being no objection, the gentleman will have leave.

DECLARATION OF RIGHTS.

Mr. HAGER, by consent, introduced the following proposed amendment to the Constitution, in relation to the declaration of rights:

1. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

2. No power of suspending laws shall be exercised, unless by the Legislature, or by its authority.

3. No ex post facto law, nor any law impairing the obligation of contracts, or making irrevocable any grant of exclusive or special privileges or immunities, shall be passed.

4. The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature, or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write, or print, on any subject, being responsible for the abuse of that liberty. No conviction shall be had in any prosecution for the publication of papers relating to the official conduct of officers or men in public capacity, or to any other matter proper for public investigation or information, where the fact that such publication was not maliciously or negligently made shall be established to the satisfaction of the jury; and in all indictments for libels the jury shall have the right to determine the law and the facts, under the direction of the Court, as in other cases.

5. The citizens have a right, in a peaceable manner, to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by petition, address, or remonstrance.

6. The Legislature shall not grant any title of nobility, hereditary distinction, or exclusive privilege, nor create any office the appointment to which shall be for a longer term than during good behavior.

7. The Courts of justice shall be open to all, and every man for an injury done him in his property, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay. No law can limit the amount to be recovered for injuries resulting in death, or for injuries to persons or property; and in case of death from such injuries the right of action shall survive, and the Legislature shall prescribe for whose benefit such actions shall be prosecuted. No law shall prescribe any limitations of time within which suits may be brought against corporations for injuries to persons or property, or for other causes different from those fixed by general laws regulating actions against natural persons.

Referred to the Committee on Preamble and Bill of Rights.

JUDICIAL DEPARTMENT.

Mr. HAGER, by consent, introduced the following proposed amendments to the Judiciary Department, to be added to those heretofore made in amendment number ten:

1. Whenever two Justices of the Supreme Court are to be chosen for the same term of service, each voter shall vote for one only; when three

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or four are to be chosen, he shall vote for no more than two, and when five or six are to be chosen, he shall vote for no more than three. Candidates highest in vote shall be declared elected.

2. The Justices of the Supreme Court, during their continuance in office, shall reside within this State, and the District and County Judges, during their continuance in office, shall reside within the districts or counties for which they may be respectively elected.

3. No duties shall be imposed by law upon the Supreme, District, or County Courts, or the Justices or Judges thereof, except such as are judicial.

4. Whenever a Judicial District is composed of two or more counties, the County Judges in the District Courts of their respective counties may act for and in the place of a District Judge, when he may be absent from the county, and in such capacity shall have power in actions and proceedings in such District Court to issue orders and writs of mandamus, quo warranto, certiorari, prohibition, ne exeat, injunction, and habeas corpus, and to hear and determine the same.

5. Until otherwise directed by law, the District Courts and the County Courts shall continue as at present established, except as in this Constitution changed.

Referred to the Committee on Judiciary and Judicial Department.

At two o'clock and twenty-eight minutes, on motion of Mr. Ayers, the Convention adjourned until to-morrow.

NINETEENTH DAY.

SACRAMENTO, Wednesday, October 16th, 1878.

The Convention met in regular session at ten A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Herold,	Porter,
Ayers,	Herrington,	Prouty,
Barbour,	Hilborn,	Pulliam,
Beerstecher,	Hitchcock,	Reddy,
Belcher,	Holmes,	Reed,
Bell,	Howard,	Reynolds,
Biggs,	Huestis,	Rhodes,
Blackmer,	Hughey,	Ringgold,
Boggs,	Hunter,	Rolfe,
Boucher,	Inman,	Schell,
Brown,	Johnson,	Schomp,
Burt,	Jones,	Shafter,
Campbell,	Joyce,	Shoemaker,
Caples,	Kelley,	Shurtleff,
Chapman,	Kenny,	Smith, of Santa Clara,
Charles,	Keyes,	Smith, of 4th District,
Condon,	Kleine,	Smith, of San Francisco,
Cowden,	Laine,	Soule,
Cross,	Larkin,	Stedman,
Crouch,	Larue,	Steele,
Davis,	Lavigne,	Stevenson,
Dean,	Lewis,	Strong,
Dowling,	Lindow,	Sweasey,
Doyle,	Mansfield,	Swenson,
Dudley, of San Joaquin,	Martin, of Alameda,	Swing,
Dudley, of Solano,	Martin, of Santa Cruz,	Terry,
Dunlap,	McCallum,	Thompson,
Eagon,	McComas,	Tinnin,
Edgerton,	McConnell,	Townsend,
Estee,	McCoy,	Tully,
Estey,	McFarland,	Turner,
Evey,	McNutt,	Tuttle,
Farrell,	Miller,	Vacquerel,
Fawcett,	Mills,	Van Dyke,
Filcher,	Moffat,	Van Voorhies,
Finney,	Moreland,	Walker, of Marin,
Freud,	Morse,	Walker, of Tuolumne,
Garvey,	Murphy,	Webster,
Gorman,	Nason,	Wellin,
Grace,	Nelson,	West,
Gregg,	Neunaber,	Wickes,
Hager,	Noel,	White,
Hall,	O'Donnell,	Wilson, of Tehama,
Harrison,	Ohleyer,	Winans,
Harvey,	O'Sullivan,	Wyatt,
Heiskell,	Overton,	Mr. President.

ABSENT.

Barnes,	Freeman,	Stuart,
Barry,	Glascock,	Waters,
Barton,	Graves,	Weller,
Berry,	Hale,	Wilson, of 1st District,
Casserly,	Lampson,	

LEAVE OF ABSENCE.

One day's leave of absence was granted Mr. Keyes.

Journal of yesterday read and approved.

MEMORIAL.

MR. HAGER presented the following memorial, signed by N. R. Johnston and sixteen other citizens of California:

To the Constitutional Convention, to meet at Sacramento, California, on the twenty-eighth day of September, eighteen hundred and seventy-eight:

Believing that Almighty God is the source of all power and authority in civil government, that the Lord Jesus Christ is the Ruler of Nations, and that the revealed will of God is of supreme authority in civil affairs;

Remembering that this country was settled by Christian men, with Christian ends in view, and that they gave a distinctly Christian character to the institutions which they established;

Perceiving the persevering attempts which are made to prohibit the reading of the Bible in our public schools, to overthrow our Sabbath laws, to abolish the oath, prayer in our State Legislature, and other Christian features of our institutions, and so to divorce the government from all connection with the Christian religion;

Viewing with grave apprehension the corruption of our politics, and the prevalent lack of moral and religious character in those who hold office in the State; and

Believing that a written Constitution should contain explicit evidence of the Christian character and purpose of the State which frames it, and perceiving that the silence of the Constitution of the State, as well as of the United States, in this respect, is used as an argument against all that is Christian in the usage and administration of the government;

We, the undersigned, citizens of the State of California, petition your honorable body to frame the Constitution so that it shall suitably express our acknowledgment of Almighty God as the source of all authority in civil government, of the Lord Jesus Christ as the Ruler of Nations, and of His revealed will as of supreme authority; and thus indicate that this is a Christian commonwealth, and place all the Christian laws, institutions, and usages of the State on an undeniable legal basis in the fundamental law of the same.

THE OBSERVANCE OF SUNDAY.

MR. MARTIN, of Alameda, presented the following petition, signed by A. Elder and many others:

The undersigned, citizens of the State of California, respectfully and urgently request the delegates constituting the Convention, authorized to prepare a Constitution for said State, to retain section four, article one, of the same, and to add to said section a provision declaring the Sabbath day, or Sunday, a day of rest.

LOCAL OPTION.

THE PRESIDENT presented the following memorial, signed by E. White and several hundred other citizens of Humboldt County:

To the President and Members of the Constitutional Convention of the State of California:

The people of the State of California recognize the fact that it is the object and duty of the present Convention to promote the welfare of our people by the enactment of wise and just laws, and to advance their common interests by the encouragement of every legitimate, and the suppression of every pernicious, traffic.

Your memorialists are of the opinion that a great portion of the more obstinate and painful moral disorders that afflict the human family are engendered by the use of spirituous and intoxicating liquors; that the common use of such intoxicating liquors is not only destructive to health and happiness, but also impairs the faculties of the mind, and thereby tends equally to dishonor our character as a nation as well as to lower us in the scale of civilization.

Your memorialists have no doubt but that the presence of the plague or any other pestilential disorder, which might sweep away thousands of our fellow citizens, would elicit the most strenuous and energetic efforts on the part of our government to subdue it, and to guard against its possible occurrence.

Your memorialists can discern no just reason why the more certain and distressing ravages of intoxicating liquors upon the lives and happiness of our citizens, and the well-being and quiet of our community, should not be guarded against with corresponding vigilance and anxiety by the present rulers of the United States, and more particularly by the present law-makers of our own fair State.

Your memorialists beg leave to add further that, in their belief, the use of spirituous and intoxicating liquors is, in any case whatever, wholly unnecessary; that they neither fortify the body against the influences of heat or cold, nor render labor more easy or more productive; and that there are many other articles of diet and drink which are not only perfectly safe and salutary, but in every way superior and preferable to intoxicating liquors for any of the purposes above mentioned.

Your memorialists also believe that it is a grave defect in our present Constitution, in that it denies to the people of the different counties, townships, and districts the privilege of fairly determining, at the ballot-box, whether liquor saloons shall continue to exist in their midst, with their attendant trains of evil, of vices, pollution, want, and woe.

We are fully convinced that the law passed in March, eighteen hundred and seventy-four, and known as the "Local Option Law," was a proper and just law, and one meeting with the general approbation of our people, as was evidenced by the fact that, out of over one hundred elections held under its provisions, the success of Local Option was in the ratio of two and a half to one. We, therefore, commend it to your consideration.

Your memorialists have beheld with regret the hitherto feeble and ineffectual endeavors put forth to stop or impede this giant evil, and the proportionally barren results which have resulted therefrom.

They center their hopes, therefore, of an effectual remedy, in the wisdom and power of your honorable body, and in behalf of our common humanity entreat of you, by all your obligations, to protect the lives and comfort of our citizens, and by your regard for our national character and respect for our land in the scale of intelligent and civilized beings, to impose such heavy duties on intoxicating liquors, or adopt such other remedial and preventive measures as shall, in your sober judgment, tend most efficiently to subdue and eradicate these evils.

Therefore, with an honest belief in the justness of our demand, and with a firm reliance in the honor, wisdom, and sincerity of your honorable body, we humbly crave at your hands a prompt and impartial consideration of our request, and if possible an ultimate exemption from this distressing evil.

COUNTIES AND COUNTY SEATS.

MR. BOUCHER was granted leave to introduce, out of order, the following proposed amendment to the Constitution, in relation to counties and county seats:

ARTICLE —.

COUNTIES.

SECTION 1. No new county shall be formed or established by the Legislature from any county or counties, which will reduce the county or counties, or either of them from which it shall be taken, to less contents than six hundred square miles; nor shall any county be formed of less contents; nor shall any line thereof pass in less than ten miles of any county seat of the county or counties proposed to be divided.

SEC. 2. No county shall be divided, or have any part stricken therefrom, without submitting the question to a vote of the people of the county, nor unless a majority of all the legal voters of the county voting on the question shall vote for the same.

SEC. 3. No county shall be so formed unless the assessed value of the property contained therein shall amount to six millions of dollars.

SEC. 4. There shall be no territory stricken from any county unless

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a majority of the voters living in such territory shall petition for such division; and no territory shall be added to any county without the consent of the majority of the voters of the county to which it is proposed to be added, but the portion so stricken off and added to another county, or formed in whole or in part into a new county, shall be holden for and obliged to pay its proportion of the indebtedness of the county from which it has been taken. An equitable division of all county property, owned at the time of such division, shall be made between the old and new counties.

COUNTY SEATS.

No county seat shall be removed until the point to which it is to be removed has been determined by a majority of the voters of the county, in such manner as shall have been prescribed by general law.

Read and referred to Committee on City, County, and Township Organizations.

REPORT ON CHINESE.

MR. MILLER, from the Committee on Chinese, made the following report:

MR. PRESIDENT: The Committee on Chinese, to whom was referred resolution number twenty-eight, relating to a memorial to be presented to the President of the United States for the modification of the Burlingame Treaty, beg leave to report the same to the Convention, together with the following substitute therefor, unanimously agreed upon by the committee, with the recommendation that the substitute herein be adopted.

Resolved, That the Convention memorialize the President and Senate of the United States to modify the Burlingame Treaty so as to prohibit Chinese immigration, and that the Chair appoint a committee of seven to draft such memorial, to be submitted to the Convention.

MR. GRACE. I call for the reading of the original resolution.

THE SECRETARY read the original resolution, as follows:

Resolved, That this Convention memorialize the President of the United States to abrogate or modify the Burlingame Treaty; and also memorialize Congress to prohibit Chinese immigration; and that the Chair appoint a committee of seven to draft such memorials, to be submitted to this Convention.

MR. HAGER. I would like to move to amend that report in this respect, that this standing Committee on Chinese be authorized to draw that memorial. They are more conversant with the subject. They have the matter before them, they are charged with it, and they are the proper committee to draw the memorial. I move to amend, that the Committee on Chinese be authorized to draw the memorial.

THE PRESIDENT. The gentleman will send his amendment in writing to the desk.

MR. MILLER. The committee have no objection to this amendment and will accept it.

THE PRESIDENT. The Chair cannot tell what the amendment is unless it is sent up in writing.

MR. BLACKMER. I desire to ask the Secretary to read the first part of that resolution again. My recollection is that it memorializes the President of the United States to modify the treaty.

THE SECRETARY again read the resolution and then read Mr. Hager's amendment.

The amendment was adopted.

The resolution as amended was adopted.

STATIONERY.

MR. HILBORN, from the Committee on Mileage and Contingent Expenses, offered the following resolution:

Resolved, That the Secretary of State be requested to furnish the Convention with a statement of the amount of stationery issued from his office up to this date which has been charged to the appropriation for the payment of the expenses of this Convention.

MR. McCOMAS. I would like to know if we are informed whether the stationery used here is to be charged against the appropriation for the expenses of the Convention. I do not think, from the wording of the law, that it is so intended.

MR. HILBORN. I will say, in justification, that we have ascertained that the Secretary of State and all the other members of the State Board of Examiners so construe the law that all the stationery used here shall be charged to the one hundred and fifty thousand dollars appropriated for running this Convention. I take this method of bringing the matter to the attention of the Convention, that they may know the fact, and also that they may have some idea as to how much stationery is being used—that they may know what inroads are being made upon that appropriation.

The resolution was adopted.

MR. NOEL. I desire to offer a resolution.

THE PRESIDENT. The gentleman's resolution is out of order at present.

COMMITTEE MEETINGS.

MR. CAMPBELL. I desire to give notice that the Committee on Executive Department will meet in room fifty-five after the adjournment.

MR. EDGERTON. The Committee on Revenue and Taxation will meet in the Supreme Court room this evening at seven o'clock.

MR. ESTEE. The Committee on Corporations other than Municipal will meet at room fifty-six immediately after adjournment.

MR. VAN DYKE. The Committee on Preamble and Bill of Rights will meet in room seventy-two immediately after adjournment.

LIST OF COMMITTEES.

MR. ROLFE. I desire to ask for information. I would like to know what committees I am on and who are my Chairmen, and I would like to know why these printed lists of committees are not printed. I believe there was a special order made requiring them to be printed immediately.

THE PRESIDENT. The Chair is informed that they will be ready this afternoon.

MR. ROLFE. I understood that the resolution required them to be printed separately from the rules.

THE PRESIDENT. It required them to be printed out of their order.

MR. SHAFTER. I ask the Committee on Pardoning Power to meet at my desk immediately after adjournment.

SERGEANT-AT-ARMS' CLERK.

MR. GARVEY offered the following resolution:

Resolved, That P. K. Keene be and he is hereby appointed Clerk of the Sergeant-at-Arms, and his pay shall be the same as Minute Clerk, payable out of the appropriation for the expenses of the Convention.

Referred to the Committee on Contingent Expenses.

COMMITTEE ROOMS.

MR. HILBORN offered the following resolution:

Resolved, That the Sergeant-at-Arms be directed to assign the chambers of the Supreme Court for committee rooms for this Convention.

Adopted.

COMMITTEE CLERK.

MR. NOEL offered the following:

Resolved, That the Committee on Enrollment and Engrossment be authorized and empowered to employ a clerk, at a salary of five dollars per day, whenever necessary.

Referred to the Committee on Contingent Expenses.

ADJOURNMENT.

The sixth order of business being finished, the President, at ten o'clock and forty minutes A. M., declared the Convention adjourned until to-morrow, at ten o'clock A. M., under the rule adopted yesterday.

TWENTIETH DAY.

SACRAMENTO, Thursday, October 17th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Harrison,	Porter,
Ayers,	Harvey,	Prouty,
Barbour,	Heiskell,	Pulliam,
Barry,	Herold,	Reddy,
Barton,	Herrington,	Reynolds,
Beerstecher,	Hilborn,	Rhodes,
Belcher,	Hitchcock,	Ringgold,
Bell,	Holmes,	Rolfe,
Biggs,	Howard,	Schell,
Blackmer,	Huestis,	Schomp,
Boggs,	Hughey,	Shafter,
Boucher,	Hunter,	Shurtleff,
Brown,	Inman,	Smith, of Santa Clara,
Burt,	Johnson,	Smith, of 4th District,
Campbell,	Jones,	Smith, of San Francisco,
Caples,	Kelley,	Soule,
Chapman,	Kenny,	Stedman,
Charles,	Kleine,	Steele,
Condon,	Laine,	Stevenson,
Cross,	Lampson,	Strong,
Crouch,	Larkin,	Stuart,
Davis,	Larue,	Sweasey,
Dean,	Lavigne,	Swenson,
Dowling,	Lewis,	Swing,
Doyle,	Lindow,	Terry,
Dudley, of San Joaquin,	Mansfield,	Thompson,
Dudley, of Solano,	Martin, of Alameda,	Tinnin,
Dunlap,	Martin, of Santa Cruz,	Townsend,
Eagon,	McCallum,	Tully,
Edgerton,	McComas,	Turner,
Estee,	McConnell,	Tuttle,
Estey,	McCoy,	Vacquerel,
Evey,	McFarland,	Van Dyke,
Farrell,	McNutt,	VanVoorhies,
Fawcett,	Mills,	Walker, of Marin,
Filcher,	Moffat,	Walker, of Tuolumne,
Finney,	Moreland,	Webster,
Freud,	Morse,	Weller,
Garvey,	Nason,	Wellin,
Glascock,	Nelson,	West,
Gorman,	Neunaber,	Wickes,
Grace,	Noel,	White,
Graves,	O'Donnell,	Wilson, of Tehama,
Gregg,	Ohleyer,	Winans,
Hager,	O'Sullivan,	Wyatt,
Hale,	Overton,	Mr. President.
Hall,		

ABSENT.

Barnes,	Joyce,	Reed,
Berry,	Keyes,	Shoemaker,
Casserly,	Miller,	Waters,
Cowden,	Murphy,	Wilson, of 1st District.
Freeman,		

Journal of yesterday read and approved.

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LEAVE OF ABSENCE.

Leave of absence was granted to Messrs. Shoemaker and Reed for one day, to Messrs. Cowden and Joyce for two days, to Mr. Hughey for three days, and to Mr. O'Donnell until Monday next.

MR. SMITH, of Santa Clara, presented a memorial respecting reclaimed lands.

Referred to Committee on Agriculture.

STATE PRISONS.

MR. CAMPBELL. I ask leave of the Convention to present and have referred a proposition which was prepared by the late Governor Haight, who intended to introduce it before the Convention. It is in relation to the organization of a Board of State Prison Directors. It was his intention, in his lifetime, to have introduced this proposition, and it has been forwarded to me by the Secretary of State Prison Commission. I ask to have it referred to the Committee on State Institutions and Public Buildings.

So ordered.

The proposition was as follows:

PROPOSITION TO ESTABLISH A BOARD OF PRISON DIRECTORS.

There shall be a Board of Prison Directors, to consist of five persons, to be appointed by the Governor, with the advice and consent of the Senate, who shall hold office for ten years, except that the first five appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies in said office thus or otherwise occurring shall be filled in like manner. The appointee to a vacancy occurring before the expiration of a term shall hold only for the unexpired term of his predecessor. The Governor shall have the power to remove either of the Directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard, upon written charges.

The Board of Directors shall have the charge and superintendence of the State Prison, and shall possess such powers and perform such duties in respect to County Jails, and other penal and reformatory institutions in the State, as the Legislature may prescribe.

The members of the Board shall receive no compensation other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the Legislature may direct.

The Board shall appoint the Warden, Physician, and Clerk, and determine the other necessary officers of the prison. The Board shall have power to remove the Warden, Physician, and Clerk for misconduct, incompetency, or neglect of duty, after an opportunity to be heard, on written charges. All other officers of the prison shall be appointed by the Warden thereof, and be removed at his pleasure.

Whenever section twenty-two, twenty-three, twenty-four, and thirty-five of this article shall be finally adopted, they shall take effect without further legislative action, and it shall be the duty of the Governor thereupon to appoint the Board of Prison Directors as provided therein.

Referred to Committee on State Institutions and Public Buildings.

ATTACHES.

MR. TINNIN offered the following resolution:

Whereas, great inconvenience exists to the members of this Convention, in consequence of some of its attachés failing to perform their duties; therefore, be it

Resolved, That the Sergeant-at-Arms is hereby directed to assume control of all attachés, other than those acting as clerks, and he is further authorized to detail any of the attachés under his control to perform any duties required in the building.

He shall report any negligence on the part of said attachés to the Committee on Mileage and Contingent Expenses, who may take such action as they think proper.

Adopted.

MR. AYERS offered the following resolution:

Resolved, That the Judiciary Committee be instructed to report to this Convention whether, in their opinion, the expenses of printing and stationery ordered by the Convention and members, for their use, are legally chargeable to the fund appropriated in the Act under the authority of which this Convention has met.

Adopted.

MR. TERRY offered the following resolution:

Resolved, That the Committee on Legislative Department be and is hereby authorized to employ a clerk, at a compensation of five dollars per day, for each day that he is actually employed.

Referred to the Committee on Mileage and Contingent Expenses.

CORPORATIONS.

MR. HALE offered the following resolution:

Resolved, That the Secretary of State be requested to furnish to the Convention all information in his possession upon the following subjects, to wit:

First—The number and classification of all corporations other than municipal now existing in the State of California, and formed under the laws of this State.

Second—The aggregate amount of the capital stock of all said corporations and the aggregate amount of said capital stock of each class thereof.

Third—A declared statement of the principal place of business and locations of the principal offices of each corporation.

Fourth—A detailed statement of the amount of capital stock actually paid up by the said corporations.

MR. HALE. I desire to say one word upon that subject. We all know that in the State of California, at an early day, we made a departure upon the subject of corporations other than municipal. We cut off the power of forming corporations other than municipal, except under general law. Since that time we have had a system of law authorizing the formation of corporations. We have now had an experience of one quarter of a century under this system. We are convened here again upon a call of the people to reform our organic law. It seems to me, sir, that it would be the part of wisdom to lay before this body all the information that can be furnished by the office of the Secretary of State, which is the depository of that information, showing our experience thus far upon this subject. It is to throw as much light as possible to the minds of this Convention in determining whether they wish to continue the system as heretofore adopted, and, if modifications be needed, what those modifications should be. The resolution is intended to call for this information in detail that it may be laid before this Convention in a form that we can understand.

The resolution was adopted.

STATIONERY EXPENSES.

THE PRESIDENT. The Chair has received the following communication from the Secretary of State, which the Secretary will read.

THE SECRETARY read:

STATE OF CALIFORNIA, DEPARTMENT OF STATE,
SACRAMENTO, October 16th, 1878.

To the honorable President and Members of the Constitutional Convention:

GENTLEMEN: I have the honor to acknowledge the receipt of Resolution No. —, adopted by your body to-day, requesting me to furnish a statement of the amount of stationery furnished to members thereof up to date.

In reply to the same I would say, that just at this time, when the full force of my office is required to perform the usual routine of business, and such extra labor as has been created by the Convention, it has been impossible to keep the many requisitions for stationery, etc., properly entered up to each member's account, so that the amount delivered to each, or in aggregate, could be ascertained on short notice.

The law of the Legislature under which stationery is disbursed, makes the manner of keeping accounts very complex and tedious, as every item, even as to the different qualities or kinds of pens and pencils, etc., must be carried out in full, and charged at exactly cost price, necessitating a constant reference to bills of purchase, and striking averages where the same vary with the times; and I would respectfully say to your honorable body, that it will be impossible for me to comply at once with the request contained in said resolution, as such special labor must be secondary to the regular business of the office. At the earliest opportunity, however, consistent with official duties, I shall be pleased to afford the information desired.

I have the honor to be your obedient servant,

THOMAS BECK,
Secretary of State.

THE PRESIDENT. If there be no objection the communication will be received and laid on the table.

REPORT.

MR. HILBORN, from the Committee on Mileage and Contingent Expenses, made the following report:

MR. PRESIDENT: Your Committee on Mileage and Contingent Expenses, to whom was referred resolution number forty-three, introduced by Mr. Estee, providing for the payment of J Steppacher, for services as Clerk of the Committee on Rules, have had the same under consideration, and find the following facts:

The committee, while preparing the rules for this Convention, found it necessary to employ a clerk, who was promptly discharged when the rules were completed. Mr. Steppacher served in that capacity thirteen days, and we think five dollars per day is a reasonable compensation. We therefore recommend the adoption of the resolution.

Your committee have also had under consideration resolution number forty-four, introduced by Mr. Edgerton, authorizing the Committee on Revenue and Taxation to employ a clerk, and herewith report the same back, and recommend that it be adopted Your committee are of the opinion that this is *one of the very few committees* who will need the services of a clerk.

Your committee have also had under consideration resolution number twenty-nine, introduced by Mr. Beerstecher, providing for the payment of two dollars per day to Patrick Levy, for lighting up the rooms of this building used by the Convention. There is no person in the service of the State whose especial duty it is to light the gas and extinguish the same. The duty is performed by Mr. Levy, who is one of the regular porters, employed about the building at seventy-five dollars per month, and under the law his day's work ends at five o'clock P. M. He receives no additional pay from the State for attending at night to look after the gas. It is unjust to expect him to remain about the Capitol building until late at night to extinguish the lights without extra compensation The Board of Examiners claim that there is no fund at their disposal out of which the extra compensation can be paid, and we see no alternative but for the Convention to pay it out of their appropriation. We therefore recommend the adoption of the resolution.

We have also had under consideration resolution number twenty-six, introduced by Mr. Eagon, which provides for paying G. E. McStay for writing up the Journal prior to the election of the Journal Clerk, and herewith report the same back, and recommend its adoption

We have also had under consideration resolution number forty-five, offered by Mr. Estee, providing for the payment of eighteen dollars to Willie Campbell, for services as Page prior to his appointment, and herewith report the same back, and recommend that it be indefinitely postponed.

We have also had under consideration resolution number forty-seven, introduced by Mr. Garvey, providing for the appointment of a Clerk to the Sergeant-at-Arms, and herewith report the same back, and recommend that it be indefinitely postponed.

S. G. HILBORN, Chairman.

PAY FOR CLERICAL SERVICE.

The report was taken up, and the SECRETARY read the first resolution, as follows:

Resolved, That the Controller be and is hereby authorized and directed to draw his warrant in favor of J. Steppacher, for the sum of sixty-five dollars, for services as Clerk of the Committee on Rules, payable out of the appropriation for this Convention, and that the State Treasurer be and is hereby authorized to pay the same.

MR. ESTEE. Mr. President: When this committee was appointed there was no rule by which we were controlled, and it was necessary to have a clerk. A clerk was appointed by the committee, and the clerk rendered these services. I think they were well and faithfully rendered, and were worth five dollars a day, and I hope the committee will pay it.

MR. DUDLEY, of Solano. It seems to me that seventy-five dollars—that is five dollars a day for the time the Convention has been in session, is a very large sum to pay for the work.

MR. HILBORN. It is sixty-five dollars—thirteen days at five dollars a day.

MR. DUDLEY, of Solano. I do not know what services this clerk rendered. I understand that he has been writing up the rules. It seems to me that is a very large sum to pay him, even if he had to copy the rules three times over.

MR. BARBOUR. I would like to ask the committee if they know that any thirteen days' work has been performed.

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Mr. HILBORN. All I know about it is, that the Chairman of the committee appeared before us and made a statement that this clerk had performed these services, and we take it for granted that he did.

Mr. EDGERTON. I have been a member of that Committee on Rules and I know something about this matter, although I do not pretend to know the number of days which that committee has been in session. But I do know this: that this committee ordered these rules to be indexed, for instance; that there have been several reports, references, and changes of the rules, and that this gentleman has always been in attendance upon the committee, and has performed all the clerical duties which have devolved upon them, and it has amounted to a very considerable duty. I have no doubt that he has either been in actual service, or in attendance and waiting upon that committee during these thirteen days. He has also prepared the list of standing committees, which will be found printed with the rules, and that was also done by order of this Convention. There have been a great many changes made in the rules, and all that clerical work has been done by this gentleman. He certainly ought to be paid something, and, in my judgment, that is not too much.

Mr. CROSS. I am not in favor of paying out any money unnecessarily, but I believe in doing justice, and since a question seems to have arisen, I would like to say that I have been in the habit of writing here late, evening after evening and night after night. I have seen Mr. Steppacher working here until between nine and ten o'clock under the dictation of that committee.

Mr. EDGERTON. To my knowledge he has been running between this committee and the State Printing Office, and doing other work which would otherwise have fallen upon the members of the committee. I do not believe the people sent us here to perform that class of work.

The resolution was adopted.

COMMITTEE CLERK.

The SECRETARY read the next resolution, as follows:

Resolved, That the Committee on Revenue and Taxation be and is hereby authorized to employ a clerk at a compensation of five dollars per day for each day that he is actually employed.

Adopted.

GAS PORTER.

The SECRETARY read the next resolution, as follows:

Resolved, That the Secretary of State is hereby requested to have such rooms in the Capitol building as may be used for meetings of committees, lighted up on nights of meeting; and that Patrick Levy, the Porter, who has charge of the gas, be and he is hereby allowed two dollars per day for the performance of such extra service, to be paid out of the appropriation for the expenses of this Convention.

Mr. LARKIN. We have employed porters to do that work. I shall oppose the motion on that ground. I move the indefinite postponement of the resolution.

Mr. HILBORN. In regard to this matter I would say that we have not as yet employed porters to take charge of the gas. Even if we had, it would be better to employ the man who has charge of the gas works. I think it would be economy. This particular man saved this State last winter about nine hundred dollars by his judicious management of the gas. He is thoroughly familiar with the works, and it would be a long time before any stranger could gain that familiarity. I am told by the Secretary of State, and other persons around the building, that he is a very competent person, and I have no doubt that it would be economy to employ this man to perform this duty rather than any stranger.

Mr. TERRY. I would ask the Secretary to again read that portion of the report which relates to this matter.

The SECRETARY read:

"Your committee have also had under consideration resolution number twenty-nine, introduced by Mr. Beerstecher, providing for the payment of two dollars per day to Patrick Levy, for lighting up the rooms of this building used by the Convention. There is no person in the service of the State whose especial duty it is to light the gas and extinguish the same. The duty is performed by Mr. Levy, who is one of the regular Porters employed about the building at seventy-five dollars per month, and under the law his day's work ends at five o'clock P. M. He receives no additional pay from the State for attending at night to look after the gas. It is unjust to expect him to remain about the Capitol building until late at night to extinguish the lights, without extra compensation. The Board of Examiners claim that there is no fund at their disposal out of which the extra compensation can be paid, and we see no alternative but for the Convention to pay it out of their appropriation. We therefore recommend the adoption of the report."

Mr. BEERSTECHER. I do not think it can be charged against me that I have advocated any extravagant expenditures in this Convention, and when I introduced this resolution it seemed to me that it was no more than just that Mr. Levy should receive this two dollars for the extra services that he rendered. He has to remain seven hours after the day's work is done to perform this duty. He is not compelled to be here after five o'clock, but he generally does not go home until twelve o'clock at night. It is a matter of absolute economy and a saving to this Convention; and the idea that the Porters of the several committee rooms can discharge these duties seems to me to be absurd in the extreme. A great number of the lights are outside of any of the committee rooms, and who is going to attend to the lights on the outside? As the gentleman from Solano has aptly said, Mr. Levy saved this State somewhere in the neighborhood of a thousand dollars by reason of understanding the business of attending to the gas. He knows exactly how many flames to have and how many not to have, and the consequence is an absolute saving to the State. I think it is a matter of economy for the State, and matter of justice towards Mr. Levy, that he receive this two dollars.

Mr. LARKIN. I misunderstood the reading of the resolution, and I withdraw my motion to indefinitely postpone.

Mr. GREGG. I understand that this man already receives a salary for performing this duty about the building. If that is so, there is no need of increasing his compensation, and this is only to increase his compensation for services already called for.

Mr. EDGERTON. In reply to the gentleman from Kern, Mr. Gregg, I understand that this gentleman, Mr. Levy, is in the employment of the State, and while he has charge of the gas, he has charge of it only for eight hours in the day. When these duties are discharged he can go home, and nobody can get at it; and it is a mere question as to this Convention whether its committees shall have lights. Because, if Mr. Levy sees fit to go away when his day's work is done, there is an end to it. Now, last evening I had to go to Mr. Levy and make a personal request of him to light up the Supreme Court room for the benefit of the Committee on Revenue and Taxation. If the resolution does not pass, the committees will all come in to-morrow asking that it be passed, so that they can have lights.

Mr. DUDLEY, of Solano. Mr. President: If this man is in the service of the State for the purpose of having charge of the gas, and has only to serve eight hours out of the twenty-four, it would certainly seem very strange that his hours of service should commence at eight o'clock in the morning and end at five o'clock in the afternoon. I do not see any particular necessity for anybody to have charge of the gas during those hours. It is very certain that the various State offices are lighted up here at night, and somebody has charge of it. It seems to me that it is just a matter of strike on his part. There being more committee rooms to light, he takes this opportunity to increase his pay.

Mr. SMITH, of Santa Clara. I move to strike out the words "two dollars" from the resolution.

Mr. EDGERTON. I will ask the gentleman how he supposes these committee rooms will be lighted?

Mr. SMITH, of Santa Clara. I propose to get some other man.

Mr. EDGERTON. You cannot do it. This man performs his duties, and is only required under the law to remain eight hours.

Mr. BEERSTECHER. This man receives seventy-five dollars per month. The resolution is to pay him two dollars extra per day; and then he will receive less than five dollars per day. The gentleman says that if this man does not do the work we will get some other person to do the work. Well, this Convention has not been able to get any man to do anything, no matter what it was, for less than five dollars. We are paying five dollars for every man that comes into this Convention, provided he has some official employment here. The gentleman says if we do not take this man, we will take some one else. If we take any one else, we have got to pay five dollars a day, and it will be an absolute loss to the State of three dollars a day, and then the man that we take will not understand his business as Mr. Levy understands his business. I understand this man to be a general Porter, who has to attend to business here around the building for eight hours in the day, and after his general duties are finished he can go home at five o'clock. It seems to me that this man is justly entitled to receive this pay.

Mr. HILBORN. There seems to be a general misapprehension existing here. Gentlemen seem to think that this man is employed by the State to look after the gas works. That is not so. He is a general Porter about the building. There are three of them. He comes here at the same time and works at the same kind of labor as the others. Go down into the stationery room and you will find him doing up books to send off, the same as the other Porters. As an accommodation to the officers of the building he stays here and lights up in the library and several State offices. That is all extra, and he is not required to do it by law. He is not paid for it by the State. Formerly there was a person specially employed for this work; now this man does it. This has been asked on account of the fact that he is obliged to stay here until twelve o'clock at night and look after the gas and economize, and it has been found that by his skillful management of the gas he saved the State a large amount of money, and the Legislature have found it economical to employ him and give him a little extra pay for staying up here until twelve o'clock at night. We have got to have somebody. In any event this Convention will be charged about nine hundred dollars a month, and if we get an unskillful man who does not understand taking care of the gas we will find that it will come up to twelve hundred or fifteen hundred dollars a month. I confess that when this resolution was first referred, I was prejudiced against the idea. I thought he was crowding us a little. When we came to find out that this man, after having performed a full day's work as a Porter, stays here until twelve or one o'clock at night, for our convenience, I think it unjust to ask him to do it without pay. We tried to saddle this on the State in some way, but we found there was no fund out of which the State Board of Examiners could pay it.

Mr. GRACE. This discussion is costing the State more than the whole proposition contemplates. I move the previous question.

No second.

Mr. HAGER. I want to ascertain the fact. It is said by some gentlemen that this is a man employed by the State to do this particular business, and therefore they object to paying him any further compensation. Now, if he be employed to do this particular business, if that be his duty, why of course he is paid for it. We do not want gas here in the daytime. I guess we have enough of that without the artificial gas. But if, as others say, he is a Porter, employed here about the building to do certain duties in the daytime, and this burden is not imposed upon him now, then he should be paid if he does this work. I am in doubt as to what the man's position is.

The resolution was adopted.

PAY OF PAGE.

The Secretary read the next resolution, as follows:

Resolved, That the Controller of State shall issue his warrant, and the Treasurer shall pay to Willie Campbell the sum of eighteen dollars, for six days' pay as Page for services rendered before his appointment.

Mr. HUESTIS. I would like to inquire upon what theory the com-

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mittee report that of officers who were elected some of them shall receive pay for their services before their election, and in other cases they shall receive no pay. I notice from the reading of the report that it is recommended that the Journal Clerk shall receive pay for the time that he served. I think Willie Campbell is just as much entitled to pay for his services as any one else, and I therefore hope that the recommendation of the committee will not be adopted.

MR. HILBORN. The law provides that the President may appoint four Pages. We have already paid four Pages. The Convention acted upon the proposition that the then presiding officer, the Governor, had designated these particular persons. It is quite possible that a large number of gentlemen, wishing to show their peculiar qualifications, got permission to come on the floor and did serve during the organization. Some of them were successful, and others not. Having paid for the four Pages which the law allowed, if we should pay this boy—and by the way, he is a very worthy boy—I fear we might have a little army of bills of this kind. We regret very much that we could not pay this boy, but we think it might amount to a considerable sum if we adopted that rule of paying all the young gentlemen who served during the organization.

MR. ESTEE. When I introduced the resolution, I did so because I was informed by Dr. Cluness that the Governor had told him that he designated him as one of the Pages of this body during its organization. I know that the boy did the duty. If he did not do it under the law, I shall not ask that it be paid. I am informed that the Governor did designate him as one of the Pages. I know he did his duty, and I think if he was so designated that he is entitled to his pay.

MR. REYNOLDS. I would like to know when we are going to see the last of these resolutions to pay Pages appointed by the Governor during the organization of this House. When are we going to see the end of it? Is this the last, or is this the beginning? In the first place, I don't think the Governor had any right to appoint any such officers, but if we can get some information as to when it shall stop ——

THE PRESIDENT. The committee recommend the indefinite postponement of the resolution, and the question is on the adoption of the resolution.

MR. HALE. I would like to inquire whether the Governor did appoint this boy or not.

MR. TURNER. He informed me that he did not appoint a single person, but he told them they might come here, as many of them as pleased, and take their chances by showing how well they could do the work. That is what the Governor stated to me, and the record bears out this statement. We have already paid four, which is all that the law allows us.

The resolution was lost.

SERGEANT-AT-ARMS' CLERK.

The SECRETARY read the next resolution, as follows:

Resolved, That P. K. Keene be and he is hereby appointed Clerk of the Sergeant-at-Arms, and his pay shall be the same as Minute Clerk, payable out of the appropriation for the expenses of the Convention.

THE PRESIDENT. That resolution is contrary to rule seventy-five, and is therefore out of order.

STATIONERY.

MR. LARKIN offered the following resolution:

Resolved, That each member of this Convention and each standing committee shall be allowed stationery to the value of ten dollars.

THE PRESIDENT. The resolution is not in order at present.

REPORT.

MR. ESTEE, from the Committee on Incorporations other than Municipal:

MR. PRESIDENT: Your Committee on Corporations, other than Municipal, report back to this Convention resolution number two hundred and five, introduced by Mr. Joyce, and respectfully suggest that the same be referred to the Committee on Legislative Department. Respectfully,

M. M. ESTEE, Chairman.

So ordered.

MR. ESTEE, from the Committee on Corporations other than Municipal, offered the following resolution:

Resolved, That a clerk or copyist is necessary for the Committee on Incorporations other than Municipal, and the Convention is requested to allow said committee to elect a clerk at a compensation of five dollars for each day when actually employed by said committee.

Referred to the Committee on Contingent Expenses.

EXCUSED.

MR. BARBOUR. Mr. President: I ask leave to make a request in reference to these standing committees. I find that I am appointed on four or five, and I am summoned on four committees at the same time. It is impossible for me to attend to the duties of the Committee on Revenue and Taxation, on Corporations, on Chinese, and on State and County Boundaries, each one of which has summoned me to appear in session with them after the adjournment. It is a physical impossibility. I find other gentlemen only on one committee. I have spoken to Mr. Cross, of Nevada, whose ideas and views correspond with my own, and I ask that I be dropped from the Committee on Revenue and Taxation, and that Mr. Cross be appointed. I wish to attend as much as I can to the sessions of the committees, therefore I make a motion to that effect.

THE PRESIDENT. The gentleman from San Francisco asks to be excused from service on the Committee on Revenue and Taxation. If there be no objection, he will be excused. It is so ordered. The Secretary will read the next resolution, from the Committee on Mileage and Contingent Expenses.

JOURNAL CLERK.

THE SECRETARY read:

Resolved, That the Controller be and he is hereby authorized and directed to draw his warrant for forty dollars in favor of G. K. McStay, for services rendered in writing up the Journal previous to his election.

MR. CROSS. Does Mr. McStay draw pay from the beginning of the session?

THE PRESIDENT. Only from the day of his election.

MR. HILBORN. I would state that he has drawn pay only since his election. He had to write up the Journal from the commencement of the session and this is to give him pay for that service.

MR. BURT. I would like to ask whether Mr. McStay did this work previous to his appointment or since. If the work has been done since, it seems to me that we are paying him for it.

MR. HILBORN. I do not think that the gentlemen in this body understand it. During the organization we had no Journal Clerk. A Minute Clerk kept the minutes on rough sheets of paper. Nobody was authorized to write them up in the Journal for five days; then we elected Mr. McStay, Journal Clerk, and he had to go to work and write up the Journal from the start. In other words, he had to do five days' extra work. Since that time we pay him eight dollars each day. He has had to write up the Journal five days for which he has got no compensation.

MR. TOWNSEND. Did not this Convention pay one man for that work?

MR. HILBORN. The minutes were kept by young Dobbins.

MR. GREGG. I would ask whether he was five days writing up these minutes.

MR. STEDMAN. I rise to a question of information. Do we pay our Minute Clerks and Secretaries at the desk for every day of the session, the same as the members? Now, for instance, are our Secretaries and Clerks paid for this two days' adjournment, or simply for the time they are at work. If these gentlemen are paid for every day, I think it is out of place to bring in a bill for five days' work.

MR. EAGON. I offered that resolution, sir, for the purpose of paying Mr. McStay while he was not the Journal Clerk of this house, as I understood it; but whether he was or not, whether he did the work previous to or since his election, he is allowed under the law eight dollars a day for writing up the Journal of this body. He was elected five days after this house had been in session. The Journals, or the matter he had to copy into the Journals, had accumulated there, and he had to write them into the Journals. He done five days' work for this body for which he has received no compensation whatever, if he only gets pay from the time he was elected. Now, sir, his work is principally at night. He has to come here in the evening and get the minutes from the Minute Clerk, and work late in the night to have the Journals ready to be read on the next morning. This, I have no doubt, cost him some extra expense in order to have the Journals written up. He had to employ additional help, so I am informed, and it is nothing more than right that he should have pay the same as other officers who performed services here.

MR. REDDY. It seems to me that this Convention has already established a precedent that the salaries shall commence on the day of the appointment or election of officers of this Convention. It has just been established in the case of Willie Campbell. It is well known to every member on this floor that this little boy, for six long days, rendered faithful service here. No one finds any fault with him, and yet when he puts in his claim for pay the Convention votes and says: "We have accepted your labor, but in view of the economy necessary for this State to practice, we will accept the labor of this little fellow, and we will not pay him." Now, perhaps, Mr. Campbell is not old enough yet to have that principle recognized which declares that the laborer is always worthy of his hire. But, in this case now pending, it seems to me that there is a strong desire to pay a man for labor performed five days before his appointment. Now, if we are to proceed upon a principle and be bound by the precedents which we ourselves establish, I see no reason why this gentleman should receive pay when it is refused to this little boy. If he does, I should think that it would be proper to reconsider our action in the case of little Willie.

MR. MARTIN, of Santa Cruz. I would inquire whether Mr. McStay was appointed by the Governor to officiate in that capacity.

The resolution was lost.

NOTICES.

MR. EDGERTON. I desire to give notice that the Committee on Judiciary and Judicial Department will meet at one o'clock P. M. to-day, in the Supreme Court room. The meeting is called for the purpose of considering the question of eligibility of Judge Fawcett, and it is desirable that every member of the committee attend.

THE PRESIDENT. I am requested to give notice that the Committee on Education will meet at two o'clock to-day, in room number fifty-five.

MR. CAMPBELL. The Committee on Executive Department will meet in room number fifty-five immediately after the adjournment of the Convention.

COUNTY AND TOWN GOVERNMENTS.

MR. SHAFTER, by leave of the Convention, introduced out of order the following amendment to article eleven, section four, of the existing Constitution:

SECTION 4. The Legislature shall establish a system of county and town governments, which shall be as nearly uniform as practicable throughout the State. Each county of the State shall be divided into so many compactly located towns as may be deemed necessary, not less than three; *provided*, that after three have been formed, no additional town shall be made containing less than thirty-six square miles. Each town shall be known as the town of ——, and may sue and be sued by

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such title. In each town there shall be elected, annually, one Supervisor, one Town Clerk, one Assessor, one Overseer of Highways, one Overseer of the Poor, one Constable (who shall also be Collector of Taxes), and one Justice of the Peace. The Supervisor of each town shall constitute a Board of Supervisors for that county, and shall assemble at the Courthouse thereof, on the first —— in ——, of each year, and proceed to audit the accounts of said county, examine the books of the Assessors, regulate and equalize the valuation of property, fix the county levies for the ensuing year, apportion the same among the various towns, and perform such other duties as shall be prescribed by law. It shall be the duty of each town to provide for the education of all its inhabitants, by maintaining proper free schools, to provide for paupers resident therein, and for the building and maintenance of necessary bridges and highways; and all taxes paid in such towns for these purposes shall be expended therein. The Legislature, at the first session after the adoption of this Constitution, shall provide for carrying into effect this article, and may thereafter give full effect to the same.

Read and referred to Committee on City, County, and Township Organizations.

CHINESE.

Mr. MILLER, by leave of the Convention, introduced out of order the following proposed amendment to the Constitution, relating to Chinese:

Section —. The Legislature shall have power to enact all needful laws, and to prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of alien vagrants, paupers, criminals, and invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous to the well-being and peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure to comply with such conditions.

Read and referred to Committee on Legislative Department.

LICENSE TAX ON CORPORATIONS.

Mr. LARKIN, by leave of the Convention, introduced out of order the following proposed amendment to the Constitution, relative to a license tax upon the capital stock of corporations:

Section —. All corporations incorporated under the laws of this State, or doing business in this State, shall pay an annual license to the State, in a sum not exceeding one per cent. upon their capital stock.

Sec. —. The Legislature shall pass laws to enforce the above section.

Read and referred to Committee on Corporations other than Municipal.

NOTICES.

Mr. EDGERTON. The Chairmen of all the committees are requested to meet here immediately after the adjournment.

Mr. OVERTON. The Committee on State Institutions and Public Buildings will meet in the Sergeant-at-Arms' room immediately after the adjournment.

ADJOURNMENT.

On motion of Mr. Edgerton, at twelve o'clock and twenty minutes A. M. the Convention adjourned.

TWENTY-FIRST DAY.

Sacramento, Friday, October 18th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Dunlap,	Jones,
Ayers,	Edgerton,	Kelley,
Barbour,	Estee,	Kenny,
Barnes,	Estey,	Keyes,
Barry,	Evey,	Kleine,
Barton,	Farrell,	Laine,
Beerstecher,	Filcher,	Lampson,
Belcher,	Finney,	Larkin,
Bell,	Freeman,	Larue,
Biggs,	Freud,	Lavigne,
Blackmer,	Garvey,	Lindow,
Boggs,	Glascock,	Mansfield,
Boucher,	Gorman,	Martin, of Alameda,
Brown,	Grace,	Martin, of Santa Cruz,
Burt,	Graves,	McCallum,
Campbell,	Gregg,	McComas,
Caples,	Hager,	McConnell,
Chapman,	Hall,	McCoy,
Charles,	Harrison,	McNutt,
Condon,	Harvey,	Miller,
Cowden,	Heiskell,	Mills,
Cross,	Hilborn,	Moffat,
Crouch,	Hitchcock,	Moreland,
Davis,	Holmes,	Morse,
Dean,	Howard,	Nason,
Dowling,	Huestis,	Nelson,
Doyle,	Hunter,	Neunaber,
Dudley, of San Joaquin,	Inman,	Noel,
Dudley, of Solano,	Johnson,	Ohleyer,
O'Sullivan,	Soule,	Vacquerel,
Overton,	Stedman,	Van Dyke,
Porter,	Steele,	Van Voorhies,
Prouty,	Stevenson,	Walker, of Marin,
Pulliam,	Strong,	Walker, of Tuolumne,
Reed,	Stuart,	Webster,
Reynolds,	Sweasey,	Weller,
Rhodes,	Swenson,	Wellin,
Ringgold,	Swing,	West,
Rolfe,	Terry,	Wickes,
Schell,	Thompson,	White,
Schomp,	Tinnin,	Wilson, of Tehama,
Shafter,	Townsend,	Wilson, of 1st District,
Shurtleff,	Tully,	Winans,
Smith, of Santa Clara,	Turner,	Wyatt,
Smith, of 4th District,	Tuttle,	Mr. President.

ABSENT.

Berry,	Herrington,	O'Donnell,
Casserly,	Hughey,	Reddy,
Eagon,	Joyce,	Shoemaker,
Fawcett,	Lewis,	Smith, of San Francisco,
Hale,	McFarland,	Waters.
Herold,	Murphy,	

LEAVE OF ABSENCE.

Leave of absence was granted as follows: Mr. Smith, of San Francisco, for three days; Mr. McFarland, for one day; Mr. Herrington, for two days; and Mr. Lewis, for an indefinite time.

The Journal of yesterday was read and approved.

PETITIONS AND MEMORIALS.

Mr. HUESTIS. Mr. President: I have a memorial from a number of taxpayers on the subject of local option, which I desire to have referred to the Committee on Legislative Department. I also ask that the petition received on the same subject from the same locality, on Wednesday last, and referred to the Committee on Preamble and Bill of Rights, be referred to the Committee on Legislative Department.

MEMORIAL ACCOMPANYING LOCAL OPTION PETITION.

To the President and Members of the Constitutional Convention:

On behalf of the petition accompanying this memorial, transmitted herewith, your memorialists would most respectfully represent that the proposition embodied in the prayer of your petitioners, to wit: "The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, voting precinct, town or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits," is identical with a clause presented by the Constitutional Convention of the State of Texas, and ratified by the people of that great commonwealth.

The proposition presented raises but a single issue before your honorable body, to wit: the expediency of the local prohibition of the traffic in intoxicating liquors. In this statement we assume that the inherent right of the people to regulate or to prohibit by law, the said traffic, will not be denied. The principle which commends the proposition brought before you by this petition is, that it refers the question of the expediency of prohibiting the traffic in intoxicating liquors to the people. This principle is in consonance with the very genius of republican institutions. The people of separate localities should have the right to determine for themselves, as to whether the sale of intoxicating drink is inimical to the best interests of their respective communities. This application of the principle of local sovereignty is not new, but extends already to other questions of local character. We assume that those citizens interested in the sale of intoxicating beverages, cannot reasonably object to the adoption of this proposition. No good citizen will demand protection in the right to engage in a business which, in the judgment of a majority of his neighbors, is demoralizing to the neighborhood; and if the traffic in liquors is not destructive of the morals and good order of a community, these separate communities may safely be trusted with such determination of the question as the facts warrant. In the opinion of your memorialists, any opposition to the proposition on the part of those engaged in the traffic in liquors must be based upon the ground, that should the proposition be incorporated into the Constitution, many communities would decide against the continuation of the traffic. This is in effect an admission that in all such communities the traffic is now carried on against the enlightened judgment and moral conscience of a majority of the people resident in such communities. The proposition herewith presented, if adopted, would relegate the whole question to the arbitration of the ballot box; and representing those who entertain the opinion that the traffic in intoxicating drinks is destructive of the best and highest interests of the commonwealth, we cheerfully submit the grave question involved to this high arbitrament. To deny the prayer of this petition will, in the opinion of your petitioners, be in effect a denial of a sacred right. The right to determine what is necessary and appropriate to accomplish the ends of government, establish order, and promote the general welfare of society, resides in the people, and all we ask is, that this right shall be recognized in the determination of the issues arising out of contending opinions concerning the character and moral tendencies of the unrestricted traffic in intoxicating liquors. The nature of the proposition herewith presented is such as to absolve us from the necessity of presenting any considerations or arguments tending to establish the expediency of prohibiting the liquor traffic. We have no data upon which to found the assumption that in practice, the proposition presented would result in such prohibition; the result would be dependent upon the will of the majority of the voters in the local subdivisions named. But it is obvious that the perpetuity or prohibition of the traffic will depend upon the verdict of the people, in whom resides the right to determine the necessity or reasonableness of all prohibitory laws.

And as in duty bound, your petitioners will ever pray.

Mr. TERRY. Mr. President: I think the proper committee for the reference of these petitions is the Committee on Township Organizations. It is proposed to give to each particular township the right to regulate the sale of intoxicating liquors, and the proper committee would be the Committee on Township Organization, and I move its reference to that committee.

Mr. HUESTIS. I have no objection, if that is the proper committee.

The PRESIDENT. There being no objections it is so referred.

Mr. WELLER. I desire to present the following memorial, signed by a large number of citizens, in relation to quicksilver mines, and ask to have it referred to the Committee on Revenue and Taxation:

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CALIFORNIA QUICKSILVER MINES.

A Statement of the Assets, Valuation, and Production of the principal Quicksilver Mines in California during the three years last past:

Name of County.	Name of Mine.	Valuation of Mines and Lands.	Valuation of Improv'ts	Valuation of Per. Prop'ty	Totals.	Quicksilver produced—Flasks.	Assessed val. per flask produced.
1876–77 Napa	Redington	$41,240	$95,000	$14,950	$151,190	9,183	$16 46
1877–78 Napa	Redington	36,240	80,000	8,875	125,115	9,447	13 24
1878–79 Napa	Redington	36,240	80,000	12,657	128,897	6,864*	18 78
		$113,720	$255,000	$36,482	$405,202	25,494	$15 89
1876–77 Lake	Sulphur Banks	$56,278	$3,292	$25,000	$84,570	8,732	$9 68
1877–78 Lake	Sulphur Banks	50,750	62,800	9,235	122,785	11,649	10 54
1878–79 Lake	Sulphur Banks	50,487	38,000	15,176	103,663	10,468*	9 89
		$157,515	$104,092	$49,411	$311,018	30,849	$10 08
1876–77 Lake	Great Western	$27,000	$20,000	$2,615	$49,615	4,495	$11 04
1877–78 Lake	Great Western	27,000	20,000	2,615	49,615	5,877	8 44
1878–79 Lake	Great Western	27,800	20,000	395	41,195	3,894*	10 58
		$74,800	$60,000	$5,625	$140,425	14,266	$9 84
1876–77 Sonoma	Oakland	$5,000	$5,000	$1,050	$11,050	2,150	$5 14
1877–78 Sonoma	Oakland	5,000	5,000	2,740	12,740	1,395	9 13
1878–79 Sonoma	Oakland	5,000		4,550	9,550	1,142*	8 36
		$15,000	$10,000	$8,340	$33,340	4,687	$7 11
1876–77 Fresno	New Idria	$50,960	$25,000	$14,119	$90,079	7,272	$12 39
1877–78 Fresno	New Idria	30,960	20,000	9,585	60,545	6,316	9 58
1878–79 Fresno	New Idria	20,000	15,000	6,035	41,035	4,258*	9 64
		$101,920	$60,000	$29,739	$191,659	17,846	$10 74
1876–77 S'ta Clara	Guadalupe	$19,910	$20,890	$10,950	$51,750	7,381	$7 01
1877–78 S'ta Clara	Guadalupe	26,350	63,500	10,900	100,750	6,241	16 14
1878–79 S'ta Clara	Guadalupe	26,350	63,500	10,900	100,750	5,330*	18 90
		$72,610	$147,890	$32,750	$253,250	18,952	$13 36
Total Value of above Mines.							
1876–77		$200,388	$169,182	$68,684	$438,254	39,213	$11 17
1877–78		176,300	251,300	43,950	471,550	40,925	11 52
1878–79		158,877	216,500	49,713	425,090	31,956*	13 30
		$535,565	$636,982	$162,347	1334,894	112,094	$11 90
1876–77 S'ta Clara	New Almaden	$150,000	$150,000	$91,115	$391,115	20,631	$18 96
1877–78 S'ta Clara	New Almaden	150,000	100,000	51,820	301,820	24,079	12 53
1878–79 S'ta Clara	New Almaden	150,000	100,000	54,710	304,710	11,778*	25 87
		$450,000	$350,000	$197,645	$997,645	56,488	$17 66

The County of Santa Clara, in addition to its naturally rich agricultural advantages, makes a very important show in the extensive product of quicksilver from the two mines within its limits. From these, the New Almaden and Guadalupe, are procured nearly one half of the whole of this article manufactured in California; the other principal mines being the Redington in Napa County, Sulphur Bank and Great Western in Lake, Oakland in Sonoma, and New Idria in Fresno.

We have before us a tabulated statement of the actual number of flasks shipped from each of these mines during a period of two years, and an approximation of this current year's product, judging by the returns of the first six months, the result of which appears to be, that during that time the Redington produced 25,494 flasks, on which the average assessment is $15 89 each; Sulphur Bank, 30,849 flasks; average assessment, $10 08; Great Western, 14,266 flasks; average assessment, $9 84; Oakland, 4,687 flasks; average assessment, $7 11; New Idria, 17,846 flasks; average assessment, $10 74; Guadalupe, 18,952 flasks; average assessment, $13 36. So that the six mines produced 112,094 flasks in all, and were assessed on an average of $11.90 per flask. The returns of the largest mine, the New Almaden, are for the same period, 56,488 flasks, on which the average assessment is $17 66, forming rather more than one half of the total production of the other mines named above. We notice also, that the valuations of mines, lands, improvements, and personal property on the first six named mines amount for three years to $1,334,894 in all; whereas the similar valuations on the New Almaden are $997,645. Now, with such figures before us, there is need of some satisfactory explanation as to the great disproportion which the burdens on the New Almaden show to those of the other six mines enumerated, in proportion to the product of each of them. According to our understanding of these returns in our possession, there is a clear over assessment on the sundry valuations for the three years against the New Almaden mine of about $325,000, as compared with the other establishments, and of $5 76 on the average assessment per flask. This appears to be discrimination against the former out of reason, and of course places it at the greatest disadvantage in the manufacture of quicksilver when compared with the lighter taxation imposed on its competitors. It seems, therefore, opposed not only to all sound sense, but to fair commercial policy, that such an unequal distribution of assessments should be allowed to continue. The public are also interested in guarding so important an industry from being impeded by an extortionate drain on its advantageous development.

* Known production for first six months, 1878, doubled to make comparative yearly statement.

RESOLUTIONS.

MR. THOMPSON, by leave, offered the following:

Resolved, That the President, by consent of the Convention, appoint Porters to take charge of the committee rooms.

Referred to Committee on Mileage and Contingent Expenses.

MR. SMITH, of Santa Clara, offered the following:

Resolved, That the Adjutant-General be requested to report to the Convention a detailed statement of the expenses of the Military Department of the State for the last two years.

The resolution was adopted.

MR. STRONG offered the following:

Resolved, That P. H. Keene be and he is hereby allowed a per diem from the twenty-eighth day of September to the seventeenth day of October, for services as Clerk to the Sergeant-at-Arms, to be paid out of the appropriation for the expenses of the Convention.

Referred to Committee on Mileage and Contingent Expenses.

RESOLUTION AMENDING THE CONSTITUTION.

MR. MARTIN, of Alameda, offered the following resolution, in reference to the School and University Endowment Funds:

Resolved, That all losses to the Permanent School or University Endowment Fund of this State, which shall have been occasioned by the defalcation, mismanagement, or fraud of the agents or officers, or officers of the State, controlling or managing the same, shall be audited by the proper authorities of the State. The amount so audited shall be a permanent funded indebtedness against the State in favor of the respective fund sustaining the loss, upon which not less than six per cent. annual interest shall be paid.

Referred to the Committee on State and Municipal Indebtedness.

REPORTS OF STANDING COMMITTEES.

MR. WINANS, from the Committee on Education, made the following report:

MR. PRESIDENT: Your Committee on Education beg leave to report back to the Convention amendment number one hundred and sixty-three, introduced by Mr. Tully, proposing an educational qualification for the right of suffrage, and respectfully ask its reference to the Committee on Right of Suffrage.

The report was adopted, and the matter so referred.

MR. DEAN, from the Committee on Miscellaneous Subjects, made the following report:

MR. PRESIDENT: Your Committee on Miscellaneous Subjects, to whom was referred proposed amendment number one hundred and forty-seven, introduced by Mr. Rhodes, creating a Board to supervise and prescribe the duties, powers, and liabilities of certain corporations, and for other purposes, beg leave to report the same back to the Convention, and ask that it be referred to the Committee on Corporations other than Municipal.

The proposition was so referred.

MR. MILLER, from the Committee on Chinese, made the following report:

MR. PRESIDENT: Your Committee on Chinese, to whom was referred the proposed amendment to the Constitution, number sixty-four, which is in these words: "Section —. The further immigration of Chinese to this State is hereby prohibited. Municipal authorities in the ports in this State to which they are destined shall have power to prevent their debarkation, and to reembark them if landed," have had the same under consideration, and now beg leave to report the same back to the Convention, with the recommendation that it be not adopted, for the reason that in the opinion of your committee the proposed amendment is in substance intended to regulate the affairs of commerce by the State, and is therefore in conflict with the Constitution of the United States, which delegates to the National Government the exclusive power to regulate commerce. MILLER, Chairman.

The proposition was referred to the Committee of the Whole.

RESOLUTION OUT OF ORDER.

MR. EDGERTON. Mr. President: I ask leave to send up the following resolution out of order:

Resolved, That M. A. Cook be appointed Night Watchman of this Convention, at a per diem of five dollars.

THE PRESIDENT. The resolution is out of order, under rule seventy-five.

REPORTS OF COMMITTEES.

MR. HILBORN. Mr. President: I would like to ask that this report of the Committee on Mileage and Contingent Expenses be taken from the table and disposed of—that part of it in reference to Night Watchman. The report of the committee was to the effect that a Night Watchman was necessary. They also reported in favor of the claims of a certain individual for that office. But rule seventy-seven disposes of that part of the report, and leaves the appointment with the President of the body.

THE PRESIDENT. The question will be on the adoption of the report, so far as pertains to the office of Night Watchman.

The motion being put, the Convention refused to adopt the report, on a standing vote: ayes, 58; noes, 59.

MR. BARBOUR, from the Committee on Chinese Immigration, made the following report:

MR. PRESIDENT: Your Committee on Chinese Immigration, to whom was referred proposed amendment number one hundred and thirty-one, introduced by Mr. Kleine, beg leave to report the same back, with the recommendation that it be not adopted, as, in the opinion of your committee, the State has not such power.

Also, the following, by MR. KLEINE:

Resolved, That a per capita tax of two hundred and fifty dollars should be levied upon each coolie immigrant, with the request that it be referred to the Committee of the Whole.

PROPOSED AMENDMENT TO THE CONSTITUTION.

MR. CROSS. Mr. President: I desire to offer the following proposed amendment to section seventeen, of article four, of the Constitution.

THE PRESIDENT. It is not in order, unless by unanimous consent. The Chair hears no objection, and the gentleman will send up his proposition.

LEGISLATIVE DEPARTMENT.

Proposed addition to section seventeen, article four:

No law shall take effect until ninety days after the first general election succeeding its passage. Every law shall be designated by a number. At any general election next succeeding any session of the Legislature, any person voting at such election may place upon his ballot the words, "Against Law No. ——," giving in figures the number of any law or laws passed at the session of the Legislature next preceding such general election; and if a majority of all the votes polled shall be against any law so passed at the next preceding session of the Legislature, then such law so voted against shall not take effect at all.

Referred to the Committee on Legislative Department.

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Mr. WICKES, by unanimous consent, introduced the following amendments to sections one and two, article one, of the Constitution:

First—All men are endowed with an equal measure of liberty, and subject to an equal provision of restraint. They are, in fact, equal before the law. They may enjoy and defend life and liberty, acquire, possess, and protect property, and seek security and happiness by all lawful means.

Second—The people are endowed with political power. Government is divinely instituted for the protection, security, and benefit of the people, and they have the right to alter and reform the same whenever the public good seems to require it.

Referred to the Committee on Preamble and Bill of Rights.

SUFFRAGE.

Section —. After the year eighteen hundred and eighty, no person who shall become a citizen of this State under the naturalization laws of the United States, and no minor who shall have attained his majority after that, shall be entitled to exercise the right of suffrage at any election, State, county, or municipal, who is unable to read and write in one known language.

Referred to the Committee on Right of Suffrage.

RESOLUTIONS.

Mr. WILSON, of San Francisco. Mr. President: At the request of the Judicary Committee, I ask leave to send up the following resolution, and ask its adoption:

Resolved, That the Judiciary Committee be and they are hereby authorized to employ a clerk, at a compensation of five dollars per day for each day employed.

Referred to the Committee on Mileage and Contingent Expenses.

Mr. GORMAN. Mr. President: In order to find out what committee clerks are necessary, I offer the following:

Resolved, That all committees requiring clerks shall notify the Convention immediately.

Mr. EDGERTON. I move that the resolution be laid on the table.

The motion prevailed, and the resolution went to the table.

ADJOURNMENT.

Mr. ESTEE. Mr. President: I move that when the Convention adjourns, it adjourns to meet on Monday, at two o'clock.

The PRESIDENT. I have been requested to state that the Committee on Corporations other than Municipal, will meet immediately after adjournment in room fifty-six; the Committee on Military Affairs will meet immediately after adjournment in room ten; the Committee on Preamble and Bill of Rights will meet after recess.

Mr. McCALLUM. I move to amend, until to-morrow.

The PRESIDENT. That will be the order any way.

Mr. McCALLUM. Then I move to lay the motion on the table.

Mr. WHITE. I second the motion.

Mr. EDGERTON. Mr. President: I rise to a point of order. It is the first time I ever heard of a motion to adjourn being tabled.

The PRESIDENT. This is a motion that the Convention adjourn to a particular time when it does adjourn.

Mr. ESTEE. I made the motion at the request of other gentlemen. It was done at the request of committees, and I will withdraw the motion if the Convention does not desire to adjourn.

Mr. EDGERTON. I renew the motion, that when this Convention adjourns it adjourn until Monday, at two o'clock, and I would like to hear some good reason why we should not.

Mr. LARKIN. Mr. President: With the consent of the house, and at the request of the distinguished gentleman from Sacramento, Mr. Edgerton, I would say that there are a number of members of this Convention who have been absent on business most of the time since this Convention was called, and they have returned to visit us, and I desire them to stay here a few days longer. If we adjourn they will go to their homes again and we shall be deprived of their company. I think there is sufficient business without adjourning. The work of the committees is now proceeding, and may proceed without adjourning.

Mr. EDGERTON. Mr. President: In reply to the distinguished gentleman from El Dorado, Mr. Larkin, I would say that the very object of this motion to adjourn is to enable all the members to meet in committee without interruption, and spend all day to-morrow at work. Why we should meet here and go through the ceremonies, talking about Night Watchmen, spending two hundred dollars or three hundred dollars, instead of going to work to-morrow and putting in a good day's work, I do not see.

Mr. CAPLES. In answer to the distinguished gentleman from Sacramento, I will state that he knows, and every member knows, that by adjourning over Saturday a majority of the members will return to their homes, thus involving the loss of a whole day, and I protest against it. It is an absolute waste of time, and every gentleman knows that our time is limited; that it is too short at best; that it is an open question whether we will be able to get through with the labors devolving upon the Convention, even if we should devote our entire time to work. Yet gentlemen seem to be willing to override the sense of this Convention for the sake of getting home. The gentleman knows there will be no committee work done if we adjourn over until Monday, and I protest against it in the interest of honesty, in the interest of the taxpayers of the State of California.

Mr. NOEL. Mr. President: I am opposed also to any useless waste of time, but for that very reason I am in favor of adjourning over until Monday. It is well known by every gentleman on this floor that there is nothing for the Convention to do, that the work of the Convention is in the hands of the various standing committees. We will meet here to-morrow morning and spend half the day, and nothing accomplished. If we have an adjournment these committees can go to work at their business, preparing their reports so that next week we may have something to do, something that will accomplish definite, positive results. This meeting every morning as we have for two days past, calling the roll, reading the Journal, amounts to nothing, and costs the people of this State hundreds of dollars. It will expedite business, and therefore I shall vote for an adjournment.

The PRESIDENT. The gentleman from Sacramento moves, that when this Convention adjourns, it do adjourn until Monday at two o'clock.

The ayes and noes were demanded by Messrs. Larkin, Caples, and McCallum.

The roll was called, and the motion was lost by the following vote:

AYES.

Ayers,	Hale,	Porter,
Barnes,	Hall,	Pulliam,
Belcher,	Harvey,	Reed,
Boucher,	Howard,	Reynolds,
Campbell,	Huestis,	Rolfe,
Chapman,	Jones,	Schell,
Cowden,	Lampson,	Shafter,
Dudley, of San Joaquin,	Mansfield,	Swing,
Dunlap,	Martin, of Alameda,	Thompson,
Edgerton,	Martin, of Santa Cruz,	Turner,
Estee,	Miller,	Van Dyke,
Estey,	Mills,	Van Voorhies,
Graves,	Noel,	Wilson, of 1st District,
Gregg,	Overton,	Winans—43.
Hager,		

NOES.

Andrews,	Harrison,	Rhodes,
Barbour,	Heiskell,	Ringgold,
Barry,	Hilborn,	Schomp,
Barton,	Hitchcock,	Shurtleff,
Beerstecher,	Holmes,	Smith, of Santa Clara,
Bell,	Hunter,	Smith, of 4th District,
Biggs,	Inman,	Soule,
Blackmer,	Johnson,	Stedman,
Boggs,	Kelley,	Steele,
Brown,	Kenny,	Stevenson,
Burt,	Keyes,	Strong,
Caples,	Kleine,	Stuart,
Charles,	Laine,	Sweasey,
Condon,	Larkin,	Swenson,
Cross,	Larue,	Terry,
Crouch,	Lavigne,	Tinnin,
Davis,	Lindow,	Townsend,
Dean,	McCallum,	Tully,
Dowling,	McComas,	Tuttle,
Doyle,	McConnell,	Vacquerel,
Dudley, of Solano,	McCoy,	Walker, of Marin,
Evey,	McNutt,	Walker, of Tuolumne,
Farrell,	Moffat,	Webster,
Filcher,	Moreland,	Weller,
Finney,	Morse,	Wellin,
Freeman,	Nason,	West,
Freud,	Nelson,	Wickes,
Garvey,	Neunaber,	White,
Glascock,	Ohleyer,	Wilson, of Tehama,
Gorman,	O'Sullivan,	Wyatt—92.
Grace,	Prouty,	

MEETING OF COMMITTEES.

Mr. LARKIN. The Committee on Privileges and Elections will meet immediately after adjournment.

Mr. MILLER. The Committee on Chinese will meet to-night.

Mr. CAMPBELL. The Committee on Executive Department will meet to-night.

Mr. ESTEE. The Committee on Corporations, other than Municipal, will meet immediately.

The PRESIDENT. I am requested to announce that the Committee on Future Amendments will meet in the Supreme Court room immediately.

Mr. BARNES. The Committee on Military Affairs will meet immediately after adjournment.

Mr. WILSON, of San Francisco. The Judiciary Committee will meet immediately after adjournment.

Mr. SHAFTER. The Committee on Pardoning Power will meet immediately.

ADJOURNMENT.

At ten o'clock and fifty-three minutes A. M., on motion of Mr. Larkin, the Convention adjourned.

TWENTY-SECOND DAY.

Sacramento, Saturday, October 19th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Beerstecher,	Boggs,
Barbour,	Bell,	Boucher,
Barry,	Biggs,	Brown,
Barton,	Blackmer,	Burt,

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Campbell,	Johnson,	Schomp,
Caples,	Jones,	Shafter,
Chapman,	Kelley,	Shoemaker,
Charles,	Kenny,	Shurtleff,
Condon,	Keyes,	Smith, of Santa Clara,
Cowden,	Kleine,	Smith, of 4th District,
Cross,	Laine,	Soule,
Davis,	Lampson,	Stedman,
Dowling,	Larkin,	Steele,
Doyle,	Larue,	Stevenson,
Dudley, of San Joaquin,	Lindow,	Strong,
Dudley, of Solano,	Mansfield,	Stuart,
Dunlap,	Martin, of Santa Cruz,	Sweasey,
Eagon,	McCallum,	Swenson,
Edgerton,	McConnell,	Swing,
Estey,	McCoy,	Terry,
Evey,	McFarland,	Thompson,
Filcher,	McNutt,	Tinnin,
Finney,	Mills,	Townsend,
Freeman,	Moffat,	Tully,
Freud,	Moreland,	Turner,
Garvey,	Morse,	Tuttle,
Glascock,	Nason,	Vacquerel,
Gorman,	Neunaber,	Van Voorhies,
Grace,	Noel,	Walker, of Tuolumne,
Graves,	Ohleyer,	Webster,
Gregg,	O'Sullivan,	Weller,
Hall,	Overton,	Wellin,
Harvey,	Porter,	West,
Heiskell,	Prouty,	Wickes,
Hilborn,	Reed,	White,
Hitchcock,	Reynolds,	Wilson, of Tehama,
Holmes,	Rhodes,	Wilson, of 1st District,
Howard,	Ringgold,	Winans,
Hunter,	Rolfe,	Wyatt,
Inman,	Schell,	Mr. President.

ABSENT.

Ayers,	Hale,	Miller,
Barnes,	Harrison,	Murphy,
Belcher,	Herold,	Nelson,
Berry,	Herrington,	O'Donnell,
Casserly,	Huestis,	Pulliam,
Crouch,	Hughey,	Reddy,
Dean,	Joyce,	Smith, of San Francisco,
Estee,	Lavigne,	Van Dyke,
Farrell,	Lewis,	Walker, of Marin,
Fawcett,	Martin, of Alameda,	Waters.
Hager,	McComas,	

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. McComas, on account of sickness; to Mr. Nelson, for one day; to Mr. Van Dyke, for one day; to Mr. Ayers, for two days; to Mr. Crouch, for one day; to Mr. Miller, for one day; to Mr. Farrell, for one day; to Mr. Huestis, for one day; to Mr. Hale, for one day; to Mr. Tinnin, for two days; to Mr. Winans, for one day; and to Mr. Fawcett, for one day.

COMMUNICATIONS FROM STATE OFFICERS.

THE PRESIDENT. I have here a communication from the Secretary of State, in answer to a resolution adopted by this Convention asking for information, which the Secretary will read.

THE SECRETARY read the communication, as follows:

STATE OF CALIFORNIA, DEPARTMENT OF STATE,
SACRAMENTO, October 19th, 1878.

To the President and members of the Constitutional Convention:

GENTLEMEN: I have the honor to acknowledge the receipt of Resolution No. —, adopted by your honorable body, on Thursday, the seventeenth instant, requesting me to furnish to the Convention all information in my possession upon the following subjects, to wit:

First—The number and classification of all corporations other than municipal now existing in the State of California, and formed under the laws of this State;

Second—The aggregate amount of capital stock of all said corporations, and the aggregate amount of capital stock of each class thereof;

Third—A declared statement of the principal place of business and location of the principal office of each corporation;

Fourth—A detailed statement of the amount of capital stock actually paid up by said corporations.

The various subjects enumerated in the foregoing resolution upon which information is sought, are recorded in books kept in my office for that special purpose, and in order that the Convention may have the desired information at as early a day as possible, I herewith place at your service the records of all corporations on file in my office, and which are in as condensed a form as the information sought by the resolution would warrant.

I have the honor to be,
Your obedient servant,
THOMAS BECK, Secretary of State.

The communication was accompanied by all the books of record of corporations on file in the office of the Secretary of State.

MR. LARKIN. Mr. President: As the mover of the resolution is not present, I move that the matter be laid on the table until he is here.

MR. MCFARLAND. I would ask if the report does not lie on the table now. [Laughter.]

THE PRESIDENT. Yes, sir; does the gentleman desire to have it read? [Laughter.]

RESOLUTIONS.

MR. NOEL. Mr. President: I desire to offer a resolution:

Resolved, That the thanks of this Convention be returned to the Secretary of State for the promptness and dispatch with which he has complied with the order of the Convention directing him to furnish all information in his possession in relation to corporations other than municipal.

Resolved, That five hundred copies of such report be printed and laid on the desks of the members of this Convention. [Laughter.]

MR. MCCALLUM. I move that it be referred to the member from the rural districts (referring to a large owl that inhabited the chamber). [Laughter.]

THE PRESIDENT. It will be referred to the Committee on Mileage and Contingent Expenses.

Mr. TULLY offered the following:

Resolved, That five thousand dollars of the money appropriated by the State to defray the expenses of this Convention be placed in the hands of the Hon. Thomas Beck, Secretary of State, to defray his expenses while engaged in compiling the information required by the resolution now under consideration.

THE PRESIDENT. It will go to the Committee on Contingent Expenses.

PROPOSITIONS AND RESOLUTIONS RELATING TO THE CONSTITUTION.

MR. WYATT. Mr. President: I ask leave to introduce a proposition to amend the Constitution.

THE PRESIDENT. If there is no objection, the gentleman will have leave. The Chair hears none.

THE SECRETARY read the proposed amendment:

PROPOSITION RELATIVE TO ALL MONEYS BEING MADE LEGAL TENDER.

Resolved, That the following proposition be inserted in the Constitution, and numbered section —:

SECTION —. All moneys of the United States, made legal tender in the payment of private debts, shall be received at its face value in payment of taxes, salaries, or other public dues authorized to be collected by the laws of this State.

Referred to the Committee on Legislative Department.

REPORTS OF COMMITTEES.

MR. REED presented the following report from the Committee on Corporations:

MR. PRESIDENT: Your Committee on Corporations, to whom was referred resolution number three hundred and four, beg leave to report the same back, and ask that it be referred back to the Committee on Miscellaneous Subjects.

Also, resolution number three hundred and seventy eight, and ask that it be referred to the Committee on Revenue and Taxation.

CHAS. F. REED, for Committee.

So referred.

MR. HILBORN presented the following report from the Committee on Mileage and Contingent Expenses:

MR. PRESIDENT: Your Committee on Mileage and Contingent Expenses, to whom was referred resolution number forty-nine, introduced by Mr. Berry, to authorize the Committee on Legislative Department to employ a clerk, have had the same under consideration, and herewith report the same back, and recommend that it be adopted.

Also, resolution number fifty, introduced by Mr. Estee, authorizing the Committee on Corporations other than Municipal to employ a clerk, have had the same under consideration, and report the same back, and recommend that it be adopted.

Also, resolution number seventy-four, offered by Mr Wilson, authorizing the Judiciary Committee to employ a clerk, and herewith report the same back, and recommend that it be adopted.

We have also had under consideration resolution number fifty-three, to allow P. H. Keene compensation for services as Clerk to the Sergeant-at-Arms, and report the same back, and recommend that it be indefinitely postponed.

Your committee have also had under consideration resolution number forty-eight, introduced by Mr. Noel, authorizing the Committee on Enrollment to employ a clerk, and report the same back, and recommend that the resolution lie on the table until such time as the Convention shall decide that this committee needs the services of a clerk.

HILBORN, Chairman.

The report was adopted.

MR. EAGON, from the Committee on Right of Suffrage, presented the following report:

MR. PRESIDENT: Your Committee on the Right of Suffrage beg leave to report back resolution number forty-three, introduced by Mr. Tully, and resolution number eighty-seven, introduced by Mr. Davis, and request that they be referred to the Committee on Legislative Department.

So referred.

PROPOSITIONS AND RESOLUTIONS RELATING TO THE CONSTITUTION.

MR. FREEMAN. Mr. President: I ask leave to introduce a proposition, relative to taxation.

THE PRESIDENT. If there is no objection, the gentleman will have leave. The Chair hears none.

REGARDING TAXATION.

Proposed substitute for section thirteen, of article eleven, of the present Constitution:

SECTION —. Taxation shall be equal and uniform throughout the State. All property in the State, including debts, credits, and choses in action, and excluding growing crops, shall be taxed in proportion to its value, to be ascertained as directed by law. Every mortgage, deed of trust, or other contract or agreement, whether oral or written, which secures any existing debt or liability, shall, for the purposes of assessment and taxation, be deemed and treated as an estate or interest in the property affected by such mortgage, deed, or other contract, and shall be assessed accordingly.

Referred to the Committee on Revenue and Taxation.

IN RELATION TO TAXATION.

MR. RHODES, by consent, introduced the following proposed amendment to the Constitution:

Resolved, That the following sections be appropriately numbered and incorporated in the new Constitution:

SECTION —. Taxation shall be uniform throughout the State. All property in this State (money, bonds, mortgages, and solvent debts

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included), other than property exempt under the laws of the United States, and that belonging to the State and to the several counties, municipal corporations, public schools, and school districts therein, shall be taxed in proportion to its value, to be ascertained as directed by law, except as herein otherwise specially provided.

Sec. —. In assessing property for the purpose of taxation, small tracts of land under cultivation shall not be assessed at a higher value per acre than contiguous lands, in large tracts, of equal productive capacity and corresponding local advantages. Buildings, and other like improvements, shall be assessed separately from the land. The term "property," as used in this section, shall not be construed to embrace farm produce until the same is harvested and susceptible of manual delivery. Every person, and every incorporated company in this State may, if he or it so elects, present to the Assessor, when he proceeds to assess the property of such person or incorporated company, a verified list of his or its creditors, or of so many of them as he or it may determine, excluding all who are not residents and taxpayers of this State, and may ask the Assessor to deduct the amount of indebtedness, as shown by such list, from the assessed value of his property. The verification shall be by oath, or affirmation, and to the effect that each item in said list is a bona fide existing debt, entitled to no abatement by reason of the payment of any portion thereof; that it is not a contingent liability, nor a liability as indorser or guarantor for any other person, company, or association. If the Assessor shall be satisfied that said list is in all respects correct, he shall deduct the amount of indebtedness therein shown from the value of the property assessed to such person or corporation, and the remainder shall be the sum upon which tax shall be levied, subject, however, to revision by the Board of Supervisors, sitting as a Board of Equalization.

Referred to the Committee on Revenue and Taxation.

WATER AND WATER RIGHTS.

Mr. TINNIN, by consent, introduced the following proposed amendment to the Constitution, regulating water and water rights:

The right to divert the unappropriated waters for mining, manufacturing, agricultural, or domestic purposes, from any stream or lake in this State, shall never be denied.

Referred to Committee on Water and Water Rights.

TO REGULATE WATER RENTS.

Mr. TINNIN, by consent, introduced the following proposed amendment to the Constitution, to regulate water rents:

Whenever any person, persons, or corporation shall offer for rent or hire any water for mining, agricultural, manufacturing, or domestic purposes, the Board of Supervisors in the county where it is offered shall fix the maximum price for said water.

Referred to the Committee on Water and Water Rights.

TO REGULATE WATER PRIVILEGES.

Mr. TINNIN, by consent, introduced the following proposed amendment to the Constitution, regulating water privileges:

For the purpose of making ditches, canals, flumes, tunnels, drains, reservoirs, or aqueducts, for mining, agricultural, domestic, or manufacturing purposes, the right of eminent domain shall never be denied.

Referred to the Committee on Water and Water Rights.

THE JUDICIAL DEPARTMENT.

Mr. EDGERTON introduced the following proposed amendment to the Judicial Department:

Section —. There shall be one County Court for each county of the State, and there shall be at least one Justice of the County Court for each county; and in counties where more than one Justice is necessary to perform judicial duties there shall be as many Justices as shall be sufficient, but each Justice shall try causes and questions at issue, and the Legislature shall direct the method of the distribution of business among the Justices.

Sec. —. There shall be provided in each county as many forums, or Court-rooms, as there are Justices of the County Court, and the forums shall be distinguished by enumeration. The assignment of particular Justices to the different forums shall be regulated by law, but nothing shall prevent the Justices from the freedom of interchange.

Sec. —. In the City and County of San Francisco a particular forum or forums shall be designated for probate business exclusively, also one or more for criminal cases exclusively, and the remainder for civil causes exclusively. The Legislature shall prescribe the manner of distributing the calendar of causes to the different forums, with full scope for redistribution and transfers. The Legislature shall have power to apply the provisions of this section to any other county whose growth and population shall render it necessary.

Referred to the Committee on Judiciary and Judicial Department.

REMOVAL OF THE CAPITOL.

Mr. SMITH, of Santa Clara, introduced the following provision for promoting the health of State officers and members of the Legislature, and for securing the property and the archives of the State from destruction by floods:

The Committee on State Institutions and Public Buildings be requested to inquire into the propriety of incorporating into the new Constitution section one, article eleven of the old Constitution, which reads as follows:

The first session of the Legislature shall be held at the Pueblo de San José, which place shall be the permanent seat of government until removed by law; *provided, however*, that two thirds of all the members elected to each house of the Legislature shall concur in the passage of such law.

Referred to the Committee on Miscellaneous Subjects.

JUDICIAL DEPARTMENT.

Mr. SCHELL introduced the following proposed amendment to the Constitution, concerning the Judicial Department:

Resolved, That the following be incorporated in the new Constitution:

Sec. —. When a judgment or decree is reversed or affirmed by the Supreme Court, every point fairly arising upon the record of the case shall be considered and decided; and the reasons therefor shall be concisely stated in writing and preserved with the record of the case; and it shall be the duty of the Court to prepare a syllabus of the points adjudicated in each case concurred in by three of the Judges thereof, which shall be prefixed to the published report of the case.

Referred to the Committee on Judiciary and Judicial Department.

ABORTION.

Mr. DOWLING introduced the following proposed amendment to the Constitution, entitled, "To eradicate the horrible crime of abortion:"

Article I.

Sec. —. The crime of abortion is hereby considered a felony, and punishable with State Prison for life.

Referred to the Committee on Legislative Department.

FUTURE AMENDMENTS.

Mr. BLACKMER introduced the following proposed amendment to the Constitution, relative to future amendments:

Amend section one, of article ten, of present Constitution, by striking out, after the word "people," in the tenth line, the words "in such manner and," and after the word "prescribe," in the eleventh line, insert the following, "and such amendment or amendments shall be so prepared and distinguished, by numbers or otherwise, that they can be voted on separately, unless it shall be found impracticable to so distinguish them."

Amend section two, of article nine, by striking out, after the words "less than," in the eighth line, the words, "that of both branches of the Legislature," and insert the following, "eighty nor more than one hundred." Also, strike out after the word "rejection," in the eleventh line, to and inclusive of the words "against the new Constitution," in the thirteenth line, and insert the following: "The Constitution so submitted shall be voted on as a whole, but the Convention shall have power to submit separate articles on any subject, to be voted on separately, and should such separate article or articles, or any portion thereof, be approved by the people, they shall then be considered as a part of the Constitution of this State, and shall be incorporated therein in place of the article, section or sections, in the then existing Constitution, which relate to the same subject matter."

At the close of section two, add the following: "If, however, it is found that any article, section or sections, submitted separately, have been ratified by the people, the Executive of this State shall, by his proclamation, declare such article, section or sections, to be a part of the then existing Constitution of the State of California."

Referred to Committee on Future Amendments.

LOBBYING.

Mr. WICKES introduced the following proposed amendment to the Constitution, in relation to lobbying in the Legislature:

Any agent, attorney, or person that, during the sitting of the Legislature, attempts to influence, bias, or induce any member of the Legislature to vote for or against any measure or bill pending before the members thereof, shall be adjudged guilty of contempt, and, on proof, shall be punished as the Legislature may direct.

Referred to the Committee on Legislative Department.

ON TAXATION.

Mr. TUTTLE introduced the following proposed amendment to the Constitution, in relation to providing for an annual assessment:

LEGISLATIVE DEPARTMENT.

Section —. The Legislature shall provide by law for only one annual assessment or valuation of property for taxation for State, county, city, township, school, or any other municipal purposes. Legislatures shall meet once in four years.

Referred to the Committee on Revenue and Taxation.

RELATIVE TO CORPORATIONS.

Mr. VACQUEREL introduced the following proposed amendment to the Constitution, relative to corporations other than municipal:

Resolved, That in all elections for Directors or Managers of any incorporated company, each shareholder shall have the right to cast only one vote, either in person or by proxy, no matter how many shares he may possess; and that to have the right of voting said shareholder must have been in possession of one or more shares at least six months before elections take place. All elections in opposition to this section shall be unlawful.

Referred to the Committee on Corporations other than Municipal.

LEGISLATIVE DEPARTMENT.

Mr. GRACE introduced the following proposed amendment to the Constitution, in reference to the Legislative Department:

Section —. The members of the Legislature shall receive a fixed salary, to be prescribed by law, which shall be in full for their services, and no other allowance or perquisite, either in payment of postage or otherwise, shall be made. Nor shall any change be made in such compensation during their term of office, but the Legislature shall provide for ratable deductions therefrom on account of unnecessary absence during its sessions.

Referred to the Committee on Legislative Department.

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ABOLISHING THE OFFICE OF LIEUTENANT-GOVERNOR.

MR. STEDMAN introduced the following proposed amendment to the Constitution, in relation to the abolishment of the office of Lieutenant-Governor:

Resolved, That the following section be inserted in the Constitution, in lieu of sections sixteen and seventeen of the present Constitution:

SECTION —. In case of the death or resignation of the Governor, or his removal from office, the Speaker of the Senate shall exercise the office of Governor until another Governor shall be duly qualified: but in such case another Governor shall be elected at the next general election.

Referred to the Committee on Executive Department.

A PENAL COLONY.

MR. CROSS introduced the following proposed amendment to the Constitution, relative to the establishment of a penal colony:

ARTICLE —.

SECTION —. The Legislature shall have power, when it shall deem it best, to establish a penal colony upon an island adjacent to, or included within, the State of California, and to provide that all or any portion of the criminals of this State may be confined to prescribed limits upon such island, under such rules, and under the supervision of such officers as the Legislature may by statute prescribe.

Referred to the Committee on Miscellaneous Subjects.

RESOLUTIONS.

MR. Kelley, of Yolo, offered the following, referring to the owl:

WHEREAS, The daily sessions of this Convention are open, and the proceedings are daily reported by the press of the State, but no adequate means have been provided to ascertain the mode of conduct of delegates in the interval between regular sessions, and especially in the nighttime; and whereas, an appropriation for the per diem of Night Watchman would be antagonistic to the true spirit of retrenchment and reform; and whereas, an individual member of the tribe that has a peculiar fitness as a diviner of ways that are dark has entered this chamber, and voluntarily assumed the duties of Night Watchman;

Resolved, That he be permitted to remain undisturbed on his perch, to view, in his wisdom, the proceedings in and out of session, of this Convention.

[Laughter.]

THE PRESIDENT. It will be referred to the Committee of the Whole Convention.

MR. HILBORN offered the following:

Resolved, That our visitor be assigned a desk among the other reporters on the floor.

[Laughter.]

MR. EAGON offered the following:

Resolved, That the Controller of State be and he is hereby directed to draw his warrant in favor of James Saultry for one hundred and five dollars, for twenty-one days' services as Night Watchman, and the Treasurer to pay the same out of the appropriation for the expenses of the Convention.

THE PRESIDENT. The question is on the adoption of the resolution.

MR. FREEMAN. I move to lay the resolution on the table.

MR. EAGON. It would be proper to refer it to the Committee on Mileage and Contingent Expenses.

The motion to table prevailed.

ADJOURNMENT.

MR. BEERSTECHER. I move we now adjourn until three o'clock next Monday.

MR. CAPLES. I move to make it ten o'clock Monday.

The motion to adjourn until three o'clock Monday was lost on a standing vote—ayes, 42.

MR. LARKIN. I move we now adjourn.

MR. REYNOLDS. I move we adjourn until two o'clock Monday.

MR. FILCHER. I move to make it ten o'clock Monday.

THE PRESIDENT. At ten o'clock and forty minutes, the hour for adjournment having arrived, the Convention stands adjourned until ten o'clock Monday.

TWENTY-FOURTH DAY.

SACRAMENTO, Monday, October 21st, 1878.

The Convention met at ten o'clock A. M. President pro tem., Belcher, in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Davis,	Heiskell,
Barbour,	Dowling,	Holmes,
Barnes,	Dudley, of Solano,	Howard,
Barry,	Dunlap,	Hunter,
Barton,	Eagon,	Inman,
Belcher,	Edgerton,	Johnson,
Biggs,	Estee,	Jones,
Blackmer,	Estey,	Kleine,
Boggs,	Evey,	Laine,
Boucher,	Filcher,	Lampson,
Brown,	Finney,	Larkin,
Burt,	Freeman,	Larue,
Caples,	Garvey,	Lindow,
Chapman,	Glascock,	Mansfield,
Charles,	Gorman,	Martin, of Santa Cruz,
Condon,	Grace,	McCallum,
Cowden,	Gregg,	McConnell,
Cross,	Harvey,	McCoy,
McFarland,	Ringgold,	Townsend,
McNutt,	Shoemaker,	Tully,
Moffat,	Shurtleff,	Turner,
Moreland,	Smith, of 4th District,	Tuttle,
Morse,	Soule,	Vacquerel,
Nason,	Stedman,	Walker, of Tuolumne,
Noel,	Steele,	Webster,
Ohleyer,	Stevenson,	Weller,
O'Sullivan,	Stuart,	Wellin,
Overton,	Sweasey,	West,
Porter,	Swing,	Wickes,
Prouty,	Terry,	White,
Pulliam,	Thompson,	Wilson, of 1st District,
Reed,	Tinnin,	Wyatt.
Reynolds,		

ABSENT.

Ayers,	Herrington,	O'Donnell,
Beerstecher,	Hilborn,	Reddy,
Bell,	Hitchcock,	Rhodes,
Berry,	Huestis,	Rolfe,
Campbell,	Hughey,	Schell,
Casserly,	Joyce,	Schomp,
Crouch,	Kelley,	Shafter,
Dean,	Kenny,	Smith, of Santa Clara,
Doyle,	Keyes,	Smith, of San Francisco,
Dudley, of San Joaquin,	Lavigne,	Strong,
Farrell,	Lewis,	Swenson,
Fawcett,	Martin, of Alameda,	Van Dyke,
Freud,	McComas,	Van Voorhies,
Graves,	Miller,	Walker, of Marin,
Hager,	Mills,	Waters,
Hale,	Murphy,	Wilson, of Tehama,
Hall,	Nelson,	Winans,
Harrison,	Neunaber,	Mr. President.
Herold,		

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. Schell, for one day; to Mr. McComas, on account of sickness; to Mr. Rolfe, for the balance of the week; to Mr. Waters, for two days; to Mr. Bell, for one day; to Mr. Smith, of San Francisco, for one day; to Mr. Doyle, for one day; to Mr. Wilson, of Tehama, for two days; to Mr. Kelley, for one day; to Messrs. Huestis, Winans, Miller, Keyes, and Swenson, for one day each.

MR. BIGGS. I move that leave of absence be granted to all absentees.

MR. LARKIN. I am opposed to the motion. If any gentleman wants leave of absence, let him ask for it.

MR. BIGGS. The reason I asked for it was to save incumbering the Journal.

The Journal of Saturday was read and approved.

MR. COWDEN. Mr. President: I was recorded as absent on Saturday. I was present.

THE PRESIDENT pro tem. If there are no reports of committees, a motion to adjourn will be in order.

RESOLUTIONS.

MR. MORELAND. Mr. President: There is a vacancy, caused by the absence of Mr. Berry, a delegate from Modoc and Siskiyou, and I have a resolution to offer on the subject:

WHEREAS, It has been suggested that there is now a vacancy in this Convention from the Counties of Modoc and Siskiyou, caused by the insanity of Mr. Berry, delegate elected by those counties; therefore,

Resolved, That this Convention, on Friday, the twenty-fifth day of October, one thousand eight hundred and seventy-eight, at eleven o'clock, proceed to the election of some qualified person to fill such vacancy.

THE PRESIDENT pro tem. I think the resolution should be referred to some appropriate committee.

MR. LARKIN. I would like to inquire whether Mr. Berry has resigned? Under the present circumstances, I think it is due to the gentleman and his family that this resolution should lie on the table.

MR. TINNIN. I second the motion to lay the resolution on the table.

The motion prevailed.

AMENDMENT TO THE CONSTITUTION.

MR. BURT. Mr. President: I would ask leave to introduce a proposition out of order.

THE PRESIDENT pro tem. If there is no objection the gentleman will have leave. The Chair hears none.

POWERS OF BOARDS OF SUPERVISORS.

MR. BURT, by consent, then introduced the following proposed amendment to the Constitution, increasing the legislative powers of Boards of Supervisors:

ARTICLE —.

SECTION —. The Boards of Supervisors of the several counties, municipal cities, and towns, shall have power to enact all laws relating to the local government of their respective counties and townships, and municipal cities and towns; *provided*, said laws shall not conflict with any general State laws; also to fix the salaries, and manner of payment, of all officials (except the Judiciary) of their several counties and townships, and municipal cities and towns.

Referred to Committee on City, County, and Township Organizations.

THE PRESIDENT pro tem. The Committee on Public Buildings will meet immediately after adjournment.

AN EXPLANATION.

MR. TERRY. Mr. President: I have been requested by the Secretary of State to make an explanation. He has understood from some of the members of the Convention that they think he was guilty of

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some disrespect to the Convention in sending the volumes here on Saturday. He desires me to say that he intended no possible disrespect to the Convention, but he simply desired to demonstrate to the Convention the utter impossibility of affording the information desired. The fifty-four volumes are entirely filled with articles of incorporation; and besides this, there are about five hundred not recorded. They are coming in at the rate of four to ten a day. It would have required the service of the entire force of his office for three months to make up the information required by the resolution. He intended no disrespect whatever, but simply desired to demonstrate the utter impossibility of complying with the request.

MR. LARKIN. Mr. President: I hope this matter will remain until the mover of the resolution is present.

MR. TERRY. I simply desired to say that he intended no disrespect to the Convention whatever.

MR. LARKIN. I hope this matter will remain until the mover of the resolution returns. This is a matter for this Convention to determine, and it is disgraceful in the extreme. Judge Hale, of Placer, introduced the resolution. After having had a consultation with him, I called on Mr. Beck, and he said the information should be furnished. For some reason, or for some motive or suggestion, he saw fit to insult the Convention by bringing those books here—not to us, but to the people of the State who called this Convention and sent us here, and I desire to have the matter laid over until Judge Hale is here. He had no right to take those books away. Those books should have been retained here until the Convention saw fit to remove them.

MR. TERRY. Mr. President: The report made here was not disrespectful, but was entirely proper. The resolution called for the number of corporations, the date of organization, amount of capital stock, the names and residences of the incorporators, etc. They were contained in fifty-four volumes, filled with nothing else, and could not have been condensed in less than one quarter of that space. It would have occupied no less than one quarter of the space occupied in these books, and it was simply to demonstrate to the Convention that the information was contained there, and in almost as small a space as he could get it. I have made no motion, but simply make this explanation for the Secretary of State—that he intended no disrespect to the Convention.

MR. BLACKMER. I desire to give notice that the Committee on Future Amendments will meet after adjournment in the Supreme Court room.

MR. LARKIN. I give notice that the Committee on Privileges and Elections will meet immediately after adjournment in room fifty-nine.

MR. EDGERTON. I give notice that the Committee on Revenue and Taxation will meet in their room immediately after adjournment.

MR. ESTEE. The Committee on Corporations other than Municipal will meet immediately after adjournment.

ADJOURNMENT.

At ten o'clock and twenty-five minutes, on motion of Mr. Noel, the Convention adjourned.

TWENTY-FIFTH DAY.

SACRAMENTO, Tuesday, October 22d, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Filcher,	Lindow,
Ayers,	Finney,	Mansfield,
Barbour,	Freud,	Martin, of Santa Cruz,
Barry,	Garvey,	McCallum,
Barton,	Glascock,	McComas,
Beerstecher,	Gorman,	McConnell,
Belcher,	Grace,	McCoy,
Bell,	Graves,	McFarland,
Biggs,	Gregg,	McNutt,
Blackmer,	Hale,	Miller,
Boggs,	Hall,	Mills,
Boucher,	Harrison,	Moffat,
Brown,	Harvey,	Moreland,
Burt,	Heiskell,	Morse,
Campbell,	Herold,	Murphy,
Caples,	Herrington,	Nason,
Casserly,	Hilborn,	Nelson,
Chapman,	Hitchcock,	Neunaber,
Charles,	Holmes,	Noel,
Condon,	Howard,	O'Donnell,
Cowden,	Huestis,	Ohleyer,
Crouch,	Hughey,	O'Sullivan,
Davis,	Hunter,	Overton,
Dean,	Inman,	Porter,
Dowling,	Johnson,	Prouty,
Doyle,	Jones,	Pulliam,
Dudley, of San Joaquin,	Joyce,	Reed,
Dudley, of Solano,	Kelley,	Reynolds,
Dunlap,	Kenny,	Rhodes,
Eagon,	Keyes,	Ringgold,
Edgerton,	Kleine,	Schell,
Estee,	Laine,	Schomp,
Estey,	Lampson,	Shafter,
Evey,	Larkin,	Shoemaker,
Farrell,	Larue,	Shurtleff,
Fawcett,	Lavigne,	Smith, of 4th District,
Smith, of San Francisco,	Tinnin,	Weller,
Soule,	Townsend,	Wellin,
Stedman,	Tully,	West,
Steele,	Turner,	Wickes,
Stevenson,	Tuttle,	White,
Strong,	Vacquerel,	Wilson, of Tehama,
Stuart,	Van Dyke,	Wilson, of 1st District,
Sweasey,	Van Voorhies,	Winans,
Swing,	Walker, of Marin,	Wyatt,
Terry,	Walker, of Tuolumne,	Mr. President.
Thompson,	Webster,	

ABSENT.

Barnes,	Hager,	Rolfe,
Berry,	Lewis,	Smith, of Santa Clara,
Cross,	Martin, of Alameda,	Swenson,
Freeman,	Reddy,	Waters.

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. Cross for three days, to Mr. McCoy for three days, to Mr. McComas on account of sickness.

The Journal of yesterday was read and approved.

THE SECRETARY OF STATE'S REPORT.

MR. HALE. Mr. President: I ask leave of the Convention to introduce a resolution out of order.

THE SECRETARY read the resolution, as follows:

WHEREAS, Heretofore, to wit, on the seventeenth instant, this Convention, by resolution, duly requested the honorable the Secretary of State of California, who is the legal custodian of the records of all corporations other than municipal, which have been formed under the laws of this State, to be informed by a detailed statement to be made to the Convention, embracing the following points of inquiry, to wit: the total number and classification of all such corporations; the aggregate amount of capital stock of all, and the aggregate amount of capital stock of each class of such corporations; a statement in detail of the principal places of business, and a like statement of the location of the principal offices of such corporations; also, a like statement of the amount of capital stock actually paid up by all such corporations; and,

WHEREAS, Said Secretary of State did, subsequently, to wit, on the nineteenth instant, in nominal compliance with the request contained in said resolution, place on the desk of the Secretary of this Convention a large and cumbrous mass of books from his office, said to contain the record evidences of all the corporations mentioned in said resolution of inquiry, and by his accompanying reply to said resolution proffered said record books to this Convention as the most condensed and accurate reply he could make thereto; and,

WHEREAS, Both by reason of the existing legal necessity that said books should be kept and maintained exclusively in the office of said Secretary of State as public records, and the utter want of reasonable facilities on the part of this Convention to make abstracts therefrom, covering and embracing the matters of inquiry specified in said resolution, it is the sense of this Convention that the Secretary of State has not complied, in letter or in spirit, with the requests contained in said resolution; also, that it is still his reasonable duty to make such compliance to the extent of his ability; therefore,

Resolved, That said Secretary of State have leave to remove all such record books to their said proper place of custody, and that he is respectfully requested to furnish to this Convention, by a statement in writing, such reasonable information touching said corporations as expressed in said resolution heretofore adopted, or so much thereof as he shall be reasonably able to so furnish; and if from any cause he is not able, in whole or in part, to make such compliance, then to report to the Convention the cause of such disability.

THE PRESIDENT. The question is on the adoption of the resolution.

MR. HALE. Mr. President: I desire in this connection to make an explanation, which is in part of a personal nature. I hold in my hand the original resolution, which, upon my motion, was passed by this Convention on the seventeenth instant, and also the return, which I will shortly read, made by the Secretary of State, in which he inadvertently or otherwise falls into a grave mistake as to its contents. I desire to read for the information of the Convention the resolution:

"*Resolved*, That the Secretary of State be requested to furnish to this Convention all the information in his possession upon the following subjects, to wit: *First*—The number and classification of all the corporations other than municipal, now existing in the State of California, and formed under the laws of this State. *Second*—The aggregate amount of capital stock of all such corporations, and the aggregate amount of capital stock of each class thereof. *Third*—A detailed statement of the principal places of business and location of the principal offices of all such corporations. *Fourth*—A detailed statement of the amount of capital stock actually paid up by all said corporations."

This resolution, Mr. President, being introduced on the day I stated, being carefully read to the Convention, was adopted without any amendment, or any motion to amend, so far as I know, and without any objection on the part of any member, so far as I could hear. On Saturday, the nineteenth instant, I was absent, unfortunately, from the deliberations of the Convention, on leave, however, but I see that the Secretary makes this reply, as published in the Sacramento Record-Union: [Reads.]

"The President: I have here a communication from the Secretary of State, in answer to a resolution asking for information, which the Secretary will read:

"STATE OF CALIFORNIA, DEPARTMENT OF STATE,
"SACRAMENTO, October 19, 1878.

"To the President and members of the Convention:

"GENTLEMEN: I have the honor to acknowledge the receipt of Resolution No. ——, adopted by your honorable body on Thursday, October seventeenth, requesting me to furnish to the Convention all information in my possession upon the following subjects: *First*—The number and classification of all corporations other than municipal, now existing in the State of California, and formed under the laws of the State of California. *Second*—The aggregate amount of capital stock of all such corporations. *Third*—A declared statement of all the principal places of business, and the location of the principal offices of each corporation. *Fourth*—A detailed statement of the amount of capital stock actually paid up by said corporations. The various subjects included in the foregoing resolution, upon which information is sought, are recorded in the books kept in my office for that special purpose; and in order that the Convention may have the desired information at as early a day as possible, I hereby place at your service the records of all corporations on file in my office, and they are in as condensed a form as the information sought by the resolution would warrant.

"I have the honor to be your obedient servant,

"THOMAS BECK, Secretary of State."

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Mr. President, I desire to call attention to the fact that if this is his response to the calls of this Convention, it is grossly inaccurate. This may be a typographical error; but I am assured by the Secretary at the desk that the Secretary of State was furnished with a correct copy of the resolution introduced. That, however, is a proposition of little moment.

Now, Mr. President, I desire to read a little further from the proceedings of this Convention occurring on that morning, to show what was the temper, the evident disposition, and the evident intent of this Convention, and the purpose of this report so made by the Secretary of State.

["The books, consisting of some fifty bound volumes, had been previously placed on a large table at the Clerk's desk.]

"MR. LARKIN said: Mr. President: As the mover of the resolution is not present, I move the matter lie on the table until he returns.

"MR. McFARLAND. Mr. President: I would ask if the report does not lie on the table now.

"THE PRESIDENT. Yes, sir. Does the Convention desire the report read? [Laughter]," says the reporter.

"MR. NOEL offered the following:

"*Resolved*, That the thanks of this Convention be returned to the Secretary of State for the promptness and dispatch with which he has complied with the order of the Convention directing him to furnish all information in his possession in relation to corporations other than municipal.

"*Resolved*, That five hundred copies of such report be printed and laid on the desks of the members of this Convention. [Laughter.]

"Referred to the Committee on Mileage and Contingent Expenses.

"MR. McFARLAND then said: I move the matter be referred to the member from the rural district. [Referring to a large owl which had during the night previous entered the Chamber, and which all day sat perched on the cornice above the President's desk, looking solemn and wise.]

MR. McFARLAND. Will the gentleman allow me to correct that? It was my friend from Alameda, Mr. McCallum, who made that motion.

MR. HALE. I accept the gentleman's explanation with great pleasure.

MR. TULLY then offered the following:

"*Resolved*, That five thousand dollars of the money appropriated by the State to defray the expenses of this Convention be placed in the hands of the honorable Thomas Beck, Secretary of State, to defray his expenses while engaged in compiling the information required by the resolution now under consideration."

"THE PRESIDENT. It will go to the Committee on Contingent Expenses."

There the matter seems to have been permitted to drop for the day. Again, I observe from the report of this Convention that the gentleman from San Joaquin yesterday rose to make an explanation on behalf of and in the name of the Secretary of State, which I read now, because it seems to be an authorized statement of the Secretary of State, and it is from that standpoint that I desire to call attention to it. It is as follows:

"MR. TERRY. Mr. President: I have been requested by the Secretary of State to make an explanation. He has understood from some of the members of the Convention that they think he was guilty of some disrespect to the Convention in sending the volumes here on Saturday. He desires me to say that he intended no possible disrespect to the Convention, but he simply desired to demonstrate to the Convention the utter impossibility of affording the information desired. The fifty-four volumes are entirely filled with articles of incorporation; and, besides this, there are about five hundred not recorded. They are coming in at the rate of four to ten a day. It would have required the service of the entire force of his office for three months to make up the information required by the resolution. He intended no disrespect whatever, but simply desired to demonstrate the utter impossibility of complying with the request."

Mr. Larkin then spoke as follows:

"MR. LARKIN. I hope this matter will remain until the mover of the resolution returns. This is a matter for this Convention to determine, and it is disgraceful in the extreme. Judge Hale, of Placer, introduced the resolution. After having had a consultation with him, I called on Mr. Beck, and he said the information should be furnished. For some reason, or from some motive or suggestion, he saw fit to insult the Convention by bringing those books here—not to us, but to the people of the State who called this Convention and sent us here, and I desire to have the matter laid over until Judge Hale is here. He had no right to take those books away. Those books should have been retained here until the Convention saw fit to remove them."

Then the gentleman from San Joaquin, Mr. Terry, is reported as saying:

"MR. TERRY. Mr. President: The report made here was not disrespectful, but was entirely proper. The resolution called for the number of corporations, the date of organization, amount of capital stock, the names and residences of the incorporators, etc. They were contained in fifty-four volumes, filled with nothing else, and could not have been condensed in less than one quarter of that space. It would have occupied no less than one quarter of the space occupied in these books, and it was simply to demonstrate to the Convention that the information was contained there, and in almost as small a space as he could get it. I have made no motion, but simply make this explanation for the Secretary of State—that he intended no disrespect to the Convention."

Now, Mr. President, this may be a source of great merriment to the Convention. There are some gentlemen who think this a proper occasion for levity, and without desiring to express any disrespect for any member on this floor, I must still be permitted to say that I have never seen more ill-timed levity in anything, and I wish to state why. Mr. President, taking into consideration the tone of some gentlemen on this floor, and of the Secretary of State, it would appear that somebody has most egregiously blundered in this business, and I suppose to a certain extent I am responsible for introducing this resolution. Allow me to say, Mr. President, that I did not do it upon my own individual judgment alone, though I should have done so without any hesitancy. I did it after consulting and discussing the subject-matter with several well-known and eminent gentlemen of this Convention, and who concurred with me fully as to the purpose sought to be accomplished by the resolution.

Now, sir, I may have blundered, innocently though it may be, but the Convention nevertheless has shared in that blunder itself, because this resolution was adopted without a dissenting voice, and what was my original motion became its own deliberate act. If there was any blunder about this matter it is now material to know where it is. I still think, and shall think until I am convinced by evidence other than that furnished, that there was no blunder committed on my part in introducing this resolution, or by the Convention in its adoption.

Mr. President, before coming to this Convention, after having been honored by the people of this State by an election to a seat here, I have spent such time as I have been able to spare from other vocations in looking through the reports of Conventions in other States, called to perform duties like unto those incumbent upon us here. In doing so I had occasion to look over the reports of the State whence I came, Illinois, and also over the reports of the State of New York, and those of my native State, Pennsylvania; also, of Missouri and some other States; and, sir, I noticed by all the Journals and reports that Legislatures of those States had provided that the various officers of the State, Secretary, Treasurer, Controller, and all the State officers, should furnish to the Convention all information, upon its reasonable call, to enable the Convention to wisely perform their duties in framing a new organic law. And, sir, I have not been able to find an instance where a State officer has refused this information, though in several States the requisitions have been of the same class as the one I introduced last Thursday. I think I may say, within bounds, that I examined no less than fifty resolutions adopted by the Conventions, asking information of the State officers like unto that which we ask for, in every sense of the word, and, sir, in no instance can you find in any of the Journals or reports of those Conventions where the Secretary of State, or Controller of State, or the Governor of the State, or any officer of the State, availed themselves of any such privileges as this, or were permitted to make any such reply as has been made by the Secretary of State to this Convention. Now, allow me to call attention to the statute which the Legislature of this State passed—the Act under which this Convention was called and is now sitting: "The Secretary of State, all public officers, and Boards of Commissioners, shall furnish such Convention with all such information, papers, details, books, or other documents in their possession, as the said Convention shall order or require for its use from time to time while in session."

I think, sir, when I have read this, under these circumstances, that I shall stand, and that this Convention will stand, acquitted of all folly, of all stepping out of the usual and proper course in making this inquiry of the Secretary of State. Mr. President, I wish to say now in regard to the resolution which I have this morning introduced, that I have stated the facts of this matter, and I believe I have done so accurately.

Now, Mr. President, is it proper, because, if there be no motive—if there is no substantial reason why this Convention should still desire this information—then this resolution should not be adopted. In other words, we should make up our minds that we did a foolish act, and let it go.

My resolution calls for a different line of action. I thought, and the Convention evidently thought, that the resolution was well timed in its character. I think so still. Now, sir, what does this resolution call for? It calls, sir, for a statement of the total number of all corporations that have been formed, and that are existing under the laws of this State. That is one thing.

Again, sir, it calls for a classified statement of each class of the corporations so formed. Why do we desire this information? Allow me to say why. We all know—or at least every lawyer on this floor will remember—that in the olden times, in the beginning, corporations were not permitted to be formed as now. They were not formed under general laws. They were grants from the crown; they were charters; they were in the nature of special grants. In the course of time it was found that great corruption crowded into the administration of government, growing out of this practice, and in this State when they adopted the present Constitution, following after the laws of some of the other States, they provided that corporations other than municipal should be formed only under general laws, and we have been living and acting under that provision of the Constitution, and laws framed in pursuance of it, from that day to this.

It was said by Judge Terry—speaking for the Secretary of State—that there are fifty-four bound volumes of these records in his office, which contain nothing but the declared statements of the articles of incorporation of corporations which have been formed under these general laws. Now, if we look into the statute books—at least until the Codes were adopted—we find that corporations were permitted to be formed under general laws for certain specified purposes. They embraced a very large range of industries and pursuits, and business affairs in this State. When the Codes came to be adopted, the barriers which before that time had been permitted to stand were all swept away, and thenceforth, under the provisions of the Codes, they were authorized to form corporations, by compliance with a few statutory requirements, by a few individuals who had gathered together in a neighborhood for the purpose of carrying on the various industries, and all the various classes of business enterprises.

Now, sir, the purpose of this resolution was to make an exhibit of this state of facts. I was aware of the fact that there was this vast mul-

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titude of corporations, which are as numerous as the sands upon the seashore. I was not unaware of the fact that these corporations were so numerous that their names were myriad—all the way from a corporation organized for the construction and maintenance of a railroad or steamboat line down to a peanut stand.

One object of this resolution was to develop these facts in detail, so that when we reached that question we would have the record of facts from the proper offices, as a basis for action. Again, sir, there is another point. This resolution asks for the principal offices and places of business. Why did we do that? Why, sir, it is a fact that these corporations, whose names is legion, have places of business—by which I mean the properties to be operated, to be purchased, to be worked—established all the way from the northern extremity of the State down to the southern line, and from the coast back to the eastern boundary, and cover the whole Pacific coast, yet whose principal places of business, almost without exception, is on two or three streets of San Francisco; so that all mining, manufacturing, and agricultural pursuits—almost all the industries of the State, conducted by corporations, have their principal offices of business in San Francisco.

That was why I asked for this information, so as to present the facts in detail to the Convention, so that we, coming here as representatives of the people, may be able to say how far it would be wise to modify the system of laws under which these corporations hereafter shall be formed in this State.

Now, sir, it was said by Judge Terry that the Secretary of State cannot furnish this information. Why? I beg leave to ask, why? The law provides, sir, that when a corporation is formed that the few persons who are required only for that purpose shall sign articles of incorporation, and that they shall state their corporate name, state their capital stock, the amount of it, state the purposes, for which the corporation is formed, the principal place of business, and the location of their offices. These are matters simply of detail required to be filed under the law. Does the Secretary of State mean to tell us that he has no system of indexing or tabulation by which these few cardinal facts and points can be ascertained? It is incredible, sir, and I want to say, if such is the fact, it would be quite proper for this Convention, or some other authorized body, to pass a resolution requesting the next Legislature to see that this gross negligence is corrected. I cannot believe that it is true.

In the resolution I have offered, sir, I ask the Convention to express it, as its judgment, not that the Secretary of State shall absolutely furnish this information in full, but that he shall furnish us what he reasonably can. No impossible or unreasonable thing should be demanded of him, or anybody else, but the resolution says he shall furnish such information as he may have, to the extent of his reasonable ability, and so far as he is not able to comply to make his report to this Convention, stating simply why he is not able to do so, and that will be satisfactory.

I hope this resolution will be adopted. I hope so, because I think the information is important, and I think the people of this State expect us, as their representatives, sent here for the purpose of forming a new framework of government for ourselves and our children who shall come after us, to consider this subject well. I know, sir, and I think many other gentlemen will concur with me, when I say that the people of this State have not, for the first time, heard of these corporations. They have had their attention called to it for a long time, and they take a very serious view of the situation. They expect us to go to the various offices and ascertain the various conditions, and if there be an unsound sill, an unsafe pillar, or an insecure column anywhere in the structure of the government, that we will carefully examine the defect and wisely find the remedy, so that the structure of our State government will stand safely and securely in time to come, securing to us, and to our children after us, the blessings of a wise and free government. I believe, Mr. President, that this information will materially aid this Convention in the performance of its duty, and, therefore, I ask most earnestly, and yet respectfully, that this resolution may be adopted.

Mr. BLACKMER. Mr. President: I desire to second the resolution as presented by the gentleman from Placer, Mr. Hale, and for these reasons: First, because I believe that the information called for by the resolution is of paramount importance to this Convention. I believe that that information should be in the hands of the Convention, and in the hands of the committees in whose charge these subjects are to be placed. I believe it ought to be furnished because it was provided in the Act calling this Convention that any officer of the State should furnish, upon the requisition of this Convention, such information for its use. I believe that that information has not been provided, in the spirit in which it was asked for, by the report of the Secretary of State as presented to this Convention. I believe, sir, that the report from the Secretary of State was not couched in such language as it should have been in reply to the very courteous request of this Convention for that information. If it was not in his power to furnish us the information according to the specifications that were put down in the resolution, it should have been his duty to have said in so many words, "I am not able to give you this information in full.' He should have given us what he could. But, sir, instead of that he sends up here a table loaded with books, large enough to be a load for any man to carry, fifty-four in number, and tells us that it is in as compact a form as he can give us the report.

Now, sir, I believe that the Secretary of State has made a great mistake in this report. Either he did not understand the purport of the resolution, or he did not understand the temper of this Convention. I believe that the resolution ought to pass, further, because it gives to the Secretary of State still opportunity to comply with the wishes of this Convention, and if he is not able to do it in full to give us what he can or give us the reasons why he cannot give it; and it certainly is his duty to do so. I am in favor of this resolution, and hope it will be adopted.

Mr. TERRY. Mr. President: I have no objection to the passing of this resolution, but I take a different view of this matter than that expressed by the gentlemen who have addressed this Convention. I am assured by the Secretary of State that no disrespect was intended, and for my part I think that all the information which is of any particular importance was afforded by the exhibition of those books upon that table. If it was important to show that these corporations had multiplied and had grown up—that they pervaded all parts of the State and every possible enterprise in the State—we had ocular demonstration of the fact—after the fashion of the popular mode of teaching—we had the object lesson before us. We found fifty-four volumes, averaging I should say at a rough guess, about eight hundred pages to the volume, or nearly forty-five thousand pages of articles of incorporation.

Now, what better evidence could we have of the immensity of this interest that has grown up under the lax system spoken of by the gentleman from Placer, Mr. Hale, than the exhibition of the volumes here. And, sir, as to the ability of the Secretary of State to comply, it seems to me that it is easy to judge that it is utterly impossible for a tabulated statement to be made in the time before this Convention adjourns. These articles of incorporation are usually not very lengthy. It would require about a page and a half to contain the articles of each company. Then we would have from thirty to forty thousand corporations. Now, simply giving the names, amount of capital stock, and place of business of these corporations, it——

Mr. HALE. It does not call for the names of the corporations.

Mr. TERRY. You call for the place of business, the amount of capital stock, and the amount of capital stock paid in?

Mr. HALE. Yes, sir.

Mr. TERRY. That would involve the examination of the articles of incorporation of twenty thousand corporations at the very least. At thirty lines to the page, that would be eight hundred pages of the report—that simple statement alone; as I said, I have no objection to passing the resolution. It is the duty of the Secretary of State to give us all the information in his power, but I do not think that he is censurable to the extent that some gentlemen do. For my part, I think the levity was misplaced in a body like this, and that the Secretary perhaps made a mistake in not simply reporting, instead of exhibiting the books to the Convention, that it was impossible to collate the information in the time. Certainly the information called for would occupy eight hundred or one thousand pages, and would be of no use to the Convention unless it was printed and laid upon the desks of members; and I do not suppose that an expense of that kind is to be incurred for the purpose of printing this information.

Mr. WICKES. Mr. President: We have made many mistakes and some blunders. If any one has blundered in the premises, and if any one rests under a cloud of suspicion as to the conveyance of disrespect to this body, I think it would be better to exonerate all parties, and go on with the regular order of the day; and to simplify the matter, I offer this amendment as a substitute for the resolution.

The SECRETARY read the resolution, as follows:

Resolved, That a committee be appointed to make such cursory examination of the books in question as will determine whether the demand was inconsiderately made, or whether such examination of said books by a committee detailed to procure such information jointly, would be feasible and practicable, to report to this body at the earliest moment

Mr. LARKIN. Mr. President: The resolutions offered by the gentleman from Placer, Mr. Hale, ought to be adopted by this Convention for several reasons. When that matter came up I made a motion to lay the report of the Secretary of State on the table. It had become the property of this house. The Secretary of State or some one else removed the books from this chamber without the permission of this Convention. They had no authority to do so. On the other proposition, that he be requested to furnish such information as he may have, or give the reasons why he cannot comply in whole or in part with the request of the Convention, I think is perfectly proper. I do not desire to crowd upon the Secretary of State, although his act has placed us in a very unenviable position before the people of this State. He has placed us in the position of being snubbed by the Secretary of State, and through us he has snubbed the people of California.

I insisted that this resolution should lie on the table until the mover returned. He has returned, and he has made a proper statement, and offered proper resolutions under the circumstances. I am satisfied that Mr. Beck now better understands his duty to this Convention and to the people of the State than he did when he brought these books in here in lieu of the report that we requested him to make. I hope that the resolution will be adopted, and that he will have a chance to take these books from here by leave of the Convention, and have an opportunity to make a proper report, or explain the reasons why he cannot comply with the request of the Convention.

The PRESIDENT. The question is on the passage of the resolutions.

Mr. TINNIN. It is on the amendment of the gentleman from Nevada, Mr. Wickes.

The PRESIDENT. There was no second to it.

Mr. BARRY. I second the amendment for the purpose of bringing it before the Convention.

Mr. LARKIN. I call for the reading of the resolutions.

The SECRETARY read the resolutions:

Whereas, Heretofore, to wit, on the seventeenth instant, this Convention, by resolution, duly requested the honorable the Secretary of State of California, who is the legal custodian of the records of all corporations, other than municipal, which have been formed under the laws of this State, to be informed by a detailed statement to be made to the Convention, embracing the following points of inquiry, to wit: the total number and classification of all such corporations; the aggregate amount of capital stock of all, and the aggregate amount of capital stock of each class of such corporations; a statement in detail of the principal places of business, and a like statement of the location of the principal offices of such corporations; also, a like statement of the amount of capital stock actually paid up by all such corporations; and

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WHEREAS, Said Secretary of State did, subsequently, to wit, on the nineteenth instant, in nominal compliance with the request contained in said resolution, place on the desk of the Secretary of this Convention a large and cumbrous mass of books from his office, said to contain the record evidences of all the corporations mentioned in said resolution of inquiry, and by his accompanying reply to said resolution proffered said record books to this Convention as the most condensed and accurate reply he could make thereto; and,

WHEREAS, Both by reason of the existing legal necessity that said books should be kept and maintained exclusively in the office of said Secretary of State as public records, and the utter want of reasonable facilities on the part of this Convention to make abstracts therefrom covering and embracing the matters of inquiry specified in said resolution, it is the sense of this Convention that the Secretary of State has not complied, in letter or in spirit, with the requests contained in said resolution; also, that it is still his reasonable duty to make such compliance to the extent of his ability; therefore,

Resolved, That said Secretary of State have leave to remove all such record books to their said proper place of custody, and that he is hereby respectfully requested to furnish to this Convention, by a statement in writing, such reasonable information touching said corporations as expressed in said resolution heretofore adopted, or so much thereof as he shall be reasonably able to so furnish; and if from any cause he is not able in whole or in part to make such compliance, then to report to the Convention the cause of such disability.

MR. LAINE. Mr. President: While I am disposed to see to it that all the State officers shall treat the Convention properly, and make all proper reports which this Convention has a right to call for, I am satisfied in my own mind that in this case we have called for more than the Secretary of State can give. The voluminousness of the matter is such that I am satisfied it would require a longer time than the sitting of this Convention to compile it, and comply with the resolution. I think the Convention acted hastily, though I have no doubt the Convention was impelled by a proper spirit to seek the information. But they acted I think without due consideration in this matter.

Now it seems to me, before we pass this resolution, we should be certain that we are right in the matter, and that the officer was in contempt. It seems to me the proper course would be to refer the whole matter to a standing committee of this body, and there is no more proper committee than the Committee on Corporations, selected with a view to dealing with that subject. That committee can go to the Secretary of State and examine the documents, and see if this Convention has properly understood the matter, and report back to this Convention, so that we may all be relieved from any improper course of action. In pursuance of this idea, I send up to the desk an amendment to the amendment, for the purpose of referring the whole matter to the Committee on Corporations, with instructions to investigate the matter and report to this Convention the proper action to be taken.

THE SECRETARY read the resolution, as follows:

Resolved, That the whole subject-matter of the two resolutions introduced by the member from the Second Congressional District, calling on the Secretary of State for information concerning corporations, be referred to the Committee on Corporations other than Municipal, with instructions to investigate the matter and report to this Convention such course of action as in their judgment it is held for the Convention to take in the premises, at as early a day as possible.

MR. BROWN. Mr. President: I feel to favor this last amendment. I have heard a great deal said about this matter, and I have heard read the resolution of the gentleman from Placer. I am well convinced that at the time of the passage of that resolution this Convention desired only what was reasonable. Our desire was to have proper information in regard to corporations, and we wished to know everything that reasonably could be known. But I am thoroughly convinced that the resolution embraced too much. I am convinced, since the matter has been discussed in this body, that the resolution was too broad, and too much in detail for the Secretary of State to comply with in any reasonable length of time. For instance, he was to give the aggregate amount of the capital stock, and of each class thereof; a detailed statement of the principal place of business of each corporation, and the location of the principal office of each corporation, and a detailed statement of the amount of capital stock, and the amount actually paid up by all such corporations. This embraces a great deal in the aggregate and a great deal in the detail. I am fully convinced that although we were desirous of having this information brought before the Convention, yet there was too much required. I think we should allow a committee to investigate this matter, that we may know whether or not we do not have need of some information with regard to the vast amount of work that is required in this case. Therefore, I am entirely in favor of the last amendment.

MR. NOEL. Mr. President: It seems to me that ordinary prudence, and a decent regard for the dignity of this Convention, requires that this matter be dropped, and I move that the whole matter be indefinitely postponed.

MR. BARTON. Mr. President: I am in hopes this resolution will not prevail to postpone the whole subject-matter. I am in hopes that neither of the two amendments will prevail. In my humble judgment, Mr. President, this Convention to-day occupies rather an unpleasant position in regard to this immense amount of matter that was presented here, purporting to be a report from the Secretary of State in response to a resolution offered by the gentleman from Placer, Mr. Hale. I would like to ask the gentlemen of this Convention, where are the volumes presented here as a report in response to the call of this Convention? If those documents are considered valuable, it is well that this Convention understand that they are responsible for their delivery. They were carted in here, in my opinion, with disrespect for this Convention, and they have been carted out with the same degree of disrespect. Now, sir, shall I, as a member of this Convention, wink at this thing, and say that a public servant shall become the master of the people's representatives in this Convention? I hope not. I don't wish to detain the Convention, but I hope the resolution offered by Judge Hale will pass.

MR. HALE. Mr. President: I desire to say one word. I hope that the amendment to the amendment will not prevail. I understand how easy it is—I am not altogether unacquainted with parliamentary practice—I understand the old dodge of killing a thing by referring it to a committee. It is very similar to the process by which we bury out of our sight the dead things which we cannot have among the living. I do not think, Mr. President, that this resolution is intended to be of that character. This resolution which I offered is not intended—it expresses no censure towards the Secretary of State—and if it did, sir, I think it would be justified, under the circumstances; but it simply says:

"*Resolved*, That the Secretary of State have leave to remove all such books to their proper place of custody, and that he is hereby respectfully requested to furnish to this Convention, by a statement in writing, such reasonable information touching said corporations, as expressed in said resolution heretofore adopted, or so much thereof as he shall be reasonably able to furnish; and if, from any cause, he is not able, in whole or in part, to make such compliance, then to report to the Convention the cause of such disability.

I do not know how it is that these books are not here now. He brought them into the Convention, so says the report. I was not here myself. And he made an accompanying report, and stated that he made this in response to the resolution adopted by this Convention. I do not understand how it is that he has been permitted to remove them. I have seen no resolution permitting him or anybody else to remove them. He put them in the hands of the Convention.

Now, this resolution is, first, to get him out of that difficulty. It gives him leave to withdraw them, and return them to their proper place of custody. It is a respectful request to him to furnish the information specified in the original resolution, or so much thereof as he is reasonably able to furnish, and if not able in whole or in part to furnish it, then to report to the Convention the reasons of this disability. I submit that there is no need of the Committee on Corporations or any committee to investigate this matter. I think this expresses the whole matter. It returns this resolution, and asks him to comply, if able, and if not, to state why not. This certainly needs no report from any other committee to find out the propriety of this request. I hope this motion and the amendment and the amendment to the amendment will not prevail, but that the original resolution will be acted upon by the Convention.

MR. O'DONNELL. Mr. President: I hope this whole matter will be laid on the table. We are now censuring an officer without giving him an opportunity of being here before this Convention. It is impossible for an officer to produce what was required of him by that resolution in the next three months. I hope, Mr. President, that this whole matter will be laid on the table. I make that motion, that it be laid on the table.

THE PRESIDENT. The first question is on the motion to lay the whole matter on the table. The Chair hears no second to the motion.

MR. HALE opposed the amendments, and urged the adoption of the original resolutions.

MR. MCCALLUM. Mr. President: I submit that this motion to indefinitely postpone and the amendments should be voted down, and the matter disposed of on the original resolution; and I desire to call the attention of this Convention to a paragraph in the Secretary of State's report, which is in fact and in substance the whole of it: "The various subjects included in the foregoing resolution, upon which information is sought, are recorded in the books kept in my office for that especial purpose, and in order that the Convention may have the desired information at as early day as possible, I hereby place at your service the records of all corporations now on file in my office, and they are in as condensed a form as the information sought by the resolution would warrant." That, sir, is the whole report, except the recital of the resolution. I say the friends of the Secretary of State, in my judgment, should vote for this resolution. He should have an opportunity to set himself right. The information furnished by the gentleman from San Joaquin is not official information to the Convention. The Secretary of State should have an opportunity to state the reasons why he did not comply with the original resolution. There is nothing in his report either replying to the resolution or giving any reason for not doing so. And more than this, it is not accurate upon its face. Those books, the great mass of them, are records of the certificates of incorporation. We may have been in error from the beginning. It may be that this is a sort of comedy of errors from the beginning. The gentleman who made the motion may have been in error in asking too much. The Convention may have been in error in adopting the resolution. The Secretary of State was evidently in error in his facetiousness, for that evidently was the design of it, and he was in error in sending the books into the Convention.

MR. GREGG. Mr. President: I rise to a point of order. The motion to lie on the table is not debatable.

THE PRESIDENT. The motion was not seconded.

MR. MCCALLUM. Now, the resolution offered by the gentleman from the Second District merely calls upon the Secretary of State for such information as he is able to furnish, and if he cannot furnish it all, to state the reasons. No reasons have yet been assigned to this Convention why he did not furnish the information, except what is indirectly stated by the gentleman from San Joaquin, no doubt correctly; but the information furnished by the Secretary of State is what he should have furnished to the Convention officially. There is no censure in the resolution offered by the gentleman from Placer, none whatever, but it gives the Secretary an opportunity to comply with the request or state the reasons why he has not done so. And, sir, that portion of the resolution which he could not comply with, if it is true that there are twenty-five thousand certificates of incorporation, he could have given that amount of information, and there are certainly other means whereby he could have furnished it without so voluminous a report; and, as to the balance, he could have stated the facts which he stated to the gentleman from San Joaquin. We can pass this resolution, and I have no doubt the Secretary of State will be glad to set himself right.

MR. STEDMAN. Mr. President: A resolution was offered and adopted by this body, requesting the Secretary of State to furnish us

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with certain specified information. In response to this request, we are all aware that fifty-four volumes of records were brought into this chamber and laid before the Convention, accompanied by a report in which we were told that all the information asked for was contained in these fifty-four volumes, and in as condensed a form as it is possible to get it. It is indeed unfortunate that the State of California should have a Secretary of State who is no more competent to fulfill the duties of that high office than the present incumbent, judging him by his own admission. Every member of this Convention ought to know that when the Secretary of State brought those books into this chamber, he was guilty of a gross insult to this body, and Mr. Terry, this morning, as the representative of Mr. Beck, tells us that these books were brought here as a sort of an "object lesson," to teach us, like so many children, what we should do.

MR. TERRY. I beg to correct the gentleman. I am not the representative of Mr. Beck. I represent the people of San Joaquin.

MR. STEDMAN. He told us that these books were sent here as a sort of "object lesson," as we are regarded as children, not able to comprehend a report. Why did not the gentleman come to this Convention with a report couched in respectful language, as our resolution was? If it was impossible for him to comply with the request, why did he not inform this Convention of that fact in a respectful manner? Now, sir, I believe that the Secretary of New York, or Missouri, or Pennsylvania, or any other great State, where there are perhaps as many or more corporations as in this State, I believe the Secretary of State in any of those States would have been able to furnish such information as that asked for by the resolution. The only difficulty is, in my opinion, that the Secretary of State of California has not adopted a proper system of keeping these records. Whether he knows how or not, I cannot say, but his system is certainly not the proper one or the information contained in these volumes would have been epitomized in such a manner as to be easily placed before this Convention in proper shape. I hope the resolution will be adopted, and that the amendments will be voted down.

MR. O'DONNELL. I move to lay the whole matter on the table.

MR. REDDY. I second the motion.

THE PRESIDENT. The question is upon laying the whole matter on the table.

Lost.

THE PRESIDENT. The question is upon referring it to the Committee on Corporations.

The ayes and noes were demanded by Messrs. Hale, Wyatt, and Filcher.

MR. HALE. I withdraw the demand for the ayes and noes.

THE PRESIDENT declared the motion lost on a viva voce vote.

Division was called for, and before the Convention divided, Messrs. Hilborn, Larkin, and Filcher demanded that the roll be called.

The roll was called, and the motion was lost by the following vote:

AYES.

Andrews,	Holmes,	Porter,
Biggs,	Howard,	Pulliam,
Brown,	Inman,	Reddy,
Caples,	Johnson,	Shoemaker,
Cowden,	Kelley,	Shurtleff,
Dudley, of San Joaquin,	Laine,	Smith, of 4th District,
Eagon,	Lampson,	Swing,
Edgerton,	Larue,	Terry,
Fawcett,	Mansfield,	Tinnin,
Freud,	Martin, of Santa Cruz,	Tully,
Glascock,	McConnell,	Turner,
Graves,	Murphy,	Van Voorhies,
Gregg,	Noel,	Weller,
Hilborn,	Overton,	Wilson, of 1st District.

NOES.

Barbour,	Harrison,	Reed,
Barry,	Harvey,	Reynolds,
Barton,	Heiskell,	Rhodes,
Beerstecher,	Herold,	Ringgold,
Bell,	Herrington,	Schell,
Blackmer,	Hitchcock,	Schomp,
Boggs,	Huestis,	Shafter,
Boucher,	Hughey,	Smith, of San Francisco,
Burt,	Hunter,	Soule,
Campbell,	Jones,	Stedman,
Casserly,	Joyce,	Steele,
Chapman,	Kenny,	Stevenson,
Charles,	Keyes,	Strong,
Condon,	Kleine,	Stuart,
Crouch,	Larkin,	Sweasey,
Davis,	Lavigne,	Thompson,
Dean,	Lindow,	Townsend,
Dowling,	McCallum,	Tuttle,
Doyle,	McComas,	Vacquerel,
Dudley, of Solano,	McFarland,	Van Dyke,
Dunlap,	McNutt,	Walker, of Marin,
Estee,	Miller,	Walker, of Tuolumne,
Estey,	Mills,	Webster,
Evey,	Moffat,	Wellin,
Farrell,	Moreland,	West,
Filcher,	Morse,	Wickes,
Finney,	Nason,	White,
Garvey,	Nelson,	Wilson, of Tehama,
Gorman,	Neunaber,	Winans,
Grace,	Ohleyer,	Wyatt,
Hale,	O'Sullivan,	Mr. President.
Hall,	Prouty,	

MR. O'DONNELL, when his name was called, refused to vote.

MR. STEDMAN, when Mr. O'Donnell's name was called. I believe we have a rule which compels every member to vote.

MR. O'DONNELL. I refuse to vote.

THE PRESIDENT. The next question is on the amendment of the gentleman from Nevada, Mr. Wickes. The Secretary will read it.

THE SECRETARY read the amendment, as follows:

Resolved, That a committee be appointed to make such cursory examination of the books in question as will determine whether the demand was inconsiderately made, or whether such examination of said books by a committee detailed to procure such information jointly, would be feasible and practicable, to report to this body at the earliest moment.

The amendment was lost.

The original resolutions were then adopted.

PROPOSITION WITHDRAWN.

MR. BEERSTECHER. Mr. President: I ask leave, out of order, to withdraw amendment number three hundred and nineteen, for correction.

THE PRESIDENT. There being no objection, the gentleman will have leave. The Chair hears none.

PETITIONS AND MEMORIALS.

MR. EDGERTON presented the following petitions:

The undersigned, citizens of the State of California, respectfully and urgently request the delegates constituting the Convention authorized to prepare a Constitution for said State, to retain in said Constitution section four of the same, and to add to said section a provision declaring the Sabbath day, or Sunday, a day of rest.

Signed by Samuel Jelly, and many others.

THE PRESIDENT presented the following petition:

SANTA BARBARA, Cal., October 11th, 1878.

To the Members of the Constitutional Convention:

GENTLEMEN: The Santa Barbara League wish to call your attention to the petitions now before your honorable body on the right of suffrage. We ask that the Constitution be so constructed that there shall be no disfranchisement on account of sex. The following are our reasons:

First—Because "all just governments derive their powers from the consent of the governed." Woman is governed by laws to which she gives no consent.

Second—Because woman has the same inherent desire for and power of self-government as man, and the same natural right to exercise that power.

Third—Because the ignorant and intemperate are enfranchised and intrusted with the privilege of making laws to govern her, and of employing their vested powers in restraining her from exercising a citizen's highest perogative, the right of ballot.

Fourth—Because woman is taxed, and taxation without representation is as much tyranny in eighteen hundred and seventy-eight as in seventeen hundred and seventy-six.

Fifth—Because it is a citizen's right to be tried by a jury of his peers, and woman is not so tried, in California.

Sixth—Because the well-being of the State demands that thousands of hard working women, who add greatly to its wealth and its intellectual and moral worth, should not be crippled in their power of usefulness.

Seventh—Because, with the ballot in the hands of all good citizens, the honor of our State would be asserted and the perpetuity of our government assured; for a nation's injustice is a prelude to a nation's decay.

The right to vote we consider inherent. Webster defines inherent, as naturally pertaining to; innate; as the inherent right of men to life, liberty, and protection. "To secure these rights, governments are instituted, deriving their just powers from the consent of the governed." The right to form governments is then an inherent right. To do this in our country it is necessary to vote; therefore the right to vote is inherent in every American citizen. If not, from whom acquired? If the people acquire the right from themselves and delegate it to others, the right must be inherent in the first place or they have nothing to give, no powers to delegate. We earnestly entreat your honorable body, so to frame the new Constitution, that women may be empowered to exercise this inherent right, the right of suffrage.

Yours respectfully,

MARY A. ASHLEY,
President Santa Barbara League.

MARY F. HUNT, Secretary.

Referred to the Committee on Right of Suffrage.

PROPOSITIONS AND RESOLUTIONS RELATING TO THE CONSTITUTION.

MR. EDGERTON introduced the following proposed amendment to the Constitution, in relation to the Bill of Rights:

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. And to secure said rights, it is essential that one day in seven should be observed as a day of rest. The first day of the week, usually called the Sabbath or Sunday, shall be observed as said day of rest.

Referred to Committee on Preamble and Bill of Rights.

AGAINST OFFICE SEEKING.

MR. WICKES introduced the following proposed amendment to the Constitution, in relation to office seeking:

Any candidate who, in any newspaper, print or writing, announces, or consents to announce his name as candidate for nomination to any public office, by any party, club, caucus, or convention, thereby disqualifies himself from holding the office for which he thereby is announced as a candidate during the next term thereof.

Referred to Committee on Legislative Department.

REVENUE AND TAXATION.

MR. FILCHER introduced the following proposed amendment to the Constitution, relative to revenue and taxation:

ARTICLE —.

SECTION 1. Taxation shall be equal and uniform throughout the State of California.

SEC. 2. For the purposes of taxation all property within the State

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shall be assessed at its full cash value, to be ascertained in such manner as the Legislature may direct; and property in the sense of this article shall be understood to include all rights, privileges, or franchises that have been or may be granted by the State, or any subdivision thereof, to any individual, corporation, or association, and every other conceivable thing that possesses any commercial or exchange value; *provided*, that the property of the State, and the property of the counties, and other municipal corporations, may be exempted from taxation.

SEC. 3. Land shall in all cases be assessed as an item separate and distinct from the improvements thereon, and in determining the value of land for the purposes of taxation, no discrimination shall ever be made between tracts of land possessing the same natural and other facilities, and of the same productive capacity, in consequence of any improvements that may have been made on one tract or piece of land more than on another.

SEC. 4. Any property of any individual, association, or corporation may be seized and held for the amount of the taxes due from said individual, association, or corporation, but any party in possession of, and paying the taxes on property that is incumbered by mortgage, or other legal lien, shall recover, without legal process, from the holder of said mortgage, or lien, an amount, in settlement, equal to the sum of the taxes on the amount of said mortgage or lien.

SEC. 5. Nothing in the foregoing shall be construed as depriving the Legislature of the right to levy a special tax on peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn keepers, grocery keepers, liquor dealers, toll bridges, toll roads, ferries, insurance, telegraph, and express interests or business, venders of patents, and persons, companies, or corporations owning or using franchises or privileges, in such manner as it may from time to time direct by general law, uniform in all cases as to the class upon which it operates.

Referred to the Committee on Revenue and Taxation.

REGARDING THE UNIVERSITY.

MR. VAN DYKE introduced the following proposed amendment to the Constitution, regarding the University of California:

ARTICLE —.

SECTION —. Whereas, the University of California is not, either in its origin or endowments, exclusively a State institution, but derived its origin from the College of California, and has received large endowments from the Congress of the United States upon certain conditions connected therewith affecting its organization, and also valuable endowments from individuals, which were designed to preserve and develop it in its present form, and in order to attain the full benefit and proper use of said endowments, and to give such stability to said University as will tend to acquire further endowments from private sources, it is expedient that it should continue to exist in perpetuity under its present organization and government, and incapable of change—it is declared that said University shall constitute a public trust, and that its organization and government shall be perpetually continued in their existing form, character, and condition, subject only to such legislative enactments as shall not be inconsistent therewith, and shall only pertain to its support and more complete development; and it is further declared that the Board of Regents, in their corporate capacity, and their successors in that capacity, their officers and servants, shall have, hold, use, exercise, and enjoy all the powers, authorities, rights, liberties, privileges, immunities, and franchises, which they now have or are entitled to have, hold, use, exercise, and enjoy, and the same are hereby ratified and confirmed unto them and to their successors, and to their officers and servants, respectively, forever. It shall be entirely independent of all party influences, and kept free therefrom in the appointment of its Regents and the administration of its affairs.

Referred to the Committee on Education.

MR. HOWARD. I call for the regular order of business.

MR. CAPLES. I ask leave to introduce this resolution, to be referred to the Judiciary Committee.

THE PRESIDENT. The regular order of business is called for.

COMMUNICATIONS FROM STATE OFFICERS.

The President presented the following communication from the Adjutant General:

GENERAL HEADQUARTERS, STATE OF CALIFORNIA,
ADJUTANT-GENERAL'S OFFICE, SACRAMENTO, October 21st, 1878.

To the President and members of the Constitutional Convention:

GENTLEMEN: In compliance with the resolution adopted by your honorable body, on the eighteenth instant, I have the honor to submit the following, embracing the expenditures out of the respective appropriations for military purposes for the twenty-eighth and twenty ninth fiscal years ending June thirtieth, eighteen hundred and seventy-eight:

Armory rent and other expenses, First Brigade		$1,563 00
Armory rent and other expenses, Second Brigade		44,195 85
Armory rent and other expenses, Third Brigade		1,572 00
Armory rent and other expenses, Fourth Brigade		9,582 00
Armory rent and other expenses, Fifth Brigade		1,924 00
Salary of Adjutant-General	$6,000	
Salary of Assistant Adjutant-General	4,000	
Pay of Porter	600	
Postage and expressage	200	
		10,800 00
Cleaning and transportation of arms		1,131 20
Total		$71,038 05

In addition to the foregoing, a special appropriation of five thousand two hundred and two dollars ($5,202) was made at the last session of the Legislature, for payment for guard and other military duty, performed in San Francisco, in November, eighteen hundred and seventy-seven, and January, eighteen hundred and seventy-eight, and expended as follows:

To Headquarters, Second Brigade	$148 00
To First Infantry Regiment, Second Brigade	1,316 00
To Second Infantry Regiment, Second Brigade	1,490 00
To Third Infantry Regiment, Second Brigade	1,416 00
To First California Guard	832 00
Total	$5,202 00

I deem it proper to state that the last Legislature increased the appropriation for armory rents and other expenses of the National Guard for the thirtieth and thirty-first fiscal years, to ninety thousand five hundred and twenty-eight dollars ($90,528), against sixty thousand dollars, the amount appropriated for the twenty-eighth and twenty-ninth fiscal years.

I have the honor to remain, very respectfully, your obedient servant,

P. F. WALSH,
Adjutant-General.

MR. TINNIN. I move that two hundred and forty copies be printed. The motion prevailed.

REPORTS OF COMMITTEES.

MR. WILSON, of San Francisco, from the Judiciary Committee, presented the following report of the Judiciary Committee, with reference to the eligibility of the Hon. Eugene Fawcett, of Santa Barbara:

To the President of the Constitutional Convention:

The majority of the Committee on Judiciary and Judicial Department, to which was referred the resolution introduced by the Honorable Clitus Barbour, of San Francisco, instructing the committee to inquire into the eligibility of the member from Santa Barbara, the Honorable Eugene Fawcett, and his right to a seat in this Convention, beg leave to report that the subject has been carefully considered by the committee, and that we are of opinion that the Honorable Eugene Fawcett was eligible, and is entitled to a seat in this Convention.

As all the members of the committee do not concur in this view, we may be excused for stating some of the reasons which led the majority to this conclusion:

Before the introduction of the resolution of Mr. Barbour, Judge Fawcett had occupied his seat as a member of this Convention for nearly three weeks. No person had, or has yet, appeared claiming his seat. His own county and judicial district have raised no question, made no protest, and presented no memorial on the subject, but, on the contrary, were desirous of his election, and are well satisfied with him as a member of this Convention, as we are informed and believe. He is a gentleman of high character, of learning and ability, of judicial experience, and in every way well qualified to make a useful member. The objection to him comes from a point remote from his constituency, and without a suggestion of unfitness in any respect, is based upon a narrow literal and technical construction of section sixteen, of article six, of the State Constitution This declares Judges of the District Courts to be "ineligible to any other office than a judicial office during the term for which they shall have been elected" As Mr. Fawcett is the Judge of the District Court of the First Judicial District of the State, and was such at the time of his election as a member of this Convention, it is claimed that he was ineligible, and not entitled to retain his seat.

It is manifest to the undersigned that this is not a correct view of the subject. We are satisfied that a membership of this Convention is not an office in the sense in which that term is used in the Constitution; that a broader and more extended view must be taken; and that to hang upon the letter here is emphatically to hang upon the bark; that to be literal is to be wrong. The Constitution, as it is, creates a form of State government complete in itself. Under it the State was to be organized, officered, and launched into operation. It did not anticipate what should be done under a succeeding Constitution, but provided for its own practical working. Its great fundamental principle was the distribution of the powers of government into three separate departments—the executive, legislative, and judicial—confining each to its own sphere. There were to be a large number of offices, each of which at once took place in its separate department. As long as that Constitution should last those offices would last, and it was in view of that fact that section sixteen of article six was adopted, rendering Judges ineligible during their terms to any office in the executive or legislative department. This covered the usual ordinary and necessary workings and instrumentalities of the government under that Constitution. It kept the Judge from using his high judicial functions so as to advance him in the executive or legislative department, leaving him, however, free to seek advancement from a lower to a higher judicial position. But when we come to the question of a new Constitution, we have something effecting the most radical change possible. The old things are to pass away, and new ones take their place. A Constitutional Convention is, therefore, an unusual, rare, and merely occasional instrumentality of the government, and of brief existence. It is not one of the three great departments of government which are created for every-day operations, and is not to be thrust into the ranks and limits of one of these three divisions, and take its place either as executive, legislative, or judicial. The Constitutional Convention outranks them all; it is their creator, and fixes limits to their spheres of action, and boundaries to their powers. It is occasional, exceptional, brief, and peculiar. It represents the people in their primary capacity, and forms the organic, fundamental, and paramount law of the State. Its members are mere agents or delegates of the people, and they have no power to adopt or create, but, at most, can only propose and present to the people a draft of a Constitution for their adoption or rejection. To confound, therefore, the functions and duties of a member of this rare and exceptional body for the formation of a new organic law with those of an officer under the every-day working of an existing system, is in our minds to commit a manifest error. It is to confound the architects and builders of a grand edifice with the people who subsequently occupy it; or the foundryman and machinist who build the engine with the engineers and firemen who subsequently manage it.

When we examine the framework of the Constitution itself, we find it divided into articles, under which are systematically arranged the offices pertaining to each division, and their qualifications. Article four covers the legislative department; article five the executive, and article six the judicial. In none of these do we find any reference to members of a Constitutional Convention. Such Conventions are only referred to in article ten, a distinct and separate part of the Constitution, thus isolating this subject from those portions appertaining to the ordinary and every-day operations of the government. This article ten is as broad as can be; no test of eligibility is given; no qualifications are prescribed. The only limit is, that "such Convention shall consist of a number of members not less than that of both branches of the Legislature." From this it would seem that the people were left free to select whom they pleased. The statute under which the Convention was called is likewise free from any limitation or restriction in this regard.

The common practice of the people of the United States is in accordance with the views here presented. Mr. John Howard Hinton, in the second volume of his History and Topography of the United States (pages 324 to 327), treats of Constitutional Conventions, and, among other things, says: "The constituency who choose the delegates for a Convention is almost always the same constituency who choose the members of the State Legislature; but it seems to be open to discretion to make this occasional constituency even more extensive. A great peculiarity, however, of the character of Conventions is, that the delegates may be individuals from any class, including the ministers of religion, the Governor, and other public functionaries, and the Judges. In this point the reader will be struck with the resemblance it bears to the English county meetings, where peers and commoners, and clergy and all other men assemble to deliberate on any public concerns. Both institutions, indeed, are traceable to a common Saxon stock."

In Virginia the Governor of the State sat side by side with John Marshall, both delegates in the Constitutional Convention of that State, whilst the latter was hold-

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ing the exalted position of Chief Justice of the Supreme Court of the United States. Other distinguished officers were likewise delegates to the same Convention.

In the Illinois Convention of eighteen hundred and sixty-two, Judge O'Melveny was a delegate and had been Judge of one of the Circuit Courts within one year prior to his election as delegate. The Constitution of that State provided that the Judges of the Supreme and Circuit Courts should not be eligible "to any other office or public trust of profit" in that State or the United States during the term for which they were elected, nor for one year thereafter, and that all votes for them for such "other office or public trust of profit" should be void. Mr. O'Melveny's competitor contested his seat on that ground; but the Convention, acting upon the principle that a delegate to the Convention was not an officer within the sense and meaning of the Constitution, retained Judge O'Melveny in his seat.

That Convention consisted of the prominent men of Illinois, and numbered among its members jurists of national renown. That case affords an exact parallel to this, and is a precedent directly in point, whilst we have been unable to discover a single instance to the contrary.

Beside all this we cannot assume for a moment that the Convention which framed the present Constitution intended to trammel the succeeding generation in any such manner in the formation of a new or revised organic law. It would have been contrary to the accepted theories of our government, that they should claim a right to define who should constitute the representatives of the people in their great work of defining the fundamental law of the future. Such action would have been contrary to principle and to the common practice of the people in like cases.

We are, therefore, happy to vindicate the able and distinguished men who framed the present Constitution, from any such aspersion on their fame, and are entirely satisfied that their intention and meaning was merely to prohibit the Judges from discharging the duties of an office belonging to either of the other departments under that Constitution. Clearly the inhibition was intended to apply only to the government and the departments thereof created by that Constitution, and not to the rare and exceptional occasion of a Convention, in which the people, resuming their original sovereignty, undertake to change the whole government and select its own agents for that purpose.

So far we have attempted to maintain our conclusion upon reason and the common usages and practice of Constitutional Conventions. But we are not without the authority of some of the highest Courts of the country in our favor. The Supreme Court of this State directly maintains the principles on which we rely. That Court has construed the various sections of the Constitution referred to, and held that the Chief Justice of this State may lawfully hold the office of Trustee of the State Library, and that the Police Judge of San Francisco may act as Police Commissioner

See People vs. Provines, 34 Cal., 532 et seq., and People vs. Bush, 40 Cal., 340.

In the Provines case the Supreme Court held that the Legislative Department referred to in Article III of the Constitution, means the Senate and Assembly and nothing else. It is very clear then that a Constitutional Convention is not a legislative body in the sense of the Constitution.

Article III of our Constitution is borrowed from the Constitution of Iowa, and the Supreme Court of that State has held that under that Article one man may exercise the duties of Mayor of a city and Justice of the Peace, as the office of Mayor is not a State office.

Santo vs. The State of Iowa, 2 Iowa, 220.

The Constitution of Indiana provided that, "No person holding a lucrative office or appointment, under the United States or under this State, shall be eligible to a seat in the General Assembly; nor shall any person hold more than one lucrative office at the same time, except as in this Constitution permitted," etc.

The Director of the State Prison, which was a lucrative office, was also a Councilman of the City of Madison. The Supreme Court of Indiana held that the office of Councilman was a lucrative office, and though literally it fell within the clause of the Constitution referred to, it was not a State office, and that the Constitution only referred to offices provided for under the State Government.

See the State ex rel. Platt vs. Kirk, 44 Indiana, 405.

We therefore respectfully submit that the Honorable Eugene Fawcett was eligible at the time of his election, and is entitled to retain his seat in this Convention.

October 21st, 1878.

S. M. WILSON, Chairman.
W. J. GRAVES.
D. S. TERRY.
ALEX. CAMPBELL.
T. H. LAINE.
S. G. HILBORN.
GEO. VENABLESMITH.
I. S. BELCHER.
V. E. HOWARD.
HENRY EDGERTON.
JOHN A. EAGON.
W. L. DUDLEY.
P. DUNLAP.
P. B. TULLY.
GEO. STEELE.

MR. WILSON, of San Francisco. I move that it be printed out of order, and made the special order for Thursday next, immediately after the reading of the Journal.

The motion prevailed, and the matter was made the special order for Thursday, October twenty-fourth, immediately after reading the Journal.

MR. BLACKMER, from the Committee on Future Amendments, made the following report:

MR. PRESIDENT: Your Committee on Future Amendments beg leave to return document number one hundred and nine, relating to female suffrage, and to suggest that the same be referred to the Committee on Right of Suffrage.

Yours respectfully,
E. T. BLACKMER, Chairman.

The document was so referred.

MR. LARKIN, from the Committee on Privileges and Elections, made the following report:

MR. PRESIDENT: Your Committee on Privileges and Elections have had the following propositions under consideration, and report as follows: That proposition number forty-four, introduced by Mr. Turner, be indefinitely postponed; also, proposition number twenty, and recommend that it be referred to the Committee on Suffrage; proposition number one hundred and ninety eight, introduced by Mr. Freeman, recommend that it be referred to the Committee on Apportionment and Representation; proposition number three hundred and ninety-six, by Mr. Lavigne, and recommend that it be referred to the Committee on Legislative Department; proposition number one hundred and forty-five, and recommend that it be referred to the Committee on Suffrage.

LARKIN, Chairman.

THE PRESIDENT. The first report will go to the Committee of the Whole Convention, and the others be referred as recommended.

RESOLUTIONS.

MR. CAMPBELL offered the following:

Resolved, That the President of the Convention be requested to appoint two Copying Clerks, whose duty it shall be to keep such papers and documents as may be required to be kept by the committees of the Convention which are not authorized to employ clerks, and that such Copying Clerks receive as compensation the sum of five dollars each per diem while so employed, to be paid out of the appropriation for the expenses of this Convention.

MR. CAMPBELL. I move that the resolution be referred to the Committee on Mileage and Contingent Expenses.

The motion prevailed, and the resolution was so referred.

MR. TINNIN offered the following:

Resolved, That the resolution now on the table, in regard to the pay of James Saultry, be taken up and referred to the Committee on Contingent Expenses.

Adopted, and the resolution so referred.

PROPOSITIONS AND RESOLUTIONS RELATING TO THE CONSTITUTION.

The following resolutions and propositions, relating to the Constitution, were introduced:

ON EDUCATION.

MR. SMITH, of San Francisco, introduced the following proposed amendment to the Constitution:

ARTICLE —.

SECTION —. No teacher, State, county, township, or district school officer shall ever be interested in the sale, proceeds, or profits of any books, apparatus, or furniture, used, or to be used, in any school of this State, under such penalties as may be provided by the Legislature.

Referred to the Committee on Education.

DECLARATION OF RIGHTS.

MR. SCHELL introduced the following proposed amendment to section nine, article one, of the Constitution:

SECTION —. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or the press. In all trials for libel, both civil and criminal, the truth of the matter alleged to be libelous, when published with good motives and for justifiable ends, shall be a sufficient defense to the person charged.

Referred to the Committee on Preamble and Bill of Rights.

RELATING TO THE UNIVERSITY.

MR. WEBSTER introduced the following proposed additional section to article nine of the present Constitution, relating to the University:

SECTION —. The University of this State shall be under the control of a Board of Regents, composed of fifteen members, two of which shall be elected from each Congressional District, by the qualified electors thereof, in such manner and for such time as the Legislature may, by law, provide. The remaining seven shall be ex officio members, and the Governor, Lieutenant-Governor, Superintendent of Public Instruction, Speaker of the Assembly, President of the State Board of Agriculture, President of the Mechanics' Institute, and Superintendent of Public Instruction for the City of San Francisco shall, by virtue of their office, be the aforesaid ex officio members.

Referred to the Committee on State Institutions and Public Buildings.

ON REVENUE AND TAXATION.

MR. STUART introduced the following proposed amendment to the Constitution, in reference to revenue and taxation:

The following provisions shall be included in the Constitution:

First—The State tax on property, exclusive of tax necessary to pay any debt of the State now existing, shall not exceed forty cents on the hundred dollars on the valuation.

Second—No county, city and county, city, or municipal corporation, shall impose any tax exceeding thirty cents on the hundred dollars, exclusive of the tax necessary to pay any debt now existing in said county, city and county, city, or municipal corporation.

Referred to Committee on Revenue and Taxation.

IN RELATION TO EMBEZZLEMENT.

MR. THOMPSON introduced the following proposed amendment to the Constitution, in relation to embezzlement:

SECTION 1. Every person holding office in this State, be it township, municipal, county, or State, shall be held amenable for all money or property that may come into his hands or under his control, and in case of his appropriating or converting to his own use any amount under one hundred dollars, shall be guilty of misdemeanor, and upon conviction thereof he shall be fined in the full amount so appropriated, and imprisoned in the county jail for the term of six months. And for any sum exceeding one hundred dollars and under one thousand dollars, he shall be deemed guilty of felony, and upon conviction thereof he shall be imprisoned in the State Prison not less than three nor more than five years, and in addition thereto pay a fine in the full sum so appropriated. And in all cases where the sum so appropriated shall exceed one thousand dollars in value, the penalty shall be imprisonment in the State Prison not less than ten nor more than thirty years, and in addition thereto he shall be fined the full amount so embezzled or appropriated; and he shall forever be disfranchised and ineligible to hold any office of profit or trust in this State in each and every case above enumerated.

SEC. 2. Any person in the employ of any incorporation or individual in this State who shall control or receive any money or other valuables into his custody and shall appropriate any sum not exceeding one hundred dollars, shall be deemed guilty of misdemeanor, and upon conviction thereof he shall be imprisoned in the county jail not less than one month nor more than three months, and he shall pay a fine in addition thereto of the full amount so taken. And for any amount exceeding one hundred dollars and less than one thousand dollars, he shall be deemed guilty of felony, and upon conviction thereof he shall be imprisoned in the State Prison not less than one nor more than three years, and fined in the full amount so appropriated. And for any sum exceeding one thousand dollars, he shall be imprisoned upon conviction thereof in the State Prison for not less than three nor more than ten years, and fined in the full sum so appropriated.

SEC. 3. There shall be appropriate legislation to enforce the above provisions.

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IN REGARD TO JURIES.

MR. CAPLES introduced the following proposed amendment to the Constitution, in regard to juries:

ARTICLE —.

SECTION —. Grand juries shall be composed of seven jurors, and the concurrence of five jurors shall be sufficient for the finding of a presentment.

SEC. —. Trial juries, in all cases, whether civil or criminal, except in cases where, upon conviction, the penalty would be death, shall be composed of five jurors, and the concurrence of three jurors shall be sufficient for the finding of a verdict.

SEC. —. Trial juries, in cases where, upon conviction, the penalty would be death, the jury shall be composed of seven jurors, and a concurrence of the whole number shall be necessary to the finding of a verdict.

Referred to the Committee on Judiciary and Judicial Department.

RELATIVE TO THE LEGISLATURE.

MR. WELLER introduced the following proposed amendment to the Constitution, in relation to the Legislature:

That all bills should be presented and printed within fifty days after the organization of the Legislature, to the end that their provisions may be known in the localities and among the interests to be affected by them, and an opportunity allowed by petition, remonstrance, and argument for presenting reasons for or against their enactment.

That the legalization of the acts of local officers, changes of names of persons and corporations, should be left to judicial inquiry in Courts of record, with power to apply the relief suited to each case, according to its merits.

That the regulation of strictly local affairs of counties should be intrusted within fixed limits to Boards of Supervisors, County Commissioners, or the County Courts, according as they are severally charged with county business.

That the internal and local affairs of towns, and cities, and villages, under like restrictions, should be left to the officers or Boards elected for their government, subject to the approval of the people, by an election upon questions involving taxation and expenditures.

That all Judges of Courts of record, inferior to the Supreme Court, shall annually report, in writing, to the Judges of the Supreme Court such defects and omissions in the laws, as their experience may suggest; and that the Judges of the Supreme Court shall, on or before the first day of each regular session, report, in writing, to the Governor such defects and omissions as they may find to exist, together with appropriate forms of bills to cure such defects and omissions in the laws. These the Governor is required to lay before the Legislature, that general and local laws should not conflict.

Referred to the Committee on Legislative Department.

RELATIVE TO CHINESE.

MR. O'DONNELL introduced the following proposed amendment to the Constitution, relative to Chinese:

SECTION —. The right is hereby reserved to the State to protect its citizens from pestilence and plague, and, as a police regulation, to prohibit the entry of dangerous or criminal classes.

Referred to the Committee on Chinese.

IN RELATION TO ELECTORS.

MR. CONDON introduced the following proposed amendment to the Constitution, in relation to electors:

LEGISLATIVE DEPARTMENT.

SECTION —. Any elector who shall receive any gift or reward for his vote, in meat, drink, money, or otherwise, shall suffer such punishment as the law may direct, and any person who shall directly or indirectly give, promise, or bestow any such reward to be elected, shall thereby be rendered ineligible for any office within the gift of the people of this State for the term of (6) six years, and be subject to such further punishment as the Legislature shall direct,

SEC. —. The Legislature may authorize the employment of a Chaplain for the State Prisons, but no money shall be appropriated for the payment of any religious services in either house of the Legislature.

Referred to the Committee on Legislative Department.

RELATING TO THE CHINESE.

MR. JOYCE introduced the following proposed amendment to the Constitution, relating to the Chinese subject:

Resolved, That the following be inserted in the new Constitution:

SECTION —. All rents for use or occupation of any real estate or premises whatsoever in this State, leased to or occupied by any alien who is ineligible to become a citizen of the United States, under the laws thereof, shall escheat to and be collected by this State.

SEC. —. An alien who has not declared his intention to become a citizen of the United States, under the laws thereof, shall not engage in any business in this State without having been first licensed so to do, in such manner and on such terms as the Legislature shall prescribe.

Referred to the Committee on Chinese.

PRIVILEGES AND ELECTIONS.

MR. TUTTLE introduced the following proposed amendment to the Constitution, in relation to privileges and elections:

All State officers shall be elected for a term of four years.

All elections for legislative, executive, and judicial officers to be held on the same day as that of Presidential Electors.

Referred to the Committee on Privileges and Elections.

GRADUATED TAXATION.

MR. O'SULLIVAN introduced the following proposed amendment to the Constitution, in relation to graduated progressive taxation:

ARTICLE —.

SECTION —. Taxation shall be equal and uniform. The State Board of Equalization shall classify all the lands of the State each second year into as many classes as by law shall be directed, each class to have its specific valuation per acre, and the said valuation to be the basis of the assessment; *provided*, that:

First—Whenever any one person shall, either in his own name, or in the name of any other person or corporation, own over one thousand (1,000) acres, fifty per cent. shall be added to the valuation of his land for taxes;

Second—That where such ownership shall exceed two thousand (2,000) acres, seventy-five per cent. shall be added to the valuation for taxes;

Third—That where such ownership shall exceed three thousand (3,000) acres, one hundred per cent. shall be added to the valuation for taxes;

Fourth—That where such ownership shall exceed five thousand (5,000) acres, one hundred and fifty per cent. shall be added to the valuation for taxes; and,

Fifth—That where such ownership shall exceed eight thousand (8,000) acres, there shall be two hundred per cent. added to its valuation for taxes.

Referred to the Committee on Revenue and Taxation.

NOTICE.

MR. McFARLAND gave the following notice:

Notice is hereby given that I intend to move to amend standing rule number twenty-four, by adding to the end thereof as follows: "*And provided further*, that the names of the members requiring the ayes and noes shall be entered on the minutes of the Convention." McFARLAND.

RESOLUTIONS.

MR. O'DONNELL offered the following:

Resolved, That it is the sense of this Convention that, under the Federal Constitution, the judicial power of the United States extends to all cases affecting the validity of treaties with foreign nations.

Resolved, That the Attorney-General be requested to institute proceedings necessary to obtain from the United States a decision in respect to the validity of the fifth, sixth, and seventh articles of the Burlingame treaty, or so much of said articles as recognizes or concedes the eligibility of Chinese subjects to American citizenship.

Referred to the Committee on Chinese.

MR. BARBOUR offered the following:

Resolved, That the Assessor of the City and County of San Francisco be requested to furnish to this Convention information upon the following points:

First—What was the amount of the assessment upon mining stock in the City and County of San Francisco for the last fiscal year;

Second—What was the amount of the assessments on churches, and the land on which erected, in that city and county for the last fiscal year.

The resolution was adopted.

ADJOURNMENT.

At eleven o'clock and fifty minutes A. M., the President declared the Convention adjourned under the rule.

TWENTY-SIXTH DAY.

SACRAMENTO, Wednesday, October 23d, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Evey,	Joyce,
Ayers,	Farrell,	Kelley,
Barbour,	Fawcett,	Kenny,
Barry,	Filcher,	Keyes,
Barton,	Finney,	Kleine,
Beerstecher,	Freeman,	Laine,
Belcher,	Freud,	Lampson,
Bell,	Garvey,	Larkin,
Biggs,	Glascock,	Larue,
Blackmer,	Gorman,	Lavigne,
Boggs,	Grace,	Lewis,
Boucher,	Graves,	Lindow,
Brown,	Gregg,	Mansfield,
Burt,	Hager,	Martin, of Alameda,
Campbell,	Hale,	Martin, of Santa Cruz,
Caples,	Hall,	McCallum,
Casserly,	Harrison,	McComas,
Chapman,	Harvey,	McConnell,
Charles,	Heiskell,	McFarland,
Condon,	Herold,	McNutt,
Davis,	Herrington,	Miller,
Dean,	Hilborn,	Mills,
Dowling,	Hitchcock,	Moffat,
Doyle,	Holmes,	Moreland,
Dudley, of San Joaquin,	Howard,	Morse,
Dudley, of Solano,	Huestis,	Murphy,
Dunlap,	Hughey,	Nason,
Eagon,	Hunter,	Nelson,
Edgerton,	Inman,	Neunaber,
Estee,	Johnson,	Noel,
Estey,	Jones,	O'Donnell,

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Ohleyer,	Smith, of 4th District,	Vacquerel,
O'Sullivan,	Smith, of San Francisco,	Van Dyke,
Overton,	Soule,	Van Voorhies,
Porter,	Stedman,	Walker, of Marin,
Prouty,	Steele,	Walker, of Tuolumne,
Pulliam,	Stevenson,	Webster,
Reddy,	Stuart,	Weller,
Reed,	Sweasey,	Wellin,
Reynolds,	Swing,	West,
Rhodes,	Terry,	Wickes,
Ringgold,	Thompson,	White,
Schell,	Tinnin,	Wilson, of Tehama,
Schomp,	Townsend,	Wilson, of 1st District,
Shafter,	Tully,	Winans,
Shoemaker,	Turner,	Wyatt,
Shurtleff,	Tuttle,	Mr. President.
Smith, of Santa Clara,		

ABSENT.

Barnes,	Crouch,	Strong,
Berry,	McCoy,	Swenson,
Cowden,	Rolfe,	Waters.
Cross,		

LEAVE OF ABSENCE.

Indefinite leave of absence was granted Messrs. Crouch and Berry; and leave for five days was granted Mr. Strong.

Journal of yesterday read and approved.

LOCAL OPTION.

Mr. SCHELL presented the following petition, signed by numerous citizens of Stanislaus County:

We, the undersigned, citizens of this place and vicinity, believing it to be in accordance, and in harmony with the democratic principles of our Government, would earnestly petition the Constitutional Convention, now soon to be in session, for the insertion in the new organic Act or Constitution, the following:

Section —. The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, voting precinct, town, or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.

OBSERVANCE OF SUNDAY.

Mr. HAGER presented the following petition, signed by many citizens of California:

The undersigned, citizens of the State of California, respectfully and urgently request the delegates constituting the Convention authorized to prepare a Constitution for said State, to retain in said Constitution section four, article one, of the same, and to add to said section a provision declaring the Sabbath day, or Sunday, a day of rest.

COST OF PRINTING.

The PRESIDENT presented the following communication from the Superintendent of State Printing:

OFFICE OF SUPERINTENDENT OF STATE PRINTING,
October 23d, 1878.

Mr. President: In compliance with a resolution passed by your honorable body, requesting a statement as to the cost of printing ordered by the Convention, I have the honor to report that the total cost, up to and including the nineteenth instant, amounts to one thousand three hundred and eighty-nine dollars and sixty-three cents.

Respectfully submitted. F. P. THOMPSON,
Superintendent of State Printing.

The communication was laid on the table.

COMMUNICATION FROM THE SECRETARY OF STATE.

The PRESIDENT presented the following communication from the Secretary of State:

STATE OF CALIFORNIA, DEPARTMENT OF STATE,
SACRAMENTO, October 22d, 1878.

To Hon. J. P. Hoge, President of the Constitutional Convention:

Dear Sir: Recently the honorable Convention over which you have the honor to preside passed a resolution asking for information as follows, to wit:

First—The number and classification of corporations other than municipal now existing in the State of California and formed under the laws of this State.

Second—The aggregate amount of the capital stock of all said corporations, and the aggregate amount of the capital stock of each class thereof.

Third—A detailed statement of the principal places of business and location of offices of all said corporations.

Fourth—A detailed statement of the amount of capital stock actually paid up by all said corporations.

I most respectfully call your attention to the obvious fact that the foregoing resolution calls for all the information contained in the record, and also for information not in the records of this office. In response to the resolution, and not intending any disrespect to the Convention, or any evasion of its demands, I had the honor to forward, as the only adequate compliance, the full record of the information asked for. I most respectfully represent that this action was the only course left me, since the clerical force at my disposal was not adequate to the task of making a complete transcript of the record in time to be of any service to the Convention, even if by so doing the information sought could be obtained. In view of this fact the original record was courteously placed at the disposal of the Convention. It is a matter of most sincere regret that this action has been misconstrued by the honorable gentleman who offered the resolution of inquiry, and that he and two others have seen fit to charge me before the Convention—when I had no opportunity to reply—with an intentional disrespect to that honorable body. I beg leave to assure you that no such disrespect was intended; nor can I see, in the action had, any justification for the charge.

The Convention asked for all the information in a certain record; the original of that record was promptly and courteously forwarded. I fail to see how the transmission of any record in this office can be tortured into an intentional insult to the Convention; and since this action is the full extent of my offending, I most respectfully protest against this gross misconstruction of my motives. If the response made by me was not sufficient, or if through any misapprehension of the request of the Convention I erred in forwarding the original record, I should most gladly have received any information of my error, and then, as now, would have been most happy to facilitate the deliberations of that honorable body with any official information desirable from this office, or any official courtesy or personal service within my power to bestow. Until otherwise informed or convinced, I most respectfully but firmly maintain the adequacy of the response made by me, and as respectfully and firmly disclaim any intention of disrespect to the Convention.

As to the charge that my action was an indignity to the people of California, I have only to say that I am of opinion when an officer does his duty to the best of his ability and preserves his own dignity, the people of California will find but little fault with him.

Hoping that this will receive at your hands that consideration which by reason of its candor it is entitled to, I have the honor to remain,

Your obedient servant,
THOMAS BECK,
Secretary of State.

Accompanying the above was the following:

I have the honor to acknowledge the receipt of another resolution upon the same subject as the former, passed by the Convention on yesterday, to which I shall be most happy to reply at as early a moment as possible.

The PRESIDENT. The communication will lie on the table.

Mr. HALE. I desire to say one word in connection with the communication from the Secretary of State which has just been read; not to deal with its subject-matter, because the Secretary of State says, as I understand the reading of it, that he proposes to make a further report in answer to the resolution of this Convention adopted yesterday. But he says, as I understand the reading, that the author of the resolution, evidently alluding to me, imputed to him motives of disrespect to this Convention. I beg to say that I made no such statement consciously, and I have this morning looked over the report of the remarks made by myself and other gentlemen, and I fail to find any record of any such statement made by myself. I disclaim any such motive or feeling. My motive in offering the resolution was to bring before this Convention the information sought to be obtained, and to ascertain whether it was the sense of the Convention that the Secretary of State had properly complied with the request contained in the original resolution, all of which is duly expressed in the resolution adopted yesterday.

Mr. BLACKMER. I presume that the communication from the Secretary of State includes me as one of the two to whom he refers, besides the author of the resolution, as imputing to him motives that the communication from him could not warrant. I have simply to refer to the remarks that I made, and I call the attention of the Convention to this, that the only remark I made about the Secretary of State was to say that either he had mistaken the purport of the resolution, or he had mistaken the temper of this Convention, and I see no reason, sir, to recall that statement, because I believe it is a true one. He made one mistake or the other. I referred to the Secretary of State in no other part of the remarks that I had to make.

THE CASE OF JUDGE FAWCETT.

Mr. BEERSTECHER. I have here a minority report of the Judiciary Committee, in relation to the case of Judge Fawcett. I ask that it may be printed out of its order.

So ordered.

The report was as follows:

Mr. President: The undersigned, a minority of the Committee of the Judiciary, to whom was referred the subject of the eligibility of the Hon. Eugene Fawcett to a seat in this Convention, finding themselves unable to agree with the majority of such committee, make this minority report:

It is admitted, that the sitting member whose seat is contested was at the time of his election, and is now, Judge of the District Court of the First Judicial District of California. We think this fact renders him ineligible to a seat in this Convention; and we further think that this result is distinctly required by the present Constitution and the reasons which underlie it. The right of the sitting member has been put: 1st, upon the general ground that conventions are revolutionary bodies, and, that in their creation the people are emancipated from existing laws by which they are controlled in all other affairs, and that the Convention itself is possessed of power to disregard all rules but its own will; 2d, that the Constitution now existing, allowing it to furnish the rule of judgment, sustains his claim. As to the first ground, the language of the claimant himself, although somewhat guarded, may be accepted as a fair statement of it. He claimed that this was in no sense an office within the meaning of the Constitution. That even if it was, the people had a right to say who should represent them in the Convention to frame an organic law. That if the people of one generation had a right to dictate to the people of the next, they had a right to say how and what they should do; and we would virtually have no power to alter or amend the organic law.

In the cursory examination of the majority report, the same proposition is in equivalent terms. To a doctrine so unfounded and so dangerous, the undersigned express their unqualified dissent. The people of this Republic, with all their jural relation, constitute the State. The Government is that agency both of power and officers by which the business of the State is effectuated. That the people can assemble in any place, or in any manner which caprice or convenience may direct, for consultation, and to concert action for petition or other methods of procedure for change of their legal relation to the State, or to each other, disturbing in no manner the public peace, may be safely conceded. That they may follow this up by conventions to the same end, is equally true. These conventions, like hundreds of others of purely private character, are intended to collect and give expression to public opinion. Unlike other conventions, they propose to operate upon the law, through the law-making power. Directly of themselves, they claim no power over the law but that of petition and remonstrance.

There is another class of conventions which, sweeping aside constitutions, laws, institutions, and officers, at once resolves society into its individual elements, and taking a new departure from present chaos, endeavors therefrom to create order and institutions. This is simple revolution.

While it is not asserted that this Convention is exactly one of this character, yet it is intimated that if the people have, in Judge Fawcett's case, elected a gentleman ineligible under the present Constitution, they have the right to do so, and this Convention is bound to effectuate their choice. That is to say, every provision of the present Constitution, regulating the calling and purpose of this Convention, may be ignored at will, because it has been so ignored by a detached portion of the people.

This doctrine is dangerous to all alike. When this Convention is disposed to treat the constitutional inhibition as of no value, it is not perceived why it may not expel, as well as admit members, in execution of its mere personal preference. That this Convention is not a revolutionary body, and that it sits here only under the sanction of law, it requires but a glance to perceive.

The people operating in accepted modes, induced the Legislature to exercise a specific power given them by the Constitution, by passing a law submitting the question of general revision of the existing Constitution to the people. Upon the returns of such election, it was ascertained by the officers of the law, that a revision

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had been ordered by the people. Another Legislature directed by statute the election of delegates to this body. It was held, and the persons elected presenting themselves here, at the hour set by the Legislature, were organized by the designated authority, and took an oath to support the Constitution of the State, and to discharge the office of delegate. After all this, in presence of elements of disorder, which threaten destruction of all conservatism, the undersigned cannot permit themselves to be styled revolutionists, nor this body, as one ignoring constitutions and all legal forms, limitations, and restraints, without entering their solemn protest and dissent.

This doctrine of the sovereignty of the Convention was expressly denied by the founders of the National Constitution Mr. Wilson, of Pennsylvania, of whom it is said, he was one of the profoundest jurists our country has ever produced, said in regard to the power of the Convention: "I conceive myself authorized to conclude nothing, but to be at liberty to propose anything" This doctrine received the concurrence of Governor Randolph, of Virginia, James Madison, Mr. Paterson, of New Jersey, and of the Convention. The independence of the Convention and its sovereignty was asserted by Mr Dana, of Pennsylvania, in eighteen hundred and thirty-six. This was followed up in an Illinois Convention in eighteen hundred and forty-seven, and still later, in Kentucky and Massachusetts, in eighteen hundred and fifty-three. To those who desire the restatement and adoption of this theory, the tracing of these attempts to foist this doctrine upon Constitutional Conventions, down to their adoption, in effecting the actual withdrawal of eleven States of this Union from their allegiance to it, will be, if not a pleasant, still a most instructive employment. The undersigned have no wish for such restatement, nor for any further experience founded upon it. We persuade ourselves, however, that this Convention will reject all such vagaries, and will not accept the office, nor undertake to proceed upon the theories, nor to any extent discharge the functions of a revolutionary Convention, and that it will leave the claim of the sitting member to stand or fall upon the Constitution alone.

Every one must be aware that Constitutions owe their maxims and existence to the abuses resulting from the too great concentration of power in few or single hands. This idea was so fully conceded in the act of creating the Federal Constitution, that the only question largely debated was from which of the departments into which government was resolved was it that most danger was to be apprehended.

In the country from which the first Colonists came, for many centuries the Judges had been the personal advisers of the Crown. The duties they discharged were often of a political character. In the contest with the Colonies, they were, many of them at least, the enemies of the Colonists. America was smarting under indignities advised by the Judges and Chancellors of England.

It was in view of this historical fact that American statesmen, in distributing the powers of government, undertook at least to separate them by insurmountable barriers. Especially was the intention manifested of cutting off the judicial from all junction, overlapping, or intermingling with any other department of government. In short, we believe that a Judge is forbidden to perform or in any way to represent any function of a public character, during the term for which he was elected, other than those judicial in character, and we believe further that it is a conclusion justified by reason and authority.

It must be borne in mind that constitutional questions are not to be passed upon like those presented in a plea in abatement or special demurrer. As to these it may be right to stand upon precise terms. Treaties and Constitutions require a larger and more comprehensive view, by which the true intention of their terms may be sought. As to such instruments, "*haeret in litera, haeret in cortice.*" The whole scope and purpose must be ascertained from all that is in and around the fact of the creation of the instrument to be interpreted.

The Committee of the Judiciary seem to put their resolution upon the ground that the word "office" does not properly indicate the function or place of a delegate in this Convention. The language of article six, section sixteen, is as follows: "The Justices of the Supreme Court, and the District Court, and the County Judges, shall be ineligible to any other office than a judicial office during the term for which they shall have been elected."

The committee make the whole question turn upon the interpretation of this word "office," and hold that it is not applicable to membership in this body. The undersigned do not concur in this opinion, and if we did, we do not see how it would strengthen the claimant's position.

Article III of the Constitution declares: "The powers of the Government of the State of California shall be divided into three separate departments—the legislative, the executive, and the judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted"

The People vs. Sanderson, reported in 30 Cal., 160, we think is an authority which, accepted and fairly construed, is decisive of this controversy. The case was quo warranto to settle the title of the Chief Justice of the Supreme Court to hold a seat in the Board of Trustees of the State Library. In the information or complaint, in the defendant's demurrer, in the judgment below, in the statutes, and in the briefs of counsel, the right in dispute is called an office. The Court nowhere call it such, nor do they allude to the designation as affecting their decision. This went the whole length of asserting that the Legislature could not impose upon a Judge "any other duties than those of a judicial nature."

After reciting the third article above recited, the Court quote Burgoyne vs. The Board of Supervisors of San Francisco, 5 Cal., 9. That case, after reference to Article VI, says: "From which it follows, *no duties* except of a judicial character can be conferred on the Court of Sessions, inasmuch as the officers composing those Courts are persons charged by the Constitution expressly with the performance of judicial duties."

To further emphasize their view, the Court, in the main case, proceed to assign as a reason why a judicial officer could execute no other duties, that "no provision is to be found in the Constitution expressly directing or permitting a Justice of the Court to exercise any function appertaining to either of the above departments of government." In pursuance to this larger and more comprehensive interpretation to which we have referred, this Court say. "This provision of the Constitution, so far as it relates to the judicial department of the State, is, in our judgment, eminently wise. One of its objects seems to have been to confine Judges to the performance of judicial duties, and another to secure them from entangling alliances with matters concerning which they may be called upon to sit in judgment; and another still, to save them from the temptation to use their vantage ground of position and influence to gain for themselves positions and places from which judicial propriety should of itself induce them to refrain."

The Court then decide, "that, as the duties of a trustee do not appertain to the judicial department of the government, the Chief Justice could not execute them."

The impropriety of the action contemplated in the resolution reported by the committee, and the justice and necessity of the above opinion, is decisively enforced by the results of its adoption. If anything is certain to be done by this Convention, it is a remodeling of the judicial department One of the propositions already passed upon by the Judiciary Committee, and to be reported to this Convention, is the abolition of the District Courts, their name even is to be erased from the Constitution, and yet the majority resolution would retain a gentleman here who will be required to pass upon the further existence of his office and its emoluments, and perhaps to determine the result by his single vote. "No one ought to be judge in his own cause" is a legal maxim hitherto held to be of universal application.

We think further that a delegate to this Convention is the holder of an office in the sense that word is used in the Constitution. Jameson's book upon the Constitutional Convention, section three hundred and twenty-four, thus states his view: "In my judgment, there can be but little doubt that a member of a Convention is, in the enlarged and proper acceptation of the term, an officer of the State. A Convention is a part of the apparatus by which a sovereign society does its work as a political organism. It is the sovereign as organized for the purpose of renewing or repairing the governmental machinery. That same sovereign, as organized for the purpose of making laws, is the Legislature; as organized for the purpose of applying or carrying into effect the laws, it is the judiciary or the executive. These successive forms into which the sovereign resolves itself, are but systems of organization having relation more or less directly to the government of the society. Together they constitute the Government." Mr. Webster, in his great argument in the Rhode Island case, adopts upon this point equivalent terms.

The only case we have found which seems to deny the foregoing is that of The People vs. Provines, 34 Cal., 520.

It is a noticeable fact that this decision, as it is called, asserts itself as an act of judicial legislation. After reciting all the California and other cases, the Court say: "From them we deduce the following general rule, as embodying the law of the present case as it now stands: the third article of the Constitution prohibits all persons charged with the exercise of functions which are in their nature of either a legislative, executive, or judicial character, from exercising the functions of either of the other two classes." Having thus stated the actual condition of the law, the Court, with an admission that it was entirely unnecessary to disturb that condition, proceed to contrast the soundness of a long and unbroken stream of California decisions by which that law had been declared, and to overthrow, if possible, the authority of a case in which the Judge delivering the decision had been an unsuccessful defendant.

As to the precise case, three Judges undertook to overthrow the opinions of four Judges; but of so far as the cases show, of all the preceding Judges who had passed upon the question, one or two perhaps excepted. Such a decision we submit is not entitled to very favorable consideration. Nor within its own terms is it obligatory upon this body, which is sole judge of the eligibility of its members The assertion in this case, that the word "office" used in article three above cited, is to be confined to those offices which the Constitution created or designated. We do not admit this; but if it is a correct assumption, still it remains that the office of delegate to this Convention is precisely within this category.

In the discharge of the duty which our convictions create, we have not thought it proper to canvass or judge of the merits of the sitting member, nor the fact that there is no technical contestant. We agree, that if the wish of the voters, whose suffrages sent Judge Fawcett here, can be gratified under a proper construction of the existing state of the Constitution, it should be done. Having failed to reconcile ourselves to this conclusion, we dissent from the report of the majority, and recommenced the adoption of the accompanying resolutions.

J. McM. SHAFTER,
EDW'D. BARRY,
C. J. BEERSTECHER.

NEW REFERENCE.

MR. REED made the following report:

MR. PRESIDENT: Your Committee on Agriculture, Manufactures, and Commerce, to whom was referred amendment number thirty-eight, relative to taxation of vessels, report the same back and ask that it be referred to the Committee on Revenue and Taxation; also report back amendment number sixty-three, with the recommendation that it be referred to the Committee on Water and Water Rights

Respectfully,
CHARLES F. REED, Chairman.

FURTHER TIME.

MR. EDGERTON. This is the day fixed, by an order of this Convention, suspending the regular order of business, more than a week ago, upon which committees were instructed to report. On behalf of the Committee on Revenue and Taxation, I desire to report that committee has held daily sessions since that order was passed and is able to report progress, but that it is unable yet to report a plan. This plan will very soon be perfected and ready to submit. Ask for further time.

THE PRESIDENT. If there is no objection, further time will be granted. Hearing none, it is so ordered.

MR. VAN DYKE. I have to state that we have agreed upon a draft of a Preamble and Bill of Rights, but have not had time to have it engrossed. We ask for further time until to-morrow.

THE PRESIDENT. So ordered, if there be no objection.

MR. ESTEE. The Committee on Corporations have had under consideration the questions arising in that department of the Constitution ever since its organization, have met daily and been in session a good many hours each day. They are not entirely through, but will be in a very short time. We ask for five days further time.

THE PRESIDENT. So ordered.

MR. TINNIN. I see that nearly all of the committees are unable to report at this time. I move that one week further time be granted to all committees.

So ordered.

NEW REFERENCE.

MR. ESTEE, from the Committee on Corporations, verbally reported back amendment number thirty-seven, introduced by Mr. Stedman, with the recommendation that it be referred to the Committee on Miscellaneous Subjects.

It was so referred.

POSTAGE.

MR. BARBOUR offered the following resolution:

Resolved, That the sum of five dollars be and is hereby appropriated for postage for the Secretary of this Convention on Correspondence, which is done by him by order of the Convention.

MR. BARBOUR. I introduced that at the request of the Secretary, who says that when we send for any information he has no postage to pay for it. That is all.

MR. BLACKMER. I suggest, that under the rule, that should go to the Committee on Contingent Expenses.

So ordered.

PRINTING THE JOURNAL.

MR. HOLMES offered the following:

Resolved, That the Committee on Reporting and Printing be and is hereby instructed and required to inquire into and report at an early day to this Convention, by resolution or otherwise, the expediency and possible cost of transcribing, indexing, and printing the Journal of this Convention.

Referred to the Committee on Reporting and Printing.

DECLARATION OF RIGHTS.

MR. DUDLEY, of Solano, by leave, introduced the following proposed amendment to the Constitution, relative to declaration of rights:

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SECTION —. The public officers of the State Government, and all municipal governments formed thereunder, which shall be filled by appointment from the Governor or other authority, are public trusts, to be created and administered solely for the benefit of the people; and to make the tenure of said offices dependent on the ascendancy of any political party or any private interests is a gross perversion of power.

Read and referred to Committee on Preamble and Bill of Rights.

EXECUTIVE DEPARTMENT.

MR. DUDLEY, of Solano, introduced the following proposed amendment to the Constitution, relative to the manner of filling public offices, and the tenure thereof:

Amend sections six and seven, article eleven, of the Constitution, as follows:

SEC. 6. All officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct. All appointed officers of the State Government must be appointed by the Governor, save such clerks or other subordinate officers in commissions or departments of the State Government charged with handling public funds, for whose faithfulness the official head of such commission or department may be personally responsible on bonds. The appointment of such designated clerks or subordinate officers may be vested in their immediate official superiors, if the Legislature so directs. No office shall be filled by appointment of the Legislature, or either branch thereof, save the offices of its own body.

SEC. 7. When the duration of any office is not provided for by this Constitution, it may be declared by law; but all officers of the State government filled by appointment shall be held during the pleasure of the authority making the appointment; *provided*, that the Governor shall not remove any officer without immediately communicating to the Senate (if the Legislature be then in session) an explicit statement of his reasons for making such removal, explaining why he deems it a furtherance of the public good; and if the Legislature be not in session at the time of making such removal, said statement shall be communicated within ten days after the beginning of the next succeeding regular or special session. In case of a Governor retiring from office before the beginning of the session following a removal from office, he shall, before the expiration of his term, place on file in the office of the Executive Department the required statement of reasons for removal, and such statement shall, by his successor, be transmitted to the Senate within the limit of time before specified.

Read and referred to Committee on Executive Department.

COLLECTION OF TAXES.

MR. AYERS introduced the following proposition to collect taxes in installments:

SECTION —. The Legislature shall have the power to provide for the collection of taxes in installments, by requiring the Treasurers to issue coupon receipts to each taxpayer for one twelfth, or any greater proportion, of his total annual tax, the same to be taken up at the option of the taxpayer in gross or in such installments as the law may fix.

Read and referred to Committee on Revenue and Taxation.

CAPITAL AND LABOR.

MR. CONDON introduced the following proposed amendment to the Constitution, in relation to capital and labor:

SECTION —. Transportation may be done, and supplies obtained for the State, by contract, but only with such persons, firms, or corporations, as employ no alien labor. Public work of all description, including buildings, roads, bridges, aqueducts, wells, and waterworks of every kind, to be constructed or repaired by or for the State, or by and for any county or municipality thereof, shall not be constructed or repaired by contract; but the State, county, or municipality shall pay directly to the laborers employed thereon such compensation as may be agreed on, and no alien, or person employing aliens, shall be employed thereon, or entitled to compensation for any labor he may perform thereon.

SEC. —. Eight hours shall constitute a legal day's work, for all work done by the State, or for any county, town, or municipality therein.

SEC. —. The above sections shall be enforced by appropriate legislation.

Read and referred to Committee on Labor and Capital.

RELIGIOUS LIBERTY.

MR. BEERSTECHER introduced the following proposed amendment to the Constitution, relative to the Declaration of Rights:

SECTION —. The free exercise and enjoyment of religious opinions and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent in any manner, nor shall any person ever be questioned and forced to answer any questions concerning or on account of opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State. No law shall ever be enacted by the Legislature making it unlawful to do on any day that which may be lawfully done on any other day.

Read and referred to Committee on Preamble and Bill of Rights.

TAXATION.

MR. BEERSTECHER introduced the following amended amendment—number three hundred and nineteen—relative to taxation:

LIQUOR TRAFFIC TAXATION.

SECTION —. The business of manufacturing and selling intoxicating liquors of every name and nature shall be subject to legislative regulation, by general laws having effect throughout the State; but this shall not be construed as giving to any Legislature the authority to enact prohibition laws, or delegate the power to enact prohibition laws to any political division of this State. The Legislature shall provide for an annual tax to be imposed upon intoxicating liquors, to be paid by every person, copartnership, company, and corporation who shall carry on or be engaged in manufacturing, selling, or disposing of such liquors otherwise than for medicinal, chemical, or mechanical purposes, for each place where such business is carried on by such person, copartnership, company, or corporation. Said tax shall be paid into the treasury of the county, city, village, or township where such business is carried on, and appropriated as the Legislature shall by general law provide. The sale or other disposition of such liquors to minors, persons under guardianship, insane and idiotic persons, paupers, and common drunkards, is wholly prohibited. Every person who shall carry on or engage in the business of traffic taxed as aforesaid in this section, without having first paid the tax imposed, or otherwise violate any provision of this section, shall be guilty of a misdemeanor, and, on conviction, be punished by fine or imprisonment, or both, as may be prescribed by law, and every sale, until the tax is paid, shall subject the party to such penalty; and all necessary laws shall be passed to enforce the provisions of this section.

Read and referred to Committee on Revenue and Taxation.

APPROPRIATIONS.

MR. SMITH, of Santa Clara, introduced the following proposed amendment to the Constitution, respecting appropriations:

No appropriation shall ever be paid out of the treasury of this State, or any of its funds, or any funds under its management, except in pursuance of an appropriation by law, nor unless such appropriation be made within two years next after the passage of such appropriation Act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum, and the object to which it is applied, and it shall not be sufficient for such to refer to any law to fix such sum.

Read and referred to Committee on Revenue and Taxation.

CLAIMS AGAINST THE STATE.

MR. MARTIN, of Alameda, introduced the following proposed amendment to the Constitution, relative to the adjudication of claims against the State:

SECTION —. The Legislature shall make no law authorizing the payment by any county, or municipal corporation, or town, of any private claim; but general laws shall be passed in such manner as the Legislature shall deem meet, providing for the adjudication of all such claims.

SEC. —. The Legislature shall make no law authorizing the payment by the State of any private claim against the State; but suit shall be brought against the State on any such claim in any Court of competent jurisdiction.

SEC. —. In all such suits the Governor of the State shall be served with legal process, and such defense shall be authorized as in the case of a private individual.

Referred to Committee on Judiciary and Judicial Department.

TAXATION.

MR. HAGER introduced the following proposed amendment to the Constitution, relative to revenue and taxation:

1. The taxing power may be exercised by the Legislature for State purposes; and by the counties, cities, and other public and municipal corporations, under authority granted to them by the Legislature, for county, city, and other corporate purposes.

2. All taxes shall be levied and collected by general laws, and for public purposes only. They must be equal and uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and may be levied on all subjects and objects of taxation.

3. All property subject to taxation shall be taxed in proportion to its value; but it shall be subject in proportion to its value to bear only its equal and relative proportion of taxation; and every person subject to taxation shall be taxed in proportion to what he may be worth in real estate, in personal estate, in money owned and in his possession, and in money owing him which may be reduced to possession.

4. The power to tax corporations and corporate property shall not be surrendered or suspended by Act of the Legislature. All corporations of this State shall be subject to taxation on the real and personal property owned or used by them in this State, on their gross earnings, their franchises, and their capital stock; and all corporations doing business in this State shall in like manner be taxed on the real and personal property, capital, and money owned or used by them in this State.

5. All laws exempting property from taxation, except as in this Constitution expressly prescribed, shall be void.

6. No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatever.

7. The making of profit out of State, county, city, town, public school, or other public or municipal money, or using the same for any purpose not authorized by law, by any public officer, shall be a felony, and shall be punished as prescribed by law.

Referred to Committee on Revenue and Taxation.

ADJOURNMENT.

MR. HOWARD. I call for the regular order of business.

THE PRESIDENT. Under the rule the Convention will stand adjourned until to-morrow morning.

MR. LARKIN. I hold that that resolution expired at the same stage as it passed.

THE PRESIDENT. The rule applies to the day. The Convention stands adjourned till to-morrow morning at ten o'clock. [Time, ten forty-five A. M.]

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TWENTY-SEVENTH DAY.

SACRAMENTO, Thursday, October 24th, 1878.

The Convention met in regular session at ten o'clock A. M. President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Harvey,	Overton,
Ayers,	Heiskell,	Porter,
Barbour,	Herold,	Prouty,
Barnes,	Herrington,	Pulliam,
Barry,	Hilborn,	Reddy,
Barton,	Hitchcock,	Reed,
Beerstecher,	Holmes,	Reynolds,
Belcher,	Howard,	Rhodes,
Bell,	Huestis,	Ringgold,
Biggs,	Hughey,	Schell,
Blackmer,	Hunter,	Schomp,
Boggs,	Inman,	Shafter,
Boucher,	Johnson,	Shoemaker,
Brown,	Jones,	Shurtleff,
Burt,	Joyce,	Smith, of Santa Clara,
Campbell,	Kelley,	Smith, of 4th District,
Caples,	Kenny,	Smith, of San Francisco,
Casserly,	Keyes,	Soule,
Chapman,	Kleine,	Stedman,
Charles,	Laine,	Steele,
Condon,	Lampson,	Stuart,
Cowden,	Larkin,	Sweasey,
Davis,	Larue,	Swenson,
Dean,	Lavigne,	Swing,
Dowling,	Lewis,	Terry,
Doyle,	Lindow,	Thompson,
Dudley, of San Joaquin,	Mansfield,	Tinnin,
Dudley, of Solano,	Martin, of Alameda,	Townsend,
Edgerton,	Martin, of Santa Cruz,	Tully,
Estee,	McCallum,	Turner,
Estey,	McComas,	Tuttle,
Evey,	McConnell,	Vacquerel,
Farrell,	McFarland,	Van Dyke,
Fawcett,	McNutt,	Van Voorhies,
Filcher,	Miller,	Walker, of Marin,
Finney,	Mills,	Walker, of Tuolumne,
Freeman,	Moffat,	Webster,
Freud,	Moreland,	Weller,
Garvey,	Morse,	Wellin,
Glascock,	Murphy,	West,
Gorman,	Nason,	Wickes,
Grace,	Nelson,	White,
Graves,	Neunaber,	Wilson, of Tehama,
Gregg,	Noel,	Wilson, of 1st District,
Hager,	O'Donnell,	Winans,
Hale,	Ohleyer,	Wyatt,
Harrison,	O'Sullivan,	Mr. President.

ABSENT.

Berry,	Eagon,	Stevenson,
Cross,	Hall,	Strong,
Crouch,	McCoy,	Waters.
Dunlap,	Rolfe,	

LEAVE OF ABSENCE.

Leave of absence was granted to Messrs. Waters, Dunlap, Eagon, and Hall.

On motion of MR. LARKIN, the reading of the Journal was dispensed with.

CREATION OF DEBTS.

MR. CASSERLY introduced the following proposed amendment to the Constitution, relative to creation of debts by city and county organizations:

ARTICLE —.

No debt or liability shall be created or expressly incurred by a city or by a department, board, or officer of a city, unless there shall be at the time in the treasury an unexpended appropriation applicable to such debt or liability, and sufficient to discharge the same, and all debts and liabilities previously incurred and payable out of such appropriation, and all contracts, engagements, or transactions in violation hereof shall be unlawful and void. Nor shall any debt or liability of a city be paid except out of money in the treasury appropriated thereto according to law. No money shall be drawn from the treasury except in the pursuance of an appropriation lawfully made. Nor shall any extra compensation or allowance be made to any officer, servant, agent, contractor, or employé of such government, beyond the compensation agreed upon or fixed by law. All transactions or violations of this section shall be illegal and void. The Legislature, at its first session after this Constitution takes effect, shall enact such laws, civil and criminal, as may be necessary or appropriate to enforce the provisions of this section.

ARTICLE —.

No money shall be borrowed by any city for the purpose of defraying any of the expenses of the city for which an appropriation has been made, except in anticipation of the revenue of the year for which the same may be borrowed applicable to such purpose; and all moneys so borrowed must be paid out of such revenue, or out of revenues specially provided to supply any deficiency in the collection thereof; *provided, however*, that temporary loans in anticipation of the taxes may be renewed so far as such taxes may not have been collected, when the same are fully secured to the extent of twice their amount by valid liens on real estate. In no event shall any indebtedness be incurred to an amount, including existing indebtedness, in the aggregate exceeding —— per centum on the value of the taxable property of a city. Such value shall be ascertained from the assessment roll for State and county purposes made immediately previous to incurring such indebtedness; *provided, however*, that a city may borrow money under and in accordance with the following conditions and limitations, in addition to any other conditions and limitations contained in the Constitution, namely: The debt must be for some single work or object only, and must be authorized by a resolution passed by a vote of three fourths of all the members elected to the Board of Supervisors, and approved by the Mayor, distinctly specifying such work or object, and the whole amount of the debt to be incurred. The Legislature must, before the creation of such a debt, assent thereto by an Act passed by a vote of two thirds of all the members elected to each house respectively. Such vote shall be by yeas and nays recorded on the Journal of each house; such law shall also distinctly specify the single work or object for which the debt is to be created, and the amount of the debt authorized, and shall contain provisons for a sinking fund to meet the same at maturity, and requiring at least ten per cent. of the principal to be annually raised by taxation and paid into the sinking fund. Such Act shall not take effect until it shall be ratified at an election held in said city, at which no other matter is voted upon, and which shall be held within —— days after the passage of said Act. The Legislature shall make such laws as may be necessary to provide for holding such election and ascertaining the result thereof.

Read and referred to Committee on City, County, and Township Organizations.

REPORT ON PREAMBLE AND BILL OF RIGHTS.

MR. VAN DYKE made the following report from the Committee on Preamble and Bill of Rights:

MR. PRESIDENT: The Committee on Preamble and Bill of Rights beg leave to report that they have had under consideration, for a number of sessions, the subject-matter referred to them, and, having agreed upon a draft for a Preamble and Declaration of Rights, submit the same herewith to the Convention for its consideration.

At the outset of their deliberations, the committee adopted the plan to take up, in their order, the preamble and different sections of article one of the present Constitution, and consider the same as a basis for their action, with the understanding that only such provisions should be altered or amended as the public interest seemed to demand. Acting upon this plan, the committee first informally considered and acted upon the old preamble and separate sections of article one, seriatim, in connection with the various propositions bearing thereon which have, from time to time, been referred to us by the Convention. Afterwards the committee went over the work again, in the same manner, for final action.

PREAMBLE.

It being the opinion of the committee that the substance and general style of the present preamble should be preserved, they have reported the same, with only slight verbal amendment, as the preamble for the new Constitution. It expresses, in brief and appropriate language, the people's gratitude to the Supreme Being for their freedom, and their desire and determination to secure and perpetuate its blessings by the establishment of a constitutional government. This is all that seems to be required, without loading it down with unnecessary recitals.

DECLARATION OF RIGHTS.

SECTIONS 1–2. Sections one and two, of article one, have been retained, with the same numbers, in the new article, without any alteration. The former declares the inalienable rights of man, and the latter the object and purposes of government, in a manner and style that cannot well be improved.

SEC. 3. Section three of the old article, relating to the right of trial by jury, has been materially changed. There were a large number of propositions referred to the committee, having in view some modification of the jury system, and after giving them due consideration, and devoting considerable time to the subject, the committee agreed upon the section as reported, which has been inserted in the place of the old section seven, immediately preceding the section relating to the Grand Jury, and numbered accordingly. As section three of the article here reported, the committee have adopted a new section, which recognizes the Constitution of the United States as the paramount law of the land.

SEC. 4. Section four, in reference to the free exercise and enjoyment of religious profession and worship, has been retained with the insertion of the words "or juror," after the word "witness," in the sentence, "and no person shall be rendered incompetent as a witness on account of his opinions on matters of religious belief."

A number of memorials, quite numerously signed, having in view some modifications of, or addition to, what is contained in section four have been referred to us. A representative of the clergy also favored the committee with a brief statement of the reasons assigned by a large class of our people for desiring such changes. But after giving to the subject-matter all the consideration its importance demanded, the committee, with all deference to the memorialists, still remain of the opinion that it would be unwise to materially alter or add to the section as it stands in the old Constitution.

SEC. 5. Section five, relating to the writ of habeas corpus, remains as in the original article.

SECS. 6–7. Sections six and seven, in addition to the declaration in the former against excessive fines, cruel and unusual punishments, and the unnecessary detention of witnesses, bear upon the same subject,

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namely, the matter of bail. The committee, therefore, have transposed and consolidated these sections, and have added, by way of amendment to the clause relating to detaining witnesses, a prohibition against confining them in jails or rooms where criminals are generally imprisoned. At present it not unfrequently happens that a stranger or poor person, so unfortunate as to witness the commission of a crime, for want of bail is confined in some noisome prison cell, while the criminal, more blessed in the possession of friends or property, goes at large on bail.

Sec. 7. For section seven, as already stated, we have inserted the old section three, as amended. As thus amended, the right of a jury in criminal trials is still retained, but in cases not amounting to felony the Legislature may fix the number to constitute such jury, and in all civil cases the whole matter is left to be provided by law.

Sec. 8. Section eight has been divided so as to form, with the amendments proposed, three sections. The portion relating to the Grand Jury forms the eighth section of the new article. As amended, it provides for a Grand Jury in cases punishable by death, or imprisonment in the State Prison, with the usual exceptions, and in other criminal cases permits a prosecution by information or complaint, as may be prescribed by law. It also provides that while the Grand Jury is retained, two thirds may find a true bill, thereby making it more difficult to defeat action against influential parties than under the old system. Power is also conferred upon the Legislature, by a two-thirds vote of all the members elected to each house, to abolish and restore the whole Grand Jury system. In regard to the Grand Jury as well as the trial jury, the action of the committee may not have been as radical as the public sentiment demands, judging from the various propositions before them bearing upon the subject, but, if so, there is a degree of elasticity in the new system which the old did not possess, and the Legislature, guided by experience, will be enabled to meet the wants of the people in this respect.

Sec. 9. Section nine, declaring the right of freedom of speech and of the press, and prescribing a rule in criminal prosecutions for libel, has been retained as it existed in the old article.

Sec. 10. Section ten, declaring the right of the people freely to assemble together to consult for the common good, etc., has also been retained.

The committee, after duly considering the subject-matter of the two foregoing sections, came to the conclusion that it would be unwise to propose amendments to them, or to tamper with them in any respect. Their provisions have been construed, and are well understood, and it is hazardous to make experiments in such matters.

Sec. 11. Section eleven, declaring that all laws of a general nature shall have a uniform operation, is retained.

Sec. 12. Section twelve, providing that the military shall be subordinate to the civil power, etc., has been amended by striking out the last clause, which limits an appropriation for army purposes, as that matter is covered by section twenty-two of the present article, added by way of amendment in eighteen hundred and sixty-six and eighteen hundred and seventy-one; and the latter section has also been left out of our draft, on the ground that it belongs more properly to the legislative article. To section twelve, as thus amended, we have added section thirteen of the old article, as it bears upon the same matter of restricting the military power.

Sec. 13. Section thirteen has been provided for by inserting in place of the old section, already disposed of, that portion of the old section eight, in regard to the right of the accused in a criminal trial, and has been amended. The amendment consists in adding certain other usually enumerated rights, mostly taken from article six of the amendments to the Constitution of the United States, and which seem to have been omitted from that portion of the old section eight. We have also altered the clause in regard to putting a person twice in jeopardy, so as to remove any doubt, in case a jury on the trial should, for any reason, be discharged without rendering a verdict.

Sec. 14. The committee struck out the old section of this number, relating to apportionment, as it more properly belongs to the Committee on Apportionment and Representation. The committee have constructed a new section on the subject-matter of the last clause in the old section eight—that is, taking private property for public uses. In the section reported in our draft for section fourteen, it is provided that the time or services of the citizen, when required for the public, shall also be compensated in a manner to be provided by law. It may be that the labor of an individual is his only capital or means of support, and when his time or services shall be required for the public benefit there appears to be no reason why compensation should not be made the same as when private property is taken.

Sec. 15. Section fifteen prohibits imprisonment for debt, except in cases of fraud, and prohibits imprisonment for a militia fine. It has been retained in its place without alteration.

Sec. 16. Section sixteen, declaring against ex post facto laws and laws impairing the obligation of contracts, has been amended so as to prevent impairing the remedy for the enforcement or breach of a contract.

Sec. 17. Section seventeen, in regard to the right of foreign residents to possess, enjoy, and inherit property, has been amended so as to exclude from its provisions foreigners not eligible to become citizens.

Sec. 18. Section eighteen, prohibiting slavery and involuntary servitude, has been so amended as to read: "No form of slavery shall ever exist in this State, and there shall be no involuntary servitude, except for the punishment of crime of which the party shall have been duly convicted."

Sec. 19. Section nineteen, relative to the right of the people to be secure from unreasonable seizures and searches, is retained without amendment.

Sec. 20. Section twenty, in regard to treason, and the rights of a person on trial charged with the same, remains intact.

Sec. 21. Section twenty-one, declaring that this enumeration of rights shall not be construed to impair or deny others retained by the people, was the last section of the original article, and we have retained it as the last in our draft, and changed the number accordingly. In its place as section twenty-one, we have inserted a new section declaring against special privileges and immunities. Several propositions were referred to us bearing upon this subject, and many of the Constitutions of other States contain similar provisions.

Sec. 22. The present section of this number, added by amendment, as already stated, has been dropped from our draft as properly belonging to another article. The committee have prepared a new section to take the place of twenty-one, declaring against appropriations or grants to any corporation, association, asylum, hospital, or any institution not under the exclusive management and control of the State. Judging from the various propositions on this subject, there would seem to be a public demand for some provision of this kind, in order to prevent the funds and property of the State from being diverted and used for other than public purposes.

Sec. 23. Section twenty-three is a new section, in which it is declared that the provisions of the new Constitution, unless when declared to be otherwise, shall be mandatory and prohibitory. The purpose of this is, that where plain language is used in the Constitution declaring what shall be done, and what shall not be done, it must not be construed, in convenient cases, to be merely directory. This section has also been presented in deference to what seems to be a public demand for something of the kind.

Sec. 24. This is the last section in the new article, and, as already stated, is the same as the twenty-first, or last section in the original article.

Several other new sections were proposed before the committee, but failed of adoption—some for the reason that they were considered unnecessary or inappropriate, and others for the reason, simply, that they more properly belonged to some other department.

Herewith the committee returns to the Convention various memorials and propositions bearing upon the matters under consideration, up to this time, referred to them, and would recommend that so much of any or all the provisions contained therein as may not be embodied in the draft herewith submitted, be not adopted.

All of which is respectfully submitted.

WALTER VAN DYKE,
Chairman.

MINORITY REPORT.

Mr. FREUD, on behalf of a minority of the Committee on Preamble and Bill of Rights, presented the following report:

Mr. President and gentlemen of the Convention:

We, the undersigned, minority of your Committee on Preamble and Bill of Rights, beg leave to report the following two additional sections for insertion in the Bill of Rights of the new Constitution:

Section —. No property qualification shall ever be required for any person to vote, hold office, or become a juror.

Sec. —. The penalty for all crimes, except petty misdemeanors, shall be imprisonment, which shall be proportioned to the character and degree of the offense.

J. RICHARD FREUD,
JAMES N. BARTON,
CHAS. S. RINGGOLD,
A. E. NOEL.

Mr. VAN DYKE. The report which I sent up is accompanied by a draft for a Preamble and Article One of the Constitution. I ask that they both be ordered printed, and referred to the Committee of the Whole.

So ordered.

Mr. FREUD. I ask that the minority report also be printed, and referred to the Committee of the Whole.

So ordered.

The draft submitted by the majority of the committee is as follows:

PREAMBLE.

We, the people of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings do establish this Constitution.

ARTICLE I.

DECLARATION OF RIGHTS.

Section 1. All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

Sec. 3. We recognize the Constitution of the United States of America as the great charter of our liberties, and the paramount law of the land.

Sec. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness or juror, on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

Sec. 5. The privilege of the writ of habeas corpus shall not be suspended, unless, when in cases of rebellion or invasion, the public safety may require its suspension.

Sec. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident or the presumption great.

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Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted; nor shall witnesses be unreasonably detained, or confined in any jail or room where criminals are usually imprisoned.

SEC. 7. In criminal cases, the right of trial by jury shall remain. In all cases except felony, the Legislature may provide by law the number necessary to constitute a jury; and in all civil cases, the number necessary to render a verdict.

SEC. 8. No person shall be held to answer for a crime or other public offense punishable by death or imprisonment in the State Prison (except in cases of impeachment and in cases of militia, when in actual service, and in the land or naval forces, in time of war, or which this State may keep, with the consent of Congress, in time of peace) unless on presentment or indictment of a Grand Jury. In all other cases, offenses shall be prosecuted by indictment, information, accusation, or complaint, as concurrent remedies, as may be prescribed by law. A Grand Jury shall consist of not less than fifteen nor more than eighteen persons, two thirds of whom may find an indictment or true bill. The Legislature, by a two-thirds vote of all the members elected to each house, may abolish and restore the Grand Jury system.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

SEC. 10. The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

SEC. 11. All laws of a general nature shall have a uniform operation.

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace, and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner to be prescribed by law.

SEC. 13. In criminal prosecutions in any Court whatever, the party accused shall have the right to a speedy and public trial; to appear and defend in person and with counsel, to demand the nature and cause of the accusation, and to have a copy thereof, to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf. No person after having been once acquitted by a jury, or discharged by the Court, shall again be put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law.

SEC. 14. Private property shall not be taken or damaged for public use without just compensation having been made to or paid into Court for the owner, except in cases of war, riot, fire, or great public peril, in which cases compensation shall afterwards be made; such compensation or damages to be assessed by a jury, unless waived by the parties; nor shall the time or services of any person, except when held or under arrest for crime, be taken without just compensation, to be fixed and provided by law.

SEC. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, or the remedy for the enforcement or breach thereof, shall ever be passed.

SEC. 17. Foreigners eligible to become citizens of the United States, under the naturalization laws thereof, while bona fide residents of this State, shall have the same rights in respect to the possession, enjoyment, and inheritance of property as native born citizens.

SEC. 18. No form of slavery shall ever exist in this State; and there shall be no involuntary servitude, unless for the punishment of crime of which the party shall have been duly convicted.

SEC. 19. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the persons and things to be seized.

SEC. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid or comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open Court.

SEC. 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

SEC. 22. No money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution not under the exclusive management and control of the State; nor shall any grant or donation of property ever be made thereto by the State.

SEC. 23. The provisions of this Constitution are mandatory and prohibitory, unless by express words it is declared to be otherwise.

SEC. 24. This enumeration of rights shall not be construed to impair or deny others retained by the people.

MR. LARKIN. I call for the special order.

THE PRESIDENT. The special order is called for.

THE FAWCETT CASE.

MR. EDGERTON. Regularly these reports ought to be read in open Convention. They have been printed and I believe distributed generally upon members' desks. It is the right of any member to have them read, but, unless some gentleman desires to have them read, and upon the assumption that everybody has read them, I move that the reading be dispensed with.

THE PRESIDENT. If there be no objection, the reading will be dispensed with. The question is on the adoption of the report of the Committee on Judiciary.

MR. SHAFTER. The minority report contemplated the introduction of two resolutions which I see have not been sent up with it. They are exceedingly brief, and I ask leave to send them up now.

THE PRESIDENT. If there be no objection they will be received.

THE SECRETARY read the resolutions as follows:

Resolved, That in passing upon any question submitted to this Convention, the qualification of its members included, this Convention disclaims all powers except such as are given them by the existing Constitution and the laws in accordance therewith.

Resolved, That the Hon. Eugene Fawcett is not entitled to a seat in this Convention.

MR. EDGERTON. I call for the reading of the resolution attached to the report of the majority of the Committee on Judiciary.

THE SECRETARY read:

"We therefore respectfully submit that the Hon. Eugene Fawcett was eligible at the time of his election, and is entitled to retain his seat in this Convention."

MR. EDGERTON. There was a resolution accompanying that report. It was the resolution that I called for the reading of. If it is not there, I know precisely what the resolution was in phraseology and I ask leave to send up a copy.

There being no objection the resolution was sent up, and the Secretary read as follows:

Resolved, That the Hon. Eugene Fawcett is entitled to a seat in this Convention.

THE PRESIDENT. The question is on the adoption of the report of the Committee on Judiciary.

MR. EDGERTON. I suppose, regularly, it would be in order for the gentleman from Santa Barbara to make a statement.

MR. FAWCETT'S STATEMENT.

MR. FAWCETT. I do not rise for the purpose of offering any argument upon the merits, legal or otherwise, of this case, but simply for the purpose of giving a brief statement of the circumstances under which I came to be here at present. It is a fact, sir, that the people of my district—known as the First Judicial District of this State—have heretofore seen fit to honor me with a seat upon the bench of the District Court of that district. It is also a fact that, while continuing to hold that position, the people of a portion of the district further saw fit to honor me with the election to a seat in this body. The circumstances under which they elected me to represent them in this Convention are, perhaps, better indicated by a letter which I addressed to the people of Santa Barbara County, pending the election, concerning the question as to whether I could or would consent to attend this Convention as their delegate. That letter is as follows—perhaps, however, I should first state that the people of my county seemed to meet with some difficulty in agreeing upon a proper person to represent them here. They were divided into factions, as often happens to be the case, and from some reason—whether good or otherwise—they seemed to turn to me as the only person upon whom they could agree as their delegate to this Convention. When it was first proposed to me that I accept the trust, and consent to represent the people of that county here, I said in reply: "No; I am not eligible to the place." I believe that that view would strike nineteen minds out of twenty, superficially, and without an examination into the legal merits and aspect of the case. Without reflection, without examination, I entertained the impression that I was not eligible to a seat in this Convention, and so stated, and declined peremptorily to become a candidate. Other gentlemen, however, in whose opinions I had great confidence—gentlemen both of my own county and other counties in the district and elsewhere in the State, including eminent lawyers in different parts of the State—took issue with me upon that proposition, and, as a consequence, I was led to investigate the question, and finally reached the conclusion that upon the score of eligibility there was no objection to be entertained. Then, having been generally solicited by the people of my own county, belonging to all political parties—including the official heads of the two organized parties—and also having been urged by the people of the balance of the district—the Counties of San Luis Obispo and Ventura—to serve here as a delegate, to the best of my humble ability, I conceived that, perhaps, my original position was wrong, and finally consented to stand as a candidate for delegate to this Convention from the County of Santa Barbara, as announced in the letter which I now offer to read to the Convention. It is addressed to the local paper—the Press:

To the Editor of the Press:

Within the past two weeks I have received many communications from different parts of the county asking me to serve as a delegate to the Constitutional Convention which is to meet at Sacramento in September next. These communications are signed by representative men generally, including the official heads of the two organized political parties, and seem to indicate a general desire upon the part of the electors of the county that I serve them in the capacity indicated. It would be invidious to publish one of these papers without publishing all, and it is unnecessary to tax your columns to that extent.

I have already said, and still say, that I am not a "candidate" for this trust. But, after much anxious consideration of this matter, and moved by arguments that seem irresistible, I have reached the conclusion that if the people think they need my poor services I ought not to refuse. There are times when no man has the right to decline the performance of a public duty from any personal considerations, and the present emergency is one of that nature. Let it be remembered, however, that the people have already confided to me the performance of certain other duties, and that these later duties, if assumed, will necessarily conflict, to some extent, and for the time being, with the former. I cannot be present at the Convention in November, and hold a term of Court here also; nor can it be known at this time whether a substitute can be procured for the latter duty.

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If, with a full understanding of the situation, and without intrigue, solicitation, wire pulling, or pipe laying on my part, or on my behalf, the electors of this county voluntarily designate me as their delegate, I will accept the trust. Personally, however, I would be much gratified if they could agree upon some other man.

Yours respectfully,

EUGENE FAWCETT.

Santa Barbara, May 10th, 1878.

Having published this letter, Mr. President, in pursuance of my regular duties I left the county, went upon the circuit, and did not return to that county until about five weeks after the election of delegates to this Convention. During my absence the people voted for and elected me as a delegate by about two thirds majority of all the votes cast at the election. I do not pretend to be exactly correct, but that was about the proportion. Now, I have stated that I recognize the fact, Mr. President, even if eligible to this trust, that I had strictly no right to withdraw myself temporarily from the duties which had already been confided to me, unless it was with the universal consent and by the universal desire of the people of the district. I recognized the fact that the people of my county had no right to withdraw me from those duties at the expense of the people of the other counties of the district; that I owed a duty to them; that I owed allegiance to them and the discharge of my duties to those in the other counties as well as to the people in my own county. And, sir, it was only after having been satisfied by an unmistakable expression of the opinion of a number of the people of those two counties that they desired me to temporarily abandon the judicial duties and come here in the capacity of delegate, that I consented to do so. And now, sir, as in the committee the other evening, to substantiate these statements—first, that the people of the County of Ventura desired to have me come here as a delegate—I appeal to the gentleman who represents that county as a delegate, Mr. Finney, elected on the Workingmen's ticket, to say whether or not these statements are true. I say that four fifths of the people of that county were desirous of having me come here and represent them. Is that so?

MR. FINNEY. Mr. President: It is certainly true, and I take great pleasure in saying that the people of my county were perfectly willing that Judge Fawcett should leave the duties of Judge for the time being and come here to represent the people of my part of the State.

MR. FAWCETT. I say that the people also of San Luis Obispo, by a very large majority—substantially they were unanimous upon that point—desired me to come here and represent our portion of the State to the best of my ability; and for the truth of that assertion, I appeal to the delegate from the Fourth Congressional District, Mr. Graves, to say whether or not I have stated the truth upon that subject.

MR. GRAVES. It affords me pleasure to affirm the truth of the statement. It is the almost universal wish of the people of San Luis Obispo County, which is one of the counties embraced within the First Judicial District, that Judge Fawcett should occupy a seat in this Convention.

MR. FAWCETT. That covers, Mr. President, all the territory in my judicial district. Another point, the question as to whether or not I could properly come here as a delegate, seemed to me to depend somewhat upon the state of the calendar of the business of the Court of that district. I am aware that in many parts of this State judicial business is allowed to accumulate and crowd the calendar, and that the Judge cannot at any time properly abandon his duties without leaving litigants to suffer who have business before his Court. In this connection I wish to state this further fact, and it goes to the question of expediency, that at this moment I, at least, have not a single undetermined case before me. No case has been tried, no question has been submitted to me as the Judge of the First Judicial District of this State which was not disposed of, decided, and cleared away before I left the district to attend this Convention. And there is no cause now pending in my district now ready to be tried at this moment. The business has been completely cleared away and the calendar swept, as is the custom in that district at all times; so that no litigant is suffering from my absence at present. Another fact is that the last term of Court in the County of San Luis Obispo came to a conclusion on or about the twenty-second of September, and that from that day to the first Monday in November, there is a vacation in that district, so that all of this time there was no judicial duty to discharge if I had been there. It is true that one term of Court in one of the counties of that district—the County of Ventura—will have to be postponed until after the Convention has concluded its labors. One of the other counties—Santa Barbara—will have a term, but I have already been fortunate enough to provide a Judge for that. This, Mr. President, only goes to a question of expediency. The facts which I have stated seem to me to justify me in consenting to come here as a delegate to the Convention, at the same time holding that of Judge of the First Judicial District. These matters go only to the question of expediency, and I say upon that ground I feel justified entirely, and stand before this Convention conscious of having done nothing wrong, either technically or otherwise, and having acted properly and with a due regard for the desires of the people of my part of the country. I consented to represent them to the best of my poor ability. They desire me to do so, and I submit to this Convention that unless there is great reason why I should take my departure hence, that I ought to be permitted to remain and represent them here as they desired. The fact is, that if I am excluded, the county from which I come will be substantially unrepresented in this Convention, and will have a Constitution thrust at them which they practically have had no voice in framing. I submit that it is now too late to choose a successor to sit here. Already one third of the time has passed, and before a successor could be found and seated here, perhaps another third of the time would have passed, and it would have been practically useless to pursue that course. I have nothing further to say upon this subject, and while this question is being argued upon its merits and in its legal aspects, I respectfully ask leave of the Convention to retire from the floor.

MR. EDGERTON'S ARGUMENT.

MR. EDGERTON. If I correctly understand the prominent position of the minority of the Committee on Judiciary, as set forth in their report, and as it will undoubtedly be expanded in argument by those gentlemen and others who coincide with their views, it is this: That, by the third article of the Constitution of the State, the whole power of the State is distributed into three departments—legislative, executive, and judicial. That that article provides that no person exercising powers and functions properly belonging to one of these departments can at the same time exercise powers or functions belonging to either of the others. That the powers conferred upon the members of this Convention are legislative powers, and that they are, therefore, prohibited to any person holding a judicial office, or to any one exercising the powers pertaining to the Judicial Department mentioned in article three. That article declares that "the powers of the government of the State of California shall be divided into three separate departments, and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions under either of the others." It is to be observed that the Constitution itself defines what these departments are. It goes on and determines where the legislative power and the whole legislative power of the State is lodged; where the executive power and the whole executive power is lodged; and where the judicial power and the whole judicial power is lodged. I call the special attention of the gentlemen who claim that we are exercising legislative power here to the first section of article four, which provides:

"The legislative power of this State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California."

I say then, sir, that in express terms, in language unequivocal and that cannot be misunderstood, the framers of this Constitution have said that the whole legislative power of the State was lodged in the Legislature, which they describe as consisting of a Senate and Assembly. It seems to me that right here on the very threshold of this argument we meet with a complete, absolute, and satisfactory reply to the proposition alleged in this minority report.

Then, sir, comes article five, which defines the Executive Department spoken of in article three, and it is as follows:

"SECTION 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of California."

Section eighteen, of article five, provides that "a Secretary of State, a Controller, a Treasurer, an Attorney-General, and a Surveyor-General, shall be elected at the same time and place and in the same manner as the Governor and Lieutenant-Governor, and whose term of office shall be the same as the Governor."

Now, I say, then, that the whole executive power of this State, as contemplated by article three, is lodged exclusively in the Governor, the Lieutenant Governor, the Secretary of State, the Controller, the Treasurer, the Attorney-General, and the Surveyor-General; and there it ends. That is the executive power enumerated in article three. And then comes article six, which completes this distribution of powers. Section one reads:

"The judicial power of this State shall be vested in a Supreme Court, in District Courts, in County Courts, in Probate Courts, and in Justices of the Peace, and in such Recorders' and other inferior Courts as the Legislature may establish in any incorporated city or town."

Now, sir, stopping here, I say that when this article three says that no person belonging to one of these departments shall exercise the functions belonging to another, it means that a judicial officer shall not exercise the powers of the Legislature, or powers which are vested in the Legislature of the State—that is, of the Senate and Assembly. When it says that Judges shall not exercise executive powers, it means that they shall not exercise powers belonging to the Governor, Lieutenant-Governor, Controller, Secretary of State, Treasurer, Attorney-General, or Surveyor-General, and nothing more. It seems to me this is clear; but we have authority on this subject not only in this State, but abroad. Now, sir, I understand it to be a cardinal canon of interpretation of Constitutions and laws, that where a constitutional provision has been incorporated from the Constitution of one State into the Constitution of another State, or where a statute of one State has been taken bodily from the statute books of a neighboring State and incorporated in the statute books of another, that the Courts invariably turn to the decisions in that State to guide them in their interpretation of the provision or statute. I believe that is a rule that universally prevails throughout the American States. Now, sir, it is well known that this article three, of this Constitution of California, is copied *verbatim et literatum et punctuatim* from the Constitution of Iowa. In that State, this precise question of collision between these departments arose in the case of Santo et al. vs. the State of Iowa, reported in the Second Iowa Reports. Santo was Mayor of Keokuk, a city in Iowa, and exercised executive powers. He was made Justice of the Peace, by which he exercised a judicial power. He tried a case as Justice of the Peace, and to that extent exercised judicial powers. The point made was, that his judgment was void, because, under article three, it was argued if he exercised executive powers he could not exercise the functions of a Justice of the Peace. Now, sir, the Supreme Court of that State say this:

"The objection intended is, that the Mayor is an executive officer, and that judicial authority is conferred upon him, in conflict with that provision of the Constitution which says, that no person charged with the exercise of powers properly belonging to one of these departments—the executive, the legislative, or the judicial—shall exercise any function appertaining to either of the others. These 'departments' are the departments of the government of the State of Iowa. The Mayor of the City of Keokuk is not a part of the government of Iowa. He exercises none of the functions belonging to that department. Whatever execu-

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tive offices he may perform, pertain to him only as an officer of that corporation. But we do not mean to say that he is an executive officer, in any proper sense. Similar provisions exist in the Constitutions of all, or nearly all, the other States, and yet from time immemorial, similar powers have been conferred upon the Mayors of cities. We are of the opinion that the objection is not well taken."

Now, sir, there is other authority in this State. There is the case of The People v. Provines, 34 Cal. I have not the book here, but I will state the case and the opinion, and its result as I understand it. Mr. Provines occupied the position of Police Judge in San Francisco under a law of the State, and while he was Police Judge he assumed and did exercise the powers of Police Commissioner—one clearly judicial and the other clearly executive. The point was made in that case, that being so, that he was prohibited under article three, he exercising judicial functions, from the performance of these executive functions. But the Supreme Court, in this State, in the case to which I have referred, after referring to the case from which I have just read, decided that article three refers to State government. It refers to officers who have jurisdiction over State affairs, and not local affairs, and they held that the Judge in that case could exercise the powers of that office, to wit: Police Commissioner, and that it was not at all in conflict with article three of the Constitution. So much for authorities.

And now, Mr. President, arguing this question a little further, from the basis of the Constitution itself, if the position of the minority of the Committee on Judiciary is correct, the whole discussion ends right here on article three. It puts an end to the whole thing, and the framers of the Constitution had accomplished all by force of that article. If that be so, then section sixteen, of article six, is mere surplusage—it is mere idle repetition. Section sixteen, of article six, is as follows:

"The Justices of the Supreme Court, and the District Judges, and the County Judges shall be ineligible to any other office than a judicial office during the term for which they shall have been elected."

I say, that if we take the position assumed by the minority, this means nothing; it can perform no office, because the claimant of this seat here is excluded by the force of article three. Now, sir, it is also another canon of interpretation that some motive must be assigned—some purpose to be subserved by any enactment or provision of a Constitution, which may appear to be surplusage, must be discovered if possible. Now, the question occurs, what is the purpose? I say, that outside of article three, there may be an army of officers created by the Legislature of the State. The Legislature creates any number of these officers, for the purpose of administering the government, which will occur readily to the mind of any gentleman. I say, that section sixteen of article six has reference to these officers and no others. It is not mere surplusage, because there is this vast mass of power, and there might be this multitude of offices outside of the section which they aimed to cover by section sixteen. These offices are incidental, or occasional, or transitory, and are created in the judgment of the Legislature. And when I say Legislature, I mean the Senate and Assembly, the legislative power having control of and governing them as specifically provided for in the Constitution. I say that section sixteen refers to these incidental, occasional, transitory powers of office which it may be found necessary for the Legislature to create in order to effectually administer the government in all its departments. I deduce that argument from these considerations. Observe the limitation. It is upon three classes of Judges. It is only upon Justices of the Supreme Court, District Court, and County Court, but there is a Judge of the Police Court of San Francisco; there may be a Judge of the Recorder's Court—there was once in Sacramento; there may be a Judge of the same character but differently designated in Marysville; there are Justices of the Peace. They are not excluded. That is to say, notwithstanding you have this article three, which provides that a person exercising judicial power shall not exercise functions belonging to the other departments, they put a limitation here upon certain judicial officers—Justices of the Supreme Court, District Judges, and County Judges. That is my interpretation of it. Now we come to the motive of the framers. It is to be borne in mind that the Supreme Court, the District Courts, and the County Courts issue their processes and they are mandatory in many forms upon every department of the government. They issue their injunctions and writs, and it would be in conflict with the dignity of these great tribunals, among which is this Court of sovereign judicial power, to be mixed up in these local offices like that of Police Commissioner or the various other commissions. The Justice of the Peace is different. While it would be proper to leave them to the Legislature on the score of economy, yet it would not be consistent with the dignity or the nature of the Court of sovereign power to be placed in this position. Therefore a limitation was put upon the Justices of the Supreme Court, the District Judges and the County Judges, leaving the Police Judges and Justices of the Peace and Judges of such inferior Courts as the Legislature might establish to exercise both executive, judicial, and legislative functions.

Now, sir, I say that the position of the minority is in contravention of the principle of this Government, from its foundation to the present hour, and in support of that position, I will give one illustration. The Legislature created a State Board of Examiners. It is an office unknown to the Constitution. It is an office which unquestionably the Legislature has the power to create. It is an office which I believe has been in existence for nearly a quarter of a century. Its functions are purely judicial. They sit in judgment upon the question of claims against this State; and yet that Board is composed of the executive officers of the State—the Governor, the Secretary of State, and the Attorney-General. They are executive officers, and yet we see them for a quarter of a century exercising these high and all-important judicial functions in this government. Did anybody ever question the constitutionality of that Board? Has anybody ever pretended, sir, that they were within the purview of this article three of the Constitution, cited in support of the position of the minority of this committee? I deny it. But there is another position that strikes me as a very singular one, which results in this: Gentlemen say that this is an office. I have heard nobody pretend but that the Justices of the Peace and Police Judges were eligible to this place. It cannot be maintained, under section sixteen, of article six, but that a Police Judge or Justice of the Peace may be elected to the Constitutional Convention, and invested with the solemn functions of framing a State law. And yet, sir, you are driven to the position to say that the framers of this Constitution intended, by section sixteen, of article six, to proscribe the Supreme Judges, the District Judges, and the County Judges from exercising these functions, and yet throw the doors wide open to these Judges of inferior Courts.

Now, sir, I see in the minority report, on page six, a clause which I am sorry to see. It is as follows:

"The impropriety of the action contemplated in the resolution reported by the committee, and the justice and necessity of the above opinion, is decisively enforced by the results of its adoption. If anything is certain to be done by this Convention, it is a remodeling of the judicial department. One of the propositions already passed upon by the Judiciary Committee, and to be reported to this Convention, is the utter abolition of the District Courts—their name even is to be erased from the Constitution; and yet the majority resolution would retain a gentleman here who will be required to pass upon the further existence of his office and its emoluments, and perhaps to determine the result by his single vote. 'No one ought to be judge in his own cause,' is a legal maxim hitherto held to be of universal application."

That, sir, is an argument addressed to the pecuniary interests of this claimant. Now, sir, if this Convention is to enforce it, I say enforce it upon everybody else here that is in the same category. You have resolution after resolution offered relating to bank corporations, to gas companies, to insurance companies; you have resolutions relating to quasi-public corporations, like railroad corporations. There are any number of gentlemen in this Convention largely interested in many of these corporations, and they have as directly to pass upon interests appealing to their pockets to a much larger extent than any such interest can appeal to the pocket of the claimant of this position. I think it is a degrading argument; that it was unworthy a place in this report of the minority of the committee; and that it is unworthy of the consideration of this Convention.

But another point: I say that of all men in the commonwealth the men best fitted to discharge the functions that we are here attempting to discharge are the gentlemen who occupy this high and exalted station. The station is one that commands a broader and a closer view of human life in all of its relations, social, political, and individual, than any other in society or under government. These gentlemen are brought in contact with human life at every point. Their habits of life and their duties lead them to a profounder study of the Constitution and laws than any other class in the community, and they may justly be presumed, without disparagement to any other class of gentlemen, to know more of the weaknesses and defects of the organic law than any other class of people in the community. Upon the score of intelligence, upon the score of information, upon the score of learning, I say, without disrespect to any gentleman here, that an honest, upright, learned, and enlightened Judge, is the one above all others to discharge the functions which we are here attempting to discharge.

Now, sir, right there in that connection, what has been the practice elsewhere? Why, sir, in Virginia, Chief Justice of the United States John Marshall was a member of the Convention of that State, and I shall have occasion to allude to that further on. He was a distinguished member of the Convention of Virginia of eighteen hundred and twenty-nine–thirty. There were eight or ten of the most distinguished Circuit Judges of that State in that Convention. The Governor of the State, himself, sat in that Convention—all of them, among the most illustrious gentlemen in the State or nation, or any other State or nation. It was one of the most conspicuous bodies that ever assembled upon this globe. It attracted to it the great civil leaders from Europe and America. The great statesmen were there in a body, watching its proceedings, and taking the deepest interest in it. It never occurred to these great men that they were not eligible. In the State of Illinois, their Judges have been members of their Constitutional Conventions, and performed the same duties we are sent here to perform.

It seems to me that the claimant here cannot be denied his seat except upon a technical interpretation of the word "office," in section sixteen of article six of the Constitution; and I come now directly to that point. What does the word office mean? In the Constitution of Maine—I have not the authority here—but on page one hundred and fifty-nine of Eastman's Digest of the Maine Reports will be found this syllabus:

"The term 'office' implies a delegation of a portion of the sovereign power of the Legislative, Judicial, or Executive Departments of the Government. An employment, or service as an agent, does not."

That is, it implies a delegation of the sovereign powers of the Legislative, Judicial, or Executive Departments; and the Constitution itself says that the legislative powers are vested in a Senate and Assembly, and the executive powers are vested in certain enumerated offices under the Constitution. I claim, sir, that that is direct authority upon the meaning of the word office.

Again, this matter was up before the Supreme Court of New York, in the matter of the oath to be taken by attorneys and counselors. In the twentieth of Johnson's Reports, page four hundred and ninety-two, the Court says:

"The lexicographers generally define 'office' to mean a *public employment*, and I apprehend its legal meaning to be an employment on behalf of the government in any station or public trust."

This is no part of the government of this State. The government is divided into these three departments, as defined in article three, and as described in articles four, five, and six. The Court goes on to say:

"I apprehend its legal meaning to be an employment on behalf of the government, in any station or public trust, not merely transient, occasional, or incidental. In common parlance the term 'office' has a more

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general signification. Thus, we say the office of executor or guardian; or the office of a friend. In my judgment, an attorney or counselor does not hold an office, but exercises a privilege or franchise."

The word "office" does not mean a public trust, which is merely transient, occasional, or incidental, and this is occasional, transient, and incidental. It may occur not once in a hundred years; it may occur not once in fifty or two hundred years. Whenever it does occur, it is merely occasional, transient, and incidental, and therefore, within the meaning of that opinion, not an office.

Again, in the case of Walker vs. Cincinnati, twenty-first Ohio, page fifty, the Court, in construing this clause of the Constitution—"The general Assembly, in cases not provided for in this Constitution, shall fix the term of office and the compensation of all officers"—says:

"This clause cannot be regarded as comprehending more than such offices as may be created to aid in the permanent administration of the government."

This is in corroboration of the view which I have already advanced, and follows directly in the line of the decision in the Second Iowa Reports. Now, further upon this question of authority. If I read the minority report correctly, I think they have, in a slurring way, said, or some one has said, that the majority could only find one precedent, and that was the precedent of Judge O'Melveney, who occupied a seat in the Convention of Illinois of eighteen hundred and sixty-two. There is another, sir, directly in point, from that State. The Constitution of the State of Illinois of eighteen hundred and forty-eight, under which the Convention of eighteen hundred and seventy was held, contains this clause:

"Every person who shall be chosen or appointed to any office of trust or profit shall, before entering upon the duties thereof, take an oath to support the Constitution of the United States, and of this State, and also an oath of office."

Now, sir, the law of Illinois which called the Convention of eighteen hundred and seventy, following that provision of the Constitution, and perhaps without reflection, supposing it was an office, contained a provision that every member of the Convention of eighteen hundred and seventy should take that constitutional oath. That is to say, before entering upon the discharge of his duties he should swear that he would support the Constitution of the United States; and of the State of Illinois. Yet, in the judgment of that Convention, that was not an office within the meaning of the Constitution. When the oath came to be administered, some gentlemen of the Convention had conscientious scruples, and refused to take the oath. They said that they were sent there to tear that Constitution limb from limb; that they intended to lay irreverent hands upon it, and that led to a very able and exhaustive discussion of that question, whether it was an office within the meaning of the Constitution of the State of Illinois. And I would here remark that the Constitution of Illinois, of eighteen hundred and forty-eight, was precisely like ours; that is, substantially like ours in every particular in regard to the amendment or revising of the Constitution of that State, and to calling a Convention. That question arose upon that clause of the Constitution, and it was debated for four or five days, and if gentlemen will consult the debates and proceedings, they will find forty or fifty pages of that discussion, participated in by such lawyers as Browning, of Illinois, Medill, one of the greatest editors of this country, Judge Skinner, of Illinois, who was a member of that Convention, and by others, the most eminent lawyers of the Northwest; and it was decided by an overwhelming vote in that Convention, or by a very large majority, that it was not an office within the meaning of the Constitution, and they modified the oath which had been prescribed by the Legislature, and instead of swearing to support the Constitution of the United States, and the Constitution of Illinois, they swore that they would support the Constitution of the United States, and the State of Illinois, so far as it was compatible with their duties as members of that Convention. There, sir, is an authority directly in point, corresponding exactly with the case before this Convention.

But I have another authority here which, perhaps, will win the confidence and respect of this Convention more than any yet cited. There was an ancient statute in Virginia, adopted about the time the Constitution of the United States was adopted, and just prior to the organization of the State government of Virginia under that Constitution, or, perhaps more strictly and correctly speaking, adjustment of the government of Virginia under these new rules—there was an ancient statute passed by that Legislature, I think, of seventeen hundred and eighty-eight—a Legislature of which John Marshall, Chief Justice of the United States afterwards—was a member; and I have somewhere seen the statement that John Marshall's hands had more to do with the preparation of the laws of Virginia than any other man, or set of men almost, in the State. I find, sir, in the laws of Virginia of seventeen hundred and eighty-eight, an Act passed on the eighth of December of that year, which provides:

"*Be it therefore enacted by the General Assembly*, That the members of the Congress of the United States, and all other persons who shall hold any legislative, executive, or judicial office, or other lucrative office whatsoever under the authority of the United States, shall be ineligible to and be incapable of holding any seat in either house of the General Assembly, or any legislative, executive, or judicial office, or other lucrative office whatsoever under the government of the commonwealth."

Now, sir, that extract I hold to be applicable here. The law of Virginia provided that no person holding a judicial office under the United States should exercise a legislative office in the State of Virginia. That law has been preserved in that State to this day. It was passed in a Legislature of which John Marshall was a conspicuous and most influential member. In eighteen hundred and twenty-nine Chief Justice Marshall occupied a seat in the Constitutional Convention of Virginia, notwithstanding this provision in the statute which he helped to make, that no judicial officer of the United States could hold any office, legislative, executive, or judicial, in the State of Virginia.

Now, sir, I did not intend to occupy so much of the time of the Convention as I have done. I had deemed it my duty in the conflict of opinion that prevails in the press of this State, and perhaps in here, although I have talked with very few gentlemen on the floor upon this subject—I have deemed it my duty to go somewhat extensively into an expression of the grounds upon which I base my vote in favor of the sitting member. I do not believe that it is in any sense a legislative office which this body is exercising. I do not believe that it is within the prohibition of section sixteen of article six of the Constitution, and I shall therefore vote in favor of the claimant.

There is one other point I wish to call to the attention of the Convention. I take the position that it is incompetent for this body, or for any Constitutional Convention, to prescribe to posterity or to a future generation the agencies they shall select to change, revise, or in any way affect their organic law. Now, sir, section sixteen, to which I have referred, according to the gentlemen opposed to the sitting member, means this—the framers of the Constitution directed that a certain person should not hold position in this Convention. You admit that, and it leads logically and inevitably to this position: that if this Convention can say to a future generation who shall not sit in a Convention to frame its organic law, this Convention may also dictate to a future generation who or what class may convene for that solemn duty. You admit that power and there is no denial of this result, that you may say here in this Convention, that after twenty-five or twenty years, or any time, nobody shall revise this organic law except those gentlemen who belong to the landed aristocracy. You may say, without intending to reduce it to an absurdity, that it shall not be revised except by a Convention of old women. I deny the proposition. I say it is utterly beyond the power of this Convention to say who shall sit in its primary assembly to revise, change, alter, or frame an organic law that is to operate upon all generations to come.

Now, I have a little authority upon that point. In the Convention of Virginia, to which I refer, a resolution bearing directly upon this question was introduced in the Committee of the Whole, and it was adopted by the Committee of the Whole, adopting a clause in the Constitution of Virginia pointing out and prescribing, by definite limitation, the power to amend or change that Constitution in future time. John Randolph, who was a member of that Convention, assailed it upon the very point which I make, sir. He says:

"Wher is the necessity of this provision in the Constitution? Where is the use of it? Sir, what are we about? Have we not been undoing what the wiser heads—I must be permitted to say so—yes, sir, what the wiser heads of our ancestors did more than half a century ago? Can any one believe that we, by any amendments of ours—by any of our scribbling on that parchment, by any amulet, any legerdemain, charm, abracadabra of ours, can prevent our sons from doing the same thing—that is, from doing as they please, just as we are doing what we please? It is impossible. Who can bind posterity?"

He made a very powerful speech in illustration of that idea, and the proposition was overwhelmingly defeated in the Convention by a vote of sixty-eight to twenty-five, and among those voting against it were Chief Justice Marshall, James Madison, the oracle of constitutional law—the great master of American constitution makers. He voted against that proposition, and a long list of most illustrious names, gentlemen who subsequently adorned the bench of the Supreme Court of the United States and the bench of that State. Now, sir, I say that it is incompetent for any makers of constitutions to bind posterity in that way, and there is no revolution about it.

Now, I desire to see precisely by what right we are here and how far we are bound by the Legislature, even. Section two of article ten of the Constitution provides:

"And if, at any time, two thirds of the Senate and Assembly shall think it necessary to revise or change this entire Constitution, they shall recommend to the electors at the next election for members of the Legislature to vote for or against a Convention, and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at its next session, provide, by law, for calling a Convention, to be holden within six months after the passage of such law; and such Convention shall consist of a number of members not less than that of both branches of the Legislature."

Observe the language. I say that the people do not convene to determine the question whether they will have a Constitutional Convention by force of any law. The primary action of the Legislature had no element of a law. It is time that they clothed their action with the form of an enactment, but it might have been done, and often is done, in Legislatures by a joint resolution. It did not require the signature of the Governor. It became a law when the Legislature—the Senate and Assembly—by a two-thirds vote recommended it. They passed no law. It bound nobody. If the whole people disregarded it entirely it carries no penalty with it. The people may act upon it or not. I say it has no element of law in it. And then as to the assembling of the Convention, what does the provision say? If the people vote for this Convention, the Legislature shall do what? They shall provide for what? They shall provide for *calling* a Convention. They shall make provision for calling a Convention. And there, sir, the powers of the Legislature end. Why is it necessary for the Legislature to make this provision? What is the meaning of the words "make provision?" They shall provide for the expenses of the Convention, and that is because there was no other instrumentality than the Legislature through which the funds could be extracted from the State Treasury; because they are acting under clearly defined powers which have their source in the Constitution. I say that when the Legislature had made that provision for calling the Convention, their powers ceased, and it was not in the power of the Legislature to say what this Convention could do. You admit that power, Mr. President, and what becomes of the Constitution making? Why, sir, if the Legislature can impose one restriction they can impose any. If they may say this they may say that. They might prohibit the alteration of the Bill of Rights, as they attempted to do in Pennsylvania, and that position was repudiated by the Convention *en masse* almost. If they could do that there is no limit to the legislative

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power, and this Convention might be hampered by a law that would render its work useless. We are not exercising legislative functions. I say that nobody will pretend that we are exercising executive functions, and in my judgment the functions we are exercising are neither, yet they are as much judicial as they can be said to be legislative. These are my views, and I shall vote for the sitting member.

MR. BARBOUR. Does the gentleman maintain that this Convention, not being bound by the Constitution and the law under which it was made, could refuse to submit its work to the people for ratification?

MR. EDGERTON. That is a relation between this Convention and the people. I say that this Convention draws its power from the primary source of all power, and that is the people. It is entirely outside and independent of this government—that is legislative, executive, and judicial, as defined there. We have nothing to do with either of these departments. We are independent of them. They cannot interfere with us. We are directly responsible to the people for what we do. And right here, in further illustration, is there any act we can do that enters into the concoction of an organic law? Are we not limited to the framing of an instrument to be submitted to the people. Now, there is a distinction between this and the Senate and Assembly, and that is borne out by Mr. Cooley in his work on constitutional limitations. An Act of the Legislature has binding force and power, but I say that when this body, whatever organic law we may frame, when we send it forth to the people, it takes with it no such seal of authority as does an enactment coming from the Legislature. It is binding upon nobody; neither is it a law. What we do here is merely to advise the people; and the people in their primary assemblages enact that organic law, or rather enacts that framework into an organic law. That is the position taken by Mr. Cooley.

SPEECH OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: It was no personal motive that led to the present inquiry concerning the eligibility of Judge Fawcett. In examining the report of the majority of the Committee on Judiciary, I find that the gentlemen making that report have seen fit to state that Judge Fawcett is a gentleman of high character, of learning, and of judicial experience, in every way qualified to make a useful member of this Convention. We, sir, raise no question as to the ability of the gentleman. We raise no question as to his honesty or as to his integrity. To us this seems entirely outside of the true issue to be determined here.

The gentleman, Judge Fawcett, has seen fit to make a statement in his own behalf. He has said that he was sent here by a majority of about two thirds of the votes cast in his judicial district. I beg leave to call the gentleman's attention to the fact that in his district there was one thousand one hundred and eighty-one votes cast, and out of that one thousand one hundred and eighty-one votes, he has but a majority of three hundred and sixty-one, which certainly is not a two-thirds majority if the figures that the Secretary of State has placed at my disposal, are correct. The question as to a majority or a minority in this case, I take it, has nothing to do with the issue. Judge Fawcett occupies a judicial position, and, as I understand it, a Judge is not the Judge of a majority of the people in his district, but the Judge of the whole people in his district. Suppose we do say that the majority have cast their votes in favor of the gentleman having a seat in this Convention; suppose we do say that a majority have delegated the gentleman to represent them in this Convention. I ask if the minority have not equal rights to the services of the Judge. The position of a Judge is a position different from that of any other officer in the government of the State, and the minority have equally as good claims upon his services as the majority, and if there were but one man, or one woman, yea, if there were but one person in that district who desired to have his matters adjudicated before the duly elected and qualified Judge of his district, he ought to have the right, and he ought to have the power to do it at any time.

The gentleman says himself, and the committee have seen fit to embody it in the majority report, that no one has appeared from that district in order to contest the seat of the gentleman upon this floor. I take it that it is a very delicate thing to attack a Judge. It might rebound with terrible force on the assailant. Gentlemen who have vested rights in the district of the member sitting here, the eligibility of whose seat is questioned, gentlemen having vested rights in that district, might hesitate before they come here to attack a gentleman who has the power to decide as to their rights judicially; and, therefore, it is not remarkable that no contestant has appeared upon the scene of action.

In asserting the ineligibility of Judge Fawcett, we do not have recourse, as stated by the gentleman from Sacramento, Mr. Edgerton, particularly to article three of the present Constitution. It says: "The powers of the government of the State of California shall be divided into three separate departments—the Legislative, the Executive, and Judicial—and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in the cases hereinafter expressly directed or permitted."

But we place special reliance upon section sixteen, of article six. It says: "The Justices of the Supreme Court, and the District Judges, and the County Judges, shall be ineligible to any other office than a judicial office during the term for which they shall have been elected."

I desire in the course of my argument, to call your particular attention to the fact that although article three of the Constitution says, that there are three departments of government, and that any incumbent of one department shall be ineligible to occupy a position in any other department—although the very reading of the article would seem to be conclusive, and would preclude any individual occupying official position in any one of these departments from occupying an official position in any other department—although the thing is general and comprehensive, yet I call your particular attention at this point, and I shall more especially do so hereafter in my argument, to the fact that the people of the State of California deemed it expedient to insert another clause in the Constitution, and to particularly specify, designate, and say that certain Judges should not occupy any other office. I claim that section sixteen of article six is more comprehensive than the other, and I shall show that every decision that has been brought here by the gentleman from Sacramento, Mr. Edgerton, has sole reference to article three of the Constitution, and does not touch section sixteen of article six of the Constitution at all. It seems to me that the gentleman's case falls within the provision of section sixteen of article six.

In anwer to this position, it is maintained by the gentleman from Sacramento, Mr. Edgerton, and generally by the gentlemen who hold views in opposition to the views of the minority of the Judiciary Committee, first, that the position of delegate to this Convention is not an office; second, that if it is an office, it is of such a character that the people possess the right to choose any one they may desire to fill the position, regardless of any prescribed rule of action. That it is an office, seems to us beyond the power of successful contradiction, and in support of the theory that it is an office, I call your attention, first, to the very origin of the word "office." It originates from *ob* and *facere*, signifying "to do for or on account of." To do for or on acccount of any one. Mr. Burrell gives the following definition: "A position or station in which a person is employed to perform certain duties, and by virtue of which he becomes charged with the performance of certain duties, public or private." Mr. Webster defines an office to be a duty, or charge, or trust. Mr. Worcester defines it to be a public charge.

The matter of what the meaning of the word office under the Constitution of a State is, was passed upon in the case of Bradford vs. Justices Inferior Court, in the 33d of Georgia, page 332, in which the Supreme Court of the State of Georgia says:

"Where an individual has been appointed or elected, in a manner prescribed by law, has a designation or title given him by law, and exercises functions concerning the public, assigned him by law, he must be regarded as a public officer."

Again, in the case of Shelby vs. Alcorn, 36 Mississippi, 273, the Supreme Court of that State made use of the following language. This was a case in relation to a gentleman who had been appointed a Levee Commissioner, and it was claimed on the one hand that he was not an officer, and that it was not an office, and on the other hand that he was an officer, and the position he occupied was an office. The law creating and regulating the duties of the office of Levee Commissioner provides:

"That the incumbent shall receive his appointment from the Board of Police of Coahoma County, and hold his office for two years; that he shall give an official bond, and shall act as Treasurer, and as such shall receive and disburse public money; that he shall take an oath 'that he will, in all things touching his office, seek to promote the best interest of his country and of the State of Mississippi;' that he shall make a report of the cost of building and repairing the levees on the Mississippi River, and thereupon the Board of Police is required to levy a tax sufficient to meet it; that he shall receive a salary of fifteen hundred dollars, payable out of the Levee Fund. The Levee Commissioner is also charged with the performance of other duties to the public, and is subject to removal from office for malfeasance or misfeasance, by the Board of Police.' Held: The post of Levee Commissioner is a civil office of profit, within the meaning of the Constitution. It is of the nature and essence of the fundamental law of the State, that it avoids every act done in violation of its provisions; and hence, the appointment of a member of the Legislature to an office, in violation of section twenty-six, article three, of the Constitution, is absolutely void, both for want of capacity in the appointee to accept, and for want of power in the functionary in whom the appointment is vested to make it."

In passing upon this question, the Supreme Court say, in speaking of what the term "office" means when used in the Constitution of a State:

"The term office has no legal or technical meaning attached to it distinct from its ordinary acceptations."

It has no technical meaning—no technical meaning aside from its ordinary acceptation, and, it seems to me, that any endeavor to bring in here any technical interpretation of the word "office," other than what "office" is understood to mean in the common parlance of every day life, is not in accordance with the decisions of the Courts, and is not in accordance with good common sense. Therefore, the Supreme Court of Mississippi has said, in this decision, that the term "office" has no legal or no technical meaning distinct from its ordinary acceptation.

Considerable of the difficulty and of the doubt—considerable of the gloom and of the darkness surrounding this subject, upon which we are called to pass, will be dissipated and dispelled, and light will be let in upon the subject if we merely consider the word "office" as we understand the word "office" in the every day parlance of life. If we endeavor to attach to it some technical, special, or specific meaning—if, by a system of straining, we attach to it some technical meaning, the difficulty of passing upon the question, as to whether Judge Fawcett is eligible to this position, will be tenfold increased. But if we cut off all verbiage, and we look upon the word "office" as used in the Constitution, in exactly the same sense and with exactly the same understanding that we look upon the word "office" as used in every day parlance, the matter will be clear as day, and there will be no difficulty upon that score. The Court go on to say:

"An office is a public charge or employment; but, as every employment is not an office, it is sometimes difficult to distinguish between employments which are and those which are not offices. It is generally, if not universally, true that a duty or employment arising out of a contract and dependent for its duration and extent upon the terms of such contract, is never considered an office. An office, as defined by Blackstone, is a right to exercise a public or private employment and to take the fees and emoluments thereunto belonging; whether public, as those of magistrates; or private, as bailiffs, receivers, and the like. (2 Blacks. Com., 36.) And it is laid down that a public officer is one who has some duty to perform concerning the public; and he is not the less a public officer when his duty is confined to narrow limits, because it is the duty and the nature of that duty which makes him a public officer, and not

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the extent of his authority (7 Bac. Ab. 280; Carthew, 479). And we apprehend that it may be stated as universally true, that where an employment or duty is a continuing one, which is defined by rules prescribed by law, and not by contract, such a charge or employment is an office, and the person who performs it is an officer. This was the rule applied by Chief Justice Marshall in the case of the United States vs. Maurin, in which it was held that an agent of fortifications was an officer (2 Brock. Rep. 102).

"Applying this principle to the question before us, there can be no doubt that the place or post of Levee Commissioner is an office, and the person appointed to fill it an officer.

"The powers vested in the government of the State of Mississippi are either legislative, judicial, or executive; and these respective branches of power have been committed to separate bodies of magistracy. It follows, hence, that whether an office has been created by the Constitution itself, or by statute enacted pursuant to its provisions, the incumbent, as a component member of one of the bodies of the magistracy, is vested with a portion of the power of the government, whether the portion of the power of the government which he is thus entitled to exercise is legislative, judicial, or executive in its character.

"It is, therefore, undeniably true, as maintained by the counsel for the defendant in error, that the words 'civil office under the State,' contained in the article of the Constitution above referred to, import an office in which is reposed some portion of the sovereign power of the State, and, of necessity, having some connection with the legislative, judicial, or executive departments of the government. It is a conclusion which is the necessary and logical result of the theory of the government itself. But, it is very evident that this conclusion can in no wise strengthen the position that the office of Levee Commissioner does not fall under the prohibition in the Constitution, unless it can be further shown that it is not an office, under the laws or government of the State of Mississippi.

"They say that 'there is a manifest distinction between an office and an employment under the government. We apprehend that the term 'office' implies a delegation of a portion of the sovereign power, and the possession of it by the person filling the office.'"

That seems to be the true criterion, that it implies a delegation of a portion of the sovereign power and the possession of it by the person filling the office. This decision seemed to us to be conclusive upon the point that the position of delegate is an office within the contemplation of the law. But it is claimed that it is not an office in a constitutional sense; that is, in a constitutional sense under the Constitution of the State of California. We are cited to article three of the Constitution, but it seemed to us that that has only reference to office in these three departments. As stated, great stress is laid on article three. The case of The People vs. Provines, 34 Cal., is cited as an authority. I have taken pains to examine this authority, and it does not seem to me that any consolation flows from this case to the gentlemen who contend that this is not an office, and that therefore Judge Fawcett is eligible to the position of delegate in this Convention.

The case of The People vs. Provines, 34 Cal., refers solely and alone to the third article of the Constitution. On page five hundred and thirty-four, the Supreme Court of this State say:

"In short, the third article of the Constitution means that the powers of the State government, not the local governments, thereafter to be created by the Legislature, shall be divided into three departments, and that the members shall have no part or lot in the management of the affairs of either of the other departments, 'except in the cases hereinafter expressly directed or permitted.'"

It was decided in this case that article three had reference to State offices and to State officers alone, and that this gentleman, Mr. Provines, who was Police Judge of the City and County of San Francisco, not being a State officer, and his office not being a State office, therefore there was no disqualification upon his part; but the position of delegate—I do not see how it can be successfully controverted—if the position of delegate is an office, which we claim that it is, then it of necessity must be a State office. It cannot be claimed for a moment that the position of delegate to this Convention is a local office, as a district office, or as a county office; but it must be conceded that if it is an office at all that it is a State office. The decision of the Court in that case has relation solely and alone to article three of the Constitution. It does not speak, nor was the matter brought into question, nor was the matter argued before the Supreme Court of this State, by the respondent in that case of The People vs. Provines, about section sixteen of article six of the Constitution. We have particularly to deal with section sixteen of article six of the Constitution, which says that no Supreme, no District, and no County Judge shall be eligible to any office. That is the particular section of the Constitution that we are dealing with; and in this case of Provines, that matter was not entered into at all. The examination was confined solely and alone to article three of the Constitution, and the Supreme Court simply decides that article three has reference solely and alone to State officers.

If article three of the Constitution was sufficient to meet all the requirements and all of the questions that might arise in relation to officers occupying positions, then why was section sixteen of article six of the Constitution framed. If the framers of the Constitution, and if the people of the State of California who adopted it, would have deemed it sufficient to inhibit judicial officers from occupying positions under the State of California, then it was not necessary to frame a further provision. But because they considered and they believed that article three of the Constitution was not sufficiently broad, not sufficiently comprehensive to include every character of office—for that reason section sixteen of article six was embodied in the Constitution. If article three inhibits and prevents any person occupying a position in any of the three departments of the State government from occupying a position in any other department, and that has reference solely and alone to State offices, then certainly section sixteen of article six goes beyond that when it says that a Judge shall not occupy any office at all; not only the offices that are inhibited in article three, but all and every office in the gift of the people of the State of California, whether it be a State office or whether it be a local office. Otherwise, as the gentleman from Sacramento says, it is a piece of repetition.

Now, there is a principle in law and there is a principle of right, and founded in common sense outside of the law, and that is, when a law is made, and more particularly a Constitution, it ought to be so expounded and so decided as to give full force and effect to every provision of the law or Constitution, and it is not to be decided so as to declare any portion of the law dead or inoperative. Constitutions are always to be expounded liberally. No provision of a Constitution shall be declared a dead letter, or declared inoperative, and the men who framed that Constitution set down as numskulls or dunces, who put things into a Constitution that mean nothing at all. It is the duty of the Courts and of everybody that passes upon the provisions of a Constitution, or upon the provisions of a particular law, to give full force and effect to the whole Constitution or law, and to every article and section.

If you decide that article three embodies the whole law you decide that section sixteen of article six means nothing at all; that it was surplusage, and that it is a dead letter. But if you say that article three of the Constitution means one thing—that is, it means that no officer of any one department of the State government shall have any right to occupy any office under any other department of the State Government, having reference solely and alone to State officers—a position directly under the State and in the pay of the State—if you decide that, then you must go on farther, and give effect to the whole instrument and say that when section sixteen of article six was embodied in the Constitution, that the intention was to exclude those mentioned in that section from office—every possible officer, every possible position that could be created, in the gift of the people of the State of California. That seems to me to be the true construction.

I would now like to discontinue until after dinner.

The Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two P. M. President Hoge in the chair.

Roll called, and a quorum present.

MR. BEERSTECHER'S SPEECH CONTINUED.

MR. BEERSTECHER. Mr. President: The propositions that have been advanced in favor of the eligibility of the gentleman here—to use strong language—are, in their tendencies, subversive of all established principles of stable government; a plea we consider evasive, and based upon convenience. In the first place, it is argued that the gentleman's position is not an office. Then we are told that if we should find it to be an office, nevertheless, it is not such an office as is contemplated by the constitutional provisions which rendered certain persons ineligible to hold more than one office. Of course, the second argument, if true, in substance concedes the first argument, which is that necessarily it must be an office. Proceeding from the first and the second, a third is reached, which is that if it is an office in the purview of those provisions of the Constitution which render certain persons ineligible to hold other offices than those which they do hold, then, nevertheless, this Convention is not bound by any such law, by any rule of action laid down by the Constitution. They say, "if you find against us on two points—that is, first, that it is an office; and second, that it is an office in the contemplation of the Constitution, in regard to the eligibility clause—if you find against us on these two propositions, nevertheless you must find for us upon the third proposition;" and that third proposition is that this Convention is above all law; that it is a revolutionary body; that it is controlled by no law or rule of action; that it is a law unto itself. Now, a finding for the gentlemen upon these two propositions necessarily lead, as we believe, those persons who see fit to sustain these theories to find that this Convention is beyond the pale of all law; that it is a rule unto itself; and we are not in a position to concede anything of that character. We claim that this Convention is called a Constitutional Convention, not because it is here for the purpose of framing a Constitution for the people of the State of California, but it is called a Constitutional Convention because it is called under the provisions of the existing Constitution. It is a Constitutional Convention, because it sits here by authority of law; because its proceedings are regulated by law, and not simply because it sits here to frame a Constitution for the people of California.

This Convention sustains an official relation to the people of this State. The gentleman from Sacramento, Mr. Edgerton, concedes this proposition. That is, I believe, he concedes this proposition, because he says that the resolution of the Legislature of the State of California, which gave unto the people of the State the privilege of voting as to whether or no they would have a Convention of this character, was not a law—it was not a legislative Act—it was not required to be signed by the Governor as legislative Acts are required to be signed by the Governor. He says that it is an anomaly in legislation; that it is not like unto anything that exists; that it is not a law. It seems to me that the proper explanation of that is simply this: the organic law of this State, the existing Constitution, contemplates the revision of the organic law. It contemplates within the instrument itself that the instrument can be corrected or a new one substituted in its place. It contemplates that it can be amended, and that it can be revised. And within the existing Constitution are the provisions for a department of the government which can be called into action by the voice of the people; and that department of the government is the Constitutional Convention. Therefore, I beg leave to say to the gentleman from Sacramento, Mr. Edgerton, it was unnecessary for the Legislature of California to pass a legislative Act

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calling a Constitutional Convention. Therefore it was unnecessary for the Governor of California to append his signature to any Act of the Legislature giving power and vitality to a department of the government which exists within the present existing Constitution. That is the explanation of that matter, according to my ideas and according to my theories. We say that this Convention is a combination—an integral part of the government of the State of California, and it is in no sense a revolutionary body. Because it was here; because it had existence; because it was provided for; therefore the Legislature passed no law and the Governor signed no law. It was only necessary for the people to proceed in a marked-out direction. It was not necessary to send the pioneers into the primeval forests to hew a way by which these people might proceed to enact a fundamental law. The way was hewn for them; the road was macadamized, and all that was necessary was to send the column marching down that road that was already provided in the Constitution as it exists. Therefore the Legislature did not order out the pioneers; therefore the axes were not sharpened, and therefore the body of the people marched not into the forest to hew a new road. The Legislature merely let down the bars and opened the road to the people who were marching in the direction of a new Constitution. It is a component and it is an integral part of the organic law of this State.

Of course, gentlemen, if it is found that this is not an office, and that it is not one of the offices that constitute ineligibility under the Constitution, then, of course, it is not necessary to examine these matters; but if you find it to be an office—find it to be an office falling within the ineligibility clause—then of necessity you are obliged to go a step further, and that step is to declare that you are a revolutionary body and with all the communistic and socialistic ideas with which we have been charged. I am not prepared to say that I am a revolutionist before the people of California and the people of the United States at large. But the natural argument, and the natural tendency of the argument is, that we must of necessity declare this body a revolutionary body. We protest against declaring us a revolutionary body. We say that we are acting within forms of law and acting under law. Every man having a seat here took a constitutional oath to support the Constitution of the State of California, and to support the laws of the State of California, and to support the Constitution of the United States. Why is that done? In order that we may be revolutionary, or in order that we may sit under the forms of law?

Of course it may be argued that we swear to support a Constitution that we are about to tear limb from limb, and to separate and strew its fragments broadcast over this Capitol. That is not so. We do not tear, we do not separate the Constitution of California. The present Constitution remains the Constitution just as much after this body has created a new one as it is now. When we leave here, after we have signed the new instrument, yet the old instrument has full force and effect. We do not tear this Constitution to pieces. It is the people afterwards, who by their declarations at the ballot-box say whether they will retain the old one, or whether they will take the new one. Therefore, it is absurd to say that we are tearing the Constitution to pieces, because we are not doing any such thing. The people will decide whether they will have our instrument—that is, whether they will give it life and vitality or not, or whether the old instrument shall remain the law of the land.

I call attention to page three of Jameson on Constitutional Conventions. Mr. Jameson says:

"There are known to the social life of our times, in America, four species of Conventions, namely: I. The Spontaneous Convention, or Public Meeting; II. The ordinary Legislative Convention, or General Assembly; III. The Revolutionary Convention; IV. The Constitutional Convention."

These will now be considered in their order.

"By Spontaneous Conventions, I mean those voluntary assemblages of citizens, which characterize free communities in advanced stages of civilization, having for their purpose agitation or conference in respect of their industrial, religious, political, or other social interests. These gatherings are at once the effects and the causes of social life and activity, doing for the State what the waves do for the sea. They prevent stagnation, the precurser of decay and death. They are among the most efficient manufactories of public opinion; or rather they are public opinion in the making—public opinion fit to be the basis of political action, because sound and wise, and not a mere echo of party cries and platforms. Spontaneous assemblages, for such purposes, of the masses of the people, betoken a very high state of civilization, or instincts that are sure to develop into it. To be possible, in perfection, as we see them amongst us, freedom must be ripe and well nigh universal. But when rulers and social institutions do not favor them, to their occurrence at all would be necessary a native passion for liberty strong enough to break all chains, and which could be daunted by no perils. We are prepared, therefore, to believe that it is only our own race, here and in England, that has thus far successfully vindicated the right of freely assembling.

"The second species of Conventions, consisting of our general assemblies, is so well known that I need not dwell upon it. A general assembly is, in our American system, a collection of representatives of the people, freely elected in pursuance of the Constitution, and empowered to enact the ordinary statute law. Deriving its existence and powers from the people, through the Constitution, it can do nothing except by the authority contained in that instrument, and is, therefore, official or vicarious, but at the same time subaltern—the people being the principal and paramount source of power, yet, as we shall have occasion to note hereafter, though subordinate in relation to the people, considered as the creator of the government and Constitution, the Legislature is nevertheless *prima inter pares*, when compared with other departments of the government; or, as it has been expressed by speculative writers, is more nearly sovereign than any of the departments which are ordinarily regarded as coördinate with it.

"The third species of Conventions, as its name implies, is a part of the apparatus of revolution. It consists of those bodies of men who, in times of political crisis, assume, or have cast upon them, provisionally, the function of government. They neither supplant or supplement the existing governmental organization. The principal characteristics of this species are, that they are *dehors* the law; that they derive their powers, if justifiable, from necessity—the necessity, in default of the regular authorities, of protection and guidance to the commonwealth—or, if not justifiable, from revolutionary force and violence; that they are possessed accordingly to an indeterminate extent, depending on the circumstances of each case, of governmental powers; finally, that they are not subordinate or ancillary to any other institution whatever, but lords paramount of the entire political domain. To this may be added, that they are of no definite numbers or organization, comprising sometimes one and sometimes several chambers, and composed indifferently of ex-officers of the government that was, of persons possessing neither office nor the qualifications for it, nor even for the elective franchise, or a mixture of all of these together, as chance may have tossed them to the surface. The general purpose of the revolutionary Constitution, moreover, is to bridge over a chasm between two orders of things; an order that has expired or been extinguished, and an order emerging, under the operation of existing social forces, to replace it. In short, a revolutionary convention, is simply a provisional government.

"Examples of the Revolutionary Convention have been numerous in the political history of the world, and they are becoming daily more so. Among the most famous, and, for our purpose, the most important, are those held in England in sixteen hundred and sixty and in sixteen hundred and sixty-nine.

"Interesting examples of the Revolutionary Convention are found in our own history. The first occurred in New England simultaneously with the English Convention of sixteen hundred and eighty-nine, its assembly being the result, in part, of the same causes which led to that, but, in part, of causes local to New England. Both, however, were called and composed in a similar manner, and organized after the same model, that of sixteen hundred and sixty, convened at the time of the restoration.

"Enough has been said, however, to show the characteristic features of an institution, too often, as we shall see, confounded with the Constitutional Convention, to which I now pass.

"The last species of the Convention is the Constitutional Convention. It differs from the last preceding, in being, as its name implies, Constitutional; not simply as having for its object the framing or amending of Constitutions, but as being within, rather than without, the pale of the fundamental law; as ancillary and subservient and not paramount and hostile to it. This species of Convention sustains an official relation to the State, considered as a political organization. It is charged with a definite and not a discretionary and indeterminate function. It always acts under a commission, for a purpose ascertained and limited by law or custom. Its principal feature, as contradistinguished from the Revolutionary Convention, is, that at every step and moment of its existence it is subaltern. It is evoked by the side and at the call of a government preëxisting and intended to survive it, for the purpose of administering to its special needs.

"It never supplants the existing organization. It never governs. Though called to look into and recommend improvements in the fundamental laws, it enacts neither them nor the statute law, and it performs no act of administration. As John Randolph said in the Virginia Convention of eighteen hundred and twenty-nine, it is called as counsel to the people, as a state physician, to propose remedies for the State's diseases. But it is a physician whose ministrations are confined to the extraordinary maladies requiring a fundamental change in the Constitution, not to those constantly recurring but petty disorders which demand the interposition of the ordinary Legislature.

"It is apparent that institutions whose definitions mutually exclude each other, cannot be the same, however similar the names by which they are popularly known. But it may happen (instances will be hereafter mentioned in which it has happened) that the Constitutional Convention may, by usurpation, assume one or more of the powers of the Revolutionary Convention; or that the latter may exercise those of the former. How, in such a case, is the usurping body to be classed? This question is of great importance, but it is susceptible of a ready answer.

"A Revolutionary Convention, because it is *ex vi termini*, unlimited, in respect of both the kind and the degree of its powers, may take upon itself the functions of either of the three lower species of Conventions, under the same warrant by which it justifies the assumption of revolutionary powers. A body which can, violently and without law, uproot all existing institutions, can clearly do the lesser act of digesting, or even of enacting, amendments to the Constitution. But, in doing so, it does not change its original character; it is still a Revolutionary Convention, and all its acts must stand on the footing of those which involve the widest stretch of power.

"But the converse of this proposition does not hold true. If a Constitutional Convention step outside the circle of the law, it does not continue to be a Constitutional Convention, but, so far, becomes that whose powers or methods it assumes—a Revolutionary Convention. It leaves the domain of law, which is one of specified and restricted powers, and enters upon that of arbitrary discretion, within which law is silent, and where he is master who wields the greater force."

As we state in the minority report it would be just as competent for this Convention to determine arbitrarily who shall sit here, and who shall not sit here, and who may be admitted here, as to arbitrarily expel any man and take another person into his seat. It would be just as proper for this Convention to do that, as to say that it can run entirely outside of the pale of all recognized law and authority. Mr. Jameson continues, in section three hundred and twenty-four:

"In my judgment, there can be but little doubt, that a member of a

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Convention, is, in the enlarged and proper acceptation of the term, an 'officer' of the State. This follows, not simply from the reasonings in the Illinois Convention, of which, somewhat developed in details, an abstract has been given, but especially from the principles explained in preceding sections. A Convention is part of the apparatus by which a sovereign society does its work as a political organism. It is the sovereign, as organized for the purpose of renewing or repairing the governmental machinery. That same sovereign, as organized for the purpose of making laws, is the Legislature; as organized for the purpose of applying or carrying into effect the laws, it is the judiciary or the executive. These successive forms into which the sovereign resolves itself, are but systems of organization having relation more or less directly to the government of the society."

It has further been said that if the existing Constitution contains any provisions which limit the power of this Convention to admit any one to a seat in the Convention, or which limit the power of the Convention to decide as to the eligibility of any member of the Convention, or, in other words, if there is anything in the existing Constitution which lays down a test and rule of eligibility to the members of this Convention, that section and that clause of the Constitution is null and void, and of no effect. It is claimed that it is null and void and of no effect because the people of a past age cannot limit the people of the present age. It is claimed that this Convention would have no right to limit the power of the coming generations in the Constitution that they are about to frame. With due deference to the gentlemen who have advanced that theory, I am obliged to differ. If that were the case, no law could have any effect in this State, because the people of to-morrow would simply be obliged to raise up and say: "You people of yesterday had no right to prescribe to us what the law to-day should be." It is the reverence with which the laws are held that gives us a fundamental and stable government. The stability of the government rests entirely upon the respect that the people who are to-day living have for the laws that were made by the people of yesterday and day before yesterday. It is the respect that we have for the laws that were made at the organization of these United States that makes this a stable government. Any entering wedge that says that we have a right to disregard the opinions of the men of yesterday, because they do not agree with our opinions, simply because we are the sovereigns of to-day, is a pernicious doctrine, and it will inevitably run the ship of State into destruction and into despair. It is contrary to the opinion of every statesman from Washington down. Mr. Webster said—I quote from the works of Daniel Webster, volume 6, page 224. Mr. Webster was called the great expounder of the Constitution—as a man pre-eminently above all other men; as embodying the wisdom necessary to expound and explain the existing Constitution of the United States; a man who had devoted years of toil and years of study to that instrument. Mr. Webster says:

"I have said that it is one principle of the American system, that the people limit their governments, National and State. They do so; but it is another principle, equally true and certain, and according to my judgment of things, equally important, that the people often limit themselves. They set bounds to their own power. They have chosen to secure the institutions which they establish against the sudden impulses of mere majorities. All our institutions teem with instances of this. It was their great conservative principle, in constituting forms of government, that they should secure what they had established against hasty changes by simple majorities. By the fifth article of the Constitution of the United States, Congress, two thirds of both houses concurring, may propose amendments to the Constitution; or, on the application of the Legislatures of two thirds of the States, may call a Convention; and amendments proposed in either of these forms must be ratified by the Legislatures or Conventions of three fourths of the States.

"The fifth article of the Constitution, if it was made a topic for those who framed the 'People's Constitution' of Rhode Island, could only have been a matter of reproach. It gives no countenance to any of their proceedings, or to anything like them. On the contrary, it is one remarkable instance of the enactment and application of that great American principle, that the constitution of government should be cautiously and prudently interfered with, and that changes should not ordinarily be begun and carried through by bare majorities.

"But the people limit themselves, also, in other ways. They limit themselves in the first exercise of their political rights. They limit themselves, by all their Constitutions, in two important respects; that is to say, in regard to the qualifications of electors, and in regard to the qualifications of the elected. In every State, and in all the States, the people have precluded themselves from voting for everybody they might wish to vote for; they have limited their own right of choosing. They have said, 'We will elect no man who has not such and such qualifications. We will not vote ourselves unless we have such and such qualifications.' They have also limited themselves to certain prescribed forms for the conduct of elections. They must vote at a particular place, at a particular time, under particular conditions, or not at all.

"It is in these modes that we are to ascertain the will of the American people; and our Constitution and laws know no other mode. We are not to take the will of the people from public meetings, nor from tumultuous assemblies, by which the timid are terrified, the prudent alarmed, and by which society is disturbed. These are not American modes of signifying the will of the people, and never were. If anything in the country, not ascertained by a regular vote, by regular returns, and by regular representation, has been established, it is an exception, and not the rule; it is an anomaly which, I believe, can scarcely be found.

"It is true that at the Revolution, when all government was immediately dissolved, the people got together, and what did they do? Did they exercise sovereign power? They began an inceptive organization, the object of which was to bring together representatives of the people, who should form a government."

These are the words of Daniel Webster, that the people do limit themselves as to who can vote and who can be voted for. In this particular instance the people have said, by the fundamental law of the land, that no man who is a District Judge of the State of California shall have a right to occupy any office.

If the plea of the gentleman in favor of the eligibility of Judge Fawcett is not evasive, and if it is not a plea based upon convenience of seating the gentleman in a chair upon this floor, then I ask you what it is. The gentleman says himself, "when I first examined the law in reference to my case; when I first read the sixteenth section of article six of the Constitution, I was satisfied that I was ineligible." Therefore he admits that a plain reading of that section says that he is ineligible. I challenge any man to take that section and read it (the plain reading) and consider it any other way than to say that Judge Fawcett is ineligible to this office. Of course, it will be possible, if it is so determined, to conjure up something on which to base a declaration of eligibility. Of course it is well known how possible it is for men skilled in the law—for men skilled in matters of this character particularly—to conjure up something which proves that day is night and night is day. But if we are going to read, it seems to me that it is proper for us to read the plain text—the apparent and plain interpretation of the text. Article ten of the present Constitution, says that the Constitution may be altered, amended, or revised. It goes on in section one and provides how the Legislature may provide for an amendment to the Constitution. In section two it provides how a Constitutional Convention can be called and how it is to be called. Therefore the existing Constitution expressly provides for this department of the government, and I do not see how a party can go upon any other theory. The Constitution expressly provides that such a department of government, when necessary, shall spring into existence, and after such a department of government does spring into existence, then the men that occupy positions in that department of government hold office under the Constitution as it exists and under the laws as they exist to-day; and if they are officers they certainly are State officers.

Authorities have been read this morning which I take occasion to refer to at this time, and which I will briefly pass over before I close. The main reliance is placed upon the decision found in the 34th Cal. That decision passed upon article three, which says that the powers of the Government of the State of California shall be divided into three departments—the legislative, executive, and judicial; that no person charged with the exercise of the powers properly belonging to one of these departments shall exercise any function pertaining to either of the others. The decision said that that had reference solely and alone to incumbents of these three departments of the State government—in other words, to State officers; that it had no reference to any persons who were not State officers. And the decision turns upon exactly these two points: first, the construction of article three, and second, the decision that article three has reference merely to State officers. But they never pretended to declare and lay down the rule of law for section sixteen of article six. Section sixteen says: "The Judges of the Supreme Court, and the District Judges, and the County Judges, shall be ineligible to any other office than a judicial office during the term for which they shall have been elected."

Now, gentlemen, if you closely follow the reading of article three of the Constitution, you will see that it says that no person charged with any of these duties shall have the right to exercise any function in any other department. That if he is a Judge he cannot be a legislator; if he is a Judge he cannot be Governor at the same time. It there states that the ineligibility shall be based solely and alone—and the exclusion clause there has solely and alone reference to the officers that are designated in the three departments of the government. It says that no incumbent of one of these departments shall hold any office under either of the other two departments. But by referring to section sixteen of article six, it will be seen that it does not say that no Judge of the Supreme Court, no Judge of a District Court, no Judge of a County Court, shall hold office in any of the three departments of the government. Why don't it say that? The other speaks of the government. Article three speaks of the departments of the government, but section sixteen of article six does not speak of the departments of the government. It directly asserts that no Judge shall hold any office—*any office*. There is a clear distinction. The gentlemen try to drive us back into article three. Article three has got no application to this case at all. It might as well be struck out from the Constitution, for the purposes of this case. Article three confines it so that a man holding one office in one department shall not hold an office in either of the other two departments; but section sixteen of article six comes out, broadly and comprehensively, and says that a man who is a Judge of a County Court, or a District Court, or of the Supreme Court, shall hold no office at all other than the office of Judge. If it desired to confine the inhibitions and the ineligibility merely to these three departments, then, gentlemen, I ask you why didn't it say so, as article two says? It inhibits these Judges from holding any office other than the office of Judge, whether the position be in these three departments or not.

As I took occasion to state this morning, it is the plain duty of the members of this Convention, sitting as judges, to give full effect to that Constitution. You have got no right to say that any provision of the existing Constitution is a dead letter. Everything must have vitality; everything must have life within that Constitution, if vitality and life can be given thereto. Section sixteen of article six merely goes beyond, is more comprehensive and more expansive than article three, and both of them, when judicially interpreted, will have life, and both of them will have vitality. If the vote of this Convention is to be based upon the words of law; if it is to be based upon precedent; if it is to be in consonance with the avowed principles that underlie the American system of government, then, of course, it is necessary to critically examine and pass upon what those principles are, and what the decisions have been upon this point. If, however, the vote is to be merely a complimentary vote; if we are merely to vote for the gentleman because he is a gentle-

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man—and I recognize that fact with every gentleman here to-day—I recognize Judge Fawcett to be a gentleman, a perfect gentleman; I recognize his ability; I recognize his learning. We are not crusading against him or his character. This is not a personal fight. It is a mere matter to determine what the status of this Convention is; whether this Convention is a lawful Convention, or whether it is a revolutionary Convention. We are merely determining what the law is. It is from principle that this action has been taken, and not from feeling at all.

From the examination that I have been able to give the subject, I have come to the determination, first, that it was an office; second, that it was an office that clearly fell within the ineligibility clause of the existing Constitution. I have been unable to agree with the worthy and learned gentlemen who form a majority of the Judiciary Committee. Of course it may be my clouded intellect, and it may be my ignorance; but it seems to me the position that I take in this matter is a position based upon honesty and integrity. I believe it to be the law as I have stated the law to be, and I believe that that law asks and demands of this Convention that Judge Fawcett be declared ineligible to hold a seat in this Convention.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. President: I do not feel inclined to take up any great length of time in defining my position before this body, and stating why it is that I cast my vote as I shall. It would be much more convenient, especially with the intense cold that I have and my bodily weakness, if I could make myself heard without having to exert myself to the utmost capacity of my voice, but I will endeavor to be heard in this large room and by this large assemblage. Now we have presented before us the idea that a certain member who has been acting with us in this Convention, and holding a very high and prominent position in one of the committees of this house, should be expelled. I am now speaking by way of introduction, with regard to what might be considered the impropriety of taking up this subject at this time, when one third of the time allotted to us to attend to the forming of a new Constitution has expired. But if it be true that this gentleman is ineligible to this office, and if it be clearly proven before this body that he unconstitutionally holds the position here which he does hold, as a matter of course the members of this body are bound by the strong obligation of an oath to exclude him from their deliberations. You have had presented before you the idea that if we do not arrive at certain conclusions, and if we do not interpret the Constitution as some other members in this body interpret it, that we are revolutionary. We must see through the glasses of some men; we must take the standpoint that they do; we must go through the process of reasoning that they do, and arrive at the same conclusions, otherwise we are acting unconstitutionally—otherwise we are acting revolutionary. I do not think thus. They are the gentlemen's views, of course. We hear their statements as to constitutionality and the positions they take; the reasons why they arrive at their conclusions, and if those conclusions appear to us to be incorrect, as free agents and representatives of the people, we hold it to be right to lay their views aside, however sincerely they may believe them it matters not. Now we have heard so much said concerning constitutionality, and it was supposed to be so clearly proven in some instances, that it would seem to be almost improper to say anything more whatever upon the subject, but when we take into consideration what is said in article three, the section with regard to the powers of government, it seems to me that we must arrive at some conclusion so far as that matter goes. It says:

"The powers of the government of the State of California shall be divided into three separate departments—the legislative, the executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted."

Now, it appears very plain that those occupying a judicial position, having an office of that nature, cannot have either of the others. One position upon the subject is that this is legislative; that it is a branch of the Legislature. Let us examine article four, section one. It says: "The legislative power of this State shall be vested in a Senate and Assembly." There is where the legislative power of the State is vested. "The legislative power of the State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California." Now, gentlemen have inquired if certain things were so; was, or not, the Constitution so and so? Here we inquire again if it be that this body is legislative, why didn't the Constitution say so? It says here plainly, says indubitably—too clearly to be misunderstood—that the legislative power shall be vested in the Senate and Assembly. There is where it is. Now, it is plain to me that this is only a council. The gentleman from San Francisco, Mr. Beerstecher, in his effort to prove this an office, read from an authority where it referred to a body of this description as a council. I think it is a kind of advisory council; and nothing that has been done here has life or vitality until the voice of the people—not the signature of the Governor—but the vote of the people gives it life and vitality. Would the gentleman conclude that the people are officers; that they are the Governor in this respect; I conclude not. But the great difficulty seems to be with section sixteen of article six, which says:

"The Justices of the Supreme Court, and the District Judges, and the County Judges, shall be ineligible to any other office than a judicial office, during the term for which they shall have been elected."

Now this matter has been explained, but I will tell my reasons why I vote as I do. I am convinced that what we have read concerning offices as carrying out the great principles under the laws and the Constitution of this State, and on its operations, that this body is extraordinary in its tendencies and that it is different from any legislative body, comes to this, that the great mass of the people are appealed to; that what is done goes before them, and it is with them to determine whether what is done is done correctly. Now it seems to me that when we take this into consideration—and it is highly important that we should consider that this body of men are attempting to carry out the purposes and views to suit the people—that there is nothing legislative in this. It is only advisory. We are sitting for that purpose, and if our acts are approved by the people, why, then, as a matter of course, what is done here will become the great fundamental law of the country. With these views of the subject, and many others that I might state if my health permitted, I have no hesitancy in voting for Judge Fawcett to retain his seat, even though it should be said we are revolutionary.

MR. JOHNSON'S REMARKS.

MR. JOHNSON. Mr. President: I cannot agree with all of the sentiments which have been uttered by any one gentleman on the occasion of this debate. The fact is, as Judge Fawcett himself said, I suppose that nineteen twentieths of our people, and perhaps our reflecting people, would have said on the occasion of the first presentation of this proposition to them, that he was ineligible. But on reflection, these first opinions are very often dissipated, and when we come to sift the case and to test it by its merits we come to a different conclusion. Now sir, it seems to me that the argument is reduced down to about this point. If Judge Fawcett had been sent here as a delegate to this Convention before the case reported in 34th California was decided—the case of The People vs. Provines—I should say that, under repeated decisions before that, he could not hold his position as a delegate in this Convention. Why so? Because article three does not use the word "office." The language is different and therefore the rule is different. Now, let us look at this provision in article three. It says:

"The powers of the government of the State of California shall be divided into three separate departments—the legislative, the executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted."

"No person charged with the powers"—not with the office—"properly belonging to one of these departments shall exercise any functions"—not the office—"shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted." Now, before the decision in 34 Cal., if Judge Fawcett was Judge of the First Judicial District, he was then in the exercise of powers properly belonging to the judicial department, and under this provision he could not exercise any other functions pertaining to either of the others, "except in the cases hereinafter expressly directed or permitted." But the decision in 34 Cal. being made, and that being the law of this State now, we must acquiesce in it. The matter is no longer *res inquirea* it is *res adjudicata*. It has passed into the decisions of our Courts, and as law-abiding men, to which sentiment the gentleman from San Francisco, Mr. Beerstecher, appeals, I say that we have to acquiesce in that decision. Therefore, article three has nothing to do with this discussion. The decision in 34 Cal. has stood for a number of years, ever since it was rendered, and there is no occasion whatever to allude to the distribution of powers in article three.

Then we come to this other provision that is relied upon, and let us look and see whether there is any merit in that:

"The Justices of the Supreme Court, and the District Judges, and the County Judges, shall be ineligible to any other office than a judicial office during the term for which they shall have been elected."

Now, this is the first time we have found this word "ineligible." It was in the distribution of powers in article three; but this goes further, and says that he shall be ineligible. The gentleman from San Francisco, Mr. Beerstecher, says that it must mean some other office than those stated in the distribution of powers. I say, not necessarily because it says he shall be ineligible. Article three says that he shall not hold two offices. There is quite a distinction. If a man is ineligible, then he has no capacity of being elected. If he is elected it is void. It amounts to nothing whatever, because he had no qualities of eligibility. Therefore I say it does not necessarily follow at all because the word "office" is used in section sixteen that the framers of this Constitution are talking about another office than in the distribution of powers. But say, for instance, that they were talking about some other office. Now, we find in the distribution of powers that first the legislative department is spoken of. That is treated, and then the executive department is spoken of, and then the judicial. Now, these three great departments are treated of consecutively. In the first place the powers are distributed. It is said that these powers shall be distributed independently into three departments, a principle which underlies many of our State Constitutions and the United States Constitution. Then these different departments are treated of consecutively. This word "office" occurs in treating of the judicial department. The framers were not done with the distribution of powers of this State, and after having treated of the legislative and executive, they came to the judicial department; and then this word "office" occurs, still treating of the distribution of powers. It would seem to follow, that inasmuch as it is decided in the 34th California that that distribution of powers applies only to State officers, that the word "office" must also apply to State offices.

But then say, for instance, this was not the intention. Now, in looking over this Constitution we find a number of officers treated of specially. The Governor is spoken of as an officer; the Secretary of State, Attorney-General, Surveyor-General, and the Justices of the Supreme Court, the District Judges and County Judges, they are all spoken of as officers; and there are county officers spoken of, such as County Clerks, Sheriffs, etc., but there is no allusion whatever in this Constitution to the position of delegate to this Convention as an office. Why is it, if they particularize the executive department, and say who who shall constitute its officers; if they particularize the legislative

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department, and say who shall constitute its officers, and the judicial department, and who shall constitute its officers, why is there nothing said about a delegate to the Constitutional Convention? It cannot be said that it is a position of no importance. That cannot be urged. It is a position upon which is predicated the laws of this State; our rights to our property, to our personal security, and to our liberty.

Well, now, in respect to the oath that is required here. Let us see if any oath is required of the delegates of this Convention. I read section three, of article eleven:

"SEC. 3. Members of the Legislature and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the State of California, and that I will faithfully discharge the duties of the office of ——, according to the best of my ability."

"And no other oath, declaration, or test, shall be required as a qualification for any office or public trust."

Now, Mr. President, a delegate to this Convention ought to take an oath. It would seem natural that he should be required to take an oath; but is there any requirement on that provision? It does require it of the members of the Legislature; it does require it of executive officers; it does require it of judicial officers; but there is no requirement at all as to members in this Constitutional Convention.

The only exception is "such inferior officers as may be by law exempted." Can it be said that this is an inferior office? It does seem that the framers of the Constitution did not connect the word "office" with the position of delegate to this Convention. I care nothing about the derivation of the word, whether as Webster says, it comes from *ob* and *facere*, to do for, or from anything else. I care nothing about that. We know the rule. It is usage which modifies language and which gives it its meaning. The question may come up, what is the meaning custom attaches to this word "office." But I do not think that is a proper test of the meaning which these framers of this Constitution attached to that word. I think you must look at the context, and that we must look at the whole instrument, and judge of the intention from the various provisions in this Constitution. I cannot find any provision in this Constitution that would lead me to think that they ever associated the word "office" with the position of a delegate to this Convention. Therefore, I say that they did not intend to do it.

I am aware that Mr. Jameson, in his work there, gives it as his opinion that in such a case as this—take for instance Judge Fawcett—that he would be ineligible under this provision of section sixteen of article six, that is cited. But that *is* merely his opinion. That is merely his opinion, like the opinion of any other person. So it occurs to me that we ought to look at the meaning of the words of the framers of this Constitution, and it never entered their minds to associate the words "office" in respect to the position of delegate to this Convention. All that is said in these words—section two of article ten:

"And if, at any time, two thirds of the Senate and Assembly shall think it necessary to revise or change this entire Constitution, they shall recommend to the electors, at the next election for members of the Legislature, to vote for or against a Convention, and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at its next session, provide, by law, for calling a Convention, to be holden within six months after the passage of such law; and such Convention shall consist of a number of members, not less than that of both branches of the Legislature."

Now, they simply call it a Convention, and they call the delegates to the Convention "members." They do not say anything at all about the word "office." They do not prescribe any qualifications. They do not say who shall be eligible, or anything of the kind. Now, the word "office," as was argued by the gentleman from Sacramento, Mr. Edgerton, is associated in our minds with the idea of stability; that it shall not be occasional. So in the case of The People v. Turner, 20 Cal., the Supreme Court in passing upon the question, which involved the eligibility of a District Judge, cites one of the opinions of Legare, in which he describes the difference between an officer and an occasional employé. It seems to me that it is proper distinction. This is occasional. It may occur hereafter once in thirty, forty, or fifty years. It seems to me that the position is only an occasional one, and that it is not an office.

Now, although from my present standpoint—and I have seen nothing to change my views—I shall vote for Judge Fawcett to hold his seat in this Convention, yet at the same time I do not take the position which has been taken by some gentlemen in respect to the capacities of this Convention. My position is about this: that this Convention is only advisory as far as the Constitution is concerned. We get up our Constitution and go through the regular curriculum under the Constitution of this State and the Enabling Act passed in pursuance of it. We submit it to the people, and whenever that Constitution is ratified by the voice of the people, then it becomes operative and it becomes the law of the land. I do not think, for the purposes of this argument, it is necessary to go into the other question, as to the exact powers of the Constitutional Convention, because the whole argument hinges upon this section sixteen. But if the position is taken by any one that Judge Fawcett has a right to a seat on this floor because we are a law to ourselves, I could not vote for him for that position on that ground. I cannot take that position. I believe that this Constitution is to govern us until we adopt another. When we swear to support this Constitution we are swearing to that in good faith, because we do support it until another one is adopted. There is no occasion for mental reservation, and I think it would be setting a bad precedent for us to go outside of the Constitution and the Enabling Act, as far as anything is concerned except adopting a new Constitution. I recognize that we have here exceptional powers. If the Constitution or Enabling Act did not make provision for a clerical force we would have the implied power, in order to run the Convention, to have this clerical force. This would be exceptional power, but the principal object of the Convention is advisory. I think that it is better in all of these cases to follow the plain provisions of the Enabling Act, if it is in accordance with the Constitution of the State. I see the importance of this case. If we once shift from our moorings the question is, where shall we go? Shall we say that delegates shall be paid more? Shall we say that we will sit here any length of time we choose? Shall we declare ourselves a law unto ourselves? No, sir; I think not. The way I look at it is that this stream of constitutional law should flow along placidly between its banks; though deep, yet clear; though gentle, yet not dull; strong, without rage; without o'erflowing, full. That great underlying principle—that principle which we find in the Declaration of Independence, I indorse: when grievances become such that they cannot be borne, then that other power of revolution steps in; but coming here under the forms of law, I think that we sit here as a *Constitutional* Convention.

MR. FREEMAN'S REMARKS.

MR. FREEMAN. Mr. President: I desire to state as briefly as may be the reasons which influence my opinion and judgment upon this occasion, rather than to participate in the debate, which has now occupied considerable time. The question has been mooted, rather than discussed, concerning the sovereign powers of this Convention, or of the people, and as to their right, even if they so intended by the Constitution, to prevent any person from entering this chamber as a member. I will say that without discussing that question, I understand myself to be occupying, not a revolutionary position, but, as a member of a Constitutional Convention—which is constitutional in the double sense—that it meets under and in pursuance of one Constitution for the purpose of proposing another; and I shall, therefore, address myself to the question whether, conceding that it was possible, in the adoption of the present Constitution to bind this people and this Convention, this course has been taken. Section one of article three, in regard to the distribution of powers, has already been referred to at considerable length, and the decisions, I believe, cited in the report of the majority of the Committee on Judiciary, are in cases which have arisen under that article, or articles substantially like it. Those decisions in the Iowa cases in regard to the Mayor of Keokuk, the California case, and I think the Indiana case, only go to this extent: that this distribution of powers is a mere distribution for the purposes of State government; that it does not control municipal governments, and that it is competent for the Legislatures of the respective States to authorize the officers of the municipalities to perform functions which are both in their nature executive and judicial. These authorities, therefore, do not approach the question under consideration, nor do I believe there exists any authority, unless the judgment of the Illinois Convention may be regarded as authority. I understand precisely this question was before that Convention, and that it was decided, and decided as the majority of the Committee on Judiciary think that it ought to be decided here.

I will refer to the matter of the distribution of powers in article three, section one, only to illustrate this idea: that it seemed to have been the intention of the framers of the Constitution, and of the people, to create separate departments of government, and to keep these departments separate from each other, so that persons performing the functions of one of these departments should not be interested in the performance of the functions of any other department. Without relying upon this section, we may pass at once to section sixteen of article six, and when we do so—with all due deference to the opinions of the Judiciary Committee—we read language which seems to me to be too unmistakable to be doubted, and that is that the Justices of the Supreme Court, the Judges of the District Courts, and County Judges shall be ineligible to any other office during the term for which they shall have been elected, except a judicial office. Now it seems to me the only question is whether this is an office, and I do not believe there can be any definition found of the word office, which is not applicable to the position of a member of this Convention. I think the definition, as found in the ordinary dictionary, and the definitions found in the law dictionary, and those laid down by the Judges in general terms, are substantially identical. An office is the right to exercise a public function or employment, or as Webster's Dictionary gives it, "An office is a particular duty, charge, or trust, conferred by public authority for a public purpose." Are we not now engaged in the performance of a duty, of a charge, of a trust? That we are now perform a duty and a trust I think no one will undertake to doubt. Is not this a duty? Is not this a trust, and a public one? Is it not conferred by the public for a public purpose? Is it not conferred in that particular manner which in a republican form of government is selected for the election of officers? Is it not conferred by an election, either by the people of the whole State, or by the particular districts which gentlemen here represent?

Now, I believe that the majority report of the Judiciary Committee does not undertake to say that this is not an office, but says that it is not an office in the sense in which the word is used in the Constitution. Whatever others may find in the Constitution, I find nothing there which leads me to believe that the word office, in section sixteen of article six, is used in any other than its broad and general sense, namely, a public trust, conferred by public authority, for a public purpose. It has been conceded, I believe, that almost the first view which every lawyer would take of this question is that a Judge is not entitled to hold such a position. It has been said to be a superficial view—it may be that it is a superficial view—it is the natural view, it is the ordinary view which arises from the ordinary signification of words; and I put this question, whether, in an instrument which is voted upon by the people, by men of ordinary understanding, this word is not deemed to mean

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what is ordinarily meant by the word office, or whether the people are deemed to have adopted that particular meaning which we are here in substance told is only to be arrived at by men of great comprehension. These are affirmative reasons, in my judgment, why I cannot vote that the person whose seat is now being considered, is eligible, nor do I see any reason alleged in the report of the Committee on Judiciary which would cause me to change that first, perhaps superficial, view which I had of this question. I suppose that in the report of the committee they urge upon us those reasons which have influenced their judgment, and which they deemed proper to influence our judgment. The first reason urged is that the claimant has occupied his seat for a long time; that no person has yet appeared to claim it; that his own county does not contest his right to it; that he is a gentleman of high character, ability and judicial experience, and every way qualified to make a useful member of this Convention. These considerations may tend to bias our judgment, but they cannot tend to cause us to give a correct decision upon this question; the question has nothing whatever to do with the character and attainments of the gentleman who occupies his seat. The question is the narrow, naked, legal one, is this an office within the meaning of the Constitution? I say it is not only an office, but I believe it is an office within the meaning of the Constitution, because the Constitution itself provides for the office. It designates the persons who shall hold seats here as "members of the Convention," just the same as it specifies that the persons who hold seats in the lower branch of the Legislature are "members of the Assembly."

It is said that the powers are distributed in section one of article three; that there can be no other powers, and that no other powers could have been in the minds of the men who framed the Constitution. It is not true that the powers of the government are entirely and completely distributed in this section, because it is one of the recognized powers of government to provide for new Constitutions. The Constitutional Convention, while it does not meet as frequently as the Legislature, is in America almost as much a permanent institution, and as regular an institution as the Legislature. We have passed by that stage when Constitutional Conventions are revolutionary and exceptional; they are provided for in our Constitution, and I think, perhaps, provided for in the Constitutions of all the States.

But, say the committee, speaking of the original Constitution, it did not anticipate what should be done under a succeeding Constitution. Conceding that it did not anticipate what should be done under a succeeding Constitution, it did anticipate what was to be done under the present Constitution. It did anticipate that the present Constitution might, at some future time, not meet with the approval of the people, and it did anticipate so far as to provide for the calling of a Convention, and did designate the persons who should come to the Convention as members. Reference has been made to the early Convention of Virginia. It has been said that John Marshall, one of the Chief Justices of the Supreme Court of the United States, sat in that Convention. That the Governor was also there, and that other distinguished gentlemen were present. Well, Mr. President, I know of no reason why they should not have been there. Why should they not have been there? No gentleman undertakes to say that there was any constitutional provision then, because, as a matter of fact, that was the first Constitutional Convention that ever assembled in the State of Virginia. There could have been no constitutional prohibition—there was none. Therefore there was no reason founded on any constitutional act why the Chief Justice, or all other Justices, of the United States might not have been present in that Convention.

To show further that in the ordinary sense of the term it is an office, you may refer to the very Act of the Legislature under which we are assembled. It is not binding, it is true, but it shows the popular sense in which our Constitution is understood, and which it must necessarily be understood by people of common understanding. In the first place, our election is provided for the same as the election of other officers. Our time of meeting is provided for, our powers are laid down to some extent, and we have the same rights almost, as members of the Legislature. We have power to punish for contempt, and to arrest persons; we have the power to keep them in prison during the time we are in session; in other words we have about the same general class of powers as those conferred upon the members of the Senate and Assembly. Furthermore, it is provided that we should take the constitutional oath of office. It would not have been provided that we should take an oath of office if it was not contemplated that we were officers, and in this connection it has been stated that in one of the Illinois Conventions, when members objected to taking the ordinary constitutional oath of office, that oath was modified. Now it seems to me that, so far as precedent is concerned, this recognized the right to exact an oath. If the members of that Convention had believed there was no power to exact an oath, they would not have taken any oath; they would have refused to take the oath altogether. But they did do so, simply modifying the oath so as to make it plainly consistent with the duties of their office.

SPEECH OF MR. HOWARD.

MR. HOWARD. Mr. President: This is certainly a grave question, and one that demands the patient consideration of this Convention, and which should command votes given upon principle in the fullest integrity which we can bring to bear upon it. Now, sir, I confess to you, that before I could turn away the face of Eugene Fawcett from this Convention, a man of so much merit and so little pretense, I should require a necessity and overwhelming reasons. I confess I see no such reasons yet. What is the argument here? It is that every man in this State, except a Judge of a Court, is competent and eligible as a delegate to this Convention, but that the very class of men, intelligent, competent, and who have held offices which have established a character which assures them to be worthy of this place, are the only men who cannot sit here with us and participate in our deliberations. Sir, I know of but one popular authority for any such conclusion, and that is Sam Slick. Sam said that he construed the Declaration of Independence to mean that "all men were born free and equal, except niggers." [Laughter.] And now all men are honest and all men are competent for this high function except the Judges of Courts. There is no law, there is no logic, there is no precedent for any such conclusion. Now, sir, gentlemen say that we are not in a revolution. What is revolution? It is change; nothing more, nothing less. It may be peaceable or it may be forcible; but still it is change. Revolution is defined by the highest authority to be, "An extensive change in the political constitution of a country, accomplished in a short time, whether by legal or illegal means." The argument that we cannot change our constitutional law, except according to existing modes of proceedings, and have not full power to change it with the sanction of the people, I find no precedent for, except in the days of the Tudors and the Stuarts. It was the argument of Charles I, and of James II. It was the argument of George III to our ancestors more than a century ago, which George Washington and his compeers crowded down at the point of the sword and at the cannon's mouth. It is not necessary to argue that we are in a revolutionary state at all, because the Constitution of this State has provided the manner of our acting, but has not dictated, could not dictate, what we could do here upon this floor after convened.

Let me call your attention, sir, briefly, to its provisions, and it will be seen that the Constitution expressly recognizes the power of the people. This proceeding is a peaceful, constitutional revolution, and nothing else. The second section of the tenth article declares:

"And if at any time two thirds of the Senate and Assembly shall think necessary to revise and change this entire Constitution, they shall recommend to the electors, at the next election for members of the Legislature, to vote for or against the Convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature, at its next session, shall provide, by law, for calling a Convention, to be holden within six months after the passage of such law; and such Convention shall consist of a number of members not less than that of both branches of the Legislature."

Now, sir, what does the Constitution look to when a Convention is convened? It looks to an entire change of this whole Constitution, and if we adopt any of the principles in the new Constitution from the old, they will have their force, not by virtue of the old Constitution, but from the reference of them to the people and to their adoption by the people at the polls. We are here to propose, not to enact. And now, sir, as to the qualifications of the delegations. The Constitution is silent on the subject. It mentions no qualifications; it prescribes none. It leaves the whole subject of qualification to the electors. The organic Act prescribes none, and could prescribe none, but simply says that the party having the highest number of votes shall be elected, and now it is asked by us to interpolate upon the present Constitution, and to say that no man who is a Judge shall be competent to sit here. There is no logic in that proposition; there is no reason for it. The Constitution framers of eighteen hundred and forty-nine never contemplated any such construction. If they did, they have failed to say so, and I aver, sir, that in relation to the call for the Constitutional Convention, and the methods of election and the qualifications of candidates, that this provision in the tenth article is the only operative, the only controlling one. Nor can the sixteenth section of article six—relative to the judiciary department—be invoked to control the second section of the tenth article. It cannot be considered that it forms any part in the construction of the tenth article.

Why, sir, if the argument contended for were true, that this gentleman is not eligible because he is a Judge, then it would follow that we cannot touch a single article in the present Constitution in relation to the legislative, executive, or judicial departments, because, they say, we have sworn to support this Constitution, and this Constitution remains in force until we finally adjourn. If that be so, sir, then our hands are tied; then we have no power here to vote upon the subjects upon which we are called, or adopt a new organic law. But it is not true for delegates, there is no qualification for delegates mentioned in the second section of the tenth article of the Constitution, and the whole question of qualification by this Constitution is left entirely and exclusively to the elective power, to the voters who vote for the delegates, and I challenge any authority to be produced in this instrument defining the qualifications of delegates as to the qualities he should possess for membership.

By any rule of interpretation the second section of the tenth article, prescribing the manner of calling the Convention and the qualification of its members, is the controlling section, without reference to the sixteenth section of the sixth article, in relation to the holding of office by the Judges, which has no reference to the Constitutional Convention. The two sections are not in *para materia*, and are not to be construed together. It is an elementary principle, to be found in all the books on the subject, that "general words may be restricted by particular words in a subsequent clause." "A particular enactment must prevail over a general enactment." The words of the sixteenth section no more control the call and composition of the Constitutional Convention than the provision in relation to the executive department.

It might just as well be said that no man but a Judge is competent to sit here, as to be construed that a Judge is not competent for membership. There is no more authority in the Constitution for the one proposition than the other. There would be much more sense in saying that no man but a Judge is competent, for I take it for granted that the learned Judges of this country are the most competent to frame a Constitution for the State to be submitted to the people. Therefore I say that the whole argument of the opponents of Judge Fawcett has no foundation in the Constitution; that it has no foundation in law; that all the precedents in relation to Constitutional Conventions for the last century

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have been directly in conflict with any such doctrine. But if it were operative and binding, if the sixteenth section of the sixth article could be invoked here at all, I maintain that a membership here is not an office within the meaning of the Constitution.

I assert that no respectable authority has been produced or can be found upon that proposition, except perhaps Mr. Jameson, with whose authority I am not acquainted. Jameson, I don't think, asserts any such proposition. What was the meaning of the Convention in the sixth article, which excludes Judges from holding other than judicial offices? What is a fair interpretation of the present Constitution? That it was intended to be confined to an office under the Constitution; a regular working office under the organization of the Constitution of eighteen hundred and forty-nine, but was not a Constitutional Convention convened to abrogate it. The framers of the Constitution never contemplated that a Judge might not be a member of a Constitutional Convention, called for the entire revision of the instrument. If they did so intend they did not say so, nor anything from which it could be inferred. The Constitution is entirely barren of any such declaration.

Now, every one is aware that the rule is well established by the Constitution of the United States, that so far as the qualifications of members of the House of Representatives and the United States Senate are concerned, it has been repeatedly held that they are what is presented in the Constitution of the United States, and that no power, either Federal or State, can add to or abate one jot or one tittle to those qualifications, and any attempt to do so is void. Here, sir, an attempt is made to drag in the sixteenth section of the judicial department and override the second section of the tenth article, which regulates the call of a Convention. To hold that this place is an office, and by the force of that technical construction, to exclude a member from this body. Mr. President, when statesmen come to discuss great principles of constitutional law, they do not come armed with a pocket edition of an English dictionary; they don't produce Chitty on Special Pleading. They take the Constitution as our fathers framed it and as the great men of the country have construed it; they look at the language of the instrument, they see its objects, its principles, its meaning, its intentions. They don't go to Chitty, they don't take the head-notes of a case, they take the language in its broad sense; they look at the objects and intention of the framers of the instrument. I quote briefly from Judge Story for authority on the subject of interpretation. He says:

"The first and fundamental rule in interpretation of all instruments is to construe them according to the sense of the terms and the intention of the parties."

You don't take the naked language, you regard the sense of the words; you are governed by the meaning, the intention of the framers; those are the great polar stars of interpretation. Now, sir, is it possible, can it be possible, that anybody would suppose that the framers of the present Constitution intended to exclude the most competent men in the whole country from this assembly? Sir, I do not think they are liable to that reproach; I think it is casting upon them the charge of stultification to hold that such was their intention. Again, sir, to hold that would be to charge them with absurdity. It would be not merely an absurdity, but an injustice to their country, to their fellow countrymen, if such was their meaning. It is not to be presumed. Judge Story continues:

"Illustrations may be further derived from the subject-matter, with reference to which the expressions are used; that the effect and consequence of a particular construction is to be examined, because if the literal meaning involves a manifest absurdity, it ought not to be adopted; and that the reason and spirit of the law, or the causes which led to its enactment, are often the best exponents of the words, and limit their application."

Now, sir, I say there is no reason, there is no fair construction of the sixteenth section, which would exclude Judges. No such interpretation can be given to it, no such intention can be gathered from it, no such purpose could have entered the heads of the framers of the present Constitution, because to say so would charge them with absurdity. More than all that, we must look at the mischief. The mischief was, that persons under the present Constitution, under the government as organized, should not be allowed to hold too many offices; and that one holding a judicial office should not be allowed to occupy any other under the government of that Constitution. It did not mean to extend to a prohibition to holding a seat in a Convention called by the sovereign people of the country for the abrogation of the Constitution itself. It was never intended to have that force or that construction. It never could have been the purpose of the framers of the Constitution to have excluded a judicial officer. It expressly says that he may be eligible to a judicial office, but it does not define a judicial office, it does not say to an office exclusively judicial. The functions of a member here are partly legislative and partly judicial, and I assume that the language of the sixteenth section is not to be construed to exclude a Judge from this Convention on the ground that it is judicial, because there is no pretense that it must be exclusively judicial. Again, sir, I deny that membership of this body is an office; I maintain that it is simply an employment, and I hold that the authorities, the common law authorities, draw a clear and unmistakable distinction between an "office" and a "place," an "office" and a "trust," an "office" and an "employment." The Constitution must be construed with reference to the common law. This question came before the Constitutional Convention of the State of Illinois. Some of the delegates in that body refused to take the oath to support the Constitution because they said that they came there to overturn and destroy the then present Constitution, and the answer made to that was, that the position of delegate to the Constitutional Convention of the State of Illinois was not an office within the meaning of the Constitution, and, after a careful examination of the authorities in the case of Judge O'Melveny, declared that it was not an office, and that he was a competent delegate. They summarized all the common law decisions on the subject, and declared in the Constitution:

"An office is a public position, created by the Constitution or law, continuing during the pleasure of the appointing power or for a fixed term, with a successor elected or appointed. An employment is an agency for a temporary purpose, which ceases whenever the purpose is accomplished."

Now, sir, that is a full and fair summary of the common law decisions upon the subject, and is conclusive. The matter was debated by some of the ablest men in that Convention. It was thoroughly canvassed, and that was the conclusion to which they arrived: that to be an officer within the meaning of the Constitution—and their Constitution was similar to ours in that respect—it must be a place to which a successor was elected, that it must have a fixed term. There is no such thing in the tenure of a delegate. Are we to have any successors? Have we fixed terms? I take it for granted that when the hundred days expire, and our pay stops, we shall adjourn; but we have no fixed terms. We have no successors, and, according to the text, it is not an office. Nay, more, sir, let us look at the latter part of the definition:

"An employment is an agency for a temporary purpose, which ceases whenever that purpose is accomplished."

Now, is not that precisely our position? Are we not here for a temporary purpose? Agents to do a particular thing, are we not clothed with a particular trust? And what is that trust? To make suggestions to the people for a Constitution. Now, sir, what becomes of all this technicality? What becomes of these fine-spun theories, this tortured construction that this is an office? What becomes of all this hunting into lexicographers; of all this looking into the head-notes of cases which have no application? It has no law, it has no logic to support it; and the precedents of this country, as I said before, for a century, are all the other way. I challenge the production of a single case in which a member of a Constitutional Convention has been turned out of a Convention because he held another office inconsistent with his position as delegate to the Convention. If there is any such, it has escaped my notice, and I have endeavored to post myself on this matter. But I assert, sir, the only thing that fixes the qualifications of a delegate is the Constitution of eighteen hundred and forty-nine, and that is silent on the subject.

The organic Act presented no qualification for membership, and I hold that this is a question for the elective body, that it was a question exclusively for the voters, and we have no power to revise their decision. And Judge Fawcett might well say, as John Randolph said, when the Speaker of the House of Representatives asked him, when he presented himself to take the oath of office, if he was of competent age to be a member of that body. His reply was, "Ask my constituents." And now, sir, ask the constituents of Judge Fawcett if he is their man; if they hold him competent; if they say he is qualified; if they say he is their choice. If they thus answer, sir, for us to go back of that decision would be gross tyranny and the vilest despotism. When this Convention come to examine this question carefully and with intelligence, I look upon it as impossible that this gentleman should be ousted from his place among us and sent back to his constituents, and his constituents be told that we hunted about in the old Constitution, and finding that the "i's" were not dotted and the "t's" were not crossed in favor of Fawcett, that we examined some obscure law dictionary and ascertained that section to assert that membership in this body is a public trust, and therefore an office, and we sent home that delegate from Santa Barbara. If we perform this feat it will be the first Convention by which it has ever been done, and I hope the last one ever elected that will venture on such an outrage on the sovereign rights of the people of California.

SPEECH OF MR. BARNES.

MR. BARNES. Mr. President: The general questions at issue are full of interest, and although it might be instructive still further to pursue them, the lateness of the hour and the evident weariness of this assemblage forbids their discussion. It seems to me it would have been better in the first place to consider what mischief was intended to be prevented by the provision of the Constitution which declares that Supreme Court Judges, District Court Judges, and County Judges shall be ineligible to any other than a judicial office. It is evident it was designed to keep the judicial department free from the excitements, the pleasures, the pains, and penalties of political life. It designed, so far as it was possible, that the Judge on the bench should know no parties, but only the cause. It intended that he should never descend from the bench to the pool of politics, to be flattered by friends, traduced by enemies, libeled by the press, or to have his influence and power as a Judge destroyed for political purposes, and for political purposes only. It intended that he should not be allowed to descend into the strifes for the offices created under the executive, legislative, and judicial departments; that he should not come up to the bench to punish an enemy or reward a friend. How can it be said that the presence of a gentleman connected with the judicial system of this State in this Convention can produce any such result as that I have indicated. If that is the case, then certainly the intent of section one would seem to dispose of the whole question.

The gentleman from Sacramento, for whose opinions I have very great respect, has limited the discussion to the question as to whether a delegate to the Constitutional Convention is the holder of an office within the intent and meaning of the Constitution, and he comes to the conclusion, as I understand it, and bases his determination to vote against Judge Fawcett upon the ground that, in his judgment, he is an officer within the intent and meaning of the Constitution. I am not willing to adopt that view myself, and under the sanction of the oath we have taken, and which I insisted the other day and insist now was an oath that the law had no right to impose, and the Governor of this State had no power to compel us to take; but under the sanction of that oath, I declare that I cannot see that a delegate to the Constitutional Convention is an office-holder within the intent and meaning of the Constitution.

The question, whether a duty constitutes an office, is no new subject of

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debate. It has been handled in the Courts, and has been debated and considered perhaps more fully in the Courts of the State of Illinois than in any other State. I particularly refer to Bunn et al. v. The People, 45 Illinois Rep., 401, and which I shall not now attempt to read. I hope you will all examine it.

Under the first Constitution of the State of Illinois nearly all the important offices of the State were filled by an election of the two houses. It was found that this system gave rise to very injurious combinations affecting the purity of the government; that the passage of laws or their defeat was made to depend upon the election of particular individuals to particular offices. When the Convention was called, by which the present Constitution of the State of Illinois was framed, one of the principal objects sought to be effected by that call was to deprive the Legislature of the power to appoint such officers as had been appointed by them under the old Constitution, such as Justices of the Supreme, Circuit, and inferior Courts, Auditor, Treasurer, and many others, whose functions were directly connected with some one or more of the departments of the government which the Constitution had established.

Now, in view of these constitutional provisions—there was legislation had in that State under the Constitution which provided, section twelve of the fourth article: "The Governor shall nominate, and by and with the advice and consent of the Senate (a majority of all the Senators concurring), appoint all officers whose offices are established by this Constitution, or which may be created by law, and whose appointments are not otherwise provided for; and no such officer shall be appointed or elected by the General Assembly."

Section twenty-three, article five, says: "The election of all officers, and the filling of all vacancies that may happen by death, resignation, or removal, not otherwise directed or provided for by this Constitution, shall be made in such a manner as the General Assembly shall direct; *provided*, that no such officer shall be elected by the General Assembly."

The Legislature of Illinois, under that Constitution, passed an Act in eighteen hundred and sixty-seven providing for the erection of a new State House, and in that bill they appointed certain Commissioners, naming them, whose duty it was to erect that State House and disburse the moneys that were to be used in completing it. A proceeding was taken to determine whether they were officers under the Constitution of the State of Illinois; because if they were, the Legislature had no power or right to appoint them; and the Supreme Court of that State gathered together all the definitions of what was an office under the Constitution of that State, and which definitions may be very well applied to the case at bar. The Supreme Court of Illinois say: "When the Constitution says that no office established by that instrument, or created by law, shall be filled by appointment or election of the General Assembly, the framers of it had direct and immediate reference only to such offices as were created for the purpose of administering the three departments of government organized by it."

The Court cited the opinion of Chief Justice Marshall, delivered in the Circuit Court of the United States in the case of the United States vs. Maurice. This was an action of debt on the official bond of Maurice. He says:

"It is a public charge or employment, and he who performs the duties of the office is an officer If employed on the part of the United States, he is an officer of the United States."

And here it seems to me he makes the distinction alluded to by the gentleman from Los Angeles, Mr. Howard, and which appears to be the stumbling block over which some of the gentlemen are likely to fall.

"Although an office is an 'employment,' it does not follow that every employment is an office. A man may certainly be employed under a contract, express or implied, to do an act or perform a service without becoming an officer. But if the duty be a continuing one," as for instance, the office of Governor, under the Constitution of the State, it is an office that must continue from the time the Constitution is adopted until it shall be no more, or until itself shall be changed, the office or duty is a continuing one, "which is defined by rules prescribed by the Government." As in the case of a State Treasurer or Controller, he holds the office he is, so to speak, for the moment the hand on the face of the clock. They turn and turn, and the machine goes on forever and ever. Though you remove the hands, and substitute one form or another, the machine goes on, the duty exists; it must be performed, forever, though the person who for the moment is the index upon the dial of the clock may be changed and swept away.

That I understand to be what is meant by an office under the Constitution. It is something which continues. It is something to which duties are attached which are prescribed by law, and which the officer has to perform. "Who enters upon the duties pertaining to his station without any contract defining them, if those duties continue, though the person be changed."

He says again: "It is not contended that the magnitude of the object, or amount or varieties of duties imposed to carry it out, determines the character of the employment, or will convert that which was a mere employment, temporary in its very nature, into an office; it is only their continuous nature that will have that effect."

They say this in respect to these Commissioners, who were Commissioners to erect a State House, just as we are here as Commissioners under the Constitution of the State, delegates, servants, agents, appointed to do a certain work, according to our best judgment and discretion. We execute no law, we make no law, we interpret no law. We are simply here as agents of the people, to express the average sense of the people of the State of California, as we understand it, upon certain great questions affecting the organic law of the land, and when that work is completed, and we shall have folded up our records and passed them into the hands of the Secretary of State, as the law provides, we are scatterred to the four winds of heaven. We have no continuing duty. We hold no office. There are for us no successors; and the Constitution itself neither defines nor limits our duties. It is said that we are here to make a new Constitution. Not necessarily. This Convention can to-day adopt a resolution that the existing Constitution is sufficient for the people, and adjourn sine die. There is no limitation. There is nothing that hedges in or defines our duties or obligations. There is nothing distinct and definite and certain under this statute, except that the members of this Convention are entitled to ten dollars a day for every day the Convention sits. The Supreme Court of Illinois says: "It seems to us that it cannot be predicated of these plaintiffs in error, that their duties are of such a character that a general duty contains, as in the case of the agent of fortifications, although the special duty has been performed. In fact, there are no general duties imposed by the Act in question on these appointees; they have only one single special duty to perform, and that is to superintend the erection of a State House, and when that is performed their functions, *ipso facto*, are at an end."

They go on to say: "It seems to us, the term 'such officer', judging from the contemporaneous action and construction of the clause by the Legislature, had reference alone to such officers as had some portion of the functions of government committed to their charge. No man can certainly say to which of the three departments of our government these appointees belong. It will not do to say they belong to the executive, because they are required to execute a law. The same may be said of road commissioners; they execute the laws under which they derive their appointment, and so of the numberless persons necessarily employed by the State in subordinate positions and for a special purpose. So far as we have any knowledge on this subject, or are enabled to judge from the facts of contemporaneous history, no one has ever supposed the Legislature had not full power to appoint and employ all such agents as might be deemed necessary by them to perform duties not of a permanent, but of a transient and incidental character, such as we see in abundance in our statute books. No one has ever exalted such employés to the position of an officer, though their duties might require months or years for their full performance. There is no enduring element in these employments, nor designed to be; the duty being performed, the place is vacant by the very act of performance. The case cited, of Shelby vs. Alcorn, 36 Miss. 273, is based upon this case in 2 Brock., and was a case where a system of levee protection against the inundation on the Mississippi River was inaugurated, and the functionary to superintend the work was denominated by law an officer, the tenure of the office established at two years, with a salary of fifteen hundred dollars per annum; and the decision seems to be placed on the fact, that the duties of the office were continuous, and were a part of the permanent administration of the government.

"On his report as to the cost of the work, the Board of Police were required to levy a tax to meet it. And the Court held that the powers attached to the office pertained to the executive branch of the government; that it was of a permanent nature, and had a certain tenure prescribed, and the appointees were clothed with a portion of the executive and sovereign power of the State.

"This surely cannot be predicated of these appointees. No tenure of office is fixed by the Act, no permanency is attached to it, nor is there the slightest connection with the exercise of any portion of the executive power, or of any departmental powers, and no intention manifested in the Act itself to establish an office."

I will not take the time of the Convention to read further; but it seems to me to be the most finely drawn distinction between an office and an employment that has been suggested to the examination of the members of the Convention. I think it is beyond dispute—at least it seems to me to be beyond successful attack if disputed—that this duty, this employment, placed upon the gentlemen of this Convention, under the Constitution, is not an office created by the Constitution; that they have a single special duty to perform, and that being done their occupation is, *ipso facto*, ended. It cannot be said in any sense to be an office or employment within the intent and meaning of the Constitution. So believing, and so understanding the Constitution of this State, I am glad to be able to say that I can vote in favor of the delegate returned from Santa Barbara, Judge Fawcett. It would be a shame, unless it was absolutely necessary, unless the law was so plain that he who runneth may read, that the Convention should be deprived of the experience, judgment, and intelligence of any citizen, still more when that citizen comes to us ripe with learning, with long experience, with the very qualities, Mr. President, that most and best fit a man to participate in the deliberations of a body like this. It would be a great misfortune to lose him; and I hope that unless it shall appear to be imperatively necessary, that his exclusion from the Convention will not be resolved on. For myself, sir, I am satisfied that this duty which Judge Fawcett proposes to discharge here, with the leave of the Convention, is not an office within the intent and meaning of the Constitution. And so believing, and so glad to believe, I shall vote for the member retaining his seat.

MR. O'DONNELL'S REMARKS.

MR. O'DONNELL. Mr. President: I shall vote against Judge Fawcett occupying a seat in this hall. Upon our admission as delegates to seats upon the floor of this Convention, we individually and collectively took a solemn oath to support the Constitution of the United States and the State of California, and to discharge our duties as delegates according to the best of our ability. That oath was a condition precedent to our admission to seats on this floor. The sixteenth section, of article six, of the Constitution of the State of California, reads thus: "The Justices of the Supreme Court, and the District Judges, and the County Judges, shall be ineligible to any office other than a judicial office during the term for which they shall have been elected."

That is the language of the Constitution that I swore to defend when I came into this hall, and I intend to do it; and I say whenever a man violates that Constitution, he has violated the oath that he took in front

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of the President on his admission to his seat. It is admitted that Judge Fawcett at the date of his election was and still is the Judge of the First District of the State of California. He is, therefore, ineligible to a seat on this floor by that section—the sixteenth section of article six. You may get around it by saying this is not an office; but I tell you, good sense tells us, that it is an office. It is a public office, and you draw public money from the State treasury. This is a technicality that these lawyers are trying to spring upon us. [Cries of, "Louder," "louder."] I will give you a chance to speak louder when you get the floor.

Another thing, Mr. President, if he is not eligible, and I contend he is not entitled to a seat, then his vote for officers is illegal and void. I say that if he is holding his seat, and is not entitled to his seat, his vote for officers is illegal and void. Judge Fawcett, upon his admission to a seat on this floor, was allowed to vote and participate in its organization. He cast his vote——

Mr. TULLY. I call the gentleman to order.

Mr. O'DONNELL. State your point of order. [Laughter.]

Mr. TULLY. He is not talking to the question we are discussing.

Mr. O'DONNELL. Turn right around here and listen and you will learn something. They discussed these officers and the first thing they did was to take up the statute, and now they are the first to violate it. They were the first to throw the law in our teeth, and they are the first to violate it.

Mr. President, I say that according to that Constitution—according to that clause of that Constitution, which it is impossible for any man to get around; it is the plainest language that I ever read, and if one section of the Constitution is correct the other is. That has been the Constitution of the State of California since eighteen hundred and forty-nine, and it never was violated except it will be in this case, and I hope that no member upon this floor, after taking an oath to support the Constitution of the State of California, will violate that Constitution.

I tell you, Mr. President, there is no getting around it. I know Judge Fawcett is capable for the position, but the fact is we have got too many lawyers. [Laughter.] It is getting late and I will not detain you any longer. I thank you kindly for your attention.

Mr. HUESTIS. I move that the Convention do now adjourn.

Mr. VAN DYKE. I move that the further consideration of this business be made the special order for to-morrow, immediately after roll call.

So ordered.

REPORTS.

Mr. VAN DYKE, from Committee on Preamble and Bill of Rights, presented the following report:

Mr. President: The Committee on Preamble and Bill of Rights return herewith proposed amendment number two hundred and fifty-eight, which, by mistake, was sent to our committee but properly belongs to the Committee on Legislative Department.

The report was adopted, and the proposition ordered referred to the Committee on the Legislative Department.

Mr. SHAFTER, from the Committee on the Pardoning Power, presented the following report:

Mr. President: The Committee upon the Pardoning Power having had under consideration the proposal number two hundred and fifty, introduced by Mr. Condon, report adversely to section thirty-two thereof, and as the proposal relates to legislation, recommend its reference to the Committee on Legislative Department.

J. McM. SHAFTER, Chairman.

Report adopted, and reference ordered.

At four o'clock and twenty-six minutes P. M., on motion of Mr. Shoemaker, the Convention adjourned.

TWENTY-EIGHTH DAY.

SACRAMENTO, Friday, October 25th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Dowling,	Harrison,
Ayers,	Doyle,	Harvey,
Barbour,	Dudley, of San Joaquin,	Heiskell,
Barry,	Dudley, of Solano,	Herold,
Barton,	Dunlap,	Herrington,
Beerstecher,	Eagon,	Hilborn,
Belcher,	Edgerton,	Hitchcock,
Bell,	Estee,	Holmes,
Biggs,	Estey,	Howard,
Blackmer,	Evey,	Huestis,
Boucher,	Farrell,	Hughey,
Brown,	Fawcett,	Hunter,
Burt,	Filcher,	Inman,
Campbell,	Finney,	Johnson,
Caples,	Freeman,	Jones,
Casserly,	Freud,	Joyce,
Chapman,	Garvey,	Kelley,
Charles,	Glascock,	Kenny,
Condon,	Gorman,	Keyes,
Cowden,	Grace,	Kleine,
Cross,	Graves,	Laine,
Crouch,	Gregg,	Lampson,
Davis,	Hager,	Larkin,
Dean,	Hale,	Larue,
Lavigne,	Overton,	Swing,
Lewis,	Porter,	Terry,
Lindow,	Prouty,	Thompson,
Mansfield,	Pulliam,	Tinnin,
Martin, of Alameda,	Reddy,	Townsend,
Martin, of Santa Cruz,	Reed,	Tully,
McCallum,	Reynolds,	Turner,
McComas,	Rhodes,	Tuttle,
McConnell,	Ringgold,	Vacquerel,
McFarland,	Schell,	Van Dyke,
McNutt,	Schomp,	Van Voorhies,
Miller,	Shafter,	Walker, of Marin,
Mills,	Shoemaker,	Walker, of Tuolumne,
Moffat,	Shurtleff,	Webster,
Moreland,	Smith, of Santa Clara,	Weller,
Morse,	Smith, of 4th District,	Wellin,
Murphy,	Smith, of San Francisco,	West,
Nason,	Soule,	Wickes,
Nelson,	Stedman,	White,
Neunaber,	Steele,	Wilson, of Tehama,
Noel,	Stevenson,	Wilson, of 1st District,
O'Donnell,	Stuart,	Winans,
Ohleyer,	Sweasey,	Wyatt,
O'Sullivan,	Swenson,	Mr. President.

ABSENT.

Barnes,	Hall,	Strong,
Berry,	McCoy,	Waters.
Boggs,	Rolfe,	

The reading of the Journal was dispensed with.

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. Dudley, of Solano, for two days; to Mr. Waters, for one day; to Mr. Holmes, for one day; to Mr. Boggs, for one day.

THE FAWCETT CASE.

The PRESIDENT. The special order—the matter of the eligibility of the Hon. Eugene Fawcett—is now in order.

SPEECH OF MR. HERRINGTON.

Mr. HERRINGTON. Mr. President and gentlemen of the Convention: Like most other members of the Convention, I presume, upon this floor, who will be called upon to cast their vote and pass their judgment upon this question, I feel somewhat inclined to present some of the reasons which actuate me in voting as I shall vote upon it. I shall do so as briefly as I may be able, and shall try to confine myself directly to the question at issue.

As I understand the matter involved before this Convention, it is somewhat a question of law—the facts being admitted. The question, therefore, turns upon the simple construction of the Constitution of the State, and upon two of its provisions, and upon two alone. The first of these is section one of article three, and the other is section sixteen of article six of the Constitution of this State. This construction will depend upon the reason and spirit of the law—that is to say, upon the grounds and reasons which induced the Convention and people to adopt them at the time of their adoption, and will involve the circumstances surrounding and connected with the adoption of each. It is not denied that article three was framed and adopted by a Convention similar, but not exactly like unto this. That Convention was, in truth and in fact, directly from the people, having its origin with the people, its inception among all classes, without distinction as to race, and I had almost said sex, condition, and state of circumstances. The second had its origin not with the people, but with the State Legislature, and was adopted in eighteen hundred and sixty-two. Lest I be mistaken, I will satisfy my own eyes by reference to the book itself:

"The Justices of the Supreme Court, and District Judges, and County Judges shall be ineligible to any other office."

I say, then, this second provision of the Constitution, section sixteen of article six, was adopted in the year eighteen hundred and sixty-two. Why was this section adopted? In the wisdom and counsel of these most potent, grave, and reverend signiors, who bring in this report—I ask pardon—in the wisdom of the majority of the committee, they bring in this report, in which they assert that these provisions were adopted by a Convention coming from the people, and that it was adopted with reference to the provision contained in article three of the Constitution of this State, and that, as to the officers therein referred to, those provisions had reference to the officers which were provided for exercising the powers of the Legislative, the powers of the Executive, and the powers of the Judicial Department.

It will be found by a reference to the decisions of the Supreme Court that not less than a half dozen cases were decided with reference directly to this provision of the third article prior to the year eighteen hundred and sixty-two. Prior to that year diverse constructions had been placed upon this third article of the Constitution. After mature deliberation and after reflection upon these decisions affecting this third article, it was found too feebly weak and inefficient to restrain the aspirations of gentlemen who even occupied the Supreme Bench in this State, and stations in the District and County Courts. It was ineffectual, though it inhibited them transacting any business pertaining to either of the other departments of government.

For that reason it was found advisable, in eighteen hundred and sixty-two, by the Legislature, to put it down in unmistakable terms—put it down in terms that could not be gainsaid—put it down in terms that could not be more clear if written with a sunbeam on the forefront of Heaven—that they should not and shall not occupy or transact or do any business pertaining to any other office than that to which they had been

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elected. Did these provisions point only to offices to be filled in the legislative, executive, and judicial departments? If that were so, the provisions of the third article would have been sufficient, and it would have been unnecessary for the Legislature to say, in its wisdom, they were not trammeled sufficiently to curb their ambition within reasonable bounds. Yet we find, even after the adoption of this sixteenth section, of article six, this ambition was still unchecked. The desire became so rife that a Supreme Judge, desiring to fill various positions of governmental authority, appealed to the highest tribunal of the State to have it determined that he should override the provision of the Constitution which had been solemnly enacted by two Legislatures in succession to prevent the consummation of the identical act which he essayed to do.

It is not the first time in the history of this State that the provisions of the Constitution have been trampled under foot for the gratification of ambition and selfishness. It was the exhibition of this same disposition that induced the Legislature, in its wisdom, to announce in this sixteenth section that it was no longer possible for these gentlemen to occupy these double positions.

Now, what difference do these provisions make between State offices and any other offices; county offices, or township offices? The Constitution does not specify State offices. There is no such word used in the sixteenth section of article six. It simply says: "Any other office," "shall be ineligible to any other office." Does it insert the word State? Has the Legislature put that comprehensive term into the expressions used in that sixteenth section of article six? If it had, Mr. President, the fact would not avail the majority in this contest so far as the issue is concerned. I read from the majority report:

"A Constitutional Convention is therefore an unusual instrumentality of the government, and of brief existence. It is not one of the great departments of government which are created for everyday operations, and it is not to be thrust into the ranks and limits of one of these three divisions to take its place either as executive, legislative, or judicial. The Constitutional Convention outranks them all."

What in; what in, Mr. President? In what does this Convention outrank them all? I will tell you; it outranks them in being an exclusively constitutional office. That is what it outranks them in. It will be in vain for gentlemen to say as is said in this majority report, that "it is occasional, exceptional, brief, and peculiar. It represents the people in their primary capacity." It does no such thing. It does no such thing, sir. They made a mistake; they did it unthoughtedly. They should now pause and to themselves say "check." Their oath is to the Constitution of the State which inaugurated this Convention. It was organized society and not society in its original elements, primary elements, if you please. It is, therefore, from the organized elements, the constitutional elements of the Government of the State of California that this Convention proceeds, and not from the primary elements, even if it did come direct from the votes of the people. It is, therefore, from a body politic which is so modified by the very terms of its Constitution as that no man had the right to vote at the election inaugurating it except such as had been authorized under our present Constitution to participate in the affairs of the Government. That is why it stands upon a different basis from those constitutions framed by the primary elements that usually form and enact constitutions in the first instance. That is why the gentleman who occupied the position that you, Mr. President, occupy to-day, transgressed the authority conferred upon him as Governor when he assumed to dictate to this Convention who and what should be its officers; doing so despite the objections of one of its members directly interposed. That is why I say his authority went beyond the due bounds fixed by the Constitution. Had he stood here at the will of the Convention, he might have done so as its Chairman, perhaps; but acting as Governor of this State, he was chained by the provisions of the Constitution, which binds him as it does this Convention.

What right have gentlemen to say that any man shall sit in this Convention unless by the authority of organized power under the Constitution? You may well stand with your majority here, and shake your fists in the teeth of gentlemen who elected you, and declare you are almighty, simply because you have the power to install men here and put your usurpation before the people in the light of a construction—a mere choice between expressions as to what shall constitute the organized elements of this Convention. But I say to you, pause, you are under an obligation based upon a written instrument, which you and I agreed should constitute the warrant for the assembling of the members of this Convention here to-day. I do understand that when the Supreme Court determined in the case of Ex parte Archy, that the Constitution never acted for the first time that it did ignore the plain provisions of that instrument. That when it said the provision of that document, which requires that "every law shall have but one object, and that shall be expressed in the title," was merely directory, it declared that to be law which is not law. And when this Convention undertakes to say that it is supreme—that it is not trammeled by the words of that Constitution, as if its members are not here in the interests of organized society—they tear down the plain provisions of the Constitution and assert doctrines that are revolutionary in their tendency, trampling under foot the interests and rights of the minority in this Convention, and of the people, their constituents. You have no such powers. Your powers are to propose; and your powers in that respect are unlimited. That is what you are here for, and that alone. You came here by the organized authority of the men who, and who alone, had the right to vote upon your rights to membership in this body.

Now, will you undertake to say that what has been created here an office is no office? Will you say that this position, which has been reported as being above all other offices, is not an office under the Constitution? Absurd! It is equivalent to saying that that which is mandatory is directory merely; that those who have been determined by the written instrument as the foundation, as the organizing element of this commonwealth, have never acted, for the first time, within the meaning of the Constitution. Well, if membership here is not an office, why did the Constitution makers provide in that instrument for it?

Now, this sixteenth section can certainly have no reference to the third article. And it was because this third article was too weak and inefficient to prevent the aspirations of gentlemen to other and different political positions, this sixteenth section of article six was adopted. Some were hunting for Senatorships—they all wanted to go to Congress. The last man of them desired to be Governor. Everybody seemed to have had a political longing. This third article was designed to prevent this condition of things. It failed of its purpose, however. It was not strong enough in the links that bound gentlemen to their positions on the judicial bench. The Legislature, in its wisdom, at last concluded to chain down, by this provision, as with links of steel, these restless aspirants. In vain. The English language is not strong enough to bind men's consciences if this Convention ignores its terms and determines that this position is not an office within the meaning of the Constitution. Well, this Convention has the right to settle that question. You have the right to decide it. You have the right to make it a precedent for all time to come, that it is not possible for any people under an organized government, by an organized method, to change, alter, or amend their Constitution. But I say to you it is not law. It is not in accordance with the plain provisions which you and I have sworn to obey. That is all there is to it, and this view is borne out by Judge Cooley in his great work on Constitutional Limitations, and in Jameson on Conventions, cited by him.

Now, I do not choose to travel through the definitions of what constitutes an office. If you are not sufficiently enlightened as to what constitutes an office, it would be in vain to read to you authorities from now until doomsday. There is not a definition that has been given; you can find none within the lids of the books that this position will not fill as an office. You stand here as officers. All of you are members of a tribunal which, as determined by the majority of the Judiciary Committee, outranks them all. I acquiesce in it. It is true. But because it happens to be a political office, gentlemen tell me it is not included in the terms of the Constitution. Oh! gentlemen say the Constitution never intended, where it says "a judicial officer shall not exercise the functions of any other than a judicial office," that he should not exercise the functions of an office not belonging to one of the three great departments into which the powers of the Government are separated. But membership here is not the less an office because not embraced in some of these; and, as reported by the majority, in my opinion it outranks them all of every department. I acquiesce in that report so far as that part of it is concerned. It is true it outranks them all. It is a higher and more dignified position than that of Governor of the State, and in my estimation it outranks them all in being the highest political office within the gift of the people. But it is an organized office. You cannot gainsay, you cannot deny it. It is in the book; it is written as with an iron pen and will not out. It is an office and "outranks them all." Aye, more; it is written upon your consciences by an oath that should be remembered in your deliberations upon this question.

When gentlemen tell me this is not an office, within the meaning of the sixteenth section of article six of the Constitution, I understand them to say that the Legislature, after a period of twelve years had rolled away, and after it had had the benefit of experience and of the decisions of the Supreme Court given upon this subject with reference to article three, and after this article under the decisions given had been fully tried and found wanting—that Legislature, when it enacted section sixteen, of article six, had no reference at all to this class of officers. To believe that, with that experience, after the Legislature had tried in vain with as strong provision as it was possible to place within the lids of the books to curb down or chain down those aspirants for office, and keep them out of politics and allow them to discharge the duties of their office with unbiased minds—to believe that with all this experience, when that Legislature comes to determine that these aspirants shall hold no other office than a judicial office, it did not mean a political office, is the most marvelous stretch of credulity that mortal man can conceive. Still the proposition is easy of assertion.

Now how can I prove to you that this is an office as I assert it? If I say that I am here—that I exist, that I am, how will I prove that to you? How will I make you believe that fact, if you dispute it? Can I prove the proposition? No more can I establish to your understanding the proposition that membership here is a political office established by the Constitution and within its inhibitions. It is a self-evident proposition, announced by the instrument in plain terms that cannot be proven or denied.

I hardly think it worth while to follow out all the illustrations and precedents that have been cited here as establishing the right of Mr. Fawcett to a seat upon the floor of this Convention as a delegate. Here is the case of Mr. O'Melveny, who was elected a delegate of the Constitutional Convention of the State of Illinois, and who had been a Judge of the Circuit Court within a year prior to his election as delegate. The Constitution of the State provided that:

"Justices of the Supreme and Circuit Courts should not be eligible to any office of public trust or profit in the State or the United States during the term for which they were elected nor for one year thereafter, and that all votes for them for such other office of public trust or profit should be void."

Now, Mr. President, these gentlemen all know—they are lawyers, every one of them—that it is not the province of a State Constitution or Act of the Legislature of any State to determine the eligibility and right to hold office under the United States by any member of that government. They know that when the Constitution of this State prevents one who is holding the office either of Governor or Judge of the Supreme or any other Court from sitting as a member of Congress in the Senate

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or House of Representatives of the United States simply because he occupied a State office, that law is null and void. They knew that before they brought in the majority report, and that we have no jurisdiction over the Federal qualifications of any gentleman, be he Judge, Governor, or any other officer of the State. This being so, and that law being unconstitutional, they allowed that distinguished gentleman to take his seat in that Convention. Where could be the objection? But the same reasons which applied in that case will not apply in this. He had gone out of office, and though the law forbid him for one year thereafter from occupying any other position, still he did not occupy any office at the time of his election as a delegate. The cases are not parallel. Besides, the provision of the Illinois Constitution was the first and only enactment therein disqualifying officers, and there was no manifestation of design on the part of those who enacted that provision in any subsequent part of the Constitution by which to determine that its framers intended a more stringent rule. So it is possible there may have been some excuse or latitude for the Convention to determine that he might remain there. I think this a very reasonable hypothesis in reference to this Illinois case.

But, Mr. President, this committee say further that:

"We must not assume for a moment that the Convention which framed the present Constitution intended to trammel the succeeding generations in any such manner in the framing of a new organic law. It would have been contrary to the accepted theories of our Government that they should claim the right to define who should sit in such Convention."

Now, Mr. President, and gentlemen of the Convention, it is not incredible that the people, in framing their first Constitution, should have foresight enough to say when it comes to the framing of a new Constitution—a new ship of State—you shall not take for that purpose the officers in command of the old ship. Is that unreasonable? Is it unreasonable, when you come to construct your new vessel and launch it, to have it said you shall not take the pilot from the wheel of the old craft? You shall not take the helmsman from its helm? You shall not take the captain from command? Storms may arise. There may be mutiny on board the old craft, who knows? Where are the watchmen you so carefully posted if these be taken from the old ship while the new one is being erected and launched? For God's sake, pause! When that storm arises—the captain taken, the helmsman overboard or dead, her engineer removed, what becomes of her vast machinery; what of that once carefully sailing craft now careering without rudder, compass, or guide? Is it anything unreasonable to say in the framework of your organic Act, you shall not disturb the officers of the old craft, lest, peradventure sailing at the mercy of the storm she strike upon some unseen rock, where, shivered to a wreck, she plunges headlong to the bottom of the deep?

These are some of the reasons that may be supposed to have actuated the gentlemen that this committee are so anxious to defend from the aspersions which the minority are charged with thrusting upon them, for declaring that the officers shall not be removed from their stations on board the old craft. Oh, what short-sighted architects they were in framing this very poor provision in reference to the old hulk to protect her when about being stranded or driven on the rocks and among the breakers. Why, sir, they even provided here that the captain should be retained, the pilot kept at his post; aye, that even the Judge, so far as that is concerned as between the crew and the master, should be left to watch, and watch closely that interest while this new work is in progress.

But that seems not to be the determination of the majority of this committee. They want a mutiny on board the old craft while it is yet under full sail; and they announce in bold terms that this Convention has the right to determine who now shall manage the old craft while this new one is building—while this new act is in progress. It is not law in any sense.

Now, the strongest argument made by any gentleman in favor of that report, was made by the first speaker when he announced, with stentorian voice and in clarion notes, that fix it indelibly on these walls, where loud and long by their reëchoes in every crevice, from pit to dome, they still repeat, "It is no office, it is no office." And that is their whole argument. There is no pith or bottom to it. It is "voice and nothing more." It is not founded on any reason or rule. It is not founded on the reason that actuated the Legislature in framing this new amendment to the Constitution designed for the purpose of curbing the ambition of gentlemen who desire to fill too many offices.

Now I do not say—I will not so reflect upon the distinguished gentleman whose seat is in contest here, and whom I admire as much as any gentleman can—that he was so actuated. I believe he is a man of integrity; I believe that whether he remains or goes hence he does so with as much integrity of character as any gentleman here. I will give him credit for as much honesty as any gentleman of the Convention; but I believe him to be mistaken. I do not think he has reasoned in any other light than that in which the majority of the committee have reasoned. I believe their reasoning is based upon assumptions not borne out by the letter or spirit of the law. If any one is sticking in the bark the majority of the committee are the ones that are in the bark, and they have never gotten out of it, and never will. If they had taken the pains to ascertain how many officers that have hitherto been filling double and treble offices, in some instances dealing them out by the pound, as it were, and taking the compensation without discharging the duties themselves, they would have recognized the necessity of this sixteenth section as amended in eighteen hundred and sixty-two.

It is manifest, Mr. President, when it is considered that for twelve years this State groaned under the experience hinted at in relation to the ambitious projects of those officers, until even our legislators, fond of office as most of them are, determined there should be at least one department of government kept pure and untrammeled by the questions agitating the people—by political questions—as much as possible. Now it will be in vain for gentlemen to assert that this Constitution (which we are to frame) is not a political question.

There never was a more hotly contested canvass than that between the "Non-Partisans," Democrats, Republicans, and Workingmen for membership in this body. And that canvass is still here to-day on some of the same issues that divided the parties on the day of that election. And it was for the very purpose of preventing judicial officers from entering into the political arena and mixing with the strife upon these political questions that both these constitutional provisions were enacted.

Now, these gentlemen say that this is not a political question, in this, that it is above the people. But it is not so far above the people but what the people must determine the question at last, whether we have expressed by our work here their true political sentiments. Now, had they gone down and made these inquiries in advance among the masses, and had discovered that there were, in fact, Judges filling and aspiring to fill other positions, and had come to the conclusion that this was the reason which actuated the Legislature and people in passing this sixteenth section of article six of the Constitution, they would have arrived at the reason and spirit of the law. They did not want to go down there—I ask pardon—they did not go down. Now, if any of these gentlemen have the curiosity to examine the decisions made in reference to this question, from the year eighteen hundred and fifty to eighteen hundred and sixty-three, they will find them collated and commented on in 34th California Reports, from page 130 to 134, in a decision in which Judge Sanderson undertakes to overturn and reverse the solemn adjudication that had been made in his own case three years before, when he himself had endeavored to occupy a position antagonistic (as I maintain) to his then position as Chief Justice of the Supreme Court of this State. He intended to prove that he was right anyhow, and there we have his authority for it.

We are, therefore, most happy ourselves to defend the able and distinguished men who framed our Constitution from any and all aspersions on their names. But where are the aspersions cast by the minority on the names of the framers of that Constitution? The first framers did so at an early day, according to the best of their judgment. They thought they had placed provisions there sufficiently strong to protect every department, by first of all denying to the officers of each of the great departments into which the powers of the State are divided, the exercise of any of the functions pertaining to either of the others, and afterwards, by a special provision in the same instrument, forbidding the functions of some of these departments from being exercised by certain particularly named officers. But the complications were too great; there were too many snares environing the Courts, too many loopholes for aspirants to creep through—these aspirants for office, these place-hunters. At last the Legislature seized upon them with an iron grasp, and placed upon them a clincher which it intended should be special and prohibitory. But even this was in vain. It is the Legislature of the State, therefore, that requires this defense, and the people who supported them for two successive terms, first in the proposition for the amendment, and afterwards in its adoption as a firm fixture in the Constitution.

I say, then, this majority report should have been in vindication of the Legislature, and not of the Convention that took the primary proceedings for its adoption. But who is contending for this third article of the Constitution? No one. We say it was right in its place, and would have remained an ample protection against cases like this if the Supreme Court had held it valid and in point, as they should have done. But having neglected to enforce it in its full integrity, the Legislature determined that there should be some unmistakable provision, and they put it into this sixteenth section of article six, in eighteen hundred and sixty-two. I say, then, if there is to be any vindication here, let it be of the Legislature, and not of the primary Convention.

Mr. President, these are some of the ideas which lead me to vote as I shall vote; and I really, conscientiously believe, that, first of all, membership here is an office; that, above all, it is a constitutional office; that it is an office under an organized system of government, and is a part of the machinery of this Government for the framing of a new Constitution; that it is preëminently, above all others, a political office, and that it is included within the inhibitions of section sixteen of article six of the Constitution, which denies to District Judges the right to exercise the functions of any other office.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. President: The question before us has assumed a position of more than ordinary importance, and it may be pardonable for every gentleman on this floor, before he casts his vote upon this question, to explain the reasons for the faith that is in him. As I understand the questions, Mr. President, there are two of them; first, as to the constitutional limitations which are placed upon this Convention, and, second, admitting that these limitations apply to the members of this Convention, is the position occupied by Judge Fawcett as a delegate an office? I assume, sir, first—and I do not propose to discuss that question at any length, the position taken by the gentleman from Sacramento, Mr. Edgerton, on the question as to the limitation of the powers of this Convention by section sixteen of article six of the old Constitution, does not apply to the members of this Convention or to any Constitutional Convention organized pursuant to the old Constitution of eighteen hundred and forty-nine and fifty. I maintain that the Constitution and its limitations and all of its provisions were made with the sole view of providing for the government of the people. The limitations of the legislative, the limitations of the judiciary, and of the executive departments of the government under that Constitution, were intended for the people of the State organized under that Constitution, and they must obey its provisions.

The facts are that the present Constitution provides that in some

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future time, when the people of this State shall in their wisdom conclude that the present Constitution no longer represents the average judgment of the people of this State, that a new one might be made. It was to be a new one, coming in all its form from the people, perfect in all its parts, and the people were to be the sovereigns of that new machine with which they were to run this great institution of the State government.

Now, sir, pursuant to that part of the Constitution the Legislature authorized the people of the State to meet at the polls and decide whether there should be or should not be a Constitutional Convention. They met, and they decided that there should be a Constitutional Convention, and the organic law under which we meet authorized the making and submitting to the people of a draft of a new Constitution, organizing a new Government, inserting a new set of ideas for the protection and government of the people. This was done upon the theory that the people, and not the Legislature, were the sovereigns. Therefore, so far, I most heartily agree with the position of the minority of the Committee on Judiciary in its report. I believe that we are not the sovereigns. Not only that, but I maintain that we are here merely as a committee, representing the whole people of this State, to report to them what in our judgment would be wise for the people to adopt. We occupy no other position. I cannot imagine any other position that we can occupy. They have said to us, you cannot make for us a Constitution; we are the sovereigns; we are the head of this Government. You cannot make for us a Constitution, but you can draft one and submit it to us, and if it suits us we will adopt it and make it our own child. We will breathe into it vitality, and start this Government on a new road to prosperity. That is the position, as I understand it, that we occupy to-day.

Now, sir, if that position be the true one, I want to know, unless there be a constitutional limitation as to the qualification of the delegates of this Convention, what right we—who are but the instruments of the people, representing in our individual capacities only a part of the people from our several districts—have to say to the sovereigns of another part of the State you shall select a man as a delegate to this Convention who is thirty years old; who holds an office or who does not hold an office; who is a bald-headed man or who has plenty of hair; who is wise or unwise, except so far as the statute itself limits that power. Sir, the power to make Constitutions is a sovereign power. And when a gentleman says here that I, a representative of a part of the people of this State, selected only as a committeeman for the specific purpose of drafting a new Constitution, to the remaining people of this State, that they shall select a man that suits him to make the organic law for them, I maintain, sir, that he is going beyond the authority contemplated in the old Constitution.

Now, sir, the Supreme Court of Pennsylvania, only the other day, in the case of Wells vs. Baine, maintained this position. I read from Seventy-fifth Pennsylvania, page fifty-seven, and I want it distinctly understood, Mr. President, that, for one, I recognize the fact that we came here to act by authority of law; that in the ordinary acceptation of the term we are not a revolutionary body; that we are organized under the laws of the State, so far as the law gives us power of organization. But the limitation of our powers and authority are not marked out, except so far as that we are to report back our acts to the people. The Supreme Court of Pennsylvania says, referring to the Constitutional Convention of eighteen hundred and seventy-three:

"The Convention is not a coördinate branch of the government. It exercises no governmental power, but is a body raised by law in aid of the popular desire to discuss and prepare amendments, which have no governing force so long as they remain propositions. While it acts within the scope of its delegated powers it is not amenable for its acts, but when it assumes to legislate, to repeal and displace existing institutions before they are displaced by the adoption of its propositions, it acts without authority, and the citizens injured thereby are entitled, under the declaration of rights, to an open Court and to redress at our hands."

Now, if it is not a coördinate branch of the Government I want to ask the Convention: Is that part of our Constitution which prescribes the duties and fixes the limitations of the judiciary a coördinate branch of the Government of the people of the State of California? If that is so, and if this Convention is not one of the coördinate branches of the Government, then, sir, the existing Constitution can have no application as to the rights of membership on the floor or as to our powers when we are here. I understand that the distinguished gentleman who wrote the minority report has referred to Jameson as an authority upon this question, and I beg leave to call the attention of this house to a consideration of much importance. The Courts say that "this is not a coördinate branch of Government. That it exercises no governmental power." And why does it not exercise governmental power? Why, sir, for the highest reason in the world, viz.: it is above the written law. We come here for the purpose of making a draft of a Constitution which, if adopted, will wipe from the records the hitherto organic law of the State and establish itself in its place, and it is done, sir, by the inherent majesty and power of the people of this State. They are the sovereigns in this matter. In the case I have cited the Convention undertook to provide a new election law for the State of Pennsylvania, whereby that Constitution should be submitted in peculiar forms. But the Supreme Court held that "when it (the Convention) assumes to legislate, to repeal and displace existing institutions before they are displaced by the adoption of its provisions, it acts without authority, and the citizens injured thereby are entitled under the declaration of rights to an open Court and redress at our hands." My proposition is, following that decision, that this Convention is not a coördinate branch of the government, that it is a body merely representing the sovereign people, and for the sole reason that the one hundred thousand voters (or whatever other number of them may be in this State) cannot, from the inconvenience of the position, come here and legislate for themselves. But so careful are they that we shall not infringe upon the rights of their sovereignty that they say to us: "After you shall have drafted a Constitution you shall submit it to us, and if it is satisfactory to us we will adopt it; if not, we will reject it."

Following in this train of thought, sir, let me call your attention to what Judge Cooley says about this matter—Mr. Cooley is a recognized authority upon constitutional law:

"In accordance with universal practice, and from the very necessity of the case, amendments to an existing Constitution, or entire revisions of it, must be prepared and matured by some body of representatives chosen for the purpose. It is obviously impossible for the whole people to meet, prepare, and discuss the proposed alterations, and there seems to be no feasible mode by which an expression of their will can be obtained, except by asking it upon the single point of approval or disapproval. But no body of representatives, unless specially clothed with power for that purpose by the people when choosing them, can rightfully take definitive action upon amendments or revisions; they must submit the result of their deliberations to the people—who alone are competent to exercise the powers of sovereignty in framing the fundamental law—for ratification or rejection. The Constitutional Convention is the representative of sovereignty only in a very qualified sense, and for the specific purpose and with the restricted authority to put in form the questions of amendment upon which the people are to pass; but the changes in the fundamental law of the State must be enacted by the people themselves."

If that be the law, and we are here only as the employés and agents of the people, I want to know where we get the right to say to any portion of the sovereign people of this State: "You shall not be represented in this Convention." The position is an extraordinary one, that the people of the whole State themselves shall not reorganize their government in their own way, electing delegates of their own choice whom they can control, and who shall represent their thoughts and their best ideas to this Convention.

As a question of policy, I might wander a little further from this proposition of law, and say that hitherto, in almost every one of the one hundred and fifty Constitutional Conventions that have been organized in the United States, it has been to the people a pride and honor to bring within the pales of the Convention the strongest intellects and the purest characters its society produced. Hitherto, whenever a man of marked ability, of distinguished virtue, of high reputation at home and abroad, was found in the community, that man was selected from his fellows and made a member of the Convention. As a rule, it has been done regardless of any position he occupied. When a man was found whose broad and liberal views made him respected and looked up to by the people, as the child to the father, they have said to him: "Your experience—lasting through possibly three quarters of a century—entitles you to come here and mark out the line of policy which your children shall follow." Pursuant to that line of action, Chancellor Kent—a man whose character is well known to every English law reader in Europe and America—occupied that position. He, sir, was a member of the Constitutional Convention of the State of New York in eighteen hundred and twenty-one, at the same time that he was Chancellor of that great State. And while he was a member of that Convention, there were other distinguished jurists of the State of New York who occupied a like position. Among them were Ambrose Spencer, Chief Justice; Jones Platt, Circuit Judge, and W. P. Van Ness, Circuit Judge. They met there in the Constitutional Convention of eighteen hundred and twenty-one, and they framed that Constitution under which the people of New York lived up to eighteen hundred and forty-eight, I think. And they met there, notwithstanding a provision of the Constitution, which I will read to you, and no question was raised as to their qualifications or their fitness. And let me say here, that after one hundred and fifty Constitutional Conventions have been held, it remained alone for Illinois and California to raise objections to bringing within its pale a judicial officer. The Illinois Convention decided wisely that it was not an office, and that the gentleman was entitled to hold the position. California is yet to decide that question. The Constitution framed for New York in seventeen hundred and eighty-seven, under which the Constitutional Convention of eighteen hundred and twenty-one was called, reads as follows:

"That the Chancellor and Judges of the Supreme Court shall not, at the same time, hold any other office, excepting that of delegate to the General Congress."

At that time the Constitution of the United States had not been adopted, and these were delegates elected to the General Congress of the United States, and that was the only exception. And yet, sir, these distinguished men sat in that Convention and helped to frame the Constitution of eighteen hundred and twenty-one. In eighteen hundred and forty-six there was another Convention, held under the Constitution framed in eighteen hundred and twenty-one, which provided as follows:

"Neither the Chancellor, nor Justices of the Supreme Court, nor any Circuit Judge, shall hold any other office or public trust. All votes for any elective office, given by the Legislature or the people, for the Chancellor, a Justice of the Supreme Court, or Circuit Judge, during his continuance in his judicial office, shall be void."

I want to know if you can find a constitutional provision more stringent, more binding, more incisive, than that of eighteen hundred and twenty-one. And yet, sir, on examination I find there were very many officers in that Convention judicial and legislative. It is admitted this refers to the judiciary, but there is another provision in regard to the Legislature. There was Charles H. Ruggles, of Duchess County, New York, who was a delegate to that Convention, and at the same time was Circuit Judge. Samuel J. Tilden, then a member of the Legislature, was a member of that Convention. This shows that the duties of delegates to a Constitutional Convention were not then and there under-

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stood to mean official duties under the written Constitution of the State of New York.

Now, sir, I find, pursuing this subject a little further, as to whether members of a Constitutional Convention are officers or not, that this great authority, Jameson on Constitutional Conventions, while he does exactly say as the minority of this committee has reported to the Convention, yet he also produces authority right the reverse of his position. And if you are guided by Jameson, you must believe that his authority is superior to all the precedents of all the Constitutional Conventions heretofore held. The word office could be made to extend to almost any relation in life. A man performs an office when he is a church warden. He may perform a species of office when he is doing any one act whereby the public are interested on the one side and he is receiving emolument on the other. But, sir, an office, as I understand it, means an office prescribed by the Constitution, and whose duties are marked out by it. Now, sir, upon this proposition I read from Jameson, page two hundred and ninety-one, section three hundred and seven, where he lays down two theories; one is that the Convention is a strictly representative body, and the other is that it is a committee of the people. The latter position, I maintain. We are in the relation of delegates, only delegated to perform certain duties, like the boy in my office. I tell him to draw a complaint upon a note. He takes the note and draws the complaint and submits it to me, and if I believe it is right I adopt it; and if it is not, I do not. And that is just the position we occupy. Now Jameson says:

"In other words, in its last analysis a Convention, according to this second theory, is a mere committee sitting for a specified purpose, under the express mandate of the sovereign, and possessed of such powers only as are expressly granted, or as are necessary and proper for the execution of powers expressly granted."

I submit to the gentleman from Marin, Judge Shafter, if that is not the true position we occupy. The sovereign there means the people, and it means nothing else. De Tocqueville and Leiber, authorities on Democracy in America, claim that "the sovereignty of the Government rests in the people." If we recognize that to be true, I ask the gentlemen from San Francisco, who want to protect the people, to stand by the people who have elected this man to represent them here. Now, what is the object of this contest? Is it to vindicate any great question of constitutional law? If it is it strikes me that it ought to have been done to such great men as Chief Justice Marshall, James Kent, and those men who have lived in the past. But nothing of the kind has ever been done. If it is done to vindicate any question of constitutional law we have no right to vindicate it here. We are not here as a judicial body. We are not here to lay down a line of policy for Courts. We are not a coördinate branch of this Government. We are here to perform a special duty and we can do nothing more.

SPEECH OF MR. BARRY.

MR. BARRY. Mr. President: Highly as I regard the opinions of the distinguished gentlemen who have taken a position opposite to the one I hold, and who have presented this majority report, and highly as I regard the opinion of my learned and eloquent friend, Mr. Estee, still, a common sense of duty, a sense of duty to myself, and to the people of this State, compels me to dissent from the views of those gentlemen.

I believe, sir, when I entered these halls I took an oath of office, as the other members did, that I would be bound by the Constitution of my State. And that no matter what other States might have done, no matter what the Constitutional Convention of Virginia may have done, I would obey the Constitution of California. The Constitution of the State of Virginia, which has been referred to here, was the first Constitution framed in that State, and stood on a different basis, for there were no prior constitutional provisions to fetter the members in any manner. The Government had not as yet been established. True, as the gentleman from Sacramento has said, they may have been trammeled by law, but they did not have the high law of a Constitution emanating direct from the people, and the delegates were left in a great measure to choose their own course of action. Notwithstanding the definitions of Webster and Worcester, and the opinions of Jameson, and Cooley, and Pomeroy, which have been so frequently invoked here, I say the Constitution is above all statute law, above everything but the people themselves, and I maintain, sir, that we are here as members of this body to defend this Constitution, and not to allow any man to sit in this Convention whom the Constitution declares to be ineligible.

It is true, as stated by Mr. Estee and others in the majority report of the Judiciary Committee, that the Illinois Convention, after a very lengthy debate, decided that a man holding a judicial office was not ineligible to a seat in the Convention. Yet, while as I before remarked in substance, I will admit that we may be at times governed by precedents. I will admit that Judges are, and that attorneys are; but there are times when these precedents do not come up to the case in question, to the point at issue, and I hold that such is the case at present. We are all well aware that errors of judgment may be committed of great ability and learning, by Judges on the highest benches in the country, as well as by the immature youth, and men of inexperience and ordinary learning. Mistakes are not confined to one class of people, and as the gentleman from San Francisco, Mr. Estee, and other learned and eminent gentlemen may interpret this clause in the Constitution and give their views upon it, so do I, and so does any other humble gentleman, and we have the same right to be heard upon this question.

Now, sir, following the strict provisions of section sixteen, of article six, of the Constitution, that: "Judges of the Supreme Court, and District Judges, and County Judges, shall be ineligible to any other office than a judicial office, during the term for which they shall have been elected." I believe myself, and I say conscientiously, not with any personal motive, with no feeling against the honorable and distinguished gentleman whose seat is contested here, but, sir, with a conscientious sense of duty, looking upon this question as I do, I believe that the gentleman is not eligible under the Constitution. That, sir, is the view I take, even if other gentlemen hold the contrary. And, sir, I believe the remarks of the eminent gentleman from San Francisco, Col. Barnes, are sufficient in themselves, that they are an argument in themselves, why this gentleman should not be allowed to retain his seat here. I will read from the Record-Union of this morning, which gives his remarks made on this floor yesterday:

"Mr. Barnes supported the claims of Judge Fawcett, giving at length his views of the objects which the law contemplated when it prohibited the officers of one department of government from exercising the functions of any other department. It was designed, he said, to keep the judiciary perfectly free from the excitements, pleasures, pains, and penalties of political life. It designed to place the Judge upon the bench in such a position that he should know no parties, but only the cause; that he should never descend from the bench to the pool of politics to be flattered by friends, to be threatened by enemies, to be libeled by the press, to have his influence and power as a Judge destroyed for political purposes, and political purposes only. That was the intention, that was the beginning and the end of it."

I hold that that is a sufficient reason why the people of that county which this distinguished gentleman has the honor to represent—why he should not have been a candidate for this position, and why no District Judge should be a candidate for a position of this kind, or of any political character. I believe, sir, that when the framers of this Constitution placed this section in it, it was for the very good reason that Judges ought never to descend from the bench, even to a position of this character. Call it an office or not, call it what you will, even though you endeavor to remove politics from it, yet I do not believe that any Judge should come down from the bench to be a candidate for any position. The gentleman himself has said that when he first considered the matter of his own eligibility, at first blush he was decidedly of the opinion that he was not eligible, but afterwards, in consultation with members of the bar, he changed his mind on that subject. I say his first impression was the correct one, and he would have done better to have abided by it. And I believe, as I said, that when that section was placed in the Constitution, declaring judicial officers ineligible to any other than a judicial office, that it was eminently right and proper; that it was in the interest of the people that they should never be allowed to occupy positions of this character, or any political position whatever.

And, as the venerable and able gentleman from Los Angeles said yesterday, I do not attack the Judge on the ground that he is not qualified to sit here, either by learning, experience, or ability. I believe he is a man of purity of character. I do not oppose him upon any ground of qualification, so far as regards ability or integrity, but simply on the ground that he is ineligible, and that the duties he owes to the people of the counties he represents requires that he should be there. He stated to us that the November term of his Court would be postponed, as he could not be present to attend to his duties as Judge, and remain in this Convention too. That is true, and I say that the duty he owes to the people of those counties as Judge, should be sufficient ta require his constant presence there. Recognizing his ability, his honesty, his integrity, and his worth, at the same time I believe that there is his place and not here.

I wish now to call the attention of the Convention for a few moments, while I read the decision of the Supreme Court of this State in the case of "The People vs. Burgoyne." I think the questions involved were very much the same as the question involved in this case. The opinions was delivered by the Chief Justice, and presents this question in such a clear, lucid manner, that there is no mistaking the meaning.

Several questions were raised in the argument of this case, only one of which it is deemed necessary to examine, viz.: The power of the Legislature to confer other than judicial functions upon the Courts of Sessions.

"The eighth section of the sixth article of the Constitution of this State, title, 'Judicial Department,' provides as follows: 'The County Judge, with two Justices of the Peace, to be designated according to law, shall hold Courts of Sessions with such criminal jurisdiction as the Legislature shall prescribe, and he shall perform such other duties as shall be required by law.'

"The first session of the Legislature holding under the Constitution, acting, in all probability, without reference to the distribution of the various powers of our State government, as provided in article three, conferred upon the Courts of Sessions the entire management of the financial business of the counties. Among other duties enjoined, was that of purchase or erection of suitable buildings for Court-houses and public offices.

"In compliance with the Act of April tenth, eighteen hundred and fifty, the contract, out of which has grown the subject-matter of this suit, was made.

"It is now contended, admitting the contract was fair and equal in all its parts, that it is not binding upon the County of San Francisco.

"First, because, by the third article of the Constitution, it is provided that the powers of the State government shall be divided into three separate departments, the legislative, executive, and judicial; and no person charged with the execution of powers properly belonging to one of these departments, shall exercise any functions appertaining to either of the others, except in cases expressly directed or permitted; and second, because the eighth section of the sixth article of the Constitution, before quoted, does not confer the exercise of this jurisdiction upon Courts of Sessions, but limits their jurisdiction to criminal cases alone.

"In discussing the first proposition, it is only necessary to remark, that in the previous decisions of this Court we have repeatedly alluded to the distribution of powers by the Constitution, as a leading feature, never for a moment lost sight of by its framers, but carefully preserved for the purpose of maintaining the integrity of the different departments

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intact, and securing the harmony and symmetry of the whole, by restraining each to its particular orbit.

"The history of almost every nation is replete with struggles between the judicial, the executive, and legislative branches of government, for unlimited supremacy, and demonstrates, that unless curbed by wholesome constitutional restrictions, each department will, in its turn, encroach upon and interfere with the functions of other coördinate branches of government. This spirit of usurpation and encroachment has been more frequently directed toward the judiciary than any other department. In England, it was only determined by resort to civil war, which resulted in the establishment of the entire independence of the judiciary, as well as the commons while in this country, it has been avoided by the enlightened wisdom and experience of the framers of our Federal and State Constitutions.

"Acting upon this understanding, our Constitution was designed to secure the same uniformity and harmony of operation; and we do not know how the Convention that framed it could have expressed that intention more intelligibly.

"A recurrence to the origin and reasons that induced this distribution of powers, would seem conclusive upon this case, in which the Legislature have imposed upon a Court ordained by the Constitution for the transaction of criminal business, powers belonging to the executive and legislative departments of government, not even *quasi* judicial in their character.

"It is, however, argued by the appellant in reply, that the Court of Sessions has not been vested by the Constitution with any of the judicial power of the State. That the sixth article of the Constitution, title, 'Judicial Department,' provides, that the judicial power of the State shall be vested in a 'Supreme Court, District Courts, County Courts, and Justices of the Peace.'

"The Legislature may also establish such municipal and other inferior Courts as may be deemed necessary. That inasmuch as this section does not enumerate 'Courts of Sessions,' they are no part of the judicial department, and the Legislature, in all powers not denied by the Constitution, may invest them with such jurisdiction as may be deemed proper.

"This is a narrow and forced construction, and one which cannot be supported. If the Courts of Sessions are not to be regarded as a part of the judiciary, what becomes of the criminal jurisdiction conferred by the Constitution. We can only determine to what branch of the government they belong, by the character of their officers, and the nature of the duties enjoined. Here is a '*Court*,' over which three judicial officers, known as such to the Constitution, are appointed to preside and administer, with such criminal jurisdiction as the Legislature may provide.

"Now, if the first section of the sixth article necessarily limits the judicial power to the Courts therein mentioned, by parity of reasoning, the first section of the fourth article, and the first section of the fifth article, which define in what the legislative and executive power of the State shall consist, operate a like limitation, from which it would follow, that inasmuch as Courts of Sessions are not specially enumerated in either of these sections, they belong to a fourth or nondescript branch of the government, upon which any and every power may be conferred, uncontrolled, except by the wisdom of the Legislature, notwithstanding that the third article has divided the powers of the State into three departments.

"There is another view of this question, which, I apprehend, is conclusive. Not only does the Constitution forbid the exercise of the functions of one department by any other department, but it has gone further, and to secure the complete integrity of each, has, by the third article, expressly forbid 'persons charged with the powers of one from exercising duties properly belonging to another department;' from which it follows no duties, except of a judicial character, can be conferred on the Courts of Sessions, inasmuch as the officers composing these Courts are persons charged by the Constitution expressly with the performance of judicial functions.

"Upon the second point it is equally clear that the eighth section of the sixth article necessarily limits the jurisdiction of these Courts to criminal business. Affirmative words often import a negative, except as to the matter so affirmed. In the present case, the grant of criminal jurisdiction negatives any other, just as much as that of appellate to the Supreme, or original to the District Courts, limits the jurisdiction of these Courts (as has before been decided by us).

"If any doubt could exist as to the propriety of this construction, it might be easily resolved by an examination of the sixth article of the Constitution, from which it appears that more than ordinary care has been expended in parceling out the exact judicial powers of each Court. The argument is also strengthened by the fact that the fifth section of the ninth article expressly provides for a Board of Supervisors in each county, 'who shall jointly and individually perform such duties as may be prescribed by law.' Constitutions seldom contain redundant or irrelevant matter, and if the framers of ours had understood that the eighth section of the sixth article provided for the exercise of these powers, it is hardly to be supposed that they would have needlessly committed them to any other Board or tribunal.

"It is, however, contended, admitting that these duties cannot be enjoined upon a Court, they may be conferred on the Judges thereof as commissioners, and that the exercise of them by the Judges as commissioners and not as judicial officers, would not be unconstitutional. The first answer to this position has been already stated, viz: That the officers composing the Court of Sessions are judicial officers, and, consequently, are forbidden from exercising any other functions. And second, that the Act of April tenth, eighteen hundred and fifty, confers these duties upon the Court, in direct words, and not upon the members as commissioners. A question similar to this arose in the case of the United States vs. Yale Todd, reported in 13 Howard, in a note to the case of the United States vs. Finiera, page 52, in which the same doctrine was affirmed.

"It will be observed, that the language of the Constitution is not that *they*, the County Judges and two Justices, 'shall perform such other duties,' etc., but '*he* shall,' marking more explicitly, if possible, the intention of the Constitution. But even were it otherwise, and the word *they* had been used, we have shown that, by every well settled rule of construction, as well as the scope and spirit of the instrument itself, the other duties so mentioned must be limited to those of a judicial character.

"We have considered the argument drawn from contemporaneous legislative construction, as well as the recognized legal proposition, that in doubtful cases every intendment should be in favor of the constitutionality of legislative enactments; but these axioms should apply in cases of doubt. In this instance we have none.

"This question was recently decided by the Judge of the Sixth Judicial District, in an able and well considered opinion, in which the same views are taken, and which meet with the almost uniform approbation of the bench and the bar."

Now, sir, that case expresses, to my mind, the reasons why a judicial office cannot be joined with any other, where the duties are similar. The Courts of this and other States have held to the same opinion, and there is no doubt but that construction of the question is the correct one. Gentlemen of the Judiciary Committee, in their majority report, have referred to the case of the People vs. Provines, but I hold that any man who has examined that decision carefully will agree with me that it cuts no figure in this case; that the circumstance which caused that opinion to be made does not make it a criterion to govern men in their action upon this in sustaining Judge Fawcett. The opinion of Sawyer concurring and Rhodes dissenting, to my mind convey the proper impression. I read from the opinion of Justice Sawyer. He says:

"The characteristics of many powers and duties are so marked that there can be no difficulty in determining whether they belong to the legislative, executive, or judicial departments of the government. But the lines between the several departments are not defined with precision, and there are other powers and duties that partake of the nature of duties pertaining to more than one of these departments, and may as properly be referred to one as the other, or may not strictly belong to either."

Following further, he says:

"The person to be appointed is required to have certain qualifications. He must be a citizen of the United States, and of the State, and a resident and a qualified voter of the city and county, and he must be of good repute for honesty and sobriety; and he is required to produce evidence to this effect to the Police Commissioners."

This was in the case of the Police Judge. This case was an action brought by the Attorney-General, in the name of the people, against the defendant, the Police Judge of San Francisco, who was also one of the Police Commissioners. The duties were of such a character, so nearly similar, that one person filled them both, which is not the case here with Judge Fawcett, who holds the position of District Judge in Santa Barbara and the adjoining counties, and also of delegate to the Constitutional Convention. Pursuing, Justice Sawyer says:

"I deem it proper to add, that, in my judgment, if the principles supposed to be established by the case of Burgoyne vs. Supervisors of San Francisco were more doubtful than they are, the case has been too often affirmed, and too long regarded as settling the construction of the Constitution on the point involved, to justify a reëxamination as an original question. It was thoroughly and elaborately argued by counsel fully competent to the task, and maturely considered. The question was also in subsequent cases elaborately argued and considered, and the case reaffirmed, till, in later cases, it has been followed without further question by bench and bar—the effort being to distinguish the cases as they arose. Most if not all of our predecessors have had occasion to consider the question in some form, and have acquiesced in the construction if they have not expressly affirmed it. If anything can be regarded as settled, the construction of the Constitution on this point ought to be so regarded, especially as the Constitution has been amended since discussion ceased, and the inconvenience of the construction established was not found sufficient to suggest an amendment.

"The counsel in this case do not directly make the point that the decision referred to is erroneous, but content themselves with maintaining that the case now under consideration is consistent with the prior decisions. For these reasons, I shall decline to enter into a discussion of the propriety of the construction established. Cogent arguments can doubtless be urged on both sides; but this is a reason for allowing the construction to stand, rather than for disturbing it.

"The only remaining question is, does any statute authorize the Police Judge to act in the appointment of police officers? That such authority was found at one time, under the Consolidation Act, is conceded; but it is claimed that the provisions of that Act have been superseded by subsequent Acts passed in pursuance of the amendment to section ten, article six of the Constitution, requiring the Legislature to fix by law the jurisdiction of inferior municipal Courts, and the powers, duties, and responsibilities of their Judges; that the Judiciary Act of eighteen hundred and sixty-three, and the Act of January twenty-seventh, eighteen hundred and sixty-four (Laws 1863, p. 344, and Laws 1863–4, p. 30), cover the entire subject-matter of the jurisdiction and powers of the Police Court and Police Judge; and that, as the subject of appointing policemen is not mentioned in either, it is reasonable to conclude that the Legislature did not design to continue this power."

In conclusion, Justice Rhodes, a very able and learned Judge, in his dissenting opinion says:

"I concur with Mr. Justice Sanderson, in his reasoning and conclusion upon the first point. Upon the second point, without expressing an opinion as to the conclusiveness of his argument, it is sufficient to say that I am not prepared to overrule a series of decisions almost con-

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tinuous from Burgoyne's Case, in eighteen hundred and fifty-five, to the present time, and therefore dissent from the judgment."

Now, sir, a majority of the Court in that decision have overturned a line of decisions that have been held to be good for years, that a man filling the office of Judge could not hold any other official position. While that is the only decision in this State, that I am aware of, that gentlemen have alluded to, that is contrary to the views I take, I hold, sir, as I stated before, that it is not enough to govern this body in their action in voting to retain Judge Fawcett in his seat, for them to consider that he is eligible. But, sir, there are other reasons as strong, if not stronger, which have been advanced here by gentlemen on this floor, why he should not be allowed to retain his seat. I believe that with this provision in the Constitution, as clear as it is, which expressly says that no Judge shall be eligible to any other office than a judicial office during the term for which he is elected, that when a man is a delegate to this body, in the face of a provision of that kind in the Constitution—one so clear and explicit in its terms—when he finds that such is the case, and when we find that Judge Fawcett is now filling the position of District Judge, which he himself admits, that if there was any doubt in his mind as to whether this is an office or not, that doubt should be resolved in favor of the people of this State, who are now in destitution and misery, that has been entailed upon them by legislation in favor of capital, by the interpretation of the Courts, to a great extent, in favor of capital, and, I am sorry to say, in many cases by learned lawyers, who are willing to interpret in their favor. I say, sir, in this case, that when a man is drawing a salary as District Judge, and that too a large one, and drawing another salary in this Convention, he is ineligible to membership in this Convention; that he is doing a wrong to the people, and taking the money which should be left in the State treasury, which belongs to the people, and that should be applied to other necessary and legal purposes.

Now the gentleman from San Francisco, a few days since, spoke in reference to the wail of universal discontent, which could have been more properly termed a wail of universal anguish, when the people see their money wasted and squandered, and legislation turned in favor of capital, and laws and constitutions interpreted in favor of capital. I think, sir, when a man is drawing one salary from the State, that should be sufficient without trying to draw another. It must all come out of the hard earnings of the toiling masses. This evil prevails to an alarming extent, and he who fills one position, has quite all he can attend to. Then, sir, entertaining these opinions as I do, about this proposition—I agree with the gentleman from Sacramento, Mr. Freeman, when he stated that Webster declares an office is a duty, a trust, a charge, and Bouvier says in his law dictionary that it is the exercise of a public function or employment, and this is certainly one of those cases where there are public functions to be exercised, and he is drawing pay for it; it is a public employment; therefore, holding that it is an office I shall vote against the sitting member. I believe that the opinions of such eminent men as Jameson, to the effect that membership in a Constitutional Convention is an office, is worthy of respect. And I believe that the opinions of Webster and Bouvier are worthy of respect, when they give definitions as regards the word "office."

At this point, the hour for recess having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll call dispensed with.

NOTICE.

Mr. LARKIN. Mr. President: I wish to give notice that I shall at twelve o'clock to-night move the previous question.

MR. BARRY'S REMARKS CONTINUED.

Mr. BARRY. Mr. President: I have not expressly, or by implication, impugned the motives of any gentleman of the Judiciary Committee, or the motives of any gentlemen in this body, who have adopted or expressed the same views enunciated in the report. I believe they are men of such distinguished ability, of such high sense of honor, that they speak as they believe to be right; and I only ask that they will concede the same right to me, and the same honesty of purpose to me that I am willing to concede to them. And when on yesterday the gentleman from Sacramento, Mr. Edgerton, referred to our report, or a portion of it, in the manner that he did, I think it was unworthy of him. I do not think there is any portion of that report that is discourteous, or that we said anything in that report which is improper. He referred to this portion, which I will read:

"The impropriety of the action contemplated in the resolution reported by the committee, and the justice and necessity of the above opinion, is decisively enforced by the results of its adoption. If anything is certain to be done by this Convention, it is a remodeling of the judicial department. One of the propositions already passed upon by the Judiciary Committee, and to be reported to this Convention, is the utter abolition of the District Courts—their name even is to be erased from the Constitution; and yet the majority resolution would retain a gentleman here who will be required to pass upon the further existence of his office and its emoluments, and perhaps to determine the result by his single vote. 'No one ought to be judge in his own cause,' is a legal maxim hitherto held to be of universal application."

I believe this is founded on reason, logic, and right, and there is nothing discourteous in it. I signed that minority report, and I believe the sentiments therein expressed to be right and correct, and I still stand by that report. I presume the gentleman spoke hastily when he made the remarks, and had not read the report carefully.

Judge Fawcett, the claimant for a seat in this Convention, whom we declare to be ineligible, has stated as one of the overshadowing reasons predominating in his mind why he should be retained here in his seat in this body, that he received two thirds of the votes of the people in his district—that they voted almost unanimously for him. It is, no doubt, a pleasant reflection that a man is so much esteemed in his district as to receive such a hearty indorsement, but are there not many more of us in the same position. Many of us were elected by a large vote as delegates to this Convention, but that is not a question for this Convention to take into consideration in determining this question. This is purely a matter of law, not one of expediency, not merely to satisfy the people of the district which the gentleman represents; but does he sit here by virtue of the Constitution, without any express inhibition in the Constitution, in relation to his eligibility to the seat? He defended his claims very warmly on that ground, and there were other gentlemen who took the same position. They referred in eloquent terms to the voice of the majority of the people, and held that a man elected by such a large majority that it was a still greater reason why he should be allowed his seat here. That he is a distinguished and popular man no one will deny, but that is not the question.

I will remind the gentlemen that it was but a few days since when we of the other side of the house, urged upon them that the voice of the majority should be respected; that the people's voice was supreme, especially in the case where we put up a man qualified in every way for the position, a man that had received a large vote; but the circumstances apparently, to their mind were different, and their actions and their votes did not accord with their professions to-day. In that case the voice of the people was nothing. But now it is all power. If this is consistency I fail to see the consistency. We would be willing that Judge Fawcett should retain his seat, as he has received so large a majority, such a handsome vote, on the same principle that we asked that Judge Sharpstein should have a seat in this body, as representing certain principles, representing a certain constituency who gave him such a handsome vote, representing the wishes of the people of San Francisco, who received so much larger vote than the gentleman they placed in nomination here. We were willing then, thinking it just, and we thought this principle should be carried out. We would still gladly be governed by that same principle if the gentleman who now presents himself was eligible to the position to which he aspires. But many, like myself, realizing the oath we have taken, and feeling that we should be governed by section sixteen of article six of the Constitution, which, to our mind, declares that he is ineligible, even the voice of the people, for which we have the greatest respect, is not paramount in this case, because he is here contrary to law, and under the law is not eligible to the position of delegate to this Constitutional Convention.

Now, sir, I understand that there are authorities to be introduced here in support of the position which these gentlemen have taken, showing that in other States of this Union men occupying judicial positions have been allowed to sit in their Constitutional Conventions. We admit that. We admit that men of the most distinguished ability have held such positions in other States, but that is no criterion for us to go by, for we are governed by a special constitutional provision which may not exist in the Constitutions of those States referred to. We admit that Judge Fawcett is a man well qualified by ripe learning, by long experience, and by integrity to sit in a body of this kind. We do not oppose him on that ground. We have not raised a question of that kind, but the objection is purely a legal one. We claim that there should be a certain number of legal gentlemen on the floor in a Convention of this kind, but not to the exclusion of other professions. We claim that the interests of the people at large should be represented. We hold that Judge Fawcett is not eligible, and that is the reason, and the only reason we oppose him.

I would say farther, Mr. President, that when remarks are made here like those stated by Judge Fawcett, if it is correctly reported in the Record-Union of this morning, I do not think they are becoming or proper in any delegate to make. I do not believe this Convention framed the language in the Act of the Legislature; and I do not believe the Constitution is resolved into chaos when the Convention is called by Act of the Legislature. But I believe we are still dependent upon the Constitution; that the Constitution is good and binding upon every member in this Convention; and we claim that we are bound by it to the end of the Convention. When laws are made they are binding upon the people of the whole State. When the gentlemen talk about binding posterity—that we cannot bind posterity—I say that we have been bound by the Constitution which the people of this State framed in eighteen hundred and forty-nine, and amended in eighteen hundred and sixty-two. We are also bound by the Federal Constitution. It was framed by our ancestors, and we have been bound by it; and it seems strange that we cannot in turn bind posterity in the same way. I do not believe the principle they advocate is right; I believe it is dangerous and inimical to the best interests of the people.

Mr. EDGERTON. Mr. President: I rise to ask the gentleman from Nevada when and where Judge Fawcett used the language imputed to him in this morning's paper.

Mr. BARRY. I have it here. I will read from an editorial in this morning's Record-Union. While holding that Judge Fawcett is eligible, because this is not an office, the writer proceeds to condemn the report of the committee on other grounds, and Judge Fawcett's language in particular. I will read that part of the article:

"It, however, sought to fortify itself by proceeding further, and by assuming that the authority of the Constitution ceases and determines the moment a Constitutional Convention is called; that, to use Judge Fawcett's language, 'the people, when they take power into their own hands to amend their Constitution, take all power back into their own hands, and resolve things into chaos;' and that therefore the constitutional prohibition was to be considered null and void even though its applicability to the case in point should be established. This doctrine

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appears to us to be untenable. Its implications are not merely revolutionary but anarchial. For if the Legislature, in calling a Convention under constitutional provisions, thereby creates a power broader not only than the creator, but than the power which limits the action of that creator, it necessarily follows that the Convention is a body above all law, and above all responsibility. But a Convention is not a Constitution. It is only the machinery by which a Constitution is framed; and the work of its hands remains without life or significance until it is vivified by the assenting will of the popular majority. This fact should alone suffice to show that the Convention cannot be, as implied by the doctrine under consideration, above the law. If it were above the law it could, by its own motion, create a new Constitution; it could abrogate and ignore, and defy all existing legislation; it could proceed to enact whatever measures it chose, and it could declare them operative without awaiting popular ratification.

"It could do all this if it could do the least part of it, and assuredly it can do the least part of it if it contravene the law under which it was called in any particular. That law provides that when the Convention has framed a Constitution the instrument shall be submitted to the people at a duly called election. But if the Convention is paramount there is nothing to prevent it from declaring the new Constitution in force without submitting it to the people. This is the *reductio ad absurdum;* for it will hardly be maintained that a Legislature acting under constitutional provisions, and a people operating in the same way, can somehow create a power which is above Constitution and Legislature and people together; which, in fact, is wholly without responsibility of any kind and amenable to no law. Upon a plain view of the Constitution it would seem that the people had carefully reserved to themselves the final decision in regard to the acceptance of the new Constitution, and upon this view it would appear that the Convention was supposed to be subordinate to the popular will. That, indeed, is the position which we take to be the only tenable one, but it is evidently not compatible with the doctrine advanced by the majority of the Judiciary Committee. That body, with due respect be it said, seems to have fallen into some confusion regarding the functions of a Constitutional Convention, and its relations to the old and new Constitution. It is true that such a Convention forms the paramount law for the future; but it is not true that in so doing it abrogates the paramount law which it finds in existence. It could only do that if it possessed the power of enactment, which is not claimed for it, at least directly. It is not a creator, as the committee asserts. It is but a constructor. Its work possesses no operative power when it leaves its hands. The new Constitution is simply a proposition until it has been ratified by the people. The Convention in fact may be compared to a committee from its own ranks, which puts together the work intrusted to it, but which has no power to adopt that work when it is completed, but must abide by the judgment of the whole body."

MR. EDGERTON. I have carefully read the report of Judge Fawcett's speech delivered on this floor on yesterday, as reported by Messrs. Willis & Stockton, and published in the Record-Union, and also the report of his remarks before the Judiciary Committee, and there is nothing of the kind in either of these occasions. I think there is some misapprehension on the part of the proprietors of that journal; some mistake. I have his remarks here, and if the gentleman desires to see them, he is welcome.

MR. BARRY. The remarks I refer to are in the editorial column, and they are just as he made them; I think they are in substance the same as he made in the meeting of the Judiciary Committee on the night when he presented his claims to a seat in this Convention:

"The people, when they take power into their own hands to amend their Constitution, take all power back into their own hands and resolve things into chaos."

The gentleman also said, if I remember correctly, that after this Convention met—after the organization had been completed—that we had trampled down the old Constitution, as it were; that it was no longer binding on us; that we could no longer be bound by it; and other gentlemen also said that it was revolutionary in its character. I admit that political and radical change, to a certain extent, means revolution; but they take the position that everything is resolved into chaos; that we are not bound by the Constitution which our fathers framed; that we have no right to bind posterity by constitutional provisions; that the old Constitution is no longer in existence, notwithstanding the fact that we swore to support it; and that it is no longer authority which we are bound to obey. That is the position which the gentlemen take, and I hold that they are entirely wrong. I hold, sir, that we are bound by the present Constitution until we make these proposed amendments, and until they are presented to the people and ratified or rejected by them. That is my position, and I say that the gentleman from Santa Barbara, the claimant here, used in substance the language imputed to him.

Now, sir, I believe that every gentleman on the floor of this Convention desires to vote on this question in accordance with the dictates of his own conscience, and according to the Constitution of the State to which he has sworn allegiance. I believe, sir, that all are anxious to do right in this matter, with no personal feeling whatever underlying their actions. No matter what the personal or political feelings may be, they should all be sunk in the greater good, the interests of the whole people, when we come into this chamber for the purpose of framing this Constitution. And I would say that, before the vote is taken in this matter, it is important to consider what effect our actions will have upon the next generation, as well as upon those who are now living. I would say that with that wise provision in the Constitution, which declares that Judges are ineligible, if we violate it and allow a Judge to sit here, how can we ever hope or expect that the provisions which we shall place in the proposed Constitution will ever be obeyed? The future generation will point to our own acts, and out of our own mouths condemn us. They will cite our action here, as a precedent, in declining to be bound by the provisions of the Constitution. I say, gentlemen, we cannot afford to set such an example of disobedience. We ourselves cannot afford to be the first to violate the plain provisions of the very law we are making. Such reasoning is wrong—wrong in every sense of the word, and I believe it is the duty of every man within this Convention to sustain the position taken by the minority of the committee, and obey the plain provisions of a Constitution under which we have been living, and which we have sworn to uphold until it shall have been lain aside and supplanted by a new one. Because the seats of other Judges in other States have not been contested, is no reason why the seat of Judge Fawcett should not be contested here. It is not a question of expediency that is before the Convention, it is a question of obedience to law. It is a question as to whether or not the plain and mandatory provisions of the Constitution shall be trampled under foot by the very men who, above all other men, should be the first to defend it. And while men may differ in their interpretations of the law, I hold that the gentleman is clearly ineligible to hold a seat in this Convention; and I hold, sir, that principles are above everything else. The pillars and walls of the Capitol, which surround us, and the grand and towering dome above us, may crumble and perish with time, but principles will never die; they are imperishable, and I believe if we deny this man a seat here—if we refuse to violate the sacred provisions of the Constitution—the people will approve of our course; that they will ratify our actions when they come to vote for it at the polls. I believe it is the desire of every gentleman here to make such a record here that our State will not be ashamed of us. And when our remains shall have crumbled into dust, as our children look upon that Constitution and see our names appended to it, they can say, with pride and exultation, that is the work of our fathers.

SPEECH OF MR. VACQUEREL.

MR. VACQUEREL. Mr. President: I have always believed that speaking is silver and silence is gold. I believe in the last part of the sentence, but still I am obliged to rise as I intend to vote on this matter under no party line. I am ready to vote on this matter as a man who has always contended for the right; as a man who has devoted his life to the right and for the principle of the sovereignty of the people. If there is a principle that is settled enough it is that principle. It is the fundamental principle of any republican government; and the man that goes against that principle, sir, commits a crime—a social crime. I am astonished, sir, when I see on this floor that gentlemen, who have contended so much for the sovereignty of the people, have found that the people was sovereign on the thirtieth of September last and that the people is no more sovereign to-day. I hold the reports of one of the sessions of this Convention, and what do I find—"that no right is denied unless the right of the will of the people." Again further, it says that "if the people of the State were satisfied with the organic law they certainly would not have voted to have another in its place, but it is because the people are not satisfied that this Convention has been called." Again: "We also desire to have the rights of the people recognized." Now when I see gentlemen on this floor that have sustained these principles go right against it to-day, I must oppose it, even if they are my colleagues in the same political party that I belong. Now, Mr. President, I do not care whether this is an office or not. If I want to go and find the derivation of the word "office" in the Latin roots I could find a meaning to the word, perhaps, which is a very different explanation than the one given here; but I don't care whether the gentleman from Santa Barbara retains his seat or if it is another man; but I do care to vote on this question on the principle I have always stood for, and that is the principle of the sovereignty of the people, and by my vote I will respect the will of the people of Santa Barbara.

Will I do the injustice to think for a moment that two, or three, or four thousand citizens do not know their rights? Will I entertain the idea that I am a man of sense and that they are all fools? They have signified by their votes that they want to be represented by the gentleman, Mr. Fawcett, and I—as one of the servants of the people—I vote for retaining the gentleman in his seat. We want to enforce that decision and establish that precedent, Mr. President. Who gave us that power? By what right do we usurp such authority? The people desired to have a revision of the Constitution of this State. The people is the one to judge of its delegates, and the people will be the one to judge of our work, and they will ratify or reject it. Now, sir, it has been asserted here that if we voted for the gentleman from Santa Barbara we are violating our oath. There is not one delegate of San Francisco here that has not violated his oath to the party, and that is prior to the oath he took in this hall. If these gentlemen will remember the oath they have taken in San Francisco they will remember that it says that they will not vote for or support anybody who has not affiliated with the Workingmen's party. Therefore we cannot throw into a man's face that he violates his oath. We have violated our oath to the party for the good of the people at large, and if I must violate my oath I will do it to respect the will of the people of Santa Barbara. Now, sir, I want to be understood by every gentleman present on this floor. It has been insinuated by some of my colleagues here that I would vote in that way because my seat would be contested. I am a man that is never afraid of danger; I am a man that faces the enemy boldly in the face, and you must not take me to be such a child, when I have come here and taken a seat on this floor, because I am entitled to it. I am entitled to it by the blood I have spilt in the fight. Therefore I defy any of my colleagues who want to counterbalance my vote on account of my being scared. I am not scared. I never was. I never knew but one master, and that is the people. Therefore as I have based my line of conduct on certain principles which I have never departed from, and never will depart from as long as I have a drop of blood in my veins, and upon the fundamental principles upon which George Washington has established the government of the United States—which

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is the sovereignty of the people—I will certainly vote for the report of the majority of the committee. [Applause in the lobby.]

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I agree with those who have already addressed us, that in dealing with the things of this world it is well sometimes to hear voices from the other world, and to be enlightened by the wisdom, not only of our own land but of those beyond the seas.

I should be pleased if I could excuse myself from speaking upon this question. I have sought no opportunity to do so, would gladly avoid it if possible. The report of the minority of the committee, of whom I am one, has, however, been assailed, and such extraordinary doctrine as to the nature and authority of this Convention have been advanced that I am left no choice.

I say, at once, I regret that the question of Judge Fawcett's eligibility has been raised at all. I should have greatly preferred the course taken in the Conventions of Virginia, Indiana, and other States cited here, where gentlemen holding judicial positions were allowed to retain their seats, unchallenged. But, gentlemen having a right to judge for themselves upon the proprieties of the occasion, have thought otherwise, and have presented the question of Judge Fawcett's eligibility to a seat here, to be determined as a judicial question in the light of the existing Constitution and the law.

The first question presented is as to the power of this Convention. That it has the right to judge of the qualifications of its members, is declared by the statute in calling the Convention, and it is submitted would exist without the statute.

But, in determining the main question a preliminary one is made. The minority report asserts that this Convention is bound to pursue the course dictated by the existing Constitution and laws; that we, sworn to support that Constitution, must obey it, even while in the act of proposing its alteration or abrogation; and that we are especially bound to follow established rules of construction of that instrument while so acting. On the other hand, in the report of the majority, in the speeches here of gentlemen in favor of that report, and especially in the reported argument of Judge Fawcett before the committee, it is distinctly declared that we are the people, and assembled for the purpose of remodeling the old Constitution, we are cut loose from all restraints of constitutional laws—confessedly still operating upon all persons outside of the Convention. In short, that we, and the voters who sent us here, have the power to disregard every existing law, and to proceed, as though having been just launched into being, we are met for the first time to establish government and jural relations.

The assertion is distinctly made: admitting it to be true that Judge Fawcett is ineligible under the present Constitution, the people, acting in their several districts, have the power and the right to elect him or any other person falling within that *nomen generalissimum*—"the people," to a seat here, and we have no right or power to go behind this expression of their will, although it is in contradiction to the very law which allows them to act at all.

To this doctrine of nullification of existing laws, to this secession from established government, I cannot give my assent. I am surprised at the sight of Union men giving in their adhesion to these notions. I am not surprised that many others support this raid upon the Constitution. They but follow the opinions which led some of them, at least, by revolt against the national government, to give the highest proof of their sincerity. There is something of obscurity—perhaps it is not going too far to say something of equivocation—in the terms used in the report and speeches, but the true sense is unmistakable.

The people, regardless of existing institutions, have a right at any time and in any manner, for any cause, and for no cause, to shake off all governmental relations, and to establish a new code and State or Nation. This is claimed to be not revolution, but a peaceful and legal change made in defiance of all law.

There have been in this land of ours, for at least half a century, men who have been possessed with the idea that the allegiance they owed to government was such only as was agreeable to the notion or exigencies of the hour, and that they were at liberty to withdraw from their governmental relations whenever they chose.

These ideas they have constantly endeavored to popularize by cunningly inserting them into laws, and declarations of political and deliberative assemblies.

Those who concur in the majority report are singularly felicitous in quoting these gentlemen as the leading jurists and statesmen of their time. Their undoubted ability and official position are appealed to as a sort of guaranty of their political and legal soundness, and as convincing proof that all challenge of their notions is mere temerity. Nor is the confidence of gentlemen in these statesmen at all lessened in the presence of the fact, that to them and their teachings is to be attributed the recent attempt to destroy this government and the widespread misery and disaster following that attempt. Amidst all the authorities and decisions cited there is one which has been overlooked, and which I deem decisive. It was made at Appomattox by the Chief Justice Ulysses S. Grant, supported by a myriad of Associate Justices standing around.

That decision: that no man, no mere portion of a people, should be permitted to disregard, that is to nullify the Constitution—is yet in full force and unreversed—nor will I, for one, permit it to be doubted here, or elsewhere, without characterizing its challenge as a piece of vicious folly, only worthy of those who never learn anything that is good, nor forget anything that is evil.

It may not be uninstructive to examine for a moment the history of the assertion of the supremacy of Constitutional Conventions. An extended statement as to this notion will be found in Judge Jameson's work upon Constitutional Conventions. I am very glad that this able work is the production of a Vermonter.

It appears that the omnipotence of Constitutional Conventions was first claimed in the Federal Convention of seventeen hundred and eighty-seven. This author, after citing the debate, in which the ablest minds participated, thus states the result: "In this most important Convention, then, of which most of the founders of our institutions were members, the power proper only for a sovereign—of definite legislation—was not only not claimed for that body, but it was expressly disclaimed." In the Virginia Convention of eighteen hundred and twenty-nine, this doctrine was denied by John Randolph. He said: "We have been called as counsel to the people—as State physicians—to propose remedies for the State's diseases, not to pass any Act which shall have in itself any binding force. We are here as humble advisers and proposers to the people." This doctrine which he opposed was broached by Mr. Dallas, afterwards Vice-President, in eighteen hundred and thirty-six; and it was followed up in a Convention the following year. It was proposed in Conventions of New York, Kentucky, and Massachusetts, and, it is noticeable, by the same class of politicians. In eighteen hundred and forty-seven, in the Illinois Convention, this idea of practical secession was more openly avowed. Mr. Peters thus delivers himself: "We are the State. We can trample the Constitution under our feet, as waste paper, and no one can call us to account save the people." In Maryland, in eighteen hundred and thirty-seven, and Rhode Island, in eighteen hundred and forty-one, this right of upheaval, contrary to existing Constitutions and laws, was asserted unsuccessfully. In the Free States, wherever this doctrine has been submitted to the people, it has been overthrown. The final culmination was reached in the ordinances of Conventions and Legislatures of eleven States, which seceded from the Union. Mr. Yancey, of Alabama, in its Convention, thus states this dogma: "In this body is all power. No powers are reserved from it." Concerning the reasons which underlie this doctrine, and the motives leading to its assertion, Judge Jameson says:

"Comparing the dates of the various Conventions in which the theory of conventional sovereignty has been propounded with those of the successive tides of pro-slavery fanaticism in the United States, it is difficult to resist the conviction that the assertion of that theory was connected with the great conspiracy which culminated in the late secession war. Was it foreseen, that to carry out the design of disrupting the Union with an appearance of constitutional right, new conceptions must become prevalent as to the power of the bodies by which alone the design could be accomplished? And conceding the existence of such a conspiracy to be carried through by means, were the eminent names cited the willing tools, or the dupes, of the far-seeing traitors who hatched it?"

I again say, these may be statesmen, they may be exalted jurists, but their whole doctrine and theory is destructive of all constitutional government.

I do not admit the good taste of citing such men and such theories with encomium. We are sitting here by virtue of a statute passed for that purpose, in direct furtherance of a provision of the existing Constitution. We have, as a condition of taking our seats here, sworn to support that Constitution. How this is to be done by following in the steps of that distinguished statesman, Peters, of Illinois, "in trampling the Constitution under our feet," I am unable to see. It is a singular fact that in the Constitution of only one, I think, of the original thirteen States, New Hampshire, was there any provision for amendment. This duty was left to the Legislature. No State, save Maryland and Rhode Island, and later the seceding States, ever attempted amendments in any other way, or by any other rule, than that furnished under, or permitted by, their existing Constitution.

I end this topic by saying, without the experience of an honorable gentleman on this floor who tells us he bears the marks evidencing his former assertion of this doctrine of secession. I agree with him; we have all we want of it.

The minority report states a reason against the claim of the sitting member, contained in the following language:

"The impropriety of the action contemplated in the resolution reported by the committee, and the justice and necessity of the above opinion, is decisively enforced by the results of its adoption. If anything is certain to be done by this Convention, it is a remodeling of the judicial department. One of the propositions already passed upon by the Judiciary Committee, and to be reported to this Convention, is the utter abolition of the District Courts—their name even is to be erased from the Constitution; and yet the majority resolution would retain a gentleman here who will be required to pass upon the further existence of his office and its emoluments, and perhaps to determine the result by his single vote. 'No one ought to be judge in his own cause,' is a legal maxim hitherto held to be of universal application."

As to this, my friend on the right, Mr. Edgerton, makes answer by appealing to the high character of Judge Fawcett, his position as Judge of the First District, his election to this Convention, as proof that no mere personal consideration will swerve that gentleman from a strict discharge of his duty here without any bias produced by his personal interest. I have no doubt of that gentleman's high character; nor do I for a moment suppose that his conduct would be otherwise than honorable and creditable to himself and this Convention. But the law of common sense has long been that no one shall be judge in his own cause. It is universal human experience that self-interest affects all men in the same direction, and so insidious is this influence that the law at least does not undertake the dangerous task of weighing its amount or force, but excludes all from the office of Judge who fall within it. So careful has the law been, that all those called upon to decide judicial questions should be entirely disinterested in feeling—that not only the remotest pecuniary interest, but bias for or against a party, disqualifies one from acting as a juror. It is only because there are conflicting considerations that a municipal corporator can sit where his municipality is a party. His interest is so comminuted, so slight, and the inconvenience resulting from his exclusion so great, that the objection of interest is parried or overcome.

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The lawyers of this Convention will pardon me a direct allusion to them and the hope by which they seem actuated. From the high character, which I admit is correctly attributed to Judge Fawcett, they seem to anticipate from his efforts, joined to their own, great public good, as well as the acquisition of that reputation to the profession, which at least ought to follow great abilities, successfully employed in the public service.

Our first impressions of our surroundings are sometimes the best. Trusting to such impressions, I must express a doubt as to any of us obtaining here much augmentation of reputation, and as to Judge Fawcett, the regret that he did not adhere to his first impression, and refuse the importunities of his friends, what his own judgment seemed to condemn.

Those impressions were that he was ineligible. They could only arise from the fact that the intention of the Constitution from its language, apparent to the common mind, was to prevent a judicial officer mixing himself up with any other functions of government, either executive or legislative.

It must be borne in mind that the Constitution was adopted by the people, and when possible, that construction should be put upon it, which is in accordance to the understanding of the people. Perhaps incapable of technical construction, they understand language according to its ordinary use, and no other. This apparent intent was what first controlled Judge Fawcett, and had he, sinking the lawyer, adhered to the opinion to which all average common men would have arrived upon inspection of the provision as to judicial officers, we should have been spared this discussion, and been relieved from the temptation to apply a technical close construction of the words of the Constitution, not contemplated by those who formed it.

There are a large number of lawyers in this Convention, and there is great danger that the peculiar habits of the profession may lead to a result not in accordance with the true spirit of the Constitution.

Now, sir, I have been a lawyer for forty years, have been a member of Legislature in three States, and have had the opportunity to observe the conduct of my profession in this class of questions. I for one should not regard a legislative body composed of lawyers as the best. I readily admit that the world is indebted to them for much of its progress, but the business of the average lawyer brings him in contact with small questions; his labor often terminates in establishing or defeating important claims, upon no higher reason than the observance or neglect of some mere matter of routine or form, which in no respect is essential to justice.

He gets into grooves and habits of thought technical and restrained, and having no savor of statesmanship. Thus enveloped in forms, and following their language and the traditions that underlie them, he is inclined to ignore alike the thought, the language, and the necessities of common people.

I do not say that this result is a necessary one, but that strict legal practice has that tendency, is the result of my observation. That observation has convinced me, that in everything which involves expression, lawyers as legislators are indispensable; but in everything which involves the reasons of legislation, the sentiment, emotion, the sense of justice, a knowledge of the common wants, the laymen are in no sense their inferiors, and are equally necessary to sound legislation.

If one District Judge is a necessity, why not have them all take seats here? Why not avail ourselves of the services of the two or three hundred ex-Judges we have in the State? That such an assembly is not such as the common sense of the State would approve has been already decided.

The honorable gentleman from Los Angeles, General Howard, reads from an authority. The name of the author did not reach me, but its language and idea did. No doubt it states the correct doctrine. Allow me to call attention, very briefly, to one of the rules of construction, familiar to all lawyers, as stated by Sedgwick on Statutory and Constitutional Law. He gives that of Blackstone, entirely sufficient for my purpose: "Words are generally to be understood in their usual and most known signification; not so much regarding the propriety of grammar as their general and popular use."

The majority report and its friends seem to agree with this general declaration, but they attribute to the minority report a departure from this rule by adopting what is called close, limited, or rather small construction of the terms of the Constitution, and that it errs in not applying that large, liberal, magnanimous, and broad interpretation, properly regarded as applicable to treaties and Constitutions. I agree with the proposition that the larger the scope of the instrument, especially if it is national or governmental in character, that liberality should characterize the construction.

But the question still remains, to which report is properly attributable the manifestation of liberal construction. Upon the question of power in the Convention, the majority report is limited only by the universe, but in its definition of the decisive word of the Constitution, they limit it far within its general sense. Large, liberal, or benignant interpretation is that which brings the largest number or kind of subjects and objects within the purview or effect of the law. Close or strict construction has the effect to narrow the application of the law. We have now arrived at the word "office," occurring in article five, section sixteen, of the Constitution. How do the majority treat this word? They give it the narrowest limit of which the word can be susceptible and one altogether narrower than is possible under the circumstances. The application of the word "office" is limited by the majority of the Committee on Judiciary, to such offices only as are created by that name under the Constitution. Members here are called delegates, and are therefore not officers, whatever may be their relations to the State. It is not the intention of the people, nor the interpretation of the people, which is to control; but some cabalistic, hidden meaning, which may, upon a pinch, be claimed, which is to control. In assuming power, gentlemen say they are the people. Now, this very word "people" has to be interpreted. Those we represent here are, in an important sense, not the people of California. The statute under which we sit submitted our claims to the qualified electors alone.

The people, in its literal sense, includes all sentient beings. If the word is to have this larger sense—this universal application—then the men and women, all foreigners, Chinamen included, have a right to be represented here by delegates whom they elected, as has that small body called qualified electors. This people is within the scope and effect of all general laws; it is completely subject to our rightful authority; it is to be controlled by the Constitution we propose to form. One class are native-born. The women, God bless them, always have as much claim to the beneficent protection of the law, and are morally as much entitled to participate in its creation, as are we. Yet all these are distinctly excluded from all representation here; here no one is entitled to speak for them, or as the representative of their wishes or opinions. Now, why is this? It is simply because, that by common consent—by common constitutional and statutory use of the word people, as relating to political powers, these several classes of persons have been excluded from the term "people."

If the principle of the majority report is to obtain, and the people in its largest sense is entitled to representation here, then the excluded classes were entitled to be heard upon the question of our election, and to a reasonable extent "push us from our stools," and take our places here.

I, however, allude to this in this connection only as illustrating the necessity of all the considerations surrounding a question of interpretation, and as bearing upon the true sense of the word "office," as used in the Constitution.

Article five, section sixteen, of that instrument, declares "the District Judges shall be ineligible to any office other than a judicial office during the term for which they shall have been elected."

That a membership in this Convention is an office, I have no doubt. The definition of Bouvier is, "A right to exercise a public function or employment, and to take the fees and emoluments belonging to it." Other definitions extend to the "execution of any public trust."

Bouvier places "members of the Legislature" as holding a political office, and cites Morrill vs. Haynes, 2 N. H. Rep., 246, as so deciding.

Looking into all accessible authorities I find Bouvier's definition itself cited from Cruise's Digest, as being in all respects correct.

Judge Jameson, page three hundred and forty-six, says of Legislatures and Conventions: "Both, as we have seen, belong to the *same* Legislature. That is, they are both charged with the elaboration or enactment of laws. Where they differ is in the kind of law with which they are concerned, and in the extent of their agency in its formation." In another place he states his opinion, that members of Conventions are "officers," within the ordinary interpretation of that term. In Ex parte Gregory Yale, 24 Cal., 242, the terms "office," and "public trust," are compared, and while it is held that "office" is the more extensive term, it is declared that those temporarily executing a public trust are officers within the language of the Constitution. The statute of eighteen hundred and seventy-seven-eight, page seven hundred and sixty-two, recognizes in distinct terms that we are "officers," for it requires the "constitutional oath" to be administered to us.

It was administered, and in it we each swore to "faithfully discharge the duties of the office of delegate" to this Convention.

Now, if there is no such office, the whole ceremony through which we passed seems like a grim joke, a homeopathic dose, which if it does no good, can do no harm. We are talking about the question, what is the common use of the word "office," and have seen by the last example that the term is by the Legislature applied to ourselves. That the assertion, that the functions we execute must have been termed that of an office by the Constitution, in order to make it such within the article above cited, is disproved by legislative construction in repeated instances. Members of the Legislature, Presidential electors, and probably other functionaries of like character, are not called officers either in the State or Federal Constitution. Yet in 1 Hittell's California Digest, Sec. 2424, the Legislature provided for the election of Electors of Presidents, and of such *other officers* as may be required by law. Sec. 2427 makes it the duty of the Governor "to issue his proclamation for elections, designating the *offices* to be filled." Under this section the Governor issued his proclamation for our election to this office. Sec. 2444 declares that the vote must designate the "office" to be filled.

Sections 2453-4-5-8, to the end of the chapter, treat any person who has been elected by the qualified electors as an officer. In Sec. 2460 members of Congress are put as officers.

It is quite unnecessary to follow this farther. There is not an intelligent man in California but knows that positions of this character are all in common parlance, treated and regarded as offices. No one has thus far expressed any doubt, that this common understanding furnishes the true rule of construction in general, and no one as yet has given a solitary reason why this word "office" is to be excepted from that rule.

It is said, however, that while the act of this body may be legislative in its essential nature or quality, yet, as it relates to our power over it—that is merely to advise.

That is so, and yet the people have no right to treat it as they ordinarily can advice tendered them. They cannot amend it nor qualify it; they must take it as a whole, or reject it as such.

The effect of the passage of a bill by one house of the Legislature is immediately like ours when we propose a Constitution—the body ceases to have power over its work. It proposes a scheme to its coördinate, which it may modify or reject; but the initiatory act is as much legislative as another. The only advantage the Legislature proper has over us, is the power of conference and amendment. That sober, second thought which is denied to us. Article one, section two, of the Constitution, commencing at the bottom, declares, "All political power is inher-

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ent in the people." Article three, section one, proceeds to distribute "the powers of the government of California (*i. e.* of the people) into the legislative, executive, and judicial;" and then says, "no person charged with the powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others." Now, does the "government" which is organized under the Constitution, and do the three departments thereof include and provide for the exercise of "all the political power of the people;" or is there somewhere wandering in space some vagabond force which we are at liberty to assume? The Constitution and the people have undertaken to provide for this body and to define its powers. Do these powers fall within any one of the three departments; or do we constitute a fourth estate? a department at liberty to act our own will without power of legal challenge, and only subject to such sharp medicine as lies in the storehouse of revolution. That our function is legislative, and that we are *persons* charged with the exercise of that class of powers, and that a judicial officer cannot rightfully exercise those functions, would not, to my mind, except in the light of the present debate, admit of doubt. The reasons which have operated upon the minds of the people, which have culminated in at least the attempt to keep the judiciary apart from every entanglement by which the mind of the Judge can by possibility be influenced, are known to all.

It is said Judge Fawcett is singularly unhappy in falling within them all. He is directly interested in the question of the continuance of his official life. It is said that his presence here is occasioning that delay in the administration of justice condemned by Blackstone.

When the provisions of our proposed Constitution come before him for argument, his prejudgments will bias him against that *secundo probatio* of argument to which they will be subjected. He may have that dangerous task to perform of forgetting all he has heard here upon the provisions of our proposal in order to attain to that clearness of reason necessary to understand it. I repeat the language of our report, "that if the wish of the voters whose suffrage sent Judge Fawcett here can be gratified, under a proper construction of the Constitution, it should be done." As it is, I consider his admission a violation of the letter and spirit of that instrument, and that his services, distinguished as I feel they will be, will be but indifferent compensation for that evil precedent by which "many errors will rush into the State."

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. President: As the mover of the resolution proposing this inquiry, I deem it my duty to state briefly the reasons which led me to make that proposition. I find in the majority report of the Judiciary Committee a statement that "the objection to Judge Fawcett's holding a seat in this Convention comes from a point remote from his constituency, and without any suggestion of unfitness in any respect, and is based on a narrow, literal, and technical construction of section sixteen of article six of the present Constitution."

It is not I, sir, who object to his retaining that seat. If the position I hold is correct, the objection comes from the Constitution of this State. My investigations led me to the deliberate conclusion, based upon the authority I find in the Constitution, in the absence of any decisions, authoritative or otherwise, of the question, that the Constitution, and not I, disabled him from holding a seat here. So holding, and so believing, I submitted the resolution of inquiry, which can never be tortured into an objection to Judge Fawcett; and in my opinion the majority of that committee, under the instructions contained in that resolution, were not entitled to pervert the issue by assuming that we have based our opposition to him upon any other ground than simply the ground of his disability under the Constitution of this State. My judgment is, that they, furthermore, have argued this case from the wrong end, when they assume that we must point out the qualifications and eligibility of a member of this Convention. Sir, it is not true; the affirmative is upon them to show that this is a judicial office, or the member, whose seat is being contested, is ineligible. We have nothing to do with what constitutes the qualifications of any member here. That is not a question, Mr. President, before this Convention. The question is as to the disability, under the Constitution, of a judicial officer holding any other office, or performing the functions of any other office, and that is all. Is the District Judge of the First Judicial District disabled from holding any other office, or disabled from sitting as a member in this Convention? And that is the sole question; and if the interpretation we put upon it is correct, the only outlet for gentlemen is to show that this is a judicial office, or partakes of a judicial nature.

The debate, sir, has drifted away from the real issue that is here involved, and that is this, stated briefly: first, is membership in this Convention an office? Involved in which is the question relating to the character of the Convention; it involves the question, by what authority are we assembled here; what is the character of the whole, and what are the characters of the integers composing the whole; what is our function in the conduct of the government; what is the extent of our authority; what is the limit of our authority; who has conferred upon us the authority; who has limited the authority; are we not here a duly organized body, summoned hither by the law, deriving all the power we possess from the present Constitution, according to the forms of law, bound to obey that Constitution and the law framed under it; or are we a primary body, independent of the existing Constitution and law; are we officers under the law, representatives of the people in truth and in fact, in letter and in spirit; or, are we mere occasional employés, like a man who would come here to mend a broken chandelier?

All these questions, Mr. President, are comprehended in the issue here presented, and by the judgment of the members of this Convention it must be determined, if no extraneous considerations enter into the votes which gentlemen shall cast. I maintain this proposition, as I understand all do who coincide with me in support of the minority report, that there is no such thing, in our modern American system, as a representative body of the people in their primary capacity, unless, perchance, it may be those assemblies of the people of the Territories in the United States emerging from Territorial pupilage into Statehood, and even as to them it is held that the Enabling Act is necessary to effect a change.

The proposition is new in my judgment, sir, and I do not find that it has ever been decided in any of these United States, except it may have been in the case in Illinois in eighteen hundred and sixty-two, which has been shown, if it is offered at all in this connection, to have been authority upon our side of the question, because the people reversed the judgment of the Convention which admitted Judge O'Melveny to a seat. It has never been authoritatively settled at all, and it must be decided by this Convention upon authority found in the Constitution, upon reason, and upon principle. But the authorities have never decided the question directly: what is the character, what are the functions, of a delegate to a Constitutional Convention?

A Constitutional Convention at the present time—now that the States have all been organized, now that they have been provided with all the functions, agencies, and machinery for the conduct of government—a Constitutional Convention is now but an arm or branch of that government. It belongs to the law-making department, strictly speaking, and nowhere else. It is not, as was contended in the argument in the State of Illinois, as if the people were assembled together, or a clear majority of the whole people of the State, on some vast prairie, there met together to frame their fundamental law, to set the machinery of government in motion—not at all, sir. I do not deny that it might be done. I do not deny that there might be a revolutionary Convention, but this is not one, and no such thing is contemplated at the present time in any of the remaining States of the Union. There is authority upon that score all through the books, as was well argued by the gentleman from Marin, Mr. Shafter, abundant authority that the organic law is nothing but the law of the land, as any other law, with the simple difference that it is higher and of a more exalted character. I do not wish to trouble this Convention with any authorities.

I wish to read one authority in support of the proposition, showing that modern ideas of Constitutional Conventions, and the functions which they perform in the administration of government, has undergone a change from those primitive times when John Marshall and the Governor of Virginia sat side by side in that Convention. Those precedents no more serve to illustrate the present machinery of Constitutional Conventions than the lumbering old family coaches they used to ride to the Capitol in, are like the railroad cars and steamers in which the same journeys are now performed. As this is a man of high character, I will read a few extracts from Charles O'Conor's address on Constitutional Conventions, and methods of amending Constitutions:

"A written Constitution, the distinctive feature in American methods, is not distinguishable in principle from any other law. If there was ever a distinction it is being rapidly obliterated by continual changes and extensive amplifications. That first Constitution under which we lived for so many years was framed and put in operation by a Convention of delegates selected and assembled with less formality than usually attends the choice of an annual Legislature. The early Constitutions of our sister States were in general adopted in the same manner. It seems not to have been thought at the beginning that a vote of the people was necessary to give validity to an organic plan of government. Other Constitutions in this and the sister States have provided a means for their own amendment as far as the substitution of new Constitutions in their stead."

I maintain, sir, that the constitution-making power and the law-making power are one and the same thing, and I find that proposition in article ten, sections one and two, of the present Constitution. It would be as proper to say that the members of the Legislature, proceeding to submit amendments and propositions, convening together for no other purpose than submitting them under article ten, are not officers, are not functionaries of the government, as to say that members of the Constitutional Convention, proceeding to amend the organic law by another process, are not also government officers. They are methods interchangably used for the purpose of obtaining an amendment or entire change of the organic law. I maintain that this Convention is the organ of the government, for its appointed uses in the operation of the machinery of government, and its members are officers serving that office. It is immaterial to this issue whether the organ acts with regularity or not, it is the none the less an organ. These are the propositions, Mr. President, which I maintain are involved in the issue at present before this Convention, and which must be determined by the Convention on the main question. It remains for the State of California, through this Convention, now to first declare the principle, and authoritatively assert the doctrine, whether a Constitutional Convention is a primary body, representing the people in their primary capacity, or whether, as the minority report contends, it is but the organized agency of the government, only required to be awaked into life and set in motion by the action of the Legislature. Now, the majority report goes nearly to the extent of contending for the proposition that it is a revolutionary body. Certainly there is no middle ground; that is the natural, necessary, and logical result of their position, and the gentleman from Sacramento, Mr. Edgerton, evidently so understood it, for he took the ground, distinctly and positively, where he must land in following out the logical sequence of his position; and that is briefly stated, sir, that this Convention is not controlled in any respect, either by the Constitution of the State, or by the laws passed touching it under that Constitution. And I say there is no midway ground.

The first objection of the majority report, the first criticisms made upon those who dispute the eligibility of Judge Fawcett, is that "to hang upon the letter here, is emphatically to hang upon the bark—that to be literal is to be wrong." Now, sir, is that true? Is not that an exceedingly unfair position, when it is said that unless we can find that the

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office is literally declared to be an office we must fail? We do not contend that it can be literally discovered that it is an office, or so directly declared to be, but we say that every intent, every just inference of the Constitution is that it is an office. We depend upon the broad principle that it is the agency created and function established and authorized by the Constitution, not in express, literal terms, but by fair implication.

But the report of the majority of the committee did not go to the extent which it should have gone to have made the case clear to the understanding, that of declaring whether we are working under the Constitution, or whether we are outside of it. It says, "The Constitution as it is creates a form of State government complete in itself. Under it the State was to be organized, officered, and launched into operation. It did not anticipate what should be done under a succeeding Constitution, but provided for its own practical working."

There, Mr. President, is where the majority report is fatally fallacious, in that it confounds the assemblage of the Convention with the ratification of its work by the people, for the Constitution now existing operates and is in force long after our functions have terminated, long after we have gone to our homes, and ceased to perform any office with reference thereto. "It did not anticipate what should be done under the existing Constitution, or provide for its own practical working." The point of its practical working is the method of its own amendment, its own revision, and we are here as a part of that agency, and hold that the Constitution is not supplanted, as the majority report would seem to infer, by the assembling of this Convention at all. It exists, and it will exist, in all its force and vigor until the subsequent Constitution changing it has been adopted and ratified by the people. Here, again, the report says: "As long as that Constitution should last those offices would last, and it was in view of that fact that section sixteen of article six was adopted, rendering Judges ineligible during their terms to any office in the executive or legislative department." This covered the usual, ordinary, and necessary workings and instrumentalities of the government under that Constitution, until how long? until, sir, a subsequent Constitution supplants it and destroys its force.

Another fallacy of the majority report, is in assuming that it is no part of the necessary workings of the Constitution which is to be put in force. The gentlemen say that the officers named in the Constitution—specifically named—are the only officers from which the judiciary are excluded. Now, sir, what officers are named. Gentlemen seem to misapprehend the scope and power of this instrument, in supposing that it can be only those officers specifically named; but it is not only the offices named and officers provided for in the instrument itself, whether *in esse* or *in futuro*, contemplated in section eleven of article six, where it provides that the Legislature, after naming certain officers, shall provide for the appointment and election of such other officers as may be found necessary for the proper administration of the government. Does the gentleman say that the great multitute of offices created by the Legislature during the long years, under the Constitution, have been open to the judiciary because they are not specifically mentioned in the Constitution? It would be a most extraordinary assertion. Sir, it is not only the officers named, but the officers provided for, whether by the Legislature or by the inherent force of the Constitution itself, and that is what makes us officers. We are not officers created by the Legislature, but officers spoken into existenee by the Constitution, and the Legislature is but the hand to smite the rock and set their delegation free.

Now, section eleven, cited here, contains this proviso, that the Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and to fix by law their duties and compensation. The officers named are constitutional officers; Clerks, Sheriffs, and District Attorneys are the creation of the Legislature, and are not constitutional officers; and the plain inference would be that the judiciary are free to enter into all the offices not expressly provided for by the Constitution. The Constitution is full of provisions for filling these offices when they become vacant.

The majority of the committee in their report say that "when we come to the question of a new Constitution we have something effecting the most radical change possible." Exactly! But the radical change only comes after the ratification of the Constitution. The change does not come by the assembling of this Convention. The restrictions and the prohibitions of that instrument are not relaxed until that change does come. "The old things are to pass away and new ones are to take their place. A Constitutional Convention is, therefore, an unusual, rare, and merely occasional instrumentality of the government, and of brief existence." That, Mr. President, in a certain sense, is a begging of this whole question. It makes no difference whether it is rare, it makes no difference whether it is brief, it makes no difference whether it is unusual; the provision is put in there squarely that it is an instrumentality of the government. An instrumentality of the government, how? Simply our instrumentality recognized by the Constitution of the State, and not otherwise. "It is not one of the three great departments of government which are created for everyday operations, and is not to be thrust into the ranks and limits of one of these three divisions, and take its place either as executive, legislative, or judicial." It must be a Sunday office, for they say it is not of everyday operation. How does that affect the question of the existence of this Convention as an instrumentality of the government and of the members as agents of that instrumentality. "The Constitutional Convention outranks them all; it is their creator and fixes limits to their spheres of action and boundaries to their powers. It is occasional, exceptional, brief, and peculiar." Mark, if you please, the language, the extraordinary language. It is not that the Constitution here framed and adopted is the creator of all these offices, but it is that the Constitutional Convention is the creator of them.

The necessary sequence of that is, as was claimed and contended in the State of Illinois, that a Constitutional Convention was omnipotent; that it might submit or might not submit its work; that it might create, might limit, might fix all the offices of the government. "It outranks them all;" that is the doctrine against which I am contending here. It is a doctrine which I must assert to be rank communism. If the eighty Judges of the Courts of record in this State assembled together here, calling themselves a Constitutional Convention, to take possession of the departments of government, could secure a majority, perhaps, to back them—proceeding in this way, ignoring the method pointed out by the Constitution, or the amendment to the Constitution, what is to hinder their doing it? I admit, sir, that it is "peculiar," and that is the only point upon which I can agree with the majority of the committee. "It represents the people in their primary capacity, and forms the organic, fundamental, and paramount law." There the broad doctrine is asserted of the independence of all control of this Convention, and the extraordinary language follows immediately after: "Its members are mere agents or delegates of the people." How, sir, how do they reconcile these things? In the first place it outranks all, legislative, judicial, and executive offices, and yet we come here as delegates and agents of the people.

The Colossus of Rhodes bestrides a mighty chasm, but the majority of the committee have made even a wider straddle than that. They come immediately back to our proposition, and say that "they have no power to adopt or create, but at most can only prepare and present to the people a draft of a Constitution for their adoption or rejection"—coming back again to the original proposition. Like the French brothers of the circus—Jean, Jacques, and Pierre—one ran and jumped down the throat of the second, the second ran and jumped down the throat of the third, and he turned a back somersault and jumped down his own throat. So with this majority report. They want to be on the safe side. In one breath they say that it is an omnipotent power, and in the next breath they say we have come here as mere agents and delegates of the people. They are bound to have it right some way, even though they cast consistency to the winds. I do not believe that a Constitutional Convention called by the authority of the people of the State has any such power as is claimed; is not outside of all law, nor independent of all control, as they would like to have this Convention believe. The majority report undertakes to compel those who contest this question of the eligibility of Judge Fawcett to locate the position of delegate in one of the three departments or fail in their position.

Mr. President, the issue is entirely and totally perverted. We have never contended at all, and are not bound to contend here, that the position of delegate does belong to either one of them. I am perfectly willing to state my opinion, and that is, that it is a branch of the legislative department. But the proposition is this: not what are the duties and qualifications of a delegate, as I before said, but what is the office of section sixteen of article six of the present Constitution. That is to say, instead of going to article ten, sections one and two, to discover the eligibility and qualifications of a delegate, the question is rather: is Judge Fawcett disabled under a fair interpretation of the Constitution. It is arguing at the wrong end. It is attempting to put us upon a false scent. We are not here to point out the qualifications of a member or to judge as to what constitutes eligibility. We have simply said we find a man who is disabled by another provision of the Constitution from sitting in this Convention, and therefore ask the Convention to pass upon that question. In doing so we might cite numerous other provisions of the Constitution with regard to what constitutes disqualifications of officers, but it is not necessary to this case at all. We might ask gentlemen if they would contend that a horse-thief from San Quentin was eligible to sit in the Convention, but that is not the question. We are not here discussing what are the qualifications and what is eligibility, but we are discussing the question: is a District Judge disqualified under the Constitution of the State to sit in this Convention?

That is the only issue. I pass over that portion of the report which seems to stand upon precedent and usage. The answer to that has been complete in the point made by Judge Shafter, that they form no authority, constitute no precedent for the government of this Convention, because the question never was raised, never was presented to them. But I ask now—I ask gentlemen to plant themselves squarely on the issue by their votes, and that they will follow it to its logical results, and tell me whether we are an organized body, under the law, or are we not. That is the question, sir. One gentleman, Col. Barnes, argued that the Governor had no right to administer the oath of office. Then if he had no such right or power, what follows? It was void, and we have not, consequently, taken an oath of office, and perhaps gentlemen are getting out that way, in order to vote on this proposition, that Judge Fawcett is eligible, free from the oath of office. By what authority do we come here except under the Constitution and an election? By what authority does the Controller of State issue the warrants and the Treasurer pay them, except by virtue of the law which organized us? How is it that we perform these duties and draw this pay and this mileage, Mr. President, if we are not a regularly organized body under the Constitution and the law?

Now, I pass to the intent of the law-making power when these provisions were inserted in the Constitution. In the first place, they have said that the Judges of certain Courts are disqualified from holding any other than a judicial office. How do we interpret that? Do you interpret it by the light of contemporaneous history? By cognate passages of the Constitution? We interpret it by the light of reason itself. And I say that it is a fair presumption that the intent was to control succeeding generations and subsequent Conventions. All laws, all Constitutions are trammels, binding succeeding generations, from the time of the ten commandments down. It is a still fairer presumption in the case before us, and I will cite the provision of the Constitution which makes me believe so. At the same time that this amendment was adopted—and the amendment was also adopted which immediately precedes this one,

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and will serve to illustrate and throw light upon the question, and that is section fifteen of article six: "The Justices of the Supreme Court, District Judges, and County Judges shall, severally, at stated times, during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected." That was against extra compensation for services as Judge.

The Constitution makers, through the Senate and Assembly, intended to have the amount fixed of their compensation, and to have fixed it for Judges as Judges, and nothing else. How then is it competent for the Legislature to authorize the Judges to draw more pay from the public treasury than the amount of their compensation, as fixed by law? Can Judge Fawcett draw five thousand dollars a year for his services as District Judge, and then draw ten dollars a day compensation from the treasury for services here, without a violation of the spirit, at least, of that Constitution? Gentlemen, I say that we are called upon to vindicate the distinguished men who made the Constitution from any such aspersion as the minority report implies. I, sir, wish to clear the people who ratified it from assuming that they intended anything else than to require the Judges, whom they appointed and paid, and fixed their compensation, to render service as Judges, and to receive pay as nothing else. The limitation which is placed here, both upon the incompetency of Judges to serve other than in a judicial office; and their inability to receive any increased compensation, contains the express, at least strongly implied, limitation upon his ability to serve here and to receive his pay here, under the provisions of that Constitution. And that is the fair method of construing the intent and meaning of the law makers.

I see, Mr. President, that this debate is to be long, and an adjournment is necessary, so I will conclude what I have to say. I have said that I raised the question in perfect good faith. That this is not a party question, and I never intended it to be such. I maintain that this is a question addressed to every individual delegate for his determination under his oath of office as he himself interprets it. I maintain that these gentlemen sitting in this Convention, who have argued in favor of the majority report, since they went to that stand and took the oath of office, have sat here as delegates under that oath of office; have pursued the requirements of the statute; and by these acts have concluded themselves finally from now setting up the objection that we are anything else but an organized body; functionaries of the State; officers to represent the people; attached to and a part of the law-making department. I say they should have raised that objection before they took the oath of office as prescribed in the Act which called this Convention. I have furthermore insisted upon it because it goes to a great question of principle; a principle affecting modern legislation; affecting the health and preservation of the judiciary system as involved thereunder. I know, Mr. President, that the spirit of the people of the present day is against all means whether by indirection or otherwise, whereby money is drawn from the people's treasury, whereby the fountains of justice are corrupted and polluted; and that they so intended when they sent us here to this Convention, because it is our duty to so frame the new Constitution, which we propose to submit, as to make strong provisions, forbidding distinctly and positively, hereafter and forever, all attempts upon the public treasury; all double salaries, all means and methods by which money is abstracted. I know that this is the disposition, I know that this is the complaint, and I ask gentlemen of this Convention how they can vote to sustain this District Judge in his seat here, and allow him to draw his pay, and then insert or preserve in the Constitution the clause relating to Judges, making it extend to all other officers, covering every office, and hand that down to posterity, and then let it be construed in the light of their vote upon Judge Fawcett's right to a seat here. What a multitude of laws would flow in upon the State if we were so inconsistent as that.

We must square our action according to the principle that we propose to contend for, and we must leave no room for mistake to posterity as to what we meant. And I say, that whether it be a Constitutional Convention, or whether it be a Legislature, or whether it be anything else—commission or what not—I propose to ask this Convention to say that this Judge shall not meddle, mingle, or mix with it. My friend Colonel Barnes said that the intent and meaning of the law was to be judged by the mischief intended to be prevented. That is so, sir. I say it was to prevent a Judge sitting upon the bench, and whose compensation is fixed, coming down and scrambling for ten dollars a day additional, and contending for a seat in a Constitutional Convention. "No politics in this," says the gentleman. "It is a high and inscrutable thing." And yet upon this floor and within this room gentlemen have asserted that they were voted for and elected in opposition to the workingmen—Judge Fawcett among the rest. But I say that this Convention should disregard all questions of personal consideration and feeling on the subject, and vote that Judge Fawcett is ineligible, and let it go down to other Constitutional Conventions and posterity as a precedent of reform, which at the present time the people insist upon.

Mr. HUESTIS. I move that the Convention now take a recess until seven o'clock P. M.

Mr. McFARLAND. I move we adjourn.

Lost.

The motion to take a recess until seven o'clock P. M. prevailed.

EVENING SESSION.

The Convention reassembled at seven o'clock P. M. President Hoge in the chair.

THE FAWCETT CASE.

The PRESIDENT. The question before the Convention is the consideration of the majority and minority reports of the Committee on Judiciary, in reference to the eligibility of Eugene Fawcett, of Santa Barbara.

REMARKS OF MR. FINNEY.

Mr. FINNEY. Mr. President: It would be presumptious in me, I admit, to attempt to argue the question of law that has been raised in this case, after the able and exhaustive arguments by gentlemen who are too well known in this State, and in the country, to need eulogy at my hands. But, being a delegate from the county which has so recently been separated from Santa Barbara, being still closely connected with that county, in friendship and in interest, it seems fitting that I should break the silence imposed upon myself, and say a word here in favor of the county which is now practically disfranchised on this floor, or which it is sought to debar from any participation in the counsels of the body.

What has Santa Barbara done, I ask, that she should be disfranchised and cast aside. The sum and substance of the whole thing is this: that Santa Barbara has chosen, in the exercise of her best reason and her best knowledge, to send her best man to this body to represent her in these councils, and I am glad to see that during all the course of this discussion nothing has been said against the gentleman who holds the prima facie right to a seat here with us.

And, gentlemen, I am glad to say that he is the peer of the proudest on this floor—here where we meet the very best men of the State. Judge Fawcett is a man who, for qualified intelligence, for honesty, for integrity and broad ability, is the peer of anybody, anywhere—a man who is an honor to this body, an honor to his country, and an honor to the State of California.

Mr. President, my only excuse for inflicting my crude ideas and my weak voice upon the Convention, is that I feel it my duty to speak in defense of the County of Santa Barbara and of the delegate who represents that county. That is the excuse I make for saying one word, or occupying the attention of this Convention for one moment. It was said before, that it was the wish of the judicial district over which Judge Fawcett presided that he should become a candidate for delegate from Santa Barbara to this Convention, and speaking what I know in our county, which is one of the three counties over which he presides as District Judge, the people seconded the wish of Santa Barbara County to have the service of such an eminent gentleman on this occasion. We congratulated Santa Barbara on her selection, and we congratulated ourselves that perhaps we might be able to lay so slight a sacrifice upon the altar of the State, by consenting that the terms of the Court over which he presided might be postponed, so far as our county was concerned. I know that he at first would not consent to become a candidate. I know that he would not consider the matter at all until he was assured by the attorneys of the county over which he presides that it was the general wish of the people of the county that he should accept the position; that he, while appearing simply as a member from one county, still could represent our part of the State in a body of this kind, and give to it, and to us, the benefit of his knowledge, the benefit of his wisdom and experience, which would be so valuable, not only to us but to the State at large.

I will attempt to pass no eulogy at all on the little County of Santa Barbara, although it is the choice little spot, the Italy, the sunny Italy of our glorious State that outranks them all in its wealth, in its grandeur of scenery and salubrity of climate, in everything that makes a country desirable.

But, pray, what is all this matter? Hour after hour we have been instructed and entertained by these discussions on constitutional law—perhaps I should have said, these quibbles on words—and what is the point? Is it, let me ask you, gentlemen, anything more or anything less than this: that Santa Barbara is proposed here to be disfranchised, as I said, debarred from any participation in the counsels of this Convention; for there is no person here to take the place of Judge Fawcett, if he is sent out from this floor. Santa Barbara has sent no representative here to dispute his seat. She has sent no person here to contest his seat. If Judge Fawcett is sent from this floor, Santa Barbara is disfranchised and debarred from any representation on this floor. The people you know, and it is not for me to say that they are an intelligent people. That they are able and willing to send here their quota. It has been said on this floor, and I regret that it has been said, that, perhaps, the reason there was no such contest for that seat was because Judge Fawcett occupies a judicial position, and it might be dangerous for anybody to come here and contest his seat in this Convention. I believe that gentlemen of the Convention, and all those who have been residents of this State for any length of time, will scout at the idea. The temper of Californians is different. It is the only reflection I have heard cast upon him on this floor during the whole course of this discussion, and I consider it unworthy of the occasion, unworthy to be presented before such a body as this, and I protest against any such aspersions.

On the other hand, there is the most obvious and most positive reasons why no opposition has been brought to bear from his home. It is because there is none. It is because he is the desired representative of his people; because they feel in their innermost souls that if he does not represent them here, their rights will be overslaughed, their privileges thrown away by this Convention, and they stand upon their rights, and say they will have Judge Fawcett or nobody. And a distinguished gentleman who spoke this afternoon, in whose remarks I was much interested, said this question of "office" was one that could be left to the people; that unless the prohibition was so plain that he who runs may read, he was not in favor of ousting the sitting delegate, and the construction which the people put upon this thing must be the construction which is to guide us.

The voters of the County of Santa Barbara sent this gentleman here to represent them, and shall we presume that they knew nothing of the Constitution of this State; that they voted like a lot of blind dogs for a man who could not go to trial. Is it to be presumed that they did not feel positive, upon the very highest assurance, that he would be qualified to take his seat in this Convention, and that he was perfectly eligible to the position? They signified their will, they signified their choice, they

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signified their understanding and interpretation of the Constitution, and they signified their interpretation of the word "office."

Now, I wish to say, in a modest manner, a word to my friends of the Workingmen's party, with whom I have worked and hope to work, whose principles, as enunciated here on this floor in a great measure I believe in; it seems to me that the Workingmen here on this floor cannot afford to raise this question against Judge Fawcett. It is certainly true—and I speak of this matter with reluctancy and hesitancy—but it seems to me that the Workingmen in this Convention, coming here as they did under the ban, proscribed, despised, they came here, for instance, asking a man to be nominated and elected by this Convention to fill a vacancy which they had created, believing that the man who was the choice of the people of San Francisco should be elected. They based their demand upon the sole ground that he was the choice of the people—nothing else; that in unmistakable terms the people of the district they asked to have him represent, had expressed, beyond all doubt, that he was their choice. They were defeated. Smarting under that defeat, they still had the manhood, the real nobility, when the other two vacancies came to be filled, where men had been elected in opposition to the Workingmen, to say at once these men were elected by the people in opposition to the Workingmen's party—and our principles are that the will of the people is supreme—and they made no nominations, and they so stated. I feel proud of them.

How is it here? Gentlemen, are we not in danger of violating our own consistency? This is a matter of quibbling over words. The gentleman who spoke this afternoon with so much ability, and so much skill, upon this subject, even he, prefaces his argument with the statement that he deeply regretted that this question had come up at all before the Convention, that it had been raised at all, that it had not been permitted to pass. Is there any such profound necessity, is there any such great necessity, that we should banish this gentleman from the floor of this Convention, by acting decidedly adverse to him; that we should violate the principles upon which we came here; that we should fly directly into the teeth of the great principles for which we have contended? Mr. President, I claim that we should go carefully here. We want to be sure that we are not putting ourselves in a false position; that we are not putting the lesser before the greater. It is so easy when the passions are aroused, in the heat of debate; it is so easy for the thing nearest to our eyes to seem so large, and the things further off to seem so small. If we abandon, even in seeming, the principles for which we contend, we are lost.

Another thing in this same connection I will mention: it seems to me that the delegation from San Francisco are trying to disfranchise Santa Barbara. Now, what I wish to say is this: had there been one word of protest from Santa Barbara here; had any man appeared here claiming the seat; had the people there, in any way, by any whisper floating upon the breeze, signified their dissatisfaction with the man who represents them here, there would have been some excuse. It is not so. The objection comes not from that part of the State. The people of Santa Barbara, Mr. President, have never raised their voice to utter one word of complaint in this matter. The complaint, the criticisms, the objections, come from a different quarter. The look is bad; the appearance is not creditable.

I will not take the time with answering some of the things that have been said, but will simply say in conclusion, there are two principles of law well known to everybody: that where there is a doubt remaining in the mind of any person as to the guilt or innocence of an accused person, the benefit of the doubt must be given to the accused. Now, Mr. President, if that is good law for a jury, how much stronger is this case, and how much more necessary that the benefit of the doubt should be given to the whole people of an intelligent, wealthy, enterprising county. But one of the gentlemen on this floor to-day claimed that same principle, and in the most peculiar manner perverted it, so that it might read: that when there is doubt it must be given *against* the party accused. The people of Santa Barbara are not here to plead—they are here to demand that Judge Fawcett be given his seat in this Convention. I am not here to plead for Judge Fawcett, much as I admire and honor him, but I am here to speak in behalf of the rights of the people of Santa Barbara, whom he represents, who cannot speak for themselves. The question before this Convention is: shall that people be represented, or shall they not. Shall they be set entirely to one side in this body, or shall they be allowed a voice in framing a Constitution under which they are to live, and by which they, in common with the balance of the State, are to be governed. Then, if the question of doubt comes in, if it is not absolutely proven to the satisfaction of all, to the satisfaction of every man here, that they have made this great mistake, the people of that county should be given the benefit of that doubt, and allowed to have a voice in the framing of this Constitution. So, gentlemen of the Convention, I wish to say, that if there is in the mind of any gentleman here a doubt upon this matter, that doubt should be given to the people of Santa Barbara; that doubt should be resolved in favor of allowing them to have a representative on the floor of this Convention. And in all conscience, let me ask any lawyer, any man—I don't care who—has not such a question of doubt been raised, to speak in legal terms, as would, in a great many cases, compel you as jurymen to say that a man was not guilty? The press and the ablest minds in the country have taken this side of the case. It is not a new question at all. It has been argued over and over before you, and I do not desire to recur to the arguments, except to speak for the people; and it seems very strange that it should be necessary to stand here and say a single word, in a body of this kind, for the people, and in defense of their expressed will. But is it not true that such a doubt has been raised here by these great men—the greatest men that America has produced—who, having looked the matter carefully over, decided it the other way; and shall we, in the face of their opinions, in the face of the illustrious precedents, declare that not even a doubt has been raised in our minds as to whether they were right or not. Mr. President, I beg the Convention to do our ancestors the credit of having ordinary intelligence. I thank you, gentlemen, for your attention.

ARGUMENT OF MR. SWING.

MR. SWING. Mr. President: I desire to state simply the reasons why I shall vote as I shall when this matter comes to a vote. I will say this, that I have nothing whatever against Judge Fawcett; I believe him to be a man of honesty, and a man of integrity; but notwithstanding all this, I propose to vote for him in this Convention. I take up the position fairly as they have offered it, that this is not an office. An "office" has been defined to be the exercise of a public function, and taking the question and applying that definition to the system of government of this State, under the forms of the Constitution, if this be an office, it must fall either in one of the three branches; it must either be legislative, executive, or judicial. I believe nobody claims that this is an executive office. It has been hinted and maintained, with some degree of propriety, that this is in some respects a judicial position. But I think it is well accepted by every one that if it is an office at all it is a legislative office. Now, if you take the definition given here of a legislative office, you find that legislating means enacting. We find that a legislator is one who makes laws; you find these definitions in Webster and in Bouvier's law dictionary. We are not here to make laws, but I am not one of those who desire to bring a strict literal construction to bear upon this question. You will find, for instance, that according to these definitions, the word legislator means one who proposes, or one who makes laws.

Now, I submit that we do not make any laws; that when our duties are completed, that we will then lay it before the people of this State, and they may ratify it if they choose, or they may bury it in oblivion if they so choose. I say our act will receive no force or vitality until it is received and the stamp of approval placed upon it by the sovereign power of the State, which is the people. But I do not desire to pursue the question any farther on its general bearings.

Let us look farther at the provision which is sought to be invoked, by which it is proposed to oust Judge Fawcett from his seat. Section sixteen of article three is as follows:

"SEC. 16. The Justices of the Supreme Court, and the District Judges, and the County Judges, shall be ineligible to any other office than a judicial office, during the term for which they shall have been elected."

Now, I admit I have had serious doubts as to this question. I may almost say I have been on all sides of this question. In regard to what constitutes an office in this State, I hold that if that has ever been a mooted question, it is no longer. It has been settled by the Code Commissioners, and crystallized by the adoption of the Codes, and will there remain until dissolved by a subsequent Convention, or by the repeal of the Codes. Now I take it that a District Judge is not ineligible to any office, unless it was an office created by the Constitution, or an office which has been subsequently created by Act of the Legislature. In section two hundred and twenty-two of the Political Code we find the qualifications of public offices. We find it divided into four sections—legislative, executive, judicial, and ministerial. Now, I take it that unless you find that the position of delegate to the Constitutional Convention comes within that class, then the most you can say is that Judge Fawcett is only by implication prevented from sitting in this Convention. I say that he must be—if he is ineligible, disqualified—it must be directly, and not impliedly. It must be in terms unmistakable, and not left to be construed according to the prejudice or desires of anybody. It must be specially and directly done. You will find in that title that public officers have one prescribed scope, in the executive department, from the Governor down to the Clerk of the Board of Examiners. You will find it from the Chief Justices of the State down to the Justices of the Peace. In the legislative department, to which they say this position belongs, you find there Senators and Representatives. Now, I claim that if you desire to invoke this provision against Judge Fawcett, that you must get the Code Commissioners to insert "member of the Constitutional Convention." If they had done that, you could only invoke it by implication, and I do not think we wish to declare a man ineligible by implication.

The question has been asked: what position we occupy; what position is ours? I take it that we are merely agents of the people. We are no more officers in the sense and meaning of the Constitution than he who drafts a deed would be the grantee of the deed. To illustrate my idea further, let us suppose that a certain man is doing a large business. For some cause he desires to change his system of business. He calls in a skillful financier to make a different system of business. That system is mapped out by the financier, the functions are prescribed, the positions are prescribed, and the system is submitted to the individual, and if he adopts it all right, and he changes his system of business, and if he rejects it, all right, but in neither case does the financier exercise any functions in forming a system of business, nor in overturning the former system. So I say that we are in that relation—that we are simply mapping out a Constitution for the people to adopt, and if they vote in favor of it, it will then become the law of the land. But whether they do or do not, I maintain we exercise none of the functions of government, either of the old or of the new, and it does appear to me further, that in the very nature of things we cannot exercise any public functions in our present system of government, because if we did the creature would rise above the creator.

SPEECH OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: I desire to allay the apprehension of members, by saying that I shall not occupy the attention of members for more than ten minutes. The most that I might have desired to say has been said already by other gentlemen, with force and expression greater than I could expect to give it. But, sir, I have such

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strong convictions as to the duty of this Convention towards the people of Santa Barbara County, and towards the gentleman they have sent here to represent them, that I do not feel satisfied with simply recording my vote on this question.

It is, sir, a most grave and responsible act to turn a man out of this Convention who has been sent here by any constituency in this State. I understand from private conversations that there are other gentlemen on this floor who, notwithstanding all the arguments which have been made here on either side, are still somewhat in doubt as to their duty. Now, to those gentlemen I desire to say simply a few words. I desire to say first that with me there is no doubt whatever. I have been accustomed to weigh evidence and argument, and I have never had a question presented before me, that might be considered debatable at all, which was more clear than this one. I have no doubt myself that Judge Fawcett is perfectly entitled to his seat, and I go farther in that direction than any other gentleman. I believe, sir, that any person whom the people of this State, or of any county, or any district may choose to elect, would be entitled to his seat in this body. I believe, sir, that the gentleman from San Francisco, Mr. Morris, who resigned on account of supposed inability, would have been entitled to his seat had he presented himself here and demanded it. I do not believe this is a revolutionary body. I believe we are met in pursuance of that great American system of government which has been described by Webster to be a system of liberty regulated by law, and in exact accordance with established forms of law. But, sir, I do not see that in the fundamental law of this State, under which we are now acting, there is any qualification whatever on the membership of this Convention.

Now, to the gentlemen who are in doubt, let me say this: the people of Santa Barbara County, by a majority much greater than that by which most of us have been sent, selected Judge Fawcett to represent them. If is proposed now, sir, to turn him out of this body, send him home, and say to them, if you want a representative here we will select somebody to represent you. Remember farther, there is no contestant for his seat, nobody from Santa Barbara County who objects to him, nor any person from among all the people of California presents a protest. Remember farther that this does not involve any question of personal rights, it doesn't involve any dead man's estate, it doesn't involve any wages for labor done, it doesn't involve the property of any person elected here, or of any individual in the State of California. Under these circumstances, those gentlemen who vote against the sitting member retaining his seat, must do it from an imperative sense of abstract duty. That is all. Nobody asks to have him turned out of this body, except some gentlemen who are in this body. No rights are overturned, no individual overruled, no private rights injured by his retaining his seat here. Now, under these circumstances, sir, does it not devolve upon them to show affirmatively and clearly, beyond any honest doubt, that he is not entitled to his seat here. Now, that being the case, I ask, gentlemen, whether lawyers or not, if there is not a fair, honest doubt as to his ineligibility. Why, sir, they say, lawyers should have power to decide this question. Let me call their attention to this fact, that the people of the County of Santa Barbara, of whom, I suppose, a sprinkling are lawyers, have considered this question calmly, and have decided in favor of this man's eligibility. If you are going to decide this case on the technicalities of lawyers, you will have to disregard the emphatic voice of the people of Santa Barbara. And, by the way, some of the gentlemen on this floor seem to think that lawyers are always wrong, and it is a very remarkable circumstance that every gentleman who has spoken here against the right of Judge Fawcett, is a lawyer. That apology must be made to them, sir. The objection was raised against General Cass, in eighteen hundred and forty-eight, that he was a military man, and that a military man should not be President of the United States, and the reply was that he was not a military man enough to hurt. Perhaps it may be said of these lawyers, that they are not lawyers enough to hurt.

Now, sir, the arguments on the other side of this question invariably resolve themselves into this: they give the definition of the word office, and then add their own conclusion. They say an office is a public employment—the gentleman from Marin says, a public function. The gentleman from Sacramento, Mr. Freeman, says an office is a public employment or public trust. The word public employment seems to meet the notions of both, and they come to this wonderful conclusion: membership in this Convention is a public employment, therefore membership in this Convention is an office. Now, that is the argument, isn't it? Office is a public employment, membership in this Convention is a public employment; therefore membership in this Convention is an office. A cow is an animal which has four legs; a horse has four legs, therefore, a horse is a cow. What is the difference between the two arguments? One arrives at a conclusion by the very same course of reasoning as the other, and both are equally logical. The same reasoning applies to both. It is true that a cow is an animal having four legs, but that is not the whole of the definition. It is correct to say that membership in this Convention is a public employment, but that is not the whole of the definition, by any means. Suppose that some of these legal gentlemen were employed as assistant counsel for the State, either through the Attorney-General or otherwise, to attend to some case which the State is litigating. That would be a public employment, a public trust; he would have to exercise public functions, but it would not be an office within the meaning of the Constitution. When the State creates the office, or employment of a permanent Assistant Attorney-General, which shall be filled by one man, for a certain prescribed term, then it is an office. If you employ a man to superintend the building of a capitol, as was the case cited by the gentleman from San Francisco, Mr. Barnes, the temporary employment to superintend the building of a capitol, is a public employment, but it is not an office. But if you should create the place permanently, and a man should take charge continuously of public buildings, that would be an office. If the State should employ a man at Washington City to appear before Congress and advocate the passage of some law, giving some right which this State demanded, that would be a public employment, but not an office. But if the State should permanently establish an employment of that kind at Washington, and fill it, that would be an office.

Now, this whole argument rests on the definition. I suppose, if we are going to define what the word means, we had better look in a legal dictionary. I hold in my hand a book which, as far as a dictionary is authority at all, is one of the best we have. This is an old copy of Burrel, and he defines office to be this: "An employment on behalf of the government in any station or public trust, not merely transient, occasional, or accidental." Now, this is a definition of the word "office" given by high legal authority. That is not the only definition given. That definition is taken from the decisions of the Courts.

Now, apply that definition to the members of this Convention. Is not this transient? Certainly. Is it not occasional? It never happens more than once in a generation, and perhaps may not happen once in a century. It is a transient, occasional, and accidental employment, and there is no continuity in it. It was created for a particular purpose, and when that purpose is ended, and the objects subserved, it is at an end. Is that an office, within the ordinary acceptation of the term? More than that, sir; I believe it has been argued here that the officers referred to by the Constitution are the officers created by the government, for the ordinary work of the government, and were not intended to allude to any process by which a new government should be formed, and that is the position we are in now.

Now, sir, when you come to take the argument of the gentleman from Marin, Mr. Shafter, and the other exhaustive arguments made on the other side, and strip them of their embellishments, you will find that he only argues three propositions—that this body is not revolutionary, that it is legislative, and that membership is an office under the Constitution. Upon the first, I agree with him; upon the second, I say it is not material whether it is or not; and upon this I will say that when you come to talk about definitions, I suppose it would be a fair definition to say that a legislative body is a body with power to legislate, and if that is a correct definition, this is not a legislative body, for we have no such power. There is another feature for us to allude to. I understand an office to be a place, the incumbent of which, by operations of law, has the power to perform some official act, which act in itself, and by virtue of its own face, is in itself effective, so as to change the status of some person or some thing. The Judge of a Court, for instance, has power to render a judgment which takes away the property, the liberty, or the life of the citizen, and the decision cannot be changed until it is set aside by some higher official authority. The Governor of the State may pardon the criminal or take him out of the State Prison.

A member of the Legislature is an officer, and the Legislature has power to do some act. It changes the status of some person or some thing. The Sheriff is an officer. He can take your property and sell it out, and it remains out of your possession until restored by some higher official authority. Now what power has this Convention in that direction, within that definition? Not a solitary bit. It cannot do a thing of that kind. After we have got through our labors here, sir, not a solitary person, not a solitary thing in the State of California will have been changed in the least. They remain just as they are. The organic law remains just as it is, in full force and effect. What we have done here will have no effect whatever. If the people of the State choose to adopt this Constitution which we are going to propose, then will there have been some change in the status of things, and not before.

When they talk about this body making laws, it is absurd. The Constitution says, "We, the people of the State of California, do establish this Constitution." It doesn't say, "We, the people of this Constitutional Convention," do this or that thing. The illustration given by the gentleman from Marin, Mr. Shafter, in reference to the Senate and Assembly, that neither one can make a law without the concurrence of the other, is not a fair one, for both together compose the Legislature. They are one and united, and together they can make laws, and the laws so made must have their stamp on them. "We, the people of the State of California, represented in Senate and Assembly, do enact as follows," is the enacting clause. The Constitution says that the Legislature shall be divided into two bodies. But this Convention has no power at all. We cannot do a solitary thing, except to sit here and propose something to the people, and if the people choose to adopt it it becomes the law made by the people, who are the only power who can make a Constitution, or amend or change one letter in it. If there is any legislative power about it that power lies only with the people, who say affirmatively at the ballot-box that it shall be done. It is a mere evasion of the question to say that our books are full of constitutional law. Of course, but who makes it? The people of the State; nobody else. Why, upon the face of the instrument it says so, showing that nobody has power to make constitutional law except the people.

Mr. President, I do not desire to argue this question further. But it is somewhat peculiar, sir, that this effort should be made to remove the sitting member from the floor of this Convention, when no demand has been made for his removal from any quarter. It seems to me an astonishing thing that a gentleman of high character and integrity and honesty, indorsed by two thirds of his constituency, should be unseated upon a technicality when no demand has been made by anybody from his district, and no one is here to contest his seat. He is sent here by the people, and we have no right to remove him.

SPEECH OF MR. HAGER.

Mr. HAGER. Mr. President: This debate has been so prolonged that every member of the Convention must feel wearied and fatigued. Under the circumstances I feel great reluctance in addressing the Convention, and should not do so but for the fact that so many learned

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gentlemen, with whom I differ, having spoken to the question, I feel it to be a duty to state my reasons on the vote I shall give.

I regret the *argumentum ad hominem* has been resorted to. I regret that anything of a personal character should have entered into the debate. I am sure the two or three gentlemen who have just preceded me are laboring under a great misapprehension in supposing there is any personal feeling entering into this contest, either in regard to the delegate whose seat is in question, or the constituency that sent him here. Who has any such personal feeling, and from whence does it come? I have heard of none, and know of no one entertaining any unfriendly feeling against the incumbent, or the section of the State he represents. I never had the pleasure of an acquaintance with the delegate until I met him here in this Convention, I never heard anything but good of him, and however I may vote on this question it will be in pursuance of a rule I have always adopted when called upon to perform any official act—simply to do it in accordance with my judgment and my convictions in regard to my duty.

Now, sir, I should have been glad had this resolution never been introduced. If it had been dependent on my action it would never have been introduced. I would have been willing to sit here with any gentleman who comes with the indorsement which he has secured from the people. By the law we are made judges of the election and qualification of the delegates. We are called upon to pass judgment in this instance, and all personal considerations being discarded, the simple question to be passed upon is whether or no the delegate is eligible to a seat in this Convention. His eligibility has been questioned on two grounds:

First—Being a judicial officer (District Judge), and charged with the exercise of powers properly belonging to one department of the government, he is prohibited from exercising any functions appertaining to either of the other departments; that is, the executive, or legislative.

Second—That he is disqualified, in consequence of the inhibition in the Constitution of this State, which declares that Justices of the Supreme Court, District Judges, and County Judges, are ineligible to any other office than a judicial office.

In regard to the first ground of objection, it has been argued, that, being a District Judge, he will here be called upon to exercise legislative functions, which would be in contravention of that portion of the Constitution which relates to the distribution of powers, as contained in article three, section one. This would be true, if in the performance of his duties here he should be required to act in a legislative capacity, within the meaning of the Constitution. In my opinion, sir, he is not ineligible to a seat in this Convention on this ground; and, substantially, I concur in all that has been said by my friend the delegate from Sacramento, Mr. Edgerton, upon this proposition. Within the meaning of the Constitution our duties here are not legislative, and yet to a certain extent we are performing legislative functions, as legislators, or as members of the Senate or Assembly. We do not meet to pass laws, and yet we act in a legislative capacity; and by the statute under which we are here assembled we are authorized to pass on the election and qualification of our members, to organize our body, to make rules and regulations for our government, to adopt or reject propositions amendatory of the Constitution. And in various other ways we are acting, speaking, and voting after the manner customary in legislative bodies, upon every question presented.

Neither, within the meaning of the Constitution, are we performing judicial duties, and yet to a certain extent we act in a judicial capacity—not under the Constitution, but by authority of the law under which we are called together. We may be called upon to pronounce judgment in certain cases—as in the one now before us; we may sit here as a Court; may punish for contempt; may imprison—not as a part of the judicial power as mentioned in the Constitution, but by authority of the powers conferred by the statute under which we are assembled. These things we do, these powers we exercise, these functions we perform, not as members of the Legislature, not as judicial officers, but as members of this Convention. Acting in this capacity, Mr. President, we are not filling an enumerated office, as they are declared in the Constitution, and yet we are charged with certain functions.

You may call it an office, or you may call it by any other name you please. We are charged with the performance of certain duties, and whence do we derive our powers? Whence, Mr. President, do you and the members of this Convention derive the powers which we are here exercising? Is it from the Constitution, the Legislature, or the people? The solution of this I consider the turning point of this case. It will control me and my action here. Their origin is in the Constitution, under which, as a State, we yet exist. By authority of the Constitution, the enabling Act of the Legislature, and the vote of the sovereign people of this State, we are assembled in Convention here to-day, to frame—not to establish, as some would try to convince us—a new organic law, to be submitted to the people of this State for their adoption or rejection. The Constitution, article ten, section two, contains the following:

"And if at any time two thirds of the Senate and Assembly shall think it necessary to revise and change this entire Constitution, they shall recommend to the electors at the next election for members of the Legislature to vote for or against a Convention; and if it shall appear that a majority of the electors voting at such election have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for calling a Convention, to be holden within six months after the passage of such law; and such Convention shall consist of a number of members not less than both branches of the Legislature."

In the little paragraph I have just read we find the source of all the powers and functions we are exercising. I will read it again, "such Convention shall consist of a number of *members* not less than that of both branches of the Legislature."

Our place of birth is not mute. It speaks for itself, and is found in the Constitution. It was a dormant power, and has been at rest from the time it was engrafted into the Constitution until the Legislature, by its enabling Act, and the sovereign people, by their election, breathed into it the breath of life, gave it vitality, and by virtue thereof we are here this day acting as members of a Convention authorized by the Constitution.

Now our Constitution provides further that—

"The Constitution that may be agreed upon and adopted by such Convention shall be submitted to the people at a special election for their ratification or rejection."

And yet we have been told we are clothed with omnipotent powers, and may for the time being set aside the present organic law and constitute ourselves the sovereign and supreme authority of the State. I can subscribe to no such doctrine. Clothed in a little brief authority we may frame and propose to the people of this State a new Constitution; we cannot adopt and establish one. The people may refuse to ratify it, and we may go back to our respective homes as insignificant as we were before we left them, and the Constitution we frame will pass away, and the one under which we now exist will live.

Now, we have been told by one of my colleagues, Mr. Estee, and by other gentlemen, that under a precisely similar condition of things as have here arisen, the people of New York held a Convention to frame a new Constitution, and secured, among the delegates, the Judges of their Courts, who, like ours, were excluded from holding any but judicial offices. I have before me the Constitution of New York, under which the Convention was organized. The cases are not parallel. The difference I will explain.

The Constitution of New York contained no provision for calling a Convention of members, to be elected by the people or otherwise. It only provided for amendments to be made by the Legislature. The Legislature had no such authority to call a Convention to frame a new Constitution, as is contained in the Constitution of this State. There were no dormant powers to which it could give life and vitality. The Legislature in that State, without authority of the Constitution, passed a law authorizing a Convention to assemble, whilst in this State the Legislature passed an enabling Act for a Convention, as in the Constitution provided. In the one case the Convention assembled under a law unauthorized by the Constitution; in the other it is assembled by authority of the Constitution and the statute, in harmony therewith. In New York the Constitution provided for no such officer as member or delegate of a Constitutional Convention, whilst here, under our Constitution, it is provided a Convention may be called, to be composed of *members*, and we are here in pursuance of such call.

Now, Mr. President, what are we? We are told we are not officers. What are we? We were elected as delegates to this Convention. By the Constitution we are denominated members of this Convention. Our title, therefore, should be members of this Constitutional Convention, or delegates to this Convention. The statute provides we should assemble here, elect a President, a Secretary, and such other officers as may be necessary. The Governor is to preside at our organization and administer the constitutional oath of office. All this has been done. Our per diem pay is fixed by law, and the pay of our Secretary and other officers is fixed by law. Is the Secretary an officer of this Convention? Is the Chief Justice of this State or a District Judge eligible to the office of Secretary of this Convention? It is not a judicial office. Who will get up in his place here and tell us the Chief Justice of this State is eligible to the office of Secretary of this Convention, when the Constitution declares he shall hold no office but a judicial office during the term for which he was elected? We have taken the constitutional oath of office—"to support the Constitution of the United States and the Constitution of the State of California, and faithfully to perform the duties of the office of delegate to the Constitutional Convention." We are here legislating, in a certain way, to the end that we may frame a new Constitution. We are pronouncing judgments in various ways. Yet, sir, we are told we are not officers; that we hold no office, but are merely functionaries—that our President is a functionary, that our Secretary is a functionary, and my learned friend, who sits before me, Mr. Edgerton, is a functionary.

"Can such things be,
And overcome us like a summer's cloud,
Without our special wonder?"

Now, Mr. President, under the Constitution we have enumerated officers, and by authority of the Constitution non-enumerated officers are allowed. We have executive officers named by title—such as the Governor, Secretary of State, etc.—and we have various other officers, named in the Constitution, for the administration of the affairs of State, of the counties, and other matters. It is admitted a District Judge would be ineligible to any of these unless their functions were judicial. We also find in the Constitution these provisions:

"All officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people or appointed as the Legislature may direct." (Const., Art. XI, Sec. 6.)

"When the duration of any office is not provided for by this Constitution, it may be declared by law; and if not so declared, such office shall be held during the pleasure of the authority making the appointment." (Const., Art. XI, Sec. 7.)

By these provisions, it will be observed, the Constitution contemplated other officers than those enumerated. Officers are provided for by name, and offices are provided for without naming them, and we have offices and officers unknown to the Constitution—such as the Railroad Commissioners, Bank Commissioners, Harbor Commissioners—all these are unknown to the Constitution. It may be said these officers are necessary to the administration of the affairs of the State, and, as such, must be recognized as officers within the meaning of the Constitution; but we also have officers known as Commissioners of the Yosemite Valley, appointed to take care of a public park, donated to the State by the Gov-

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ernment of the United States. They have certain duties to perform, and a salary; but it cannot be said they are officers named in or contemplated by the Constitution, or that they are charged with any duties properly belonging to the administration of State government. Could the Chief Justice of this State, or a District Judge, perform the duties of Railroad Commissioner, Insurance Commissioner, Harbor Commissioner, or those of Commissioner of the Yosemite Valley? Would it not be inconsistent with that provision of the Constitution which prohibits them from holding any other office than a judicial office? There is nothing in the argument that this inhibition only applies to the officers enumerated in the Constitution.

The intent of the Constitution is plain. It means a District Judge, during his term, shall be ineligible to the performance of any official duties under the Constitution and laws of this State, unless of a judicial character, and it cannot be so construed as to allow a Judge, ineligible to any other than a judicial office, to fill and enjoy the salary of an office created by legislative enactment. Under such a construction, we might by law create some position for a Judge and attach to it a salary or compensation of unlimited amount, and in this way evade the Constitution.

The constitutional provisions relating to District Judges and their disqualifications are as follows:

"No judicial officer, except Justices of the Peace, etc., shall receive to his own use any fees or perquisites of office. "(Const., Art. VI, Sec. 13.)

"The Justices of the Supreme Court, District Judges, and County Judges shall severally, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected." (Art. VI, Sec. 15.)

"The Justices of the Supreme Court, the District Judges, and the County Judges shall be ineligible to any other office than a judicial office during the term for which they shall have been elected." (Art. VI, Sec. 16.)

The incumbent is drawing a salary as District Judge, and as a delegate to this Convention he is drawing pay, as provided by law, at the rate of ten dollars per day. Is not this an increase of his compensation during the term for which he was elected? When he leaves his official duties, retaining his judicial office, and comes to this Convention as a member or delegate under the Constitution and laws of the State, and draws his pay here at the rate of ten dollars a day, is it not in contravention of the provisions of the Constitution as contained in the three sections I have just read? Does it mean his perquisites of office as Judge and his compensation as District Judge shall not be directly increased during his term of office, but that these may be indirectly increased by giving him another office, with additional compensation and perquisites? If it cannot be increased directly may it be increased indirectly? Could the Legislature make a District Judge a donation of say five thousand dollars for the purpose of building a house or for traveling purposes, or to allow him to draw any compensation from the State treasury except it be as compensation for his services as District Judge? If so, the provisions of the Constitution are nugatory and idle and no limitation upon the legislative power.

The intent and meaning of the Constitution is plain, and admits of but one interpretation, and that is: District Judges, during their term of office, are ineligible to the performance of any official functions under authority of this State but such as are judicial; and that their compensation or perquisites of office cannot be increased directly or indirectly by any payments out of the State treasury during their terms of office. This interpretation is honest and according to the letter and spirit of the Constitution. Any other would open the door to unlimited abuses. If it is susceptible of the interpretation attempted to be put upon it by some who have preceded me, no constitutional inhibitions could be so drawn that they could not by indirect methods be avoided.

But, Mr. President, I did not intend to expand upon this subject, and have said more than I intended. We have, however, been told, and the committee seem to so intimate in their report, that we are acting under a higher authority than the Constitution and law; that old things are passing away and new ones are taking their place; that we are not merely the representatives of the sovereign power, but sovereignty itself; that constitutional government is in abeyance, and chaos and anarchy is for the time being upon us; that this Convention is higher than the Constitution and above all law; that we are in an intermediate state between the old Constitution and the new—between the setting and the rising sun; that the old Constitution is defunct, and the new one—as Richelieu said of France—"on luminous wings is rising, Phœnix like, to Jove." This is all very good—in rhetoric, in poetry, but very weak when we come down to facts and common sense. The old Constitution is not dead; it still survives, and will exist until the new one shall be voted upon and ratified by the people. Temporarily we are here in Convention assembled, clothed with a little brief authority for one hundred days, and if the work before us should not be approved and ratified, the so-called defunct instrument will remain, as now, the organic law of the State. If such a result should ensue I should not regret it. It was my privilege to vote for our present Constitution when it was adopted, prior to the existence of our State. It contains many excellent provisions. I voted against the calling of this Convention because I was apprehensive the new Constitution might be no improvement upon the old one. If we frame a new Constitution which shall be ratified by the people, it will take the place of the old one; but as long as the old one exists as the supreme law, I shall cleave to it, and greatly to my regret, under its provisions, I consider the incumbent ineligible to a seat in this Convention.

SPEECH OF MR. SMITH, OF FOURTH DISTRICT.

MR. SMITH, of Kern. Mr. President: As a member of the Judiciary Committee, and concurring in the majority report of that committee, I deem it but right and proper that I should justify the position I have taken on this question, and answer some of the criticisms which have been made. Now, sir, I have been wondering all the time why this matter should have been brought up at all; why the time of this Convention, valuable as it is, should be wasted and frittered away in this discussion, when there was no demand for it. There is no moral question here, there is no question of public policy here, it is purely and essentially a legal question, not even having an excuse of equity. Now, as a lawyer, when that question came up, I gave my judgment on it as a lawyer. That judgment was founded down deep at the base of the whole question. As to whether this is an office or not, does not enter into the matter at all, as far as my conclusions have reached, because it is founded upon the sovereignty of the people. It is founded upon the Constitution, which was the contract entered into at the beginning of the government, at the beginning of American liberty, and it is higher than any State government, it is higher than the national government, and rises above Constitutions, whether State or national.

The Constitution of the United States is merely a grant of power. The Constitution of the State is a limitation of power. Suppose that this State had undertaken to say that a Judge should not be eligible to any office under the national government, or for President of the United States. Of course a constitutional provision to that effect would be void. So, if the State Constitution undertakes to say that a Judge shall not be eligible to this Convention, in opposition to the power which is so much higher than Constitutions, it writes an absurdity on the statute books. This whole matter has been confused and misrepresented, and the real point at issue has not been touched. The State Constitution is merely a regulation of the right of suffrage. It does not take away any right. If you pretend to say that a man holding a particular office under the State Constitution is thereby rendered ineligible to take part in the framing and organization of a new government, you commit an absurdity. He has the right to participate in the framing of a new organic law, and we have no power to deprive him of that right. Not alone does the right belong to him, but to the people he represents. Therefore, I say that whatever the State Constitution says about this matter is in the shape of mere regulation. Suppose the Constitution had attempted to say that there shall never be any constitutional office, that the people shall not enter into this matter or that matter. I say, no, the Constitution of the State of California has no right to go that far. The limits of a Constitution do not extend so far, and the national Constitution has no right to touch it.

We have nominating conventions to nominate men for certain offices. Men may be elected as delegates to nominate men for office. Here the delegates are elected to nominate a Constitution. There is no difference between them. I hope we shall get through this without any farther waste of time.

MR. VACQUEREL EXPLAINS.

MR. VACQUEREL. Mr. President: This afternoon it appears that I have made a false statement. I wish to rectify it. As a good many members of the San Francisco delegation have stated to me that they had not taken any oath to the Workingmen's party, I stand up, sir, to apologize to my colleagues, as it appears that an oath and a pledge have a very different meaning. I, sir, acknowledge having taken pledges and having violated them, thinking I would benefit the people. It shall not occur again. But, sir, in explanation to myself, I still maintain that if those gentlemen have not taken the pledge of the Workingmen's party, they stand in direct opposition to the laws established by the party.

[President pro tem. BELCHER in the chair.]

SPEECH OF MR. LAINE.

MR. LAINE. Mr. President: The question before us is one of no ordinary moment. It is a question that requires the most careful consideration, and after that consideration conscientious action. The question, Mr. President, stated in a few words is: shall we deny a seat in this august body to one sent here by the sovereign people of the County of Santa Barbara—one whose purity of character, whose integrity and magnificent intellect challenges admiration. A gentleman that any constituency in this State might well feel proud of. One who comes among us, not because he sought the position, or obtained it by party intrigue or skillful management, but one who comes among us modestly as an obedient citizen at the command of his legal sovereign. He has come in and out among us for more than twenty days, and yet, from all the district which he represents, no one has questioned his right to be here, no one has appeared to challenge his eligibility or contest his seat in this Convention. Not only from the county he represents, but from the other counties composing his district, no one has appeared to question his right to be here; but it is you and I, the agents of the sovereign people of the State, who are questioning his right to be here, and saying in the tenderness of our consciences that we cannot sit in the Convention with the delegate from Santa Barbara, selected by the only sovereign that the people of California have ever recognized, and that sovereign is the people. And at this point occurs to me the language of one of old when he says: "Who art thou that judgeth another's servant?"

So I say to this Convention, by what right do you judge of the people's servant. The distinguished gentleman from Marin has stated as a proposition on this floor, that in these questions of interpretation in these matters of words, the common judgment was better than technical law. What will that Judge say when he goes home to the thousands of people who interpreted the Constitution. He goes home and tells them that one hundred and fifty-two of their agents here have overturned their interpretation of the Constitution. Sir, I say, you are impaled upon your own argument. I had rather take the interpretation of a thousand voters who had given this matter a careful examination, and voted upon their consciences, than to trust to a lot of technical men. When the people have examined and interpreted the instrument, as

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they have in this case, it does seem to me that we should pause and hesitate long before we undertake to give a different interpretation.

In dealing with such questions as this, we must have no uncertain law. We must have broad, plain law, so clear that every word and every letter will stand out as carving upon a monument of brass before we determine this question against the sovereign people of Santa Barbara.

If it be found that under the stern mandates of the Constitution, under the supreme law of the land—and so long as it remains the supreme law of the land we must obey it—if, I say, we find that we are impelled in a certain course by the stern mandates of the Constitution, we should take that course like men, without hesitation, let the consequences be what they may. But I claim that this is not such a case, and we should only go where the law plainly and distinctly leads us, and not allow ourselves to be hampered by words alone.

Some have construed this word "office" in one way and some in another. Some claim that membership in this Convention is an office, and others take an opposite view. With due regard for those who have debated this question on the other side, I will say that the discussion has been principally upon the word "office." It means the performance of some function. But, sirs, when we took the oath there at that desk, we did not swear on the words; we swore upon the whole instrument; not upon paragraphs taken out here and there, but on the whole document; and it does seem to me that the most of the arguments here have greatly misconceived the instrument. The members have not properly understood what is meant by the word "office," or "officer." Why, the distinguished member from the City and County of San Francisco used an argument here that was strange indeed, when dealing with the question of office and officers. He seemed to think that because we had elected a Clerk, that is an officer, therefore that disposed of the whole question. Why, your town meetings elect officers; but officers of what? Not officers of the State, but officers of the town meeting. So we elect officers; but officers of what? Officers of the Convention, not of the State. When the Constitution of the State is speaking, there is no man who has studied the science of government but knows that it is speaking of the government created by it, and nothing else.

When you read a man's will, it talks of his own household; and when you read the Constitution, it speaks of the government which it creates; and if it speaks of offices and officers, it speaks of those which it creates, and none other. Now, in this matter, it seems to me we have placed the creature above the creator. The second article of this Constitution says:

"All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it."

The people are the creators of government, and the government is but their agent and their creature. When we speak of the people changing, what does it include? Does it not include the whole political household or family? Does it not include every one, whether he be the Judge on the bench, or the Governor in the chair? We are all a part of that family, part of the great unit. Hence I say that we have been looking at the creature and not at the creator. The government is the creature, and the sovereign is the people, and upon this point I have a few authorities, and to show that I am right in this position, I should like to read a few lines from Pomeroy on Constitutional Law, to show that we make a grand mistake, that we are but the temporary agents of the people, and that the government is the permanent agency of the sovereign to regulate the affairs of State. We are the temporary agents of the sovereign master—the people:

"The people themselves, the entire mass of persons who compose the political society, are the true nation, the final, permanent, depositary of all power. The organized government, whatever be its form or character, is but the creature and servant of this political unit which alone possesses dominion in itself."

I tell you, sir, there is a power behind the throne greater than the throne itself, and that is the power that is mentioned here. I do not mean in a revolutionary sense, because the Constitution is still in force, and organized government is still in force. We are here under the protection of the government, but that government is only our agent. What are you doing here? You are trying to exclude one from this body, point him out, and say to him, you are not one of this great political family. You belong to some other class, to some other people; you are not of this political family. Again he says:

"And, first, the distinction must be carefully and constantly preserved between the nation and the government which that nation has actively created, or has passively permitted, as the agent for the expression of its supreme will. The people themselves, the entire mass of persons who compose the political society, are the true nation, the final, permanent depositary of all power. The organised government, whatever be its form and character, is but the creature and servant of this political unit which alone possesses dominion in itself. It is true that the people, the nation, may have either actively constituted or passively admitted the rulers to be the sole channels and means through which their sovereign power shall be ordinarily wielded and directed for the national purposes, and may have bound themselves not to resume the direct and efficient management of that power except in certain well defined and established methods; nay, they may have restricted the government itself in the exercise of its functions, so that beyond certain appointed limits it cannot go, and thus may have denied to this government the rightful use of all the attributes of sovereignty which they themselves possess, so that for the time being these attributes cannot be brought into play by either; but it is no less true that these attributes still potentially exist in the nation, ready to be called forth whenever the people shall see fit to follow the defined and established methods, and to put their inherent, paramount force in motion."

That word "all power" is a very comprehensive word. It will be seen that you have attempted to place the creature above the creator. Where, in dealing with the question, the Constitution speaks of offices, it means the offices created by the Constitution.

Now, let us turn to article three:

"The powers of the government of the State of California shall be divided into three separate departments: the legislative, the executive, and the judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others, except in the cases hereinafter expressly directed or permitted."

Here, then, is the entire family, the legislative, executive, and judicial departments, constituting one grand whole. It constitutes the whole family of government, from the foundation stone to the highest pinnacle of its dome. It is all there, and outside of that there is nothing left. This is the length and breadth and height. Then the next thing to do is to examine and see if this Constitutional Convention is a part of these departments, or a part of any one of them. We will see whether it is or not. We are not left in doubt. We have a distinct declaration; we are not left to rack our brains over any uncertain law; we are not left to conjecture, for the Constitution, having divided the powers of government into three great heads, the legislative, executive, and judicial, proceeds to define these departments. It says:

"Section 1. The legislative power of this State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California; and the enacting clause of every law shall be as follows: 'The people of the State of California, represented in Senate and Assembly, do enact as follows.'"

There is the legislative power, and there only. We have but one legislative power, and here it is defined. Is there any avoiding it; any escape from it? No, sir. The Legislature is the only law-making power. The Constitution, it is true, is called the supreme law of the land, but Mr. Cooley lays it down that the Legislature is the only law-making power. The Legislature has the power to make laws, and to alter or repeal the same. Now, have we any such power? Can we make a law, or alter a law, or repeal a law? No, sir. We cannot change a letter. We are but a committee appointed by the sovereign to propose certain things, which must be sanctioned by the sovereign before they can have any force or effect whatever.

Now, no one claims that this is a part of the judicial department, or of the executive department. Now we come again to the matter of office, because they say this is an office. What does the term office refer to? Officers of the State. Are we officers of the State? No, sir, because we are but the agents of the sovereign, and in no sense officers of the State. An office, as meant by the Constitution, is some continuing thing, and not a mere temporary employment.

Section eight of article five says:

"When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy, by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people."

Why does it expire? Because it is an office under the State, and office of the government, and the legislative power is the one that deals with it, showing conclusively that the word "office" there has reference only to offices under the State.

Mr. President, I did not intend to make a speech, but only to give my reasons for the faith that is in me. I believe in putting this construction upon it we do violence to no law, but are simply obeying the mandates of the sovereign people, who called this Convention into being, and to whom alone we are responsible for our acts. We must appear at the bar of judgment of the whole people and answer for our acts. We are in no sense superior to this law under which we live, but we are the agents of the sovereign engaged in the performance of a sovereign act, temporary agents sent here for that especial purpose, and for that purpose only, and if we attempt to thwart the will of the sovereign people of Santa Barbara, we will be condemned by the sovereign people of the whole State.

SPEECH OF MR. JONES.

MR. JONES. Mr. President: I desire to state the reasons why I cannot vote in support of the majority report, and, sir, I propose to occupy but a few moments of the time of the Convention. I would be glad to evade what seems to be a necessity, occupying any time whatever, for the discussion has already been a very extended one. But the discussion seems to have involved issues which I think were not anticipated at the outset. Now, the character of this body is one of the most prominent questions before us—the character of the members of it—and their responsibilities, their functions, and their duties. But the real question before us is one of law—of constitutional law—the simple question whether Judge Fawcett is or is not, under the Constitution of this State, eligible to a seat in this body. That question should not be covered up. It should not be involved with any questions as to excellence of character or of eminent capabilities, or of the esteem in which he is held by his people, on which we do not differ. On the contrary, we should give his claims a calm, just consideration, just as if, instead of being the man I understand him to be, a man of learning, a man of great legal capacity, of high character, and a man likely to become a useful member of this body, he were the most humble member of this Convention.

The rights of the humblest individual on this floor should be just as sacred, and this Convention would respect them the same, as those of the most eminent member here, and we should not accept even to ourselves the imputation that all the fine qualities and characteristics of Judge Fawcett give him one iota of advantage over members who have not attained to high positions or reputation.

This is simply a question of law and justice, and we cannot afford to mingle sentimentality and friendship and admiration with it. We deal with it as a matter of business in this Convention, and nothing else.

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We must lay aside partiality, admiration, regard, and friendship, and deal with this matter irrespective of all these considerations, and as a judicial body, or a judicial person, should deal with them.

Now I come to the very question before us, the eligibility of Judge Fawcett to a seat in this body, and permit me to say that I have sought to find means and reasons that would satisfy me in voting for him, but I cannot find them.

The argument in support of the majority report, as it appears to me, has taken three forms, not all maintained by the same individuals, but, I think, all by a few individuals, and the rest, some by some, and others by others. Three distinct forms, not supporting each other, but each one sufficient in itself if well founded, and yet so stated that the advocates of eligibility can fall back from one to the other, and renew the combat at each one. The first of these three, which brought out such an extended discussion, was that the clause in the Constitution upon which the objection to eligibility is made, is not binding upon this body, for the reason that this body is superior to that instrument, the Constitution of this State, which contains that clause. Or, in other words, that there is some inherent power or right of sovereignty in the people by which the members of the Convention, representing the whole people of the State, are rendered incapable of passing upon any matter in a manner not consistent with the wishes of the people of an Assembly or Senatorial district.

If we adopt this view of the inherent right of the people, the argument would be at an end, and Judge Fawcett would be entitled to his seat.

But I do not understand that position to be well taken. The inherent right of the people I believe in—we all believe in it; but there is another consideration connected with that. We are representing the people, whose inherent rights are exercised through certain forms, imposed upon themselves by themselves. The people, with all these inherent rights, have found it necessary for their own safety to impose upon themselves rules which they cannot and will not violate.

Then I say this Convention—representing that inherent right of the people, the agents of the people, for the purpose of exercising their rights to change, modify, or even to abolish the present form of State government—could not trespass upon the rights of anybody when it exercises its judicial judgment upon the question of the eligibility of any member in this Convention. The only trespass will be in the false interpretation of the law, and if the people act otherwise than upon their own self-imposed rules, established in the Constitution and nowhere else—if the people fail and refuse to be governed by them, they will be liable to find themselves in a condition of anarchy at any moment, and to have no rule or settled mode of action. The people provided in their organic law a certain mode in which their free institutions shall be perpetuated, in which their laws may be changed or modified. The Constitution being the law of law—being the fundamental law—they have provided for its being changed in a totally different manner from that by which the statute laws are changed.

The Constitution is that law which they have enacted, and which they have made binding upon themselves and their representatives—the delegates here—that the Constitution shall be changed according to such forms and restrictions as they have imposed. In this way they retained and exercise their sovereignty, but they do it in the forms of organized republican government.

While they are the people, speaking as the people, they speak through the forms which they have found to be safe, which will save the people from acting as a rabble or a mob. That Constitution is binding as to who shall form the members of this Convention. Whatever is in the Constitution is binding upon us here, so far as it restricts or prescribes the mode of action. It is binding upon us as to all we should do in this Convention. If it was not—if we were at liberty to disregard the qualifications prescribed for members here, then we would be at liberty to disregard the law as to submitting it to the people for their ratification. Why not? These are limitations placed upon us here, and if we can disregard one of them—if we are not bound to observe this prohibition in regard to the membership of this body—then why are we called upon to regard the requirement that we shall submit this work to the people at all, after it shall have been finished? If it is binding in one thing, it is binding in all things.

I say the proposition that we are not now bound by all the restrictions and limitations upon our conduct which are contained in that instrument, is the proposition that we are not amending anything, but are casting away old things, all our existing institutions, and are proceeding, *ab initio*, to form a new Constitution and a new State. If that doctrine were carried to its logical results, it would follow that the people have not provided a mode of organic development for their institutions, but relying for their improvement upon successive revolutions, and starting anew, from time to time, creating a new State under a new Constitution, acknowledging no authorization of, and having no connection with, any prior Constitution or organization, but dissolving the old organization, the judicial, executive, and legislative departments thereof, and instituting a new State.

Now, if we do that, who can say why we should not present such new Constitution to Congress, and ask that this new State may be admitted into the Union, for, if we are a new State, we have never been admitted into the Union, and if the old is gone in every legal sense, we are no longer a part of the Union until duly admitted.

One little error I noticed was committed by the gentleman, Mr. Laine, when he speaks about Judge Fawcett having remained so long—nearly half of the legal term—without question. I think and feel that it would be an injury to him and a reproach to us if that were so, but while I agree with other gentlemen, who would have been pleased if the question never had been raised, I think members of this Convention will remember that his right to a seat here was challenged on the first day of this Convention, and his right to be sworn in as a member was then challenged, and also what was the ruling of the Chair—and I have no doubt it was the correct one—that that was not the proper time to advance such an objection, but after the body was organized would come the time when any such objection could take its proper course.

Now, as to the second proposition which is relied upon to support the majority report, I understand the position to be that even if the requirements of the existing Constitution do put a limit upon our conduct, even if those restrictions and limitations are binding upon us, still they cannot affect this body as to its action upon the subject before it, for the reason that the clause of the Constitution (the sixteenth section of article six), declaring the ineligibility of a District Judge to any other than a judicial office, does not apply to any other office than those named by the document itself—that is, than those distinctly specified as offices by the Constitution. That I hold not to be well taken. For myself, I cannot so understand it. The words are distinct and clear in the ordinary acceptation. They are words used generally and in their ordinary sense—Judges shall not be eligible to any other office—and it is a common rule that words must be taken in their ordinary sense, unless something in the context indicates that they are to be taken in a restricted or technical sense.

Now, following such a rule, I do not see how it would have been practicable or possible for the Convention framing the existing Constitution to have used language less liable to a technical interpretation, or less liable to doubt. They used a plain phrase that well expressed their idea. What ought they to have said in order to avoid the doubt that has prevailed in this body? What could they have said, unless it had been that a Judge shall not be eligible to any other than a judicial office, in any way, anywhere, nor under any circumstances? That is not decorous language to insert in any such instrument.

It is said that the construction given to the language by those who support the minority report here is technical. It is exactly the reverse, in fact. A technical construction is a limited, narrow construction, and we are giving to the words the plainest and wisest construction and not any other. We are giving them the construction which they will receive in the minds of most men.

The third proposition in support of the majority report is that, even if section sixteen of article six does refer to all officers, yet membership in this Convention is not an office. These, then, are the positions: First, we are not bound by the Constitution, being above it; second, that if we are bound by it it does not matter, for it does not apply to any officers except those named in the Constitution as officers; and, third, if it does apply to all offices, still it does not matter, because this is not an office at all.

I do not wish, Mr. President to go into any learned dissertation on this subject; I do not propose to so occupy time, and would not, even if I had other authorities than those already cited, which I have not. But admitting that members of the Legislature are officers—that members of the Senate and Assembly are officers—then I am not able to see, for my part, wherein any exception can be taken as to the proposition that we are officers occupying offices.

It has been said here that an office is a regular and continuing duty or trust. I do not think that it is a just definition at all, or that it is any essential part of the definition of an office that it should be continuous or even frequent. I think it would be perfectly proper for a Convention, framing a Constitution, to name divers officers, to meet and hold their terms when expediency requires, under one contingency or another, so that they might be called into being, to serve until the contingency be passed. This would be a mere question of expedieney. I believe the Legislature itself might have been so convened. I believe the Convention that framed the present Constitution, or even this Convention, might embody a provision that the Legislature shall meet when the Governor in his judgment deems it necessary; that it could require him to issue a call for an election for members of the Legislature, to convene at a future day, say six months, or whatever time he might deem proper, to serve until no further necessity existed. I think that Legislature would certainly have just as much official character as the Legislature which meets every two years. It is certainly erroneous to consider the length or duration of office, or the infrequency of any position as a test of its official character. We must consider its origin, its form, its functions—the special functions to be discharged.

In all these particulars, it is obvious to me, this body is strictly analogous to the Legislature of the State. It is an elective body, called in accordance with the provisions of the Constitution, which contemplated this body as much as it contemplated the Legislature. It is just as normal a part of the government as the Legislature, the executive department, or the judiciary.

The fact that its terms are not fixed at regular recurring intervals, I regard as of no consequence in determining the character of the functions discharged by the members of this body, or what their position is to be termed. It is provided for by the same instrument that the Legislature is provided for, and with reference to the same subject—the laws under which we are to live. It meets as a legislative body meets. It organizes as the Legislature does. It works as a legislative body works. It enacts a law—the fundamental law—under which the Legislature enacts statutes of details. The gentleman from San Francisco says we are here as a committee—an advisory committee—as agents and advisers of the people. That we are agents of the people is true; but I say that all the officers of the State are agents of the people, directly or indirectly, but that does not militate in the least with the functions of members being those of offices. The argument as to our relation with the people being that of an advisory committee is no more true than it would be when applied to the Legislature.

It is held that we do not enact laws. In my opinion we enact laws in the same sense that the Legislature does. We enact fundamental laws, which are to define the rights of the people, and restrict the power of the Legislature, and these laws have validity as an Act of the Legis-

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lature has when both branches have passed upon it. The people have reserved to themselves the power of ratification. Legislators would just as much and no more be officers if they had no power to pass a law over the veto by a two-thirds vote. But in our case the people directly hold the right of ratification and the veto power. The Legislature cannot put a law into force until it shall have been laid before the Governor, and then, in case of a veto, they can pass it by a two-thirds vote over the veto. Thus nothing comes from a legislative enactment prior to the sanction of the Governor. So the enactments of this body cannot take the force of operative law without the ratification of the people.

It has been said here that the Constitution we may "agree upon and adopt" amounts to nothing—has no vitality till ratified by the people. I say it will have the same vitality—a latent vitality—that an Act of Legislature has which is to take effect upon a future contingency, as, for example, the lapse of sixty or ninety days, or a particular vote to be had upon some subject. The word ratify implies some vitality and validity. You cannot *ratify* or *confirm* that which has no vitality, no validity —which amounts to nothing. If we are not officers of the State, elected to enact a fundamental law, subject to ratification or veto by the people, what are we?

The gentleman from San Francisco, Mr. Estee, says we are simply a committee—an advisory committee of the people. Well, if we are a committee merely, then instead of drafting a Constitution to be submitted for ratification or veto, we ought to submit to the people a report; then the people might act upon the report of the committee, if they had so ordered things, and adopt it or amend it, or indefinitely postpone it, but they have not so ordered things.

I cannot see upon what ground it is to be denied that we are a legislative body here. I do not care if this body is not called once in one hundred years, or once in two hundred years, so long as this body is provided for in the Constitution, so long as our fundamental law looks forward to the creation of such a position whenever needed, so long as we are a normal part of the government, we are officers thereof. The less often the better, but whatever the period of time that may be imposed, still the Constitutional Convention is provided for by the same instrument which provides for the biennial sessions of the Legislature, and for similar but higher functions.

It is true, as remarked by the gentleman from Santa Clara, that we should go slow and careful in trenching upon the right of the sovereign people. I have no doubt every member feels like going slow and careful about trenching on any right whatever. Sir, there cannot be found in the whole course of this discussion the slightest tendency on the part of any one to trench upon the rights of any one, but there should also be great caution in trenching upon the provisions of the organic law governing our institutions. Every man, every citizen, ought to show the highest regard and the greatest respect for the Constitution under which we live. The members of this Convention ought to show the highest respect for that Constitution, so that they themselves, when they submit a Constitution for the approval of the people, may claim respect for it. We, Constitution makers, should be the last of all men to disregard the provisions of the instrument which has created this Convention.

I hold, then, Mr. President, that no one of the three positions taken in support of the majority report is such as commends itself to our judgment, or that can satisfy our consciences and our reason in this matter. I cannot agree with them in regard to that, and I must, therefore, exercise my own judgment and my own responsibility, and vote according to my view of the law as it exists now. The law, by reason of its universality, may not apply advantageously in all individual cases, but for sufficient reasons it does, as a rule, inhibit the occupation by a Judge of any other office than a judicial one. It inhibits the occupation of two or three or four offices at the same time. There are certainly no better or more expressive words of inhibition than those used, and it seems to me that the Convention, when it framed the Constitution, used the plainest English that could have been found.

We are asked to point out the motive why the judiciary should be excluded from holding any other office than judicial offices. I think it has been sufficiently explained already by one or two gentlemen. My judgment of the reasons why it was not made to apply to Justices of the Peace also is that their jurisdiction is so limited in extent, so limited in the amount and range of cases, that they could never be so involved as the Judges of Courts of record. I do not know whether that is the true reason or not; it is a reason of more or less weight.

Now, Mr. President, I will occupy the time of this Convention but a moment longer. I say this discussion involves the character and extent of the functions of this Convention. I hold we are enacting a fundamental law, which only requires the ratification of the people before it can take operative effect, and that our proceedings are not *ab initio*, not revolutionary, but regular, ordinary proceedings in the orderly development of a free government, as prescribed by the people and in accordance with the restrictions which the people have laid down for our guidance. We have of course to account to the people for our stewardship. That account will be found in the work we do. I know no instrument will be framed on which men will not differ, but I think the greater portion of the Constitution can be so written, so plainly expressed, that he who runs may read.

Judge Fawcett admitted that he himself doubted his eligibility, did not believe that he was eligible to occupy a seat in this Convention, and that he thought nineteen out of twenty would not have come to any other conclusion than he did upon a clause as plain as it could be worded, that Justices of the Supreme Court, District and County Judges should not be eligible to any other office than a judicial office. He thought that was clear and intelligible language. He so declared in his letter, and he thinks now that nineteen out of twenty would have thought as he did. He might have said that ninety-nine out of one hundred would have put the same construction upon it. The first new light he received upon it was prominent men urged him to look into the matter. After considerable research he came to the conclusion that many gentlemen here have come to, that the language could be interpreted in another way; in fact that the other was the true interpretation, and there was no ineligibility at all.

I do not want any sentence or clause in this Constitution that even one man out of twenty will or can misunderstand. I want it so that nineteen men out of twenty will be able to give a reasonable guess as to its meaning, and I trust we may be able to incorporate some provisions into this Constitution that shall ever bar out such refined interpretations of plain common English. I hope that when we shall have agreed upon and adopted an amended Constitution, if my constituents shall ask me whether it means what it seems to say, I shall not feel obliged to answer, "My dear sir, nineteen men out of twenty would quite mistake its plainest provisions."

SPEECH OF MR. REDDY.

MR. REDDY. Mr. President: This discussion has taken up considerable time, and the lateness of the hour warns me to occupy but a few moments in any remarks I may have to make. I should dislike very much to talk to empty benches, but I feel secure from this from the fact that a most distinguished and interesting speaker, Mr. Wilson, of San Francisco, will follow me in this debate.

If we have arrived at any one conclusion in this discussion—if any one fact has been more clearly established than another—it is that Judge Fawcett has a most excellent character; that he is admired, that he is honest, that he is capable, seems to be admitted on all sides, and the gentlemen who are on the opposite side seem to think that by establishing such an enviable character for him they have scored one grand point in the argument. Why a man of such character should have been permitted to leave the dreamy scenes of the land of Santa Barbara is more than I can understand. Why people did not rush to the seashore and detain him within the limits of the district in which he was so much admired, it is impossible for me to comprehend. But I believe the gentleman deserves all the eulogies which have been heaped upon him. Judge Fawcett possesses all the attributes and ability they claim for him. I presume that he was pleased with those eulogies, but I know that they were expensive to the State, for the greater portion of the time occupied by the gentlemen on the other side has been taken up in laudation of him.

It is said that the people of Santa Barbara have sent him here—that they desire to be represented by him in this Convention; but I believe that the people of Santa Barbara are a law-abiding people, and if they had known that he was ineligible the result might have been different. It was said that the people of that county were informed by their Judge that he was eligible, and of all gentlemen they would believe that a Judge must know the law, and consequently they acted upon his statement of his own eligibility. If he is ineligible they have no right to be represented through him; but when we hear so much talk about the will of the people, the question naturally arises, who are the people? Are the people of Santa Barbara County permitted to lay aside our Constitution or trample on it, or to impose on the people of this State a man who by the express terms of our Constitution is declared to be ineligible? I would not permit the people of Santa Barbara County or any other county to trample upon our Constitution or our statutes.

The claimant has made a statement showing that the public service in the branch in which he is engaged will not suffer from his absence there or his presence here. Admitting this is true, is that an argument in favor of his eligibility? Why, it is like the beauties of his personal character, no argument at all, and I am surprised that gentlemen should even attempt to make a point of it. I take issue with the gentleman upon that point: the public service, if it does not suffer now, it may suffer, and that is quite sufficient to require the gentleman to remain at home. The writ of habeas corpus may be suspended by his absence. If a County Judge of one of the counties in his district should wrongfully imprison a citizen, to whom could he appeal for liberty but the District Judge? And that Judge, according to his mileage drawn from the treasury here, is six hundred miles away from the scene of his duty. That brings me back to the excellencies of the character of the gentleman who is so desirous of serving the State. "Cæsar was ambitious" to serve the State, but his fate does not seem to have been a warning to this gentleman. If he discharges the functions belonging to his official position that will be honor enough for him, and if he is the great and learned Judge he is said to be—which fact I do not dispute—let his decisions and his work in that department stand as the monuments of his fame.

I do not propose to go into the details of this matter, but will allude to other points to show the character of this transaction. He receives a salary of five thousand dollars a year for discharging the judicial duties belonging to his official office, and yet he comes to the State Capitol and draws twenty cents per mile for fleeing from his post of duty. Is it not an absurdity? It is very simple, yet it tends to show this matter up in its true light. The Constitution makers never intended to pay a man for fleeing from his duty.

I wish to refer here to another question which has given rise to a great deal of argument. A great deal of labor has been devoted to the question whether this is a revolutionary Convention, or whether it is bound by law or the statutes of our State. Several gentlemen have made the statement on the other side that this Convention is not bound by any law or statute. It is true that they admit it was called into being by the law, that it was cared for by the law, up to the time of its organization, and then it leaped from the hands of its creators into limitless power and uncontrollability and became the master of its own creator. But I will show the gentlemen in a moment that it is a mere waste of time to argue this question, because it must result in one of two things: they must admit that this Convention is controlled by law, that it is not above the law, that it is subordinate to the law, or this Convention must stultify

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itself. I claim no credit for finding the solution of this question, because it is a mere matter of memory, and to the memory of the delegates I now appeal. It is but a few days ago, in the early history of this Convention, when a gentleman came forward here with a resolution to the effect that members should not be paid save when actually engaged in the duties of this Convention; then these self-sacrificing gentlemen rose up like a band of patriots and squelched this rebellious spirit, and said that the compensation of delegates was fixed by law, under the Constitution, and that there was no power on earth to change it. Notwithstanding the unlimited power now claimed for this Convention; notwithstanding that it towers above all law and above all earthly power, yet the resolution was consigned to ignominious defeat by the ruling of the Chairman, who at the first glance recognized the fact that this Convention was controlled by law. Now I think it is pretty effectually settled that this Convention is not only controlled by the Constitution of this State, but it is controlled by the statute also.

Now, sir, what becomes of all the learning that has been wasted—I will not say wasted, for it will be carried away by the delegates when they leave for their homes—what becomes of all this black letter lore and learning? It is thrown away on this question whether this is a revolutionary Convention, or whether it is governed by the laws of the land. If that question is once disposed of, Mr. President, we will have no difficulty in determining the other question, and the only one it seems to me, that of the eligibility of the sitting member. It is conceded by the other side that judicial officers of a certain grade are prohibited from occupying any positions other than judicial. It is also conceded that the sitting member is a judicial officer. What other question have we to determine—simply whether the position each member occupies here can be considered an office. The gentlemen have cited numerous authorities and given numerous definitions of the word office. It has resulted in a decided disagreement of authorities. They say we should not bring in here pocket dictionaries; that it is technical and unbecoming to statesmen. I will agree with the gentlemen, and I shall lay aside the dictionary, Chitty on Pleadings as well as Estee on Pleadings, and shall discuss the question on broad, plain principles, as to whether it is an office or not. Laying authorities aside, how can we ascertain what an office is? Gentlemen say we should dispense with authorities, and yet they have not suggested any means by which we may determine what an office is? I believe the gentleman from Los Angeles cited Sam Slick? I am not acquainted with his authority. Another gentleman cited Jameson, and the gentleman from Los Angeles says he is not acquainted with Jameson, so I have brought in Mr. Cooley to introduce Mr. Jameson. I shall undertake to determine, not by authorities, but by the light of reason and common sense, what an office is.

May I be permitted, before proceeding to this inquiry, to answer some of the innuendoes and insinuations thrown out here to-night by the gentleman from Sacramento, Mr. McFarland, namely, "That these lawyers entertaining different views from him, are not lawyers enough to hurt." He doubtless meant that we were not lawyers enough to hurt any person's feelings. The gentleman from Marin, Judge Shafter, is well known to Judge McFarland as an eminent jurist. Of course, he did not mean he was not much of a lawyer. He certainly did not mean Judge Barbour was not lawyer enough to hurt, because he is a man of established reputation. And, as I am a stranger here, not known in the community, I suppose he means me. But I understand that Judge McFarland used to be of the same opinion that I entertain now. I am informed that the gentleman was inclined to our way of thinking so much that he resigned an office under the Government in order to render himself eligible as a candidate for delegate to the Constitutional Convention, but I presume that was when he was not lawyer enough to hurt, which by the way I am informed was but a few months ago; in all this I know the Judge meant well; I know that he was well disposed towards the people, or he would not have resigned his position under the General Government.

Now, I wish to determine what an office is. It seems we cannot agree by reference to the authorities as to what it is. I presume the only way to get at it will be to ascertain what duties or what functions belong to an office. If we find that the mode of induction into this position and the duties appertaining thereto are the same as those belonging to positions acknowledged to be offices, then it will certainly be admitted that this is an office also, yet, I do not know but what some of the gentlemen will insist that there still exists a difference; but it seems to be common sense that if all the duties of the highest office in the land are attached to this position, that it would be only fair to say that it is an office.

It will be conceded that the delegates to this Convention have been elected by the people. Now, will the gentlemen on the other side show me a single position under this State or elsewhere that is filled by an election that is not considered an office? Why, it is the great distinctive feature between a person charged with official duties and a mere employé. If the duties we perform here are the duties of mere employés, as contradistinguished from official duties, what trouble and expense the Government must incur to obtain the services of a few employés! Just think of it. The Government wants one hundred and fifty-two men to serve as employés for one hundred days, yet in order to effect that object an election is called; the electors are summoned from the mountain tops, from the depths of the mines, from the harvest field, from all parts of the State, in order to enable the Government to employ one hundred and fifty-two men in its service! Sir, the proposition is monstrous to a man possessed of only common sense. Why, sir, it must take a wonderful amount of learning to enable a man to see that this routine is necessary to enable the State of California to employ individuals in its service. But is it not wonderful what learning can do for a person! [Laughter.]

The next proposition is, why are we required to take the oath of office? We are compelled to march up to the President's desk, and, in the presence of the people of California, take and subscribe a solemn oath that we will support the Constitution of the United States and the Constitution of the State of California, and perform our duties to the best of our ability. Do you put that oath to your brickmakers? Do you require the superintendent of every work the State of California may be carrying on to take that oath before he can perform a day's labor for the State? Before the Porter can clean out the rooms he has in charge, why not bring him in here and "put him through a course of sprouts?" He is an employé; why don't you swear him? According to the theory of the gentlemen on the other side, it is as much an office as the positions we hold. We are here in obedience to the statute. The law has called us into being, and the law is now protecting us in every manner; and not only that, but it gives us command of this building, and every officer of the State is required to obey our commands, so far as giving us information is concerned; and if we see fit we can imprison any of them who may refuse to obey our commands; and we came pretty near doing it the other day—all by force and effect of the statute. We went so far as to censure a high public functionary, because he could not perform an impossibility. Not only that, but if, in the wisdom of this Convention, any unfortunate editor from Siskiyou—I believe that is the way the politicians measure distance—from Siskiyou to San Diego, or from the mountains to the sea, should discourse of this Convention or its doings in terms which might be considered disrespectful, we could send for that editor and punish him for contempt, and if we saw fit put him in prison, and keep him there just as long as this Convention remains in session. We have the power to take a citizen away from his home and incarcerate him in prison; we have the power to compel men to come here, from any part of the State, and testify before us. Why, sir, we have more power than any other tribunal in the State of California, and yet gentlemen on the other side say we are not officers under the Government!

The powers of this Convention have not been overstated by the gentlemen, because we are invested with the power to deprive a citizen of his liberty; we exercise the highest sovereign power; we exercise power as high as that of any Court in the land. The statute also provides that we have the right to fill vacancies, but when the gardeners in charge of the grounds around this building quit work must an election be called to fill their places? Why, sir, it is useless to argue this question any further. It is absurd to say that such power should be given to anybody, and yet the position not be considered an office.

Now, Mr. President, I know that the time is limited, and yet I would like to discuss one or two other questions, but I know it is asking too much of the Convention. [Cries of "Go on! Go on!"]

Members have drawn their salaries from the beginning, very regularly, and I think that is to be regarded as strong evidence that this is an office, and that we are officers of the State. Now we pass for a moment to the proposition argued by Judge Shafter this afternoon, which is on the language of the third article of the Constitution. It certainly was the clear intention of the framers of the Constitution to prevent judicial officers from meddling in other departments of State, so that judicial officers could not at their pleasure doff the "ermine" and cavort in Senatorial robes. They should be confined to their offices, and, according to the salaries paid in this State, I should judge that these duties were sufficient to occupy their entire time and attention.

It seems to me that we are legislators, for are not our acts law? There are two classes of legislation in this country—one called fundamental legislation and the other municipal. The Constitutional Convention, assisted by the people, enact fundamental law; the legislative department of the State is required to enact municipal laws. The fundamental law is to govern and guide the Legislature in the enactment of municipal regulations. But both bodies are legislative in character, and the judicial officers of this State are, by the express terms of section one, article three, of the Constitution, prohibited from participating in any legislative action, or in meddling in either of the other departments of the government. The Legislature is pointed out by the Constitution as one of the bodies in the State having the right to amend its provisions, if its action shall be afterwards ratified by the people. Membership in the Legislature is a position acknowledged to be an office. The Constitutional Convention is another body permitted, when properly assembled, to amend the Constitution, if its action shall be afterwards ratified by the people. In this respect the duties and powers of the Legislature of the State and the Constitutional Convention are the same. Why should membership in one body be considered an office and not be so considered in the other?

Thanking the Convention for the attention I have received I will now close my remarks upon this subject.

SPEECH OF MR. WILSON, OF SAN FRANCISCO.

MR. WILSON. Mr. President: I rise because it is incumbent upon me as Chairman of the Judiciary Committee to close this debate. Nothing could have pleased me better than to have seen the tone and temper in which this discussion has been maintained. However deep and earnest have been the views of gentlemen who have expressed themselves here, the spirit, the language, everything has been in the most courteous and kind manner, without any imputation against the motives of any other, and I intend to imitate the tone and temper with which others have discussed the question before you. I am relieved, in the performance of my duty, of saying much that I might have said, by the arguments of the very able gentlemen who have presented their views upon the same side in support of the report of the majority of the committee. Admonished, too, by the lateness of the hour and the fatigue manifested on the part of the Convention, I shall proceed as rapidly as possible. Although Mr. Fawcett was a District Judge at the time of his election, yet I understand the question fairly and squarely presented to the Convention to be this: "Are the people of Santa Bar-

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bara County entitled to present upon this floor a delegate of their choice?" I do not regard the question as beginning, centering, and ending merely in the sitting member, but it has a wider scope and is a larger and a greater question. It is a question involving the rights of the constituents of that gentleman; it is whether Santa Barbara County has a right to be represented upon this floor by a delegate of her own choice. Who forbids it? What forbids it? The gentlemen upon the other side have pointed us to a direct written prohibition in the Constitution upon which they rely. Prohibited by whom? Prohibited by a similar Constitutional Convention and by the people of the State of California in the year eighteen hundred and forty-nine.

It is said that that Convention and those people determined who should sit in this Convention. If so, then we have arrived at this principle in the law of constitutional government—that each Convention and generation may prescribe who shall sit in the next Convention, and following upon, that as a necessary incident, what electors shall vote for the delegates. It follows from this that we, to-day, can only exercise such political powers and enjoy such privileges as the generation preceding us chose to leave to us. On the contrary, I deny that the people of one generation have more political power than the next. I deny that the people of eighteen hundred and forty-nine could exercise a power that we cannot exercise; or that they could impair our full and free right, as a people, to make our own organic law.

I desire to call the attention of the gentlemen here to that Constitutional Convention of eighteen hundred and forty-nine, consisting of thirty-seven members, and to the people of eighteen hundred and forty-nine, who adopted that Constitution. What was the condition of things at that time? Who were those people? What were they? California originally was a department of Mexico. The system was rudely fashioned after ours. There was a General Government and States or Departments. War came and the conquest of California was the result. What was the condition of the people of California then? The political machinery of Mexico dropped, and we had a peopled region of country different from anything seen by us before in this nation. We had a military Governor over a conquered country. It had no Constitution; no State government; no Territorial organization. There was no Act of Congress that enabled them to do anything. That was their condition—peculiar and unlike anything ever seen before in this country. Those acquainted with the early history of the State know the struggle through which the people passed to be admitted into the Union. Congress refused to organize a Territorial government, and refused to pass an enabling Act so that a State Constitution and organization might be adopted and effected. A military government existed, and officers de facto were exercising the civil functions of the government and attempting to enforce laws and customs of which they knew nothing. What was California to do? What did the people do? Of necessity they were compelled to take care of themselves. They resorted to the inherent power of the American people, and elected delegates to a Convention, and framed and adopted their own Constitution and organized their State. There was nothing which authorized them so to do, except the principle that "all political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people; and they have a right to alter or reform the same whenever the public good may require it." You may say that they acted in defiance of Congress because it was claimed by the statesmen of the day that they were under the control and power of Congress, and had no right to move in the matter until an enabling Act was passed. The people, however, by reason of the great necessities of their position, peaceably and quietly elected their delegates to a Convention and adopted a Constitution. It is true that General Riley, the Military Commandant and Governor, coöperated, for the sake of peace and order—but he had no legal power to effect anything in that behalf. In fact, the delegates in Congress, in their memorial asking admission into the Union, expressly state that the people did not form their Constitution "in obedience to the dictation of General Riley, but on the contrary, actually took the initiative in the movement, and only concurred in the suggestions of the de facto Governor as a matter of convenience, to save time, and with a patriotic resolution to merge all minor differences of opinion in one unanimous effort to avert impending ills and remedy existing evils." I call attention to this part of our history for two purposes; first, as to the question of power in the people, and secondly, upon the question of the construction of the Constitution. Never before was seen exercised in a more absolute form—never before was seen a grander exhibition of the power of the people to govern and control themselves, and to frame and determine the organic law and to create a State.

Does any one here believe that a people like that, and a Convention called together as that one was, and exercising such absolute powers, intended to declare that the succeeding generation should not have the same political power, and should not exercise the same sovereign right? That we must be bound, restricted, and limited to the exercise only of such political power and rights as they should declare? That they could determine what form of government we should have, and who should be our representatives in the formation of a new Constitution? We have the right to read the Constitution by the light of surrounding circumstances. That is a cardinal rule of construction; it is a rule of common sense, the object being to get at the intention and meaning of the framers of the instrument. Nor is it to be supposed for a moment that that little band of thirty-seven persons who framed that Constitution, and the people of eighteen hundred and forty-nine who adopted it, in the exercise of the great inherent powers of the people in their original capacity, intended to say that the generation who should a third of a century later undertake to alter or amend or create anew a Constitution, should have less power than they themselves exercised. The proposition, to the contrary, is this: that the people who in eighteen hundred and forty-nine framed a Constitution and organized a State in defiance of Congress, without any enabling Act, without any Territorial government, and only by virtue of their inherent power, claimed the right and asserted the power to control, in the formation of the fundamental law, the people of this period—over a quarter of a century later. I ask now whether we of this Convention or generation can determine who shall be the electors of nineteen hundred and eight, or who shall be the members of the Convention to revise our Constitution at that time? I do not believe in any such political heresy.

If this Convention, by its vote upon this question, is to adopt any such doctrine as that, I, for one, desire to enter my solemn protest against it, and to cast my vote in favor of the majesty, the power, and the dominion of the American people. I do not say this because I think the doctrine is revolutionary, for it is not. I say it because it is the essence, the very groundwork, the very fundamental principle of American government. The contrary doctrine leads to the most dangerous results, for according to that theory we of this Convention and generation may prescribe the qualifications of all members of the next Convention and exclude all but native born citizens, or persons of over thirty-five years of age; and the same principle would enable us to go further, for we could prescribe the qualifications of electors and exclude all under forty years of age, or all possessed of property of less value than twenty thousand dollars. When we concede the power, that is an end of the question. The possible instances which I have given are not extreme cases—they all fall directly and naturally within the principle. If, therefore, the men who framed the Constitution in eighteen hundred and forty-nine could have prescribed that Judges should not sit in this Convention, they could have said that men under forty years of age could not sit in this body. You therefore arrive at a fixed principle, that each Convention possesses the power to control, determine, and shape the form and framework of any future Constitution; and that each generation has the inherent right and authority to limit the power of the succeeding generation. How far they may exercise it, of course, is a different question. I deny that they have any such power. I say the people of to-day have the same power in that respect that they had in eighteen hundred and forty-nine. I say this Convention is the judge, and the exclusive judge, of the election and qualification of its members, and that the doctrines I have contended for rest upon the broad, indisputable and inalienable principles upon which all American States are founded.

Therefore, sir, I deny the power of the people of eighteen hundred and forty-nine to say in their Constitution, or otherwise, who shall sit here. I say again, that these views are not based on revolutionary principles, but on recognized avowed, and admitted doctrines of the American Government. And I say further, that the people of eighteen hundred and forty-nine themselves never intended any such construction to be placed upon their Constitution. There is a cardinal rule of construction which, applied to the Constitution, may be stated in this wise—that if there be two constructions, one of which is in accordance with the recognized principles and genius of our Government, and the other be in violation of the same, the first must be taken as the true construction. The construction we place on section sixteen, article six, is, therefore, to be preferred, as it proceeds upon the recognition of acknowledged principles, and denies to the people at this time no power possessed by the past generation.

There is, of course, no intention of denying here the binding force and effect of the existing Constitution, in all its functions and operations upon the State Government, until changed; but when the time arrives for the exercise of the political power which inheres in the people, to alter and reform the government, it is not the government which acts but the people in their essential character as the sovereign power, as defined in section two of the Declaration of Rights.

I desire now to call attention to some of the views advanced by the distinguished gentleman from Marin, Mr. Shafter, for whose talent and learning I entertain the greatest respect. I regretted much to hear him denounce the Courts and the learned profession of which he has always been so prominent a member. He insists that gentlemen learned in the law are the least able to give a proper construction to a Constitution, and contends that these instruments are to be interpreted in the manner in which they are understood by men of low intellect. The gentleman's argument called to my mind the distinguished statesman and lawyer, Daniel Webster. I had supposed that a great part of his reputation depended upon his powers and grand efforts as an expounder of the Constitution. I had supposed that his great fame rested somewhat on his ability in that regard. I pictured to myself that distinguished man as he went in his carriage to the Supreme Court of the United States, to argue the great Darmouth College case—a case involving the construction of a clause of the Constitution of the United States. I could see him with his magnificent physique, his grand head—which was "a temple where a god might dwell"—his scrupulously neat attire, his blue coat and brass buttons, and his polished boots, getting out of his carriage at the Capitol, but before entering the Supreme Court stopping to ask the driver to get down from his box and advise him as to the meaning of that clause which forbids the States to pass any law impairing the obligation of contracts. I could also image to myself Chief Justice Marshall, after hearing that great case argued by the mightiest intellects in the land, and after long deliberations over the matter, calling up his very worthy gardener, and asking him to explain what his views were on that subject so difficult and profound to lawyers and Judges. If I recollect aright, Mr. Justice Story says that that clause on the subject of impairing the obligation of contracts was less discussed in the Constitutional Convention, and has been more discussed in the Courts than any other clause of the Constitution. I can also imagine how James Madison, Alexander Hamilton, and John Jay, when they were writing the series of articles constituting the Federalist, to induce the people of the United States to adopt the Federal Constitution, must have called in the janitors and porters around the Capitol to get their views as to the force and effect of its various clauses and provisions.

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The learned gentleman from Marin says we must take the first obvious meaning of the Constitution, as read by the man of low intellect. Now, section two of article one says: "All political power is inherent in the people." What people? In whom? He says that the first obvious meaning would include the Chinese as a part of the people of this State. So, also, he says females are a part of the people. Yet he immediately departs from his first obvious meaning, and says that the people are really the electors only—those entitled to take part in public affairs—and that they represent the whole. He had to bring his reflective faculties to bear—his reason and sense, and then he found that the interpretation which a man of low intellect would have applied would have been merely delusive.

Take, also, section three of article one of the Declaration of Rights, which declares that "the right of trial by jury shall be secured to all, and remain inviolate," and see whether the meaning would be better ascertained by the man of low intellect, or by Marshall, Kent, Spencer, and Madison.

The first view of the man of low intellect would be that in all proceedings in Courts a right of trial by jury is secured. Yet how often have Courts held that that does not apply to equity cases. The Chancellor calls a jury or not, as he, in his discretion, determines. It is manifest that, to read a Constitution rightly, requires reflection and study, and that men who have devoted the most of their time to the study of the science of government, are best enabled to give enlightened views upon it. I do not say a Constitutional Convention should be composed wholly of lawyers. On the contrary, there should be representatives from all classes of business—the farmer, the merchant, the mechanic, the miner, and others. But I do say that if I wished, in a case of sickness, to know what was my disease, I should prefer the opinion of a skillful physician to that of a man who knows nothing of medicine. On a question of law, I should take the opinion of Judge Hager before that of a layman. On a question of farming, I should resort to those who pursue that vocation. On machinery, I should consult a machinist. The opinions of learned Judges and lawyers, who have devoted their time and intellect to the consideration of legal matters, and to the study of the science of government, are, therefore, entitled to the highest respect and confidence. It was, therefore, very proper for the gentlemen who, by their able arguments, have vindicated the correctness of the report of the majority of the committee, to refer to the actions and opinions of men like Chief Justice Marshall, Chancellor Kent, Judge Spencer, and other distinguished jurists and statesmen, who have written, spoken, and acted upon the subject. They shed a flood of light upon the matter, and furnish precedents which any gentleman can honorably follow.

The learned gentleman from Marin, Mr. Shafter, and also the gentleman from Sacramento, Mr. Freeman, who has acquired a deserved fame as the author of some well written law books, rely upon section sixteen of article six of the Constitution, which renders District Judges ineligible to any other office than a judicial one during the term for which they were elected, and insist that members of this Convention are officers, because they perform functions of government and are recognized by the Constitution as having something to do with the Government. Though somewhat variously expressed, these gentlemen, as well as the gentleman from San Francisco, Judge Hager, all express the one idea of Mr. Jameson, the author of a book on Constitutional Conventions. Mr. Jameson, after treating of the case of Judge O'Melveny, who was permitted to hold his seat in the Illinois Convention, against the same objection as the one urged here, and after stating the arguments there used, pro and con, gives his own opinion that the Judge was ineligible. In support of this view he says in conclusion (page three hundred and eight): "The government of a commonwealth is the totality of those instruments through whose ministry its political organization began and continued. It is that totality which governs, and not necessarily either of its members, precisely as it is in the body of an animal which lives and acts, and not in the separate parts, though doubtless of these, one masticates the food, another digests it, a third performs locomotion, a fourth thinks, and so on. And, as in the living body each organ contributes by no matter how humble or obscure a function to the common life or development, is a member of the organism. So in the commonwealth, every citizen or body of citizens charged with any duty looking to the defense, the operation or the renewal of the political system, is an organ of that commonwealth for purposes connected with the government, and must be ranked among its officers."

This is the substance of the argument here, though greatly elaborated, and Judge Jameson certainly puts it as strongly as any of his followers here. Now one mode of proving that a proposition is untenable is to prove that it goes too far. If its legitimate result is an admitted absurdity, of course it must be abandoned. Let us concede here the proposition that "in this commonwealth every citizen or body of citizens charged with any duty looking to the renewal of the political system is an organ of the commonwealth for purposes connected with its government, and must be ranked among its officers." Now if this Convention be such "a body of citizens," still its powers are quite limited, as they are confined to merely preparing and proposing to the electors a Constitution for adoption. The act which gives force and validity to the whole matter—which renders it effective—is the act of the electors at the polls. Therefore the elector at the polls is, in the language of Mr. Jameson, a "citizen, charged with a duty looking to the renewal of the political system." Therefore he is "an organ of the commonwealth for purposes connected with its government." Therefore an elector "must be ranked among its officers." From this it follows that a Judge would be ineligible to a seat in this Convention and would not be a competent elector to vote upon it. Is not this the legitimate result of the Jameson doctrine? Does not this follow from the argument of the gentlemen from Marin, Sacramento, and San Francisco, Messrs. Shafter, Freeman, and Hager?

If it requires the action of this Convention and the action of the electors to make a Constitution, how can the delegates who merely propose be officers, and yet the electors who enact and give effect to the organic law not be officers? Each performs a separate function—each, you may say, a necessary function. Yet the greater of the two is that performed by the elector. But to call him an officer, is an absurdity no one would commit. This seems to be all that is necessary to say of Mr. Jameson's views, and that of his followers, in this respect. The gentleman from Marin, however, differs from Mr. Jameson in this—that the former insists that the functions of a Constitutional Convention are legislative, and the gentleman from San Francisco, Mr. Hager, agrees with him in that. Jameson says that a Constitutional Convention cannot exercise legislative functions, and that when it does, it is departing from its legitimate sphere. This question arose out of proceedings in the Missouri Convention, where certain legislative powers were sought to be exercised. They were, however, held invalid, because legislative. So this Convention has great functions and great duties to perform, but they are not legislative in their character. The Legislature may do many things that we of this Convention cannot do. We can do things the Legislature cannot do. Each has its own proper sphere, and each must keep within its own limit. No person is stronger in his antagonism to the exercise of legislative powers by Constitutional Conventions than Mr. Jameson; and when he argued against the eligibility of Judges to seats in the Illinois Convention, he placed it upon a different ground entirely, as has been shown. It is, therefore, somewhat singular that the gentlemen upon the other side of this question do not agree among themselves upon the ground of objection, but differ with each other as much as they differ with us.

The gentleman from Marin, Mr. Shafter, undertook to entertain us with some of his humor, and succeeded very happily. The debate has been long, and often necessarily tedious, and his sparkling humor was much relished. It was quite pleasant to hear his illustrations. He pictured a member of this Convention going after death in search of a last resting place. He first applied to the heaven prepared for good officers, but being told he was no officer he could not get in. He next went to the hell provided for bad office-holders. He was equally ineligible there, and, like Mahomet's coffin, must hang suspended between heaven and hell. Apply, however, this fable to the elector, who performs so important a function in the creation of a new Constitution. He would be equally expelled from the good office-holders' heaven and the bad office-holders' hell, and yet no one can insist that therefore he must be an officer.

The learned gentleman from Marin also offers us his own evidence as a member of the Legislature which proposed the constitutional amendments of eighteen hundred and sixty-two (one being section sixteen of article six) as to what the Legislature and people meant by "office." It was relished as a great joke a few years ago in one of the lower Courts of San Francisco, when a tyro in the law proposed to call Horace Hawes (author of the consolidation law) to testify as to the meaning of certain parts of the consolidation law of the City and County of San Francisco. I confess my surprise to hear the distinguished gentleman from Marin actually give testimony of a like character. The truth is that the Constitution of eighteen hundred and forty-nine declared that the Judges of the Supreme and District Courts should be ineligible to any office other than a judicial one, and that the only change affected by the amendment of eighteen hundred and sixty-two was that County Judges were included.

We have, therefore, Mr. President, two constructions of section sixteen, of article six. One of these interprets the word "office" to be such a State office as is provided for in the Constitution itself—such as takes rank in the existing government and looks to it as continuous and permanent—one that has functions of a character consistent with and as a part of that existing government. That construction excludes a member of this Convention, which is not a part of the machinery of the existing government, nor made in its support. Such a construction is consistent with the principles of liberty and the genius of American government. It is consistent with the second section of the Bill of Rights. The opposite construction proceeds upon the basis that the people of one generation have greater political rights and power than the people of a succeeding generation, and one Constitutional Convention is more powerful than its successor. I submit, therefore, that the views of the majority of the committee are the sound views upon this subject.

I will call brief attention to article ten of the Constitution, upon which the views of my distinguished friend from San Francisco, Judge Hager, somewhat surprised me. I do not know, however, that I should express surprise, for a distinguished man has said (I quote from memory), "Make a point ever so clear, and the odds are great that one whose habits of thought are different and the bent of whose mind lies in an opposite direction, will be unable to perceive it." Another delegate from San Francisco, Mr. Estee, had, in support of the majority report, read from the Constitution of New York a clause almost exactly like section sixteen of article six of our Constitution, as to the ineligibility of Judges to offices other than judicial offices, and proceeded to show that notwithstanding the clause, such eminent men as Chancellor Kent, Ambrose Spencer, and others sat in the Constitutional Convention of New York while holding their judicial positions, thereby proving that those distinguished men had construed the word office not to embrace delegates to a Constitutional Convention. In reply to this the gentleman from San Francisco, Judge Hager, produced the Constitution of New York to show that it contained no provision for the amendment or revision of the Constitution, while the Constitution of California contains provisions for amendment and revision. Therefore, he says in New York a member of the Constitutional Convention is not an officer, but in California a member of the Constitutional Convention is an officer; that Chancellor Kent and all the other Judges mentioned who held seats in the New York Convention, called together by the Legislature, were not holding another office, but that in California the delegates to this Convention are

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officers, because called together under the provisions of article ten, on the subject of amendment and revision. I could not help but think that the delegates to the New York Convention, who thus are construed not to be officers, would have been refused admittance to both the heaven and hell spoken of by Mr. Shafter, and been compelled to go to midair with Mahomet's coffin. What is the true meaning and force of article ten of our Constitution, providing for amendments and revision of the Constitution; and what is the effect of its absence in the New York Constitution? Is it not clear that the people of New York had the inherent political power to alter and amend the Constitution of that State? Is not that a great underlying principle of the American Government? Must the power to make a new Constitution come from a grant in the Constitution itself? Does it not come from the genius and spirit of republicanism itself? Manifestly so.

The Act of the Legislature of New York calling a Convention was merely putting the dormant power of the people of the State into action. It provided merely a proper and regular mode for the exercise of an admitted power inherent in the people. So article ten of our Constitution performs the like office. It avoids confusion and uncertainty, and secures a regular, peaceful, and orderly right which existed before the Constitution was framed, and will survive all Constitutions—the right declared in section two of the Bill of Rights. Inherent power is not granted by a Constitution. It is a confusion of ideas to say that inherent power is dependent upon a Constitution. The Bill of Rights does not give to the people the power to alter or amend the Constitution, but simply declares and affirms its existence, and the power would have existed all the same had there been no declaration of it. Now, if it be correct that this power was inherent in the people of New York—and the gentleman from San Francisco, Judge Hager, admits it—and they could exercise it, though not mentioned in the Constitution, then I ask him whether the mere mode of setting that great power of the people into motion could make any difference? Whether a delegate to a Convention called by the Legislature can be no officer, but a delegate called in another mode is an officer? I ask whether this Convention, when it is assembled, differs from any other Constitutional Convention lawfully assembled, no matter how called?

MR. HAGER. The gentleman will allow me to correct him. I did not state that in New York he was not an officer. I stated that the Constitution of California provided for the mode of calling this Convention, while the New York Constitution did not, and therefore they were different in that respect. I did not say they were not officers there but they were officers here. I certainly did not say anything of the kind, except that in our State they are recognized by the Constitution as members of the Convention, while in New York there was no such recognition in the Constitution. That is what I said.

MR. WILSON. I wrote it down, Mr. President, immediately after he said it. I beg the gentleman's pardon, but he said distinctly that these persons were not officers in New York. He has a right to retract it, of course, but I cannot be mistaken, for I wrote it down immediately.

MR. HAGER. We are not lawyers now, before a jury. When a member gives his views as to what he intended to say, that should be sufficient. I hope the gentlman will accept the explanation.

MR. WILSON. Certainly; the gentleman has a right to make the explanation. I desire to show him all due courtesy, but I cannot admit that I have uttered a falsehood before the Convention. I can now say this much, that Mr. Hager did not intend to say that they were not officers in New York. I will therefore assume that he didn't say whether they were officers or whether they were not. The learned gentleman took the distinction which now, by his explanation, amounts to nothing, for he says, "I didn't say whether they were officers or not." He took that distinction to show you that whilst it was right in New York for Judges to sit in Convention, it could not apply to us here, because in California they are officers, and thus he takes up Jameson's proposition and adopts it.

I say that the position of the members of the New York Convention and those of the California Convention are the same. The mere mode of calling them together is a matter of secondary importance. Whether it is recognized by the Constitution or not is of mere secondary importance, because the right exists in either case. Article ten of the Constitution of California simply provides the regular and proper mode of calling the delegates together, to enable the people to exercise their great inherent powers, to frame and form a new Constitution. It is a good thing to have in the Constitution, because it prevents disorder. It prevents irregularities in the exercise of that power, but it does not give the power. It simply provides a plain and easy mode of ascertaining the sentiments of the majority upon a particular occasion, as to whether the people desire to revise the Constitution. But in addition to this we may say that as the framers of that Constitution undertook to say something upon the subject of a Constitution, by all proper rules of construction they are presumed to have said all on that subject that they intended to say, and the proposition of the distinguished gentleman from Los Angeles, Mr. Howard, is undoubtedly correct, that we have no right to go outside of article ten for the purpose of considering any matter upon the subject of the Constitution, and members of the Convention. It is a plain rule of common sense and a principle of legal construction, that if there are general words in one part of an instrument and particular provisions in another part of the instrument, and there is any conflict, the particular language with reference to the particular subject controls. Now here, where article ten of the Constitution is special and applies particularly to Conventions, we look to that alone and do not go any further. We find that article ten prescribes no test of eligibility, prescribes no qualifications whatever. Therefore we are to act just as if there was nothing said about it in the Constitution. The electors have the inherent right to call a Convention to revise the Constitution and to select their own delegates. They, in the language of the Constitution, have the right to alter or reform the same whenever the public good may require it.

I am unable at this late hour to answer further the propositions of the various gentlemen who have so ably participated in this discussion and opposed the majority report. The question has been argued very thoroughly and very fully, and every gentleman here has no doubt formed a decided opinion. On behalf of the committee I can only add that the discussion has but more firmly convinced us of the correctness of our course, and we submit that the Hon. Eugene Fawcett is entitled to his seat in this Convention as a delegate from the County of Santa Barbara.

MR. LARKIN. Mr. President: I move the previous question.

The motion was seconded by Messrs. Tinnin and Barbour.

The motion prevailed and the main question ordered.

THE PRESIDENT pro tem. The Secretary will read the resolution.

THE SECRETARY read:

Resolved, That the Hon. Eugene Fawcett is entitled to a seat in this Convention.

The roll was called, and the resolution was adopted by the following vote:

AYES.

Andrews,	Howard,	Schell,
Belcher,	Inman,	Schomp,
Biggs,	Johnson,	Shurtleff,
Blackmer,	Kelley,	Smith, of Santa Clara,
Brown,	Laine,	Smith, of 4th District,
Campbell,	Lampson,	Steele,
Caples,	Larue,	Stevenson,
Casserly,	Lewis,	Stuart,
Charles,	Mansfield,	Swing,
Crouch,	Martin, of Alameda,	Terry,
Dudley, of Solano,	Martin, of Santa Cruz,	Thompson,
Dunlap,	McCallum,	Townsend,
Eagon,	McComas,	Tully,
Edgerton,	McFarland,	Turner,
Estee,	McNutt,	Vacquerel,
Evey,	Miller,	Van Voorhies,
Filcher,	Moreland,	Walker, of Tuolumne,
Finney,	Nason,	Webster,
Garvey,	Noel,	Weller,
Glascock,	Ohleyer,	West,
Graves,	Overton,	Wilson, of Tehama,
Harvey,	Porter,	Wilson, of 1st District,
Heiskell,	Pulliam,	Winans,
Hilborn,	Reed,	Mr. President—74.
Hitchcock,	Rhodes,	

NOES.

Barbour,	Herold,	Neunaber,
Barry,	Herrington,	O'Donnell,
Barton,	Huestis,	O'Sullivan,
Beerstecher,	Hughey,	Prouty,
Bell,	Jones,	Reddy,
Condon,	Joyce,	Smith, of San Francisco,
Davis,	Keyes,	Soule,
Dean,	Kleine,	Stedman,
Dowling,	Larkin,	Sweasey,
Doyle,	Lavigne,	Swenson,
Farrell,	Lindow,	Tinnin,
Freeman,	McConnell,	Tuttle,
Freud,	Moffat,	Walker, of Marin,
Gorman,	Morse,	Wickes,
Grace,	Murphy,	White,
Hager,	Nelson,	Wyatt—49.
Harrison,		

Ayers "aye," paired with Reynolds "no."
Boucher "aye," with Shafter "no."
Chapman "aye," with Rolfe "no."
Hale "no," with Dudley, of San Joaquin "aye."
Hunter "no," with Boggs "aye."
Kenny "no," with Barnes "aye."
Ringgold "no," with Shoemaker "aye."
Van Dyke "no," with Holmes "aye."
Wellin "no," with Burt "aye."

MR. MCCALLUM. I took no part in the debate, and I ask leave to explain my vote. I voted aye for the purpose of moving a reconsideration.

THE PRESIDENT pro tem. The resolution is adopted, declaring Judge Fawcett a member of this Convention.

ADJOURNMENT.

At twelve o'clock and nine minutes A. M., October twenty-sixth, on motion of Mr. Murphy, the Convention adjourned.

TWENTY-NINTH DAY.

SACRAMENTO, Saturday, October 26th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Barton,	Bell,
Ayers,	Beerstecher,	Biggs,
Barbour,	Belcher,	Blackmer,

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Boucher,	Huestis,	Ringgold,
Brown,	Hughey,	Rolfe,
Campbell,	Hunter,	Schell,
Caples,	Inman,	Schomp,
Casserly,	Johnson,	Shafter,
Charles,	Jones,	Shoemaker,
Condon,	Joyce,	Shurtleff,
Crouch,	Kelley,	Smith, of Santa Clara,
Davis,	Keyes,	Smith, of 4th District,
Dean,	Kleine,	Smith, of San Francisco,
Dowling,	Laine,	Soule,
Doyle,	Lampson,	Stedman,
Dudley, of Solano,	Larkin,	Steele,
Dunlap,	Larue,	Stevenson,
Edgerton,	Lavigne,	Stuart,
Estey,	Lewis,	Sweasey,
Evey,	Lindow,	Swenson,
Farrell,	Mansfield,	Swing,
Fawcett,	Martin, of Santa Cruz,	Terry,
Filcher,	McCallum,	Thompson,
Finney,	McComas,	Tinnin,
Freeman,	McConnell,	Townsend,
Freud,	McFarland,	Tully,
Garvey,	McNutt,	Turner,
Glascock,	Miller,	Tuttle,
Gorman,	Moffat,	Vacquerel,
Grace,	Moreland,	Van Dyke,
Graves,	Nason,	Van Voorhies,
Gregg,	Nelson,	Walker, of Marin,
Hager,	Neunaber,	Walker, of Tuolumne,
Hale,	Noel,	Webster,
Harrison,	Ohleyer,	Weller,
Harvey,	O'Sullivan,	Wellin,
Heiskell,	Porter,	West,
Herold,	Prouty,	Wickes,
Herrington,	Pulliam,	White,
Hilborn,	Reed,	Wilson, of Tehama,
Hitchcock,	Reynolds,	Wyatt,
Holmes,	Rhodes,	Mr. President.
Howard,		

ABSENT.

Barnes,	Eagon,	Murphy,
Barry,	Estee,	O'Donnell,
Berry,	Hall,	Overton,
Boggs,	Kenny,	Reddy,
Burt,	Martin, of Alameda,	Strong,
Chapman,	McCoy,	Waters,
Cowden,	Mills,	Wilson, of 1st District,
Cross,	Morse,	Winans.
Dudley, of San Joaquin,		

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. O'Donnell for one day, to Mr. Estee for one day, to Mr. Morse for one day, to Mr. Dudley, of San Joaquin for one day, to Mr. Cowden for one day, to Mr. Burt for one day, and to Mr. Waters for one day.

The Journal of yesterday was read and approved.

MADE THE SPECIAL ORDER.

MR. VAN DYKE. I wish to make a motion that the report of the Committee on Preamble and Bill of Rights be printed, and made the special order for Tuesday.

THE PRESIDENT. There being no objection, it is so ordered. The Chair hears none.

MR. GRAVES. On yesterday I announced to the house that Mr. Mills, who would have voted aye on the Fawcett resolution, was paired with Mr. Estey who would have voted no.

REPORT.

MR. LAINE. Mr. President: I ask leave to present a report from the Judiciary Committee. The Chairman of the committee has gone away, and this is a report that ought to be made, and I ask that it be printed, with the accompanying resolution, and laid on the table.

THE PRESIDENT. If there is no objection the report will be received. The Chair hears none, and it is so ordered.

MR. PRESIDENT: Your Committee on Judiciary, to whom was referred the question as to the meaning and construction of the Act of the State Legislature calling this Convention, in regard to the fund or funds chargeable with the cost of printing, stationery, etc., necessary for said Convention, respectfully report, that we had the same under consideration, and that it is the opinion of the committee, that under the Act it is the duty of the Secretary of State to furnish the members of the Convention with stationery, and that the same is chargeable to the twenty-five thousand dollars appropriated "for stationery, fuel, lights, etc., for the Legislature and State officers," etc.

This conclusion is arrived at by construing the Act making the general appropriations with the Act calling the Convention. (See Stats. 1877-8, p. 1007, third item from bottom of page; same Stats., p. 1008, Sec. 2, and p. 763, Sec. 5.)

Reading these sections and provisions together lead us to the opinion above expressed.

Second—As to the printing, it is our opinion that it is chargeable to the one hundred thousand dollars appropriated for support of the State Printing Office. (See Stats. 1877-8, p. 1007, Sec. 1, twelfth item from top of page; see also same Stats. p. 765, Sec. 16,) by which the printing is directed to be done at the State Printing Office, and the Convention is not given control of it, nor required to audit the accounts thereof; but that power is confined to the pay of members, employés, etc.

This view is strengthened by the fact that the Controller's estimate for the State Printing Office for the two years ending June thirtieth, eighteen hundred and eighty, was the sum of seventy-five thousand dollars; (See last report of Controller, p. 131,) while the appropriation was one hundred thousand dollars. (See Stats. 1877-8, p. 1007, before cited.) This large appropriation leads us to the conclusion that the printing for the Convention was included; and this is strengthened by the fact, that there was only one hundred and fifty thousand dollars specially appropriated for the expenses of the Convention, and their pay was fixed at ten dollars per day, and the number fixed at one hundred and fifty-two members, while one hundred days are allowed them to sit; when it must have been apparent to the Legislature, that one hundred and fifty thousand dollars would have been greatly inadequate to pay all the expenses of the Convention for a much shorter time than one hundred days.

Third—All other expenses of the Convention must, in our judgment, be paid out of the special appropriation of one hundred and fifty thousand dollars made in the Act calling the Convention.

All of which is respectfully submitted.

S. M. WILSON,
Chairman Judiciary Committee.

October 23d, 1878.

Constitutional Convention of the people of the State of California:

Resolved, That under the law of the State calling this Convention, the stationery furnished members by the Secretary of State is chargeable to the appropriation of twenty-five thousand dollars made "for stationery, fuel, lights, etc.," and not to the special appropriation of one hundred and fifty thousand dollars made in said Act calling the Convention; and that the printing is chargeable to the appropriation of one hundred thousand dollars for the support of "State printing," and not against the one hundred and fifty thousand dollar appropriation aforesaid; and be it further

Resolved, That the President of the Convention be instructed to take such steps as he may deem necessary to be taken in the premises to carry into practical effect the foregoing resolution.

MR. MCCALLUM. Mr. President: During the call of the roll last night on the question of the eligibility of Judge Fawcett, I stated that I voted in the affirmative for the purpose of moving for a reconsideration, as under the previous question then pending, there was no opportunity otherwise to state the reason for my vote. While by parliamentary law such notice can be given on the day following, I am aware that our rules require that notice shall be given on the day on which the vote is taken. There was no chance to give any other notice before the adjournment. A rigid enforcement of the rule would prevent the making of the motion, but if the rule was liberally construed I might make it now. Without raising that point, however, I may, perhaps, be permitted to have a few minutes in the many hours that have been occupied on this question, here to state the grounds of my motion, and I hope the Chair will entertain it temporarily for that purpose.

THE PRESIDENT. Shall the gentleman have leave?

[Cries of "leave! leave!"]

MR. MCCALLUM. I make this statement because my vote was influenced by a different reason from any of those which were given here in that lengthy and able debate. While believing that we are bound by all the provisions of the present Constitution, and until a new one shall be ratified by the people, and utterly denying the right to disregard any part of it, I was satisfied that the authorities cited here at least raised a doubt whether the position of a member here was such an office as is contemplated by the Constitution. Especially in view of the fact that as it now provides a Convention can do nothing but propose a Constitution to the people. But in the Constitution, as made in eighteen hundred and forty-nine, it was provided that the Supreme Court Justices and the District Court Judges should be excluded from holding any other but judicial office during the term for which they were elected. That was amended in eighteen hundred and sixty-two, simply by adding County Judges. But the Constitution, as made in eighteen hundred and forty-nine, contained also this section in reference to Constitutional Conventions: Article ten, section two. "And if at any time two thirds of the Senate and Assembly shall think it necessary to revise and change the entire Constitution, they shall recommend to the electors of the next election for members of the Legislature to vote for or against the calling of a Convention, and if it shall appear that a majority of such electors voted in favor of calling such election, the next Legislature shall provide by law for calling a Convention, to be held within six months after the passage of such law; and such Convention shall consist of a number of members not less than that of both branches of the Legislature." And thus it ends. Under the Constitution of eighteen hundred and forty-nine, in which the District Judges were excluded, it provided for making a Constitution by the Convention itself, without its submission to the people. When that prohibition was made the Constitutional Convention in view was not only a legislative body, but the highest legislative body known to the law. It was for that reason that in eighteen hundred and fifty-six the amendment was made to this article ten, providing that any Constitution made by such Convention should be submitted to the people. The question might be raised whether it would not even then have had to be submitted any way. But the authorities show that at least thirty-four State Constitutions framed under similar circumstances in the United States in the last century, were never submitted to the people, according to Jameson. Therefore it was a necessity that the Constitution should be amended as it was, so as to require such submission for ratification. Therefore, believing that when the exclusion of District Judges necessarily meant from membership of such Convention, having the highest possible legislative powers, I feel compelled to vote accordingly, and against my inclination, in favor of retaining Judge Fawcett as a member. I need hardly say that I have no regret in being in the minority. On the contrary, personally I am satisfied that the majority have entertained a different view.

PETITIONS AND MEMORIALS.

MR. WICKES. Mr. President: I wish to present the following memorial from citizens of San Francisco, and ask that it be referred to the Committee on Preamble and Bill of Rights:

To the Constitutional Convention, to meet at Sacramento, California, on the twenty-eighth day of September, eighteen hundred and seventy-eight:

Believing that Almighty God is the source of all power and authority in civil government, that the Lord Jesus Christ is the Ruler of Nations, and that the revealed will of God is of supreme authority in civil affairs;

Remembering that this country was settled by Christian men, with Christian ends in view, and that they gave a distinctly Christian character to the institutions which they established;

Perceiving the persevering attempts which are made to prohibit the reading of the Bible in our public schools, to overthrow our Sabbath laws, to abolish the oath,

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prayer in our State Legislature, and other Christian features of our institutions, and so to divorce the Government from all connection with the Christian religion;

Viewing with grave apprehension the corruption of our politics, and the prevalent lack of moral and religious character in those who hold office in the State; and,

Believing that a written Constitution should contain explicit evidence of the Christian character and purpose of the State which frames it; and perceiving that the silence of the Constitution of the State, as well as of the United States, in this respect, is used as an argument against all that is Christian in the usage and administration of the government;

We, the undersigned, citizens of the State of California, petition your honorable body to frame the Constitution so that it shall suitably express our acknowledgment of Almighty God as the source of all authority in civil government, of the Lord Jesus Christ as the Ruler of Nations, and of His revealed will as of supreme authority, and thus indicate that this is a Christian commonwealth, and place all the Christian laws, institutions, and usages of the State on an undeniable legal basis in the fundamental law of the same.

THE PRESIDENT. It will be so referred.

COMMUNICATIONS FROM STATE OFFICERS.

THE PRESIDENT. The Chair is in receipt of the following communication from the Secretary of State, which the Secretary will read:

STATE OF CALIFORNIA, DEPARTMENT OF STATE,
SACRAMENTO, October 23d, 1878.

To the honorable President and members of the Constitutional Convention:

GENTLEMEN: In compliance with a resolution adopted by your honorable body on the eighteenth instant, I have the honor to furnish the following statement of the amount of stationery issued from my office upon requisition of the various members, officers, and committees of the Convention from the opening of the session up to and including Saturday, October 19th, to wit: Amount issued to members, $1,167 41; amount issued to officers and attachés, $212 24; amount issued to committees, $30 16; total, $1,449 81.

Very respectfully,

THOS. BECK, Secretary of State.

THE PRESIDENT. It will lie on the table. I also have a communication from the Surveyor-General; if there is no objection the reading will be dispensed with, and the document will be printed. Hearing none it is so ordered.

SURVEYOR-GENERAL'S OFFICE,
SACRAMENTO, CALIFORNIA, October 24th, 1878.

To Hon. J. P. Hoge, President of the Constitutional Convention:

SIR: In obedience to a resolution, passed by your honorable body, I have the honor herewith to submit the following statement.

WM. MINIS,
Surveyor-General.

The following shows the whole number of acres of land which have been certified or listed to the State of California by the Government of the United States, by reason of the following land grants and donations of land:

	Acres.
Swamp and overflowed lands	1,588,768.85
Grant of 500,000 acres	487,376.95
Seminary, or seventy-two (72) sections	40,445 06
Public building, or ten (10) sections	3,363.80
Grant in lieu of 16th and 36th sections	636,021.31
Agriculture and Mechanics' Art grant	140,759 92
Yosemite Valley grant	36,111.14
Mariposa "Big-Tree" Grove grant	2,589.76

The following shows the total cash value received by the State for lands sold by her under the following grants, as appears from the records of the State Controller:

	Principal.	*Interest.*
Grant of 16th and 36th sections and lands in lieu thereof	$1,201,640 18	$736,914 60
Grant of 500,000 acres	389,432 35	407,811 98
Total	$1,591,072 53	$1,144,726 58

Grant of sixteenth and thirty-sixth sections and lands in lieu thereof.

The area of the State is about 100,500,000 acres.

The area of lakes, islands, bays, rivers, swamp, and tide lands, is about 3,357,451 acres, which taken from the area of the State, leaves about 97,142,549 acres. This amount divided by eighteen (18), gives the area of the sixteenth and thirty-sixth sections and lands in lieu thereof, which amounts to about 5,396,808 acres.

About all the land listed to the State in lieu of sixteenth and thirty-sixth sections has been disposed of.

About 2,200,000 acres of this grant is unsurveyed.

All the swamp land that is surveyed is either sold or applied for. The proceeds of the sales of this land is paid to the County Treasurers of the counties in which it is situated.

The lands held under the grant of 500,000 acres have been wholly disposed of by the State.

MR. MCCALLUM. I ask that my vote be changed in regard to the Fawcett resolution.

THE PRESIDENT. If there is no objection the gentleman will be allowed to change his vote. The Chair hears none.

REPORTS OF COMMITTEES.

MR. SHOEMAKER presented the following report:

MR. PRESIDENT: Your Committee on Reporting and Printing, to whom was referred resolution number sixty-three, concerning certain inquiries as to the probable cost and the expediency of transcribing and printing the Journal of this Convention, have had the same under consideration, and herewith report the same back and recommend its adoption by the Convention.

The following is the resolution:

Resolved, That the Committee on Reporting and Printing be and it is hereby instructed to inquire into and report at an early day to the Convention, by resolution or otherwise, the expediency and the probable cost of inscribing, indexing, and printing the Journal of this Convention.

THE PRESIDENT. The question is upon the adoption of the resolution.

MR. LARKIN. I would like to have some member of the committee state what this is going to cost. I do not want to vote blindly in a matter of this kind.

MR. SHOEMAKER. This resolution was never adopted. It was introduced and referred to our committee, and we now report it back recommending its adoption. If the resolution is adopted by the Convention, then the committee will report upon the cost. It has nothing to do with the cost.

The resolution was adopted.

MR. HILBORN. Mr. President: I would like to make a motion out of order. The other day the Superintendent of State Printing sent in an account of the amount of money that the printing had cost up to date. It seems to me the cost was very large, and I would like to have that report referred to the Committee on Printing, that they may make an estimate, and see whether or not we are paying too much for printing.

THE PRESIDENT. It will be so referred.

MR. HILBORN presented the following report from the Committee on Mileage and Contingent Expenses:

MR. PRESIDENT: Your Committee on Mileage and Contingent Expenses, to whom was referred resolution number fifty-two, authorizing the President to appoint Porters for the committee rooms, beg leave to report, that since the introduction of this resolution we have taken occasion to examine into the whole question of the employment of attachés in this Convention, in order to see if some change could not be made in the interest of economy. To this end we addressed a note to the Sergeant-at-Arms, asking him to communicate to us his views upon the subject, and by his permission we hereby append his answer as a part of our report:

"To the Committee on Mileage and Contingent Expenses of the Constitutional Convention—Gentlemen: In reply to your request for a statement of what additional help I deem necessary for the performance of the work now necessary to be done for the Convention; also, to the advisability of dispensing with any of the present employés, I hereby present the following for your consideration: First, two additional Porters are necessary to care for the committee rooms and other work they may be detailed to do; second, that there is one Doorkeeper more and two Pages more than are actually necessary for that branch of the service. The help arranged in this way, and properly detailed, would, in my opinion, be more than sufficient to perform all the work necessary.

"T. J SHERWOOD, Sergeant-at-Arms.

"October 22, 1878."

Your committee fully concur in the views of the Sergeant-at-Arms, and since the Sergeant-at-Arms, by reason of his having charge of these Pages, has obtained a knowledge of their qualifications, and is able to judge as to who should be retained and who should be discharged, we recommend that he be clothed with power to designate the persons whose services can best be dispensed with, and we therefore recommend the adoption of the following resolutions:

Resolved, That the President appoint two Porters for the committee rooms, at a salary of four dollars per day each, payable out of the appropriation for the expenses of this Convention.

Resolved, That the services of one Doorkeeper and two Pages be dispensed with, and that the Sergeant-at-Arms designate the persons to be discharged.

We herewith lay before you a list of the attachés of the Convention, with the salary of each, in order that the Convention may be informed as to the daily expenses:

Name.	Office.	Per Diem.
J. A. Johnson	Secretary	$8 00
E. F. Smith	Assistant Secretary	6 00
G. A. Thornton	Assistant Secretary	6 00
E. L. Crawford	Minute Clerk	8 00
G. E. McStay	Journal Clerk	8 00
T. J. Sherwood	Sergeant-at-Arms	8 00
B. F. Chambers	Assistant Sergeant-at-Arms	6 00
M. F. Maloney	Doorkeeper	5 00
W. N. N. Fellows	Doorkeeper	5 00
Wm. Fleming	Doorkeeper	5 00
M. Barnes	Postmaster	4 00
Frank Laine	Mail Carrier (per month)	100 00
Henry Jones	Porter	4 00
Wm. Galt	Porter	4 00
J. D. Ricks	Page	3 00
H. Durner	Page	3 00
August Rose	Page	3 00
Mark Shipley	Page	3 00
W. Campbell	Page	3 00
J. E. Doack	Page	3 00
Cary Goods	Page	3 00
E. H. Morris	Page	3 00
		$101 00
		3 33
Total		$104 33

One hundred and one dollars per day, excluding pay of Mail Carrier, which is $100 per month.

Amount brought down	$104 33
Four committee clerks, at $5 per day	20 00
Total expenses of attachés	$124 33

HILBORN, Chairman.

THE PRESIDENT. The question will be on the adoption of the resolution.

MR. HILBORN. There are two resolutions. One says that the President shall appoint Porters of the committee rooms. They had better be voted upon separately.

THE PRESIDENT. The question is on the adoption of the first resolution:

Resolved, That the President appoint two Porters for the committee rooms, at a salary of four dollars a day, to be paid out of the appropriation for the expenses of this Convention.

MR. HILBORN. Our investigation shows first, that there is no doubt that these Porters are necessary. It may be said by some gentlemen that the committee rooms are now kept in good condition. This is true. The Sergeant-at-Arms, since the committees have been meeting, has had two men employed—without authority, it is true—but they have been employed and have been at work from early in the morning until late at night, and they have all they can do. I think this resolution should be adopted.

MR. GREGG. I would like to ask how long we will need these Porters—how long these committees will be in session? It will certainly not be long until the committee work will all be done up, and then there will certainly be no need for Porters.

MR. HILBORN. I will assure you that as soon as their services can be dispensed with I shall not stand in the way of their removal. But

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they are necessary at this time, as the various committees of the Convention are at work, and the rooms must be attended to.

The resolution was adopted by a standing vote: ayes, 62; noes, 43.

THE PRESIDENT. The Secretary will read the next resolution.

THE SECRETARY read as follows:

"*Resolved*, That the services of one Doorkeeper and two Pages be dispensed with, and that the Sergeant-at-Arms designate the persons to be discharged."

MR. HILBORN. Now, in regard to this resolution, the Committee on Contingent Expenses felt that this was a very painful duty to perform, to present a resolution, the adoption of which would turn some of the employés out of employment, but we felt that we were charged with the duty which we could not evade. Mr. President, we claim that we should manage the financial affairs of this Convention as we would our private affairs, and when it came to the knowledge of the committee that there were more employés than necessary, we could do nothing but inform the Convention of that fact. It is a very painful duty to turn off any of these employés, and we consider that we are showing no disrespect to the President when we took away that disagreeable duty and gave it to the Sergeant-at-Arms. We shall not feel that we have been snubbed if you vote the resolution down. We have no personal feeling in this matter. As to the matter of who shall designate these persons to be discharged, this will relieve the President of the Convention of a very unpleasant duty, and since the Sergeant-at-Arms has control of these employés and knows their efficiency, I think it would be a great deal better to leave the matter to him. That is all there is of the resolution. Let the Sergeant-at-Arms designate the ones to be discharged. I have no personal feeling in the matter, but I believe the business of the Convention can be carried on with less employés than we now have. We must not squander the money of the State, and we should manage the business of the State as we would our own private matters. I hope the resolution will be adopted.

MR. O'SULLIVAN. I move, as an amendment to that, to strike out the word "Pages" and read that two Doorkeepers be discharged.

MR. BARBOUR. I have a resolution to that effect which I desire to send up.

THE SECRETARY read the resolution, as follows:

Resolved, That the Sergeant-at-Arms be authorized to detail two Doorkeepers to take care of the committee rooms as Porters.

THE PRESIDENT. That resolution is in conflict with the resolution just adopted, and therefore it is out of order. The motion of Mr. O'Sullivan is to discharge two Doorkeepers and retain all the Pages. It is moved, in the shape of an amendment to the original resolution reported by the Committee on Contingent Expenses, to strike out "two Pages" and insert "two Doorkeepers." The question is on the adoption of the amendment.

MR. McFARLAND. I understand the resolution includes two Pages and two Doorkeepers.

THE PRESIDENT. No, sir; one Doorkeeper.

MR. HERRINGTON. I think the question should be taken on the Doorkeepers and then on the Pages.

MR. McFARLAND. Mr. President: I understand that there are only three Doorkeepers now, and certainly we want that many. Now, I find that some gentlemen are laboring under a great misapprehension about the duties of Doorkeepers. Now, we must either have three Doorkeepers or none at all. One would be of no avail, because there are three gates by which persons can enter on this floor. Now, the Sergeant-at-Arms has no secretary or clerk, and it seems to me that we should have at least three Doorkeepers. It looks to me rather a small thing to change our mind on this business, right in the middle of the session, in order to make a little show of economy, wasting ten dollars for every one saved. We have made up our minds how many employés we need, and I do not see how we are going to get along without them. Members need not be so afraid about exhausting the appropriation, they will all get their money anyway.

MR. SHOEMAKER. Mr. President: I understand that the resolution reported by the committee will save about ten dollars a day, and I don't think the Sergeant-at-Arms, for such a small consideration, should have so much trouble put upon him as to have to turn off these men.

MR. HILBORN. As I understand it, the Sergeant-at-Arms, if this were carried out, can so arrange the force that the business can be carried on without the services either of the Night Watchman, or any additional Doorkeepers. For instance, if one of the Doorkeepers is dispensed with, the Assistant Sergeant-at-Arms can tend one of the doors, or if he is engaged in other business, one of the Assistant Porters, or some of them, can be had to assist at the gates. We passed a resolution the other day placing all the Pages under the control of the Sergeant-at-Arms, and under that resolution he now has the control over them, so that he can assign one for night work, and there would be additional Night Watchmen enough on the force without any additional expense to the State. As I said before the committee has no feeling in the world about this. You can adopt the resolution or vote it down, or change it in any way, but the committee coming in possession of the facts that there were more employés now than are necessary, some of them ought to be discharged. You can do what you please with the resolution.

MR. STEDMAN. Mr. President: I hope that the amendment offered by the gentleman from San Francisco, Mr. O'Sullivan, will be adopted. I do not believe that the people of Sacramento are so troublesome and so fierce, and so desirous of getting hold of our papers and propositions, to carry them off, that we must have two or three gentlemen sitting by the gates to hold these doors and keep people out. I do not see any necessity for any Doorkeepers; at the same time, I have no objection to having one if it is actually necessary. Now, sir, I believe that two of the Doorkeepers can be detailed as Porters. There is no necessity for discharging any one, no necessity for hiring any one. There are some eminent gentlemen on this floor, whenever a question of economy is raised, who take the opportunity of throwing into the teeth of gentlemen who advocate economy, that we are afraid the funds are going to give out. I want to say to such gentlemen, as far as the delegates from San Francisco are concerned, we are desirous of completing our duties in this Convention as quickly as possible, and going home to our constituents. We are desirous that this work shall be done as soon as possible, but we want it done well, and we are not scared about the funds giving out. I, for one, am going to remain at my post until it is completed, money or no money. The gentleman says we will get our money anyway, that is, if the funds give out, so you see he is willing to go on and entail an extra expense on the State, and allow the State to pay it. We, being true economists, desire that those Doorkeepers be detailed as Porters, and I desire to say now once more, that we want to get through with this work as quickly as possible, but we are not afraid about the funds giving out. I hope the amendment will be adopted.

MR. TINNIN. It is a notorious fact that in almost all legislative bodies, when a man has been placed in a position, no matter how unnecessary he may be, it is next to impossible to remove him from the place. Now, sir, it is enough for me to know that a standing committee of this body, composed, as it is, of all the elements represented here, after a full investigation of this subject, they investigate every matter connected with it, and they come here with a report and tell you what these facts are, and sir, it is enough for me to know that the committee have unanimously arrived at that conclusion; I am willing to sustain the committee in that conclusion. It is evident here to us that there are too many attachés in this body at the present time, but few of the members know half of them, and if the committee, through the Sergeant-at Arms, desires to curtail the expenses of this Convention, I think by all means they should be sustained in their report, and I hope the report of the committee will be sustained as it is.

THE PRESIDENT. The Secretary will read the resolution.

THE SECRETARY read as follows:

"*Resolved*, That the services of one Doorkeeper and two Pages be dispensed with, and that the Sergeant at-Arms designate the persons to be discharged."

THE PRESIDENT. The gentleman from San Francisco, Mr. O'Sullivan, moves to strike out "two Pages," and insert "two Doorkeepers" instead of one. The question is not divisible under rule twenty-one.

The amendment was lost.

The resolution was then adopted by a standing vote—ayes, 74, noes, 34.

RESOLUTIONS.

MR. TULLY. I have here a resolution, in reference to Night Watchman, which I would like to have read and referred to the Committee on Contingent Expenses.

THE SECRETARY read as follows:

WHEREAS, As this Convention will be known to all future generations as a body that in all their acts exercised the most rigid economy, even to the discharging of, and refusing to pay, a Night Watchman, who had faithfully toiled for twenty-one nights; and,

WHEREAS, Since his discharge the desks of the members are nightly robbed of pens, pencils, stationery, and everything of value left there, thus depriving members of their use, and our glorious State of California of their value: and,

WHEREAS, It is necessary to maintain our future standing with unborn generations; therefore, be it

Resolved, That the President of this Convention be requested to commence, in alphabetical order, as the names are on the roll call, and name a member each night to act as Watchman in this chamber, and in the rooms adjoining thereto.

MR. EDGERTON. I move that the order be reversed, to commence at the bottom of the roll call instead of the head.

THE PRESIDENT. I rather think the resolution is out of order.

MR. LARKIN. Mr. President: I wish to offer the following resolution:

Resolved, That each member of this Convention, and each standing committee, be allowed stationery to the value of ten dollars, and no more.

Referred to the Committee on Contingent Expenses.

MR. LARKIN. I observe by the report of the Secretary of State that our stationery account amounts to about one thousand four hundred dollars. I am satisfied, Mr. President, that any member on this floor can get along with ten dollars worth of stationery, and no committee can certainly use more than that amount; therefore, I insist upon the resolution of that kind, so that each member will be limited in the amount of stationery he can draw. I think we should practice economy. I am for retrenchment and reform in the administration of the government.

THE PRESIDENT. It will be referred to the Committee on Contingent Expenses.

MR. JONES. I desire to offer an amendment to the resolution.

THE PRESIDENT. It has been referred to the committee. When it comes back you will have a chance to amend it.

PROPOSITIONS AND RESOLUTIONS RELATING TO THE CONSTITUTION.

THE PRESIDENT. Propositions and resolutions relating to the Constitution are now in order.

ON LEGISLATIVE DUTIES.

MR. BELL introduced the following proposition for incorporation in the article on legislative duties.

SECTION —. The selling of any kind of goods under false pretenses shall be punished as a felony, and it shall be the duty of the Legislature to provide, by appropriate legislation, for the enforcement of this section.

Referred to the Committee on Legislative Department.

JUDICIAL DEPARTMENT.

MR. BARTON introduced the following proposition to amend article six, section sixteen, of the old Constitution:

Amend article six, section sixteen, of the Constitution, by adding thereto the following:

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And shall not practice in any Court or cause, except when they are defendants or respondents, during the term for which they hold the office of Judge.

Referred to the Committee on Judiciary and Judicial Department.

ON EDUCATION.

MR. LINDOW introduced the following proposed amendment to the Constitution, on education:

ARTICLE —.

SECTION —. No married woman (with the exception of widows) shall be qualified to hold any position as teacher in any of the city, county, township, or district schools, under the control of this State.

Referred to the Committee on Education.

FORCED SALE OF PROPERTY.

MR. SMITH, of Santa Clara, introduced the following proposed amendment, prohibiting the forced sale of personal and real property, and securing rights of married women, etc.

SECTION 1. The personal property of any resident of this State, to the value of five hundred dollars, to be selected by such resident, shall be exempt from sale or execution, or other final process of any Court, issued for collection of any Court of any debt contracted after the adoption of this Constitution, except for the payment of taxes.

SEC. 2. Hereafter the homestead, of the value of three thousand dollars, belonging to any resident of this State, who is the head of a family, shall not be incumbered in any manner, while owned and occupied by him or her, for debts contracted after the adoption of this Constitution, except for taxes, laborers and mechanics liens, and securities for the purchase money thereof, and dues to the State, county, township, school, or other trust funds.

SEC. 3. If the owner of any homestead dies, leaving a family, the homestead shall be exempt from debt in the same manner as to deceased, for the benefit of the heirs thereof, and all rents and profits therefrom shall accrue to the benefit of said heirs.

SEC. 4. The real and personal property of any female in this State, acquired either before or after marriage, whether by gift, grant, or inheritance, devise, or otherwise, shall, so long as she may choose, be and remain the separate estate and property of such female, and may be devised or bequeathed by her the same as if she were unmarried.

Referred to the Committee on Land and Homestead Exemption.

MECHANICS' LIENS.

MR. MCCALLUM introduced the following proposition to amend the Constitution, so as to seecure the liens of mechanics, laborers, and others:

Amend as follows:

ARTICLE —.

SECTION —. Mechanics, artisans, laborers, and material-men shall have liens upon the building or structure upon which they have done labor, or for which they have supplied material, for the value of such labor and material. And the Legislature shall provide by law for the speedy and efficient enforcement of such liens, and making the owner responsible for such liens, notwithstanding any payment or settlement made by him with contractors or sub-contractors before such liens have been paid.

Referred to the Committee on Legislative Department.

REVISING THE CONSTITUTION.

MR. SHOEMAKER introduced the following proposition concerning revising or changing the Constitution:

ARTICLE —.

SECTION —. If at any time two thirds of the Senate and Assembly shall think it necessary to revise or change this entire Constitution, they shall recommend to the electors, at the next election for members of the Legislature, to vote for or against a Convention; and if it shall appear that a majority of the electors, voting at such election, have voted in favor of calling a Convention, the Legislature shall, at its next session, provide by law for calling a Convention to be holden within six months after the passage of such law; and such Convention shall consist of a number of members not greater than that of the less numerous branch of the Legislature. The Constitution that may have been agreed upon and adopted by such Convention shall be submitted to the people, at a special election to be provided for by law, for their ratification or rejection; each voter shall express his opinion by depositing in the ballot-box a ticket whereon shall be written or printed the words "For the new Constitution," or "Against the new Constitution." The returns of such election shall, in such manner as the Convention shall direct, be certified to the Executive of the State, who shall call to his assistance the Controller, Treasurer, and Secretary of State, and compare the votes so certified to him. If by such examination it be ascertained that a majority of the whole number of votes cast at such election be in favor of such new Constitution, the Executive of this State shall, by his proclamation, declare such new Constitution to be the Constitution of the State of California.

Referred to Committee on Future Amendments.

MR. MCCALLUM. I would like to hear it read.

THE PRESIDENT. Too late; it has been referred.

REPRESENTATION OF COUNTIES.

MR. JONES introduced the following proposed amendment to the Constitution, relating to representation of counties:

Proposition to amend the Constitution by incorporating in the appropriate section the following clause, viz:

Each organized county of this State shall be entitled to at least one Representative in the Assembly.

Referred to Committee on Apportionment and Representation.

RELATING TO PUBLIC SCHOOLS.

MR. JONES also introduced the following proposed amendment to the Constitution, relating to the public schools:

SECTION —. No language other than the English language shall be taught in the public schools of this State.

Referred to the Committee on Education.

MUNICIPAL ORGANIZATIONS.

MR. MORELAND introduced the following proposed amendment to the Constitution, relating to city, county, and township organizations:

ARTICLE —.

SECTION —. The Legislature shall provide by general laws for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the power of each class shall be defined by general laws, so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. The Legislature shall also make provisions, by general law, whereby any city or town existing by virtue of any local or special law, may elect to become subject to and governed by the general laws relating to such corporations.

SECTION —. The Legislature shall, by a law uniform in its operation, provide for and regulate the fees of all county officers, and for this purpose may classify the counties by population.

Referred to Committee on City, County, and Township Organizations.

IRRIGATION.

MR. O'SULLIVAN introduced the following proposition, to provide for a general system of irrigation:

SECTION —. The rivers and fresh water lakes of the State being absolutely public property, they should be utilized for the use and benefit of all the inhabitants thereof; and irrigation, being a prime necessity for the promotion of agriculture in many parts of the State, the Legislature shall provide by law for a general system of irrigation, by canals and ditches, to be controlled and managed by the State for the general good.

Referred to the Committee on Water and Water Rights.

RELATING TO PUBLIC OFFICES.

MR. O'SULLIVAN also introduced the following proposed amendment to the Constitution, relating to public offices:

SECTION —. All public officers shall receive moderate fixed salaries, and all fees shall be accounted for and paid into the public treasury. No extra compensation shall be paid to public officers.

SEC. —. It shall be unlawful for the Legislature, the county, or municipal governments to create any unnecessary or sinecure offices.

SEC. —. No State, county, or municipal officer shall be interested, directly or otherwise, in any contract for supplies furnished or work done for the State, county, or municipality.

Referred to Committee on Legislative Department.

RELATIVE TO MISCELLANEOUS PROVISIONS.

MR. HARVEY introduced the following proposition, relative to miscellaneous provisions:

Proposition to amend article eleven (11) of the Constitution, in relation to miscellaneous provisions, by inserting the following new section:

SECTION —. Official duties shall be so performed as to facilitate the proper enforcement of the laws of this State; and the Legislature shall have power to provide for deductions from the salaries or compensation of public officers who may neglect the performance of any official duty devolving upon them, or who may perform their duties in such a careless or incompetent manner as to embarrass or retard the due operations of law.

Referred to the Committee on Miscellaneous Subjects.

MILITIA.

MR. HARVEY also introduced the following proposition, to amend section one (1) of article seven (7), relative to the organization, etc., of militia:

SECTION 1. The Legislature shall provide by law for the effectual organization and discipline of the militia of this State, for the encouragement of volunteer corps, and the safekeeping of the public arms, in such manner as may be requisite and necessary to best promote and make efficient this arm of the public service to cope with any emergency that may arise; subject, however, to the paramount authority of the Constitution and laws of the United States over this subject.

Referred to the Committee on Military Affairs.

MEMBERS OF THE LEGISLATURE.

MR. CONDON introduced the following proposed amendment to the Constitution, in relation to members of the Legislature:

ARTICLE —.

MISCELLANEOUS PROVISIONS.

SECTION —. Every person who shall be chosen or appointed to any office of trust or profit under this Constitution, or any law made in pursuance thereof, shall, before entering on the duties thereof, take an oath to support the Constitution of this State and of the United States, and an oath of office.

SEC. —. Each member of the Senate and House of Representatives shall, before they proceed to business, take an oath or affirmation to support the Constitution of this State and of the United States, and also the following oath: "I, ——, do solemnly swear (or affirm) that, as a member of this Legislature, I will in all appointments vote without favor, affection, partiality, or prejudice, and that I will not propose or assent to any bill, vote, or resolution, which appears to me injurious to the people, or consent to any act or thing whatever that shall have

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tendency to lessen or abridge their rights and privileges as declared by the Constitution of this State."

Referred to the Committee on Miscellaneous Subjects.

APPRENTICE LAWS.

Mr. HEROLD introduced the following proposed amendment to the Constitution, in relation to founding and regulating apprentice laws:

Resolved, That the Legislature be called upon to found and regulate a strict apprentice law, compelling apprentices and their parents or guardians, by fine of money, or imprisonment, to the agreement made between such parties concerning such apprentices.

Referred to the Committee on Legislative Department.

CUMULATIVE TAXATION.

Mr. HUGHEY introduced the following proposed amendment to the Constitution entitled:

"CUMULATIVE TAXATION AS A REMEDY FOR LAND MONOPOLY."

Substitute for section thirteen, article eleven, of the present Constitution:

Sec. 13. Taxation shall be equal and uniform throughout the State. All property in this State shall be taxed at its market or cash value, such value to be ascertained by the Assessor of the county in which the property is situated; *provided*, that uncultivated or unimproved lands shall in every case be valued per acre as high as cultivated or improved lands of the same grade or class; *and provided further*, that all improvements shall be assessed separately from the lands on which they stand. There shall be added to the regular State, county, and town tax rate, established by law for each year, as follows:

For every person or corporation that owns more than one thousand acres and less than two thousand, ten per centum.

For every person or corporation that owns two thousand acres and less than three thousand, fifteen per centum.

For every person or corporation that owns three thousand acres and not more than five thousand acres, twenty-five per centum.

For every person or corporation that owns over five thousand acres and not more than ten thousand acres, fifty per centum.

For all persons or corporations that own over ten thousand acres, the taxes so regularly and legally assessed as aforesaid shall be doubled.

There shall be elected at the general election to be held on the first Wednesday of September, eighteen hundred and seventy-nine, and every two years thereafter, one citizen in each Congressional District of the State, to be voted for by districts separately, who shall, after being duly qualified, together with the Governor, the Surveyor-General, the Attorney-General, and the Controller of State, constitute a State Board of Equalization, with full power to alter or modify, increase or diminish the assessments returned by the County Assessors, both as to the entire valuation of the county, and as to individual assessments; but the State Board shall not have power to abate the per centum of increase on the regular and legal rates as prescribed in this section against the owners, individual or corporate, of lands in excess of one thousand acres. There shall be no appeal from the decisions of the State Board of Equalization.

Referred to the Committee on Revenue and Taxation.

RIGHTS OF FOREIGNERS.

Mr. FREEMAN introduced the following proposed amendment to the Constitution, in relation to the rights of foreigners:

Section —. Foreigners belonging to any race any of whose members are entitled to naturalization under the laws of the United States, and who are or who may hereafter become bona fide residents of this State, shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property, as native-born citizens. All other foreigners shall have no capacity to own real estate, nor to make wills, nor to acquire property by inheritance, nor to bring or maintain any action or proceeding in any Court of this State.

Referred to the Committee on Preamble and Bill of Rights.

IN RELATION TO LIBEL.

Mr. MANSFIELD introduced the following proposed amendment of section nine, of article one, present Constitution, in relation to libel:

ARTICLE I.

Sec. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions, or indictments for libels, the jury shall first render a verdict assuming the matter charged as libelous to be true, whether the matter charged as libelous was published with good motives and for justifiable ends, or that it was not so published. If the jury return a verdict that the matter was not so published, thereupon the defendant shall be deemed guilty as charged, and shall be sentenced as required by law. If the jury render said first verdict, that the matter charged as libelous was published with good motives and for justifiable ends, thereupon, and before the same jury, the truth may be given in evidence, and if it appear to the jury that the matter charged as libelous is true, the defendant shall be acquitted; if it do not appear to the jury to be true the defendant shall be convicted and sentenced as required by law; the jury shall have the right to determine the law and the fact.

Referred to the Committee on Preamble and Bill of Rights.

NOTICE OF RECONSIDERATION.

Mr. STEDMAN. I desire to give notice that on Monday I will move to reconsider the vote by which the resolution of this morning was adopted, changing the officers.

Mr. TINNIN. Did the gentleman vote in the affirmative?

The PRESIDENT. Did the gentleman vote in the affirmative?

Mr. STEDMAN. It makes no difference under rule thirty-seven, which reads as follows:

"On the day succeeding that on which a final vote on any proposition or resolution concerning the Constitution, or other resolution, has been taken, said vote may be reconsidered on motion of any member."

The PRESIDENT. The gentleman must have voted in the affirmative before he will be entitled to give the notice.

Mr. TINNIN. Let me read the rest of the rule which the gentleman omitted. I will read the entire rule. It reads as follows:

On the day succeeding that on which a final vote on any proposition, or resolution concerning the Constitution, or other resolution, has been taken, said vote may be reconsidered on motion of any member; *provided*, notice of intention to move such reconsideration shall have been given on the day on which such final vote was taken by a member voting with the majority; and it shall not be in order for any member to move a reconsideration on the day on which such final vote was taken. Such motion of reconsideration shall have precedence over every other motion, except a motion to adjourn. No notice of reconsideration shall be in order on the day preceding the last day of the session.

The very rule which the gentleman invokes says that the notice must be given by a member voting in the affirmative.

Mr. STEDMAN. I wish to read Cushing's Manual.

The PRESIDENT. The Chair has ruled the notice out of order under the rules.

Mr. STEDMAN. Then I wish to appeal from the decision of the Chair, and I desire to read from "Cushing's Law and Practice of Legislative Assemblies," page five hundred and seven.

Mr. ROLFE. I rise to a point of order.

The PRESIDENT. There is already one point of order; the gentleman from San Francisco, Mr. Stedman, will proceed.

Mr. STEDMAN. Cushing says: "When no division of the house takes place, all the members present are deemed to have voted with the majority, and any member may move a reconsideration." Now, no division of the house has taken place, and I must be deemed to have voted with the majority, and, therefore, my motion is in order.

The PRESIDENT. Rule thirty-seven supersedes that, and absolutely provides that a member must have voted with the majority before he can give notice, and the Chair so decides, from which decision of the Chair the gentleman takes an appeal.

Mr. STEDMAN. I withdraw the appeal.

ADJOURNMENT.

Mr. NOEL. I move that the Convention do now adjourn until Monday, at ten o'clock.

Mr. EDGERTON. I move to amend, that the Convention do now adjourn until Monday, at three o'clock.

The PRESIDENT. A simple motion to adjourn is not amendable.

The motion to adjourn was lost.

PROPOSITIONS AND RESOLUTIONS RELATING TO THE CONSTITUTION.

The PRESIDENT. Propositions and resolutions relating to the Constitution are still in order.

IN REGARD TO ALIENS.

Mr. RINGGOLD introduced the following proposition, to restrict privileges to persons ineligible to become citizens:

All persons ineligible to become citizens under the naturalization laws, or prohibited by international treaties, shall not enjoy such rights and privileges as are conferred upon native-born.

Referred to the Committee on Preamble and Bill of Rights.

MUNICIPAL ORGANIZATIONS.

Mr. HAGER introduced the following proposition to amend the Constitution, in regard to county, city, and town governments:

Section 1. The several counties of this State, as they now exist, are hereby recognized as legal subdivisions of the State.

Sec. 2. County seats shall not be removed by special law, but such removals may be provided for by general law. No county seat shall be removed unless two thirds of the qualified voters of the county shall, at a general election, vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in five years.

Sec. 3. No new counties shall be established which shall reduce any county to less than four hundred square miles, or to a population of less than ten thousand inhabitants; nor shall any new county be formed of less area or containing a less population; nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided; nor shall a county be divided, or have any portion taken therefrom, unless a majority of all the qualified electors of the county or counties affected, voting at a general election, shall vote therefor. New counties when created, or portions of a county when added to another county, shall be liable for and obliged to pay their just proportion of all debts and liabilities then existing of the county or counties out of which they are respectively formed or taken.

Sec. 4. The Legislature shall establish a system of county and township governments which shall be uniform throughout the State.

Sec. 5. County officers shall consist of Boards of Supervisors, Sheriffs, Coroners, Recorders of Deeds, Auditors, Clerks, Treasurers, Surveyors, District Attorneys, and such others as may be established by law, who shall receive such compensation and perform such duties as may be prescribed by law. No Sheriff or Treasurer shall be eligible for the term next succeeding the one for which he may be elected. County officers shall be elected as prescribed by law. No person shall be eligible to a county office unless he has been a citizen and a resident within the county for two years next preceding his election or appointment.

Sec. 6. The Legislature, except as otherwise in this Constitution provided, shall provide for the election or appointment of such county, township, and municipal officers as public convenience may require,

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with such duties as may be prescribed by law. It shall, by laws uniform in their operation, regulate the fees of all county officers, and for this purpose may classify the counties by population; and shall provide by law for the strict accountability of all county and township officers, as well for the fees which may be collected by them as for all public or municipal moneys which may be paid to them.

SEC. 7. Supervisors shall be elected ——.

SEC. 8. Corporations for municipal purposes shall not be created by special laws; but the Legislature by general laws shall provide for the incorporation, organization, and classification, in proportion to inhabitants, of cities and towns; and cities and towns heretofore incorporated or created by special laws may become organized under and subject to such general laws. Cities and towns, having a population of at least ten thousand inhabitants, may become incorporated under general laws whenever a majority of the electors thereof shall at a general election vote in favor of the same.

SEC. 9. In any county having a city therein containing over one hundred thousand inhabitants, the city and county governments thereof, with an area of less than four hundred square miles, may be consolidated into one municipal government, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent, shall be applicable to such consolidated governments. In consolidated city and county governments there shall be two Boards of Supervisors or houses of legislation; one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall be so classified that six shall be elected every two years. In the election of Supervisors by general ticket from the city and county at large, each qualified elector shall vote for no more than one half the number to be elected, and the persons having the highest number of votes shall be elected. Any casual vacancy in the office of Supervisor in either Board shall be filled by the County Judge.

SEC. 10. Any city having a population of more than one hundred thousand inhabitants, may frame ——.

SEC. 11. The term of any county, city, town, or municipal office shall not exceed —— years; and no person shall be eligible thereto unless he has been a citizen and resident of such county, city, or town, respectively, for —— years next preceding his election or appointment.

SEC. 12. No county, city, town, or municipal officer shall receive to his own use, in salary or fees, more than —— thousand dollars for any one year. Any such officer receiving fees shall make returns quarterly to the —— of all fees by him received and disbursed, stating the same fully in detail, verified by his oath; and for any statement or omission in such return, contrary to truth, such officer shall be guilty of perjury, and may be prosecuted and punished therefor as prescribed by law. The Legislature shall also provide for the removal from office of county, city, town, and municipal officers, for willful, corrupt violation or neglect of official duty.

SEC. 13. The compensation or fees of any county, city, town, or municipal officer shall not be increased after his election or during his term of office; nor shall the term of any such officer be extended beyond the period for which he was elected or appointed.

SEC. 14. No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

SEC. 15. Taxes for county, city, town, and school purposes may be levied on all subjects and objects of taxation; but the valuation of property therefor shall not exceed the valuation of the same property for State purposes.

SEC. 16. The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

SEC. 17. The Legislature shall not delegate to any special commission, private corporation, company, association, or individual, any power to make, control, appropriate, supervise, or in any way interfere with, any county, city, town, or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments, or perform any municipal functions whatever.

SEC. 18. No State office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by law, and the public interest demands it, appoint such officers.

SEC. 19. Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

SEC. 20. All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall immediately on the receipt thereof be deposited with the Treasurer, or other legal depositary, to the credit of such city, town, or other corporation respectively, for the benefit of the funds to which they respectively belong.

SEC. 21. The making of profit out of county, city, town, or public school money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

SEC. 22. No county, city, town, township, Board of Education, school district, or other political or municipal corporation, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for them respectively for such year, without the assent of two thirds of the voters thereof voting at an election to be held for that purpose; nor in cases requiring such assent shall any indebtedness be incurred (except by a county to erect a Court-house or jail) to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes, previous to the incurring such indebtedness; unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within twenty years from the time of contracting the same.

SEC. 23. No county, city, town, or other public or municipal corporation, by a vote of its citizens or otherwise, shall become a subscriber to the capital stock, or a stockholder in any corporation, association, or company, or make any appropriation, or donation, or loan its credit to, or in aid of, any person, corporation, association, company, or institution.

SEC. 24. No law shall be passed by the Legislature granting the right to construct and operate a railroad within any city, town, village, or on any public street or highway thereof, without the consent of the municipal or other proper local authorities having the control of such street or highway proposed to be occupied by such railroad.

SEC. 25. Before any public work or improvement of any description whatsoever shall be made or done, in any city, in, upon, or about the streets thereof, or otherwise, the cost and expense of which is made chargeable or may be assessed upon private property by special assessment, an estimate of such expense shall be made, and an assessment, in proportion to benefits, shall be made and levied on the property to be benefited, and shall be collected and paid into the city treasury before such work or improvement shall be made, or any contract for letting or doing the same shall be authorized or performed.

SEC. 26. The Legislature shall not pass any local or special law in the cases following:

Regulating the affairs of counties, cities, towns, townships, wards, city or county Boards of Education, school districts, or other political or municipal corporation or subdivision of the State;

Authorizing the laying out, opening, altering, maintaining or vacating roads, highways, streets, alleys, town plats, or parks;

Relating to cemeteries, graveyards, or public grounds not of the State;

Locating or changing county seats;

Incorporating cities, towns, or villages, or changing their charters;

Creating offices, or prescribing the powers and duties of officers in counties, cities, towns, townships, or school districts;

Regulating the fees or extending the powers and duties of county or municipal officers;

Regulating the management and maintenance of public schools, the building or repairing of school houses, and raising of money for such purposes;

Extending the time for the assessment or collection of county, city, or other municipal taxes, or otherwise relieving any Assessor or Collector of county or city taxes from the due performance of the official duties, or their securities from liability;

Legalizing the unauthorized or invalid acts of any officer or agent of any county or municipality thereof;

Directing the payment of money out of the treasury, or by any officer, of any county, city, or town, without the consent of such county, city, and town.

Referred to the Committee on City, County, and Township Organizations.

ADJOURNMENT.

MR. EDGERTON. I move that the Convention now adjourn until three o'clock on Monday. It is only one hour after the regular time, and it will benefit the gentleman from San Joaquin, Mr. Terry, and the gentleman from Santa Clara, Mr. Laine, who live on the line of that road, and who cannot get here until forty-five minutes past two, and it seems to me, that gentlemen might be a little accommodating.

The motion prevailed by a vote of eighty-one ayes, and at eleven o'clock and ten minutes, the Convention adjourned.

THIRTY-FIRST DAY.

SACRAMENTO, Monday, October 28th, 1878.

The Convention met pursuant to adjournment, at three o'clock P. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Chapman,	Evey,
Ayers,	Charles,	Farrell,
Barbour,	Condon,	Fawcett,
Barry,	Cowden,	Filcher,
Barton,	Cross,	Finney,
Beerstecher,	Crouch,	Freud,
Belcher,	Davis,	Garvey,
Bell,	Dean,	Glascock,
Biggs,	Dowling,	Gorman
Blackmer,	Doyle,	Grace,
Boggs,	Dudley, of San Joaquin,	Graves,
Boucher,	Dudley, of Solano,	Gregg,
Brown,	Dunlap,	Hale,
Burt,	Edgerton,	Hall,
Campbell,	Estee,	Harrison,
Caples,	Estey,	Harvey,

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Heiskell,	McFarland,	Stedman,
Herold,	McNutt,	Steele,
Herrington,	Mills,	Stevenson,
Hilborn,	Moffat,	Stuart,
Hitchcock,	Moreland,	Swenson,
Howard,	Morse,	Swing,
Hughey,	Murphy,	Terry,
Hunter,	Nason,	Thompson,
Inman,	Nelson,	Tinnin,
Jones,	Neunaber,	Townsend,
Joyce,	O'Donnell,	Turner,
Kelley,	O'Sullivan,	Tuttle,
Kenny,	Overton,	Vacquerel,
Keyes,	Porter,	Van Dyke,
Kleine,	Prouty,	Van Voorhies,
Laine,	Pulliam,	Walker, of Tuolumne,
Lampson,	Reddy,	Waters,
Larkin,	Reed,	Weller,
Larue,	Rhodes,	Wellin,
Lavigne,	Ringgold,	West,
Lewis,	Rolfe,	Wickes,
Lindow,	Schell,	White,
Mansfield,	Schomp,	Wilson, of Tehama,
Martin, of Alameda,	Shoemaker,	Wilson, of 1st District,
McCallum,	Shurtleff,	Winans,
McComas,	Smith, of Santa Clara,	Wyatt,
McConnell,	Smith, of 4th District,	Mr. President.
McCoy,	Soule,	

ABSENT.

Barnes,	Huestis,	Shafter,
Berry,	Johnson,	Smith, of San Francisco,
Casserly,	Martin, of Santa Cruz,	Strong,
Eagon,	Miller,	Sweasey,
Freeman,	Noel,	Tully,
Hager,	Ohleyer,	Walker, of Marin,
Holmes,	Reynolds,	Webster.

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Ohleyer, Noel, and Smith, of San Francisco.

Leave of absence for three days was granted Mr. Tully.

Indefinite leave of absence was granted Mr. Holmes, on account of sickness.

THE JOURNAL.

The Journal of Saturday was read.

Mr. LARKIN. I see that the resolution offered by Mr. Tully on Saturday has been put in the Journal. I understood that the proposition was ruled out of order, and if it was, it has no business in the Journal. I move to amend the Journal so that that resolution be stricken out.

The PRESIDENT. It will be stricken out. It was ruled out of order.

Mr. McCALLUM. It seems that some matters get into the Journal very improperly, and as this Journal is to be corrected, I understand that by unanimous consent the Convention will agree to amending the Journal, also, in respect to certain entries that were made about a week ago, about a certain owl. I ask that the Journal be corrected so that nothing will appear in it upon that subject. Such things have no business in the Journal.

The PRESIDENT. With the unanimous consent of the Convention, the Chair will direct the amendments to be made.

So ordered.

Mr. LARKIN. I believe it to be the sense of this Convention, and I will move that the President, before signing the Journal, examine it, and strike out any matter that is not pertinent.

The Journal was then approved as corrected.

DOORKEEPER AND PAGES.

Mr. STEDMAN. I ask leave to make a motion out of order. Mr. President: I move to rescind the second resolution reported by the Committee on Mileage and Contingent Expenses, adopted last Saturday. The resolution was as follows:

"*Resolved*, That the services of one Doorkeeper and two Pages be dispensed with, and that the Sergeant-at-Arms designate the persons to be discharged."

The reason that I desire to make that motion is that if it is carried, which I have no doubt it will be, I desire to offer a resolution. Now, Mr. President, I am satisfied that a great many on last Saturday voted under a misapprehension. From conversations I have had with several gentlemen belonging to the Convention, I am satisfied that there is a great dissatisfaction at our action in adopting that resolution, from the fact that by the adoption of the resolution two small boys are to be discharged. It was asserted by one of the Committee on Contingent Expenses that they did it on the ground of economy. Now, we find that by the adoption of the resolutions on Saturday, one Doorkeeper, at five dollars a day, and two Pages, at three dollars a day each, were discharged. Total, eleven dollars. Then two Porters were appointed at four dollars a day each, making eight dollars a day, and the actual saving would be only three dollars a day, which is very small. I do not, for myself, and I believe a majority of this Convention do not, desire to see two small boys discharged to make so small a saving. Furthermore, Mr. President, I believe that we have enough help in this Convention as it at present stands, if there is a different arrangement made. The resolution I propose to offer would be this:

Resolved, That the Sergeant-at-Arms detail two of the Doorkeepers as Porters and two of the Pages as Doorkeepers for the side doors.

I hold that these side doors can be properly attended by two Pages as well as by two Doorkeepers, and I do not propose that we shall discharge either one of the gentlemen at present occupied as Doorkeepers, but that they be detailed as Porters. I think that would give satisfaction to every member of the Convention, and two small boys would not be discharged. I believe that the most of these boys whom we have employed here belong out of this city. They have come here at some expense, and perhaps some of them have been to some expense in appareling themselves in a neat manner so that they might serve as attachés, and, Mr. President, I really hope that the Convention will rescind this motion and adopt the resolution.

Mr. ROLFE. Before I cast my vote to detail a Doorkeeper here to porter work, I shall want to know whether that Doorkeeper is going to accept the service as Porter. We have employed them here as Doorkeepers. The position of Porter may not be acceptable to them. I understand that the gentleman is going to follow up his motion with a resolution to detail two of our Doorkeepers to act as Porters. I do not believe it is right to detail a Doorkeeper to act as Porter unless we have his consent. I think the proper way is to discharge them from one employment and then, if the President sees fit to appoint the same gentleman for another position, and that gentleman is willing to accept it, let the appointment be made. As regards this argument in relation to these small boys, if we do not need them here, I am in favor of discharging them, whether they are small boys or not. The argument that they are small boys has no weight with me. If we need eight Pages, retain them; and if we do not, dispense with them.

Mr. WINANS. Mr. President: I do not sympathize with the spirit of the resolutions which would exclude these boys; nor do I think that this subject should be treated with either wit or levity. It seems to me a grave question of duty. When these officers of the Convention were elected, it was certainly understood at that time that they were elected for the session. Their permanency was regarded, in a moral light at least, as being quite as enduring as our own. They were elected as officers of the Convention; not as persons to be appointed for a period of time and then to be discharged or expelled. We undertook, I think, a duty towards them, to preserve them in the positions to which we have elected them—not for a day or week, but for the full term of service. Now, sir, viewing it in that light, I consider that it is unjust towards these youths to oust them at this time. No one knows where the axe will fall. Out of eight Pages that we have now two are to be ostracised, and the poor little tremblers—I beg the gentlemen's pardon for sympathizing with youth—are now waiting, each, to see whether it is going to be his fate or not to be the victim. Now, sir, contemplating it as a question of duty, I think that when the boys came here and we put upon them the seal of our approval and employment, that we made it conditional upon them to remain during the period of the session.

Further, those boys, though little children, are the representatives of families. I believe that there is not one of them who is not the support of an aged parent or of relatives, who are dependent upon these little services for their livelihood. Are we going to make a warfare upon children? They are children. Look at it in a spirit of economy. Two boys, with a salary of three dollars a day, for sixty days—altogether three hundred and sixty dollars to be saved by this Convention. Now, sir, I favor any laudable economy. When efforts are made by the Convention to restrict and restrain expenses, I am an ardent coöperator and sympathizer. Whatever we can do to carry on our affairs in the most economical form in which they can be administered with decency I certainly favor; but what is the economy reached here? The saving is about three hundred and sixty dollars, so far as these boys are concerned. This blow will not fall again. They are the only persons to be selected during the whole term of this Convention for a visitation so unreasonable as this. There are reasons, which I presume are known to every member, which render it doubly disastrous to these boys. Who of them believed, when he was elected or appointed by the order of this Convention, through the medium of the President, that his position was not permanent? Who of us believed that it was not permanent? We understood that it was at the time. Now, sir, what are we about to do; dismiss two little boys? These boys have needy parents behind them, and it is really a warfare upon women and children to save the sum of three hundred and sixty dollars. I say that this is false economy, viewed merely as a question of finance. I say that it appeals to the good sense of every member, and it is a duty of this Convention to retain them in the employment for which we have selected them throughout the session. In the name of all that is sympathetic, I ask that the Convention may rescind the order, because it was certainly founded upon want of reflection, it seems to me. It was beginning at the wrong end. Strike men, if the blow is to fall, not women and children. It amounts to that. You know not the amount of suffering this action might entail. Two of them are to be sent out from our midst, while the rest remain. There is no criterion by which to decide who should be sent out, and there is no propriety in sending any one. The amount saved would be reaped by ourselves. Is it a saving to change the current of this money, and would it go further towards paying the delegates? Are they afraid they will not realize the entire return? Is there any one in this whole assemblage who could not afford to give two dollars from his pocket, from the money that he receives here, to aid these boys in carrying on the work to the end of the session? I say that this resolution was conceived in a spirit of false economy, and was carried out at the expense of those finer feelings and tender emotions which are the ornaments of human nature.

Mr. TINNIN. I had no desire to make any remarks on this question, for the reason that I consider it but a small affair, something that should be below the dignity of this body; but after the remarks that have been made by the gentleman from San Francisco, Mr. Winans, I desire to make a few remarks in reply to that honorable gentleman.

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Now, Mr. President, I differ from him in regard to the position that he places himself in here, and the other members in this body. We are not sent here by the people of this State to establish an almshouse or a place of charity. If the people desire to go into that kind of business, perhaps they would have sent other members here than those that are here. The law that authorizes us to assemble only allowed us four Pages, now we have eight. When we endeavor to curtail the expense of this body, we are met with that universal cry of the persecution of women and children. Now I came here not to persecute anybody, much less women and children, but I came here to perform a duty to the State of California, and not to serve any particular individual. If there is charity to be dispensed, I presume the members of this body will go down in their pockets and pay for it, and I hope that we will not persecute the State, at least, in that direction.

MR. BEERSTECHER. Mr. President: I desire to say a few words upon this subject, because I have taken the trouble and time to examine it, and fully indorse the sentiments of the gentleman from San Francisco, Mr. Winans, and I am in favor of the resolution offered by Mr. Stedman. I know it to be a positive fact, sir, that these young men are, in many instances—in fact, a majority of the cases—the support almost entirely of families in this State. I know that when the President appointed these young men, that he looked particularly to the matter; that he did not appoint them by reason of any political influence, but that he appointed them because they were worthy boys, and because they had aged parents, widowed parents, and, in one case, one of the boys has a blind father. The Convention gave to the President the power to appoint these boys. To-day we have got upon our standing rules that power vested in the President, and I do not see that we have got any right, in any such way, to tear it away from him. These boys were appointed—and the gentleman from San Francisco is correct—there was an implied understanding that these boys should remain here until the end of the session. Some of them are not residents of Sacramento. They come from other towns in this State, and they are here for the purpose of bettering their condition, hoping to be enabled to better it financially and to better it physically. It is a school for them, and they are aiding and assisting their destitute and aged parents. This leaves the whole power of expulsion in the hands of the Sergeant-at-Arms, for he dictates, and one goes, and the other remains. I will say that I should not like to see that boy who has a blind father expelled from here, and that blind father deprived of the support of that son. It is one of the American principles to give the boys a chance, and I shall always vote to give the boys a chance, and I hope that these boys will be allowed to remain here, and that these few paltry hundred dollars will go to these boys and their needy parents. This Convention can never do a nobler act, and besides, it seems to me, that this is a matter for the President—the appointive power.

The resolution was rescinded.

PETITIONS.

MR. KELLEY. I hold in my hand a petition from several religious denominations, signed by about eighteen hundred persons, protesting against the use of the word "Sunday," in the proposed Constitution. I believe the proper committee to have it referred to has already made a report, and I desire to introduce it and have it referred to the Committee of the Whole, and laid on the table until the question shall come up:

To the honorable delegates of the Constitutional Convention of the State of California, Sacramento:

At the annual meeting of the Conference of Seventh-day Adventists of the State of California, held at Yountville, Napa County, September fifth, eighteen hundred and seventy-eight, the following preamble and resolutions were adopted:

WHEREAS, An effort is being made, by those who observe the first day of the week as the Sabbath, to have incorporated in the new Constitution of the State of California a clause recognizing the said first day of the week as the Sabbath, and requiring the Legislature to enforce its observation by legislative enactment; and,

Whereas, There is not in the entire Bible, either Old or New Testament, a single precept, requiring the observance of the first day of the week as a Sabbath or holy day; and,

Whereas, There is not in either the Old or New Testament a single record of the first day of the week ever having been observed as a Sabbath, or as a holy day, by either Christ, the apostles, or early Christians; and,

Whereas, The seventh day of the week, commonly called Saturday, is the only weekly Sabbath referred to in either the Old or New Testament; and,

Whereas, There is not to be found in the entire Bible any text of scripture from which even a reasonable inference can be drawn that the fourth commandment of the decalogue, which requires the observance of the seventh day, has been abrogated and that the Sabbath has been changed; and,

Whereas, There exists in this State a large body of Christians (the Seventh-day Adventists), who are good and law-abiding citizens, who observe the seventh day of the week as the Sabbath, as required in the Bible; therefore,

Resolved, That this Conference appoint a committee to visit the Convention and set before it the facts regarding the religious sentiments and practices of Seventh-day Adventists, and to endeavor if possible to induce the Convention to abstain from incorporating in the said Constitution any clause that shall in any way give preference to the religious opinions of any religious body, or that shall in any way bind the conscience of any person, or that shall in any way interfere with the religious opinions of any person.

Resolved, That said committee be authorized to circulate petitions relating hereto for signatures.

Now, therefore, we, the undersigned citizens of the State of California, in accordance with the principles set forth in the foregoing preamble and resolution, respectfully petition your honorable body that the Constitution of this State, in reference to the Sabbath day, and all other religious questions, be framed in harmony with the principles of the Constitution of the United States, believing the free exercise of conscience in religious faith and practice to be the acme of republican government.

Referred to the Committee of the Whole, to be taken up with the report of the Committee on Preamble and Bill of Rights.

MR. HERRINGTON. I desire to offer a couple of propositions with reference to the Constitution, if there is no objection.

COMMUNICATION ON CORPORATIONS.

THE PRESIDENT. The Chair has received a communication from the Secretary of State, in response to the resolutions passed by the Convention on the eighteenth and twenty-second instant. The Secretary will read it.

THE SECRETARY read:

STATE OF CALIFORNIA, DEPARTMENT OF STATE,
SACRAMENTO, October 26th, 1878.

To the President and members of the Constitutional Convention:

GENTLEMEN: In response to the resolutions passed by the Convention on the eighteenth and twenty-second instants, calling upon me for information in respect to the corporations formed under the laws of this State, I have the honor to reply as follows:

I am not aware of any law requiring corporations going out of existence to furnish to the office of the Secretary of State any statement evidencing that fact; and there is no official data in my office that would furnish information on that point; therefore, "the number of corporations *now existing* in the State of California," as required by the first subdivision of the resolution cannot be ascertained.

As the possibility of answering the second and third subdivision of the resolution rests upon the possibility of answering the first, it follows that neither the capital stock nor the places of business of corporations now existing can be stated.

Assuming that the resolution requires only the number, etc., of articles of incorporation *on file* in this office, I shall give that information to the best of my ability.

The number of articles of incorporations on file is nineteen thousand four hundred and seventy-five, and their classification is as follows:

Newspaper, artesian well, race track, aerial navigation, homestead, railroad, State and county fair, district fair, ice, oil, acids, quicksilver, fruit, wood, hotel, insurance, wine, ship building, arts, sewing machine, iron, flume, building, peat, toll roads, lead, assaying, steam, commercial, land, bathing, coal, park, cigar, horticultural, rope, reclamation, glove, reduction works, cloth, real estate bureau, wool, fertilizing, watch, fire, jewelry, gas, medical, stage, stone, transportation, wharf, irrigating, liquor, chemical, linen, warehouse, soda water, iron, theater, brick, paving, tobacco, packing, raisins, furniture, powder, water, labor exchange, sugar, marble, boat club, sulphur, river, cemetery, ditch, express, cement, school, coöperative, lime, mills, street railroads, danger signal, glass works, granger, hall, sportsman's club, jockey club, vineyard, fire-arms, leveeing, ferry, oyster, canning, wood, ship building, banks, churches, mining, carriage and wagon, mills, laundry, botanic garden, electric power, wire works, bridge building, steamboat building, poultry and game dealers, hack and cab, dredging, musical, live stock, telegraphic, brewing, tunnel, canal, lumber, printing, publishing, colleges, societies, agricultural, mechanical.

The resolution, in its second and third subdivisions, calls for a statement of the "aggregate amount of the capital stock of all said corporations, and the aggregate amount of said capital stock of each class thereof," and a "detailed statement of the principal places of business and location of the principal offices of said corporations."

I most respectfully submit to your honorable body, that a compliance with so much of the resolution as is above quoted is impossible with the clerical force at my disposal. The aggregate of the certificates of incorporation on file in the office of the Secretary of State, number nineteen thousand four hundred and seventy-five. These certificates are recorded in forty-three large volumes, without regard to their classification. All of my predecessors adopted this practice, and it has been followed by me. I am also requested to give a "detailed statement of the amount of capital stock actually paid up by all said corporations."

Prior to the adoption of the Codes, the only corporations organizing under the laws of this State, which were required to make any statement in respect to the amount of their capital stock actually paid up, and to furnish evidence thereof to the Secretary of State, were the following, to wit: railroad companies, and steam navigation companies.

Plank and turnpike road companies, and bridge companies, were required to file a showing of this character with County Clerks, and to furnish the Secretary of State with a certificate that they had complied with the law.

The long list of other companies having the right to incorporate, and whose certificates of incorporation occupy the great bulk of the books appropriated to their record in my office, were not required to furnish the Secretary of State with any evidence in respect to the payment of any portion of the capital stock. The Codes require "the articles of incorporation of any railroad, wagon-road, or telegraph association" to state "that at least ten per cent. of the capital stock subscribed has been paid in to the Treasurer of the intended corporation." All others seem to be exempt from the requirements.

Neither the books of the office nor the indexes to the contents thereof, have been so kept as to enable any one to segregate the certificates of such incorporated companies as have been required by law to exhibit the amount of capital stock paid in, from certificates not required to make such showing, hence it must be manifest to the Convention that a vast amount of clerical labor would be required to comply with this request in this particular, as each and every certificate would have to undergo a critical examination.

The statutes of the State define my duties with unmistakable particularity, and the Legislature, in making appropriations to meet the current expenses of my office, has dealt with me with rigid exactness. There is no Urgent Necessity Fund at my disposal, to meet extraordinary calls upon my clerical force. If I were to detail a sufficient force to perform the duties required by the resolution, other duties imposed by the statutes would necessarily be left unperformed.

I assume that the information sought by the Convention is important in the interest of the people of the State, to enable the Convention to act understandingly upon some contemplated provision of the fundamental law. In this aspect, and being most desirous to facilitate by any means in my power the purposes of the Convention, I most respectfully request the appointment of a select committee to confer with me in respect to the best mode that can be adopted to lay before the Convention the information which it seeks. I have the honor to remain,

Your obedient servant,
THOMAS BECK,
Secretary of State.

MR. HALE. It is very difficult for many members on this floor to hear the reading of any document at the Clerk's desk, notwithstanding the Clerk reads just as well as any gentleman reads. I have therefore but imperfectly heard the reply that has been made by the Secretary to the resolution; in fact, to the two resolutions that have heretofore been adopted and addressed to him by this body. From what I could catch of the report, I think it contains some valuable information and suggestions. Now, sir, I believe the whole subject of corporations of the State of California is a very interesting and suggestive subject to the people at large. Both for their information and for the information of this Convention, I rise to move that the report be printed and laid upon our desks, so that the people as well as ourselves may know its contents. I suggest four hundred and eighty copies, as the rules provide.

The motion prevailed, on a standing vote—ayes, 62; noes, 53.

PROPOSITIONS.

THE PRESIDENT. The next order of business is the introduction of propositions and resolutions relative to the Constitution.

CHINESE.

MR. ESTEE introduced the following proposed amendment to the Constitution, relative to foreigners who cannot become citizens:

SECTION —. No person shall hereafter be permitted to come to this

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State and reside permanently therein who, by the present laws of the United States cannot become a citizen of the United States and of this State; and the Legislature shall make suitable provisions to enforce this section.

Referred to Committee on Chinese.

ENACTMENT OF LAWS.

Mr. HERRINGTON introduced the following proposed amendment to the Constitution, relative to enactment of laws:

LEGISLATIVE DEPARTMENT.

Section —. Every law enacted by the Legislature shall have but one subject, and that shall be embraced in the title. No law shall be revised or amended by its title; but in such case the Act revised or section amended shall be reënacted and published at length. Before final passage every joint resolution or bill shall be read at length three times in each house. Each reading of a bill or resolution in each house shall be on a different day. On the final passage of all bills and joint resolutions the vote shall be taken by ayes and noes, and be entered on the Journal. Every bill and joint resolution shall be printed before being voted upon. No bill or joint resolution shall become a law or be in force without the concurrence of a majority of the members elected to each house.

Referred to Committee on Legislative Department.

JURY SYSTEM.

Mr. CAPLES introduced the following resolution:

Whereas, Various amendments and propositions have been presented to this Convention looking to changes or modifications of the jury system; therefore,

Resolved, That the Committee on Judiciary be instructed to inquire at its earliest convenience whether the provisions of the Constitution of the United States relating to trial by jury apply to State Courts and the administration of State laws.

POWER OF MUNICIPAL CORPORATIONS.

Mr. HERRINGTON offered the following proposed amendment to the Constitution, restricting the power of municipal corporations, etc., from contracting debts and creating liabilities.

LEGISLATIVE DEPARTMENT.

Section —. It shall be the duty of the Legislature to provide by law for the organization of cities and incorporated towns and villages, and to restrict their powers of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts and liabilities by such municipal corporations; and no municipal corporation or political subdivision in this State shall create any debt or debts, liability or liabilities, that shall singly or together exceed two and one half per centum of the aggregate true cash value of the property in such municipal or political subdivision subject to taxation.

Referred to Committee on Legislative Department.

DISQUALIFICATION OF JUDGES.

Mr. GRAVES introduced the following proposition declaring the disqualification of Judges, and providing for the appointment of special Judges in certain cases:

Section —. No Judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity within the third degree, computed according to the rules of the civil law, or where he shall have been attorney or counsel in the case. When a Judge of a Superior Court is disqualified by any of the causes aforesaid, the parties may, by consent, appoint a proper person to try their case; or, upon their failure to do so, a competent person may be appointed to try the case in the county or city and county where it is pending, in such manner as may be prescribed by law. The rulings and decisions of the person so appointed shall have, as to such case, the same force and effect as though made by a regular Judge of the Court. The disqualification of Judges of the inferior Courts or tribunals shall be remedied, and vacancies in their offices shall be filled as prescribed by law.

Referred to Committee on Judiciary and Judicial Department.

ASSESSMENT OF LANDS.

Mr. FAWCETT introduced the following proposed amendment to the Constitution, relative to the assessment of lands, to be incorporated in the article on taxation and revenue:

Section —. Every tract of land containing within its boundaries more than one government section, shall be assessed for the purpose of taxation by sections or fractional sections; and where the section lines have not been established by authority of the United States, the Assessor and County Surveyor shall establish the section lines in conformity with the government system of surveys as nearly as practicable. Each section or fractional section shall be valued and assessed separately; and for the purposes of subdividing and assessing, the Assessor and Surveyor and their assistants, may enter upon any land within their respective counties.

Referred to the Committee on Revenue and Taxation.

CHINESE.

Mr. O'DONNELL offered the following resolution:

Resolved, That it is incumbent upon this Convention to incorporate in the new Constitution a new section which shall forever disqualify aliens of Asiatic descent—first, from exercising the right of suffrage; second, from holding and conveying real estate; third, testifying as witnesses in the Courts of this State in any matter, civil or criminal, in which the interests of white men are concerned; fourth, interfering with the fisheries of California.

Mr. ROLFE. I rise to a point of order. That resolution is not in the form prescribed by the rule, which requires a proposition to be in the form of a section so as to be placed in the Constitution.

The PRESIDENT. The point of order is well taken. Send back the resolution.

ENCOURAGEMENT OF IRRIGATION.

Mr. DOWLING introduced the following proposed amendment to the Constitution, relative to the encouragement of irrigation:

Section 1. The right to make a canal may be imposed compulsory in order to conduct waters intended for any public use which does not require the formal appropriation of lands.

Sec. 2. If three fourths of the owners of an irrigable land district, possessing at least two thirds of its area, wish to form an irrigation canal, the remaining fourth of the owners may be compelled to join the undertaking.

Sec. 3. The Legislature shall provide for the division of the State into three irrigating districts, to be called the Southern, Middle, and Northern Irrigation Districts, and shall also make subdivisions if necessary.

Sec. 4. The cost of building or constructing an irrigation canal or ditch shall be apportioned equally on the land to be irrigated, and said cost shall be confined to the district in which said lands are situated.

Sec. 5. All irrigation canals and ditches shall be considered a part and parcel of the lands assessed for their construction, and no irrigator can sell his land without selling his water right also.

Sec. 6. After the cost for constructing a canal or ditch is paid, the irrigators shall never have to pay any more, except that which is necessary to keep the said canal or ditch in repair.

Sec. 7. The State shall always exercise supervisory control over said canals and ditches. The Legislature shall enforce the foregoing provisions by appropriate legislation.

Referred to the Committee on Water and Water Rights.

CITY, COUNTY, AND TOWNSHIP ORGANIZATIONS.

Mr. VACQUEREL introduced the following proposed amendment to the Constitution, on city, county, and township organizations:

Resolved, That there shall be established in each county of this State a jury, composed of nine members, whose duty it shall be to act as arbiters in all questions arising between labor and capital; said jury to be voted for by the people at all municipal elections. There shall be no pay attached to such position.

Referred to the Committee on City, County, and Township Organizations.

HOMESTEADS.

Mr. BARTON introduced the following proposition to amend article eleven, section fifteen, of old Constitution, in relation to homesteads:

Amend article eleven (11), section fifteen (15), of old Constitution, to read as follows:

The Legislature shall protect by law, from forced sale, a certain portion of the homestead and other property of all heads of families. A homestead shall be invalid until a declaration of the same is filed for record in the office designated by the Legislature; and no homestead shall be exempt from any debt contracted after its acquisition and before the filing of such declaration.

Referred to the Committee on Land and Homestead Exemptions.

COMMENCEMENT OF FISCAL YEAR.

Mr. HILBORN introduced the following proposed amendment, changing the date of the commencement of the fiscal year:

Section —. The fiscal year shall commence on the first day of January.

Referred to Committee on Legislative Department.

INTERMARRIAGE WITH CHINESE.

Mr. STEDMAN introduced the following proposed amendment to the Constitution, relative to intermarriage:

Section —. The intermarriage of white persons with Chinese, negroes, mulattoes, or persons of mixed blood, descended from a Chinaman or negro from the third generation, inclusive, or their living together as man and wife in this State, is hereby prohibited. The Legislature shall enforce this section by appropriate legislation.

Referred to Committee on Legislative Department.

CHINESE.

Mr. O'DONNELL introduced the following proposed amendment to the Constitution, relative to Chinese:

Section —. Aliens of Asiatic descent shall forever be disqualified:

1. From exercising the right of suffrage;
2. From holding or conveying real estate;
3. From testifying as witnesses in the Courts of this State in any matter, civil or criminal, in which the interests of white men are involved;
4. From interfering with the fisheries of the State of California.

Referred to Committee on Chinese.

THE ORDER OF BUSINESS.

Mr. EDGERTON. I desire to submit a motion which I think is of importance to the Convention. I move that all that part of rule seventeen, from and after the sixth subdivision of the Order of Business, be temporarily suspended until next Monday, the fourth of November. I made that motion after consultation with many gentlemen in relation with the various committees here not now ready to make their reports. The special order for to-day and to-morrow is the report of the Committee on Preamble and Bill of Rights. All the gentlemen desire to be here when the Convention passes upon that. I therefore submit this motion, that all that part of rule seventeen, after the sixth subdivision of the Order of Business, be temporarily suspended until Monday, the fourth day of November.

Mr. ROLFE. I second the motion.

Mr. McCALLUM. If, of course, it has been understood, it is useless

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to make objection; but I understand there are three reports already before the Convention, and the report of the Committee on Preamble and Bill of Rights is one which I understand will take considerable time to dispose of. Now, if there is any reason why we should not get to work in the Convention, I will cheerfully vote for this proposition; otherwise I suggest that it is about time that we commenced work in the Convention.

THE PRESIDENT. The Chair will suggest that all matters must be first considered in the Committee of the Whole Convention. The Preamble and Bill of Rights is made the special order for to morrow.

MR. MCCALLUM. I would like to have it understood, for other construction is given to it. I understand the Chair to say that we can go into Committee of the Whole, notwithstanding the motion that has been made?

THE PRESIDENT. Yes; it does not affect anything before the "reports of committees."

MR. MCCALLUM. All after the sixth subdivision.

MR. WINANS. The object of that motion appears to me apparent on its face. It is evidently intended to enable the committees to have time and opportunity to act. As the Convention is now constituted, if it proceeds with the discussion in the Committee of the Whole, of articles, or propositions of articles, of the proposed new Constitution, it will necessarily and naturally occupy all the time that is usually employed during the day by committees, and thereby directly exclude committees from going on with the discharge of their duties. There would be no opportunity for committees to sit, because they are strictly prohibited from sitting while the Convention is sitting, and therefore it would be impossible for the committees to get ready in time. This is intended to give the necessary time to the committees, which are faithfully at work, and which are all conceded to be diligently prosecuting the duties confided to their charge, which they cannot do if the Convention is continuously in session. In other words, the virtual recess of the Convention during the afternoons for one week was not long enough. But one committee has made a final report, and there are thirty committees in all of this body. They must have time to work with such care as to make their work proper to be presented to this Convention. They cannot do it if we go on with the consideration of these reports now. It is out of the power of man, however assiduous they may be, unless more time is given; and I do hope, sir, that in view of the necessity of the case, in view of the importance of our movements, in view of our having first initiated that which must yet exist, that this motion will prevail.

MR. MCCALLUM. I suppose one thing we must agree on. If this motion prevails it will undoubtedly postpone the special order. It can neither be considered in Committee of the Whole or otherwise. I undertake to say that if committees choose to report they can do so, not necessarily at once; that there are propositions which will keep this Convention at work from this time forward, until the business shall have been finished; and that when we commence on the Bill of Rights it will be found that we will have business for every day we have. We have been in session thirty days, and have not commenced on a single proposition. I say that there is no reason given for postponing this special order for to-morrow. If the committee must have daytime in which to meet, why, if necessary, after the morning session adjourn over until the next day, so that committees can meet in the afternoon.

MR. JONES. I desire to offer an amendment to the gentleman's motion: that we insert "seventh subdivision" instead of "sixth subdivision," for this reason: that if the main motion should prevail there will still remain the offering of propositions relating to the Constitution, and if not allowed to be offered now they will not be considered by the committees. It occupies not a great many minutes, and moreover the committees have until next Monday, if the motion prevails, to take into consideration the additional propositions.

MR. EDGERTON. I accept the amendment.

MR. TINNIN. I offer an amendment: to include the ninth subdivision—that is, the special order.

MR. EDGERTON. I hope the motion of the gentleman from Trinity, Mr. Tinnin, will not prevail. Now, sir, there is a great deal of business in the committees. My committee is not more than half through with its labors, and when this discussion commences upon such important matters as this report of the Committee on Preamble and Bill of Rights all of these gentlemen desire to be here, and they do not desire to be here and participate in the discussion after they have been through the details and drudgery of committee work. I do not see any particular reason why the discussion should commence on that special order to-morrow. The object of my motion is to facilitate business, and enable the committees to complete their labors and get their plans submitted here. I hope the amendment will not prevail.

MR. TINNIN. My object in offering this amendment is to have some time for this body to get to its labors. We have been here now four weeks, spending the time in discussing about the employés and offering propositions. Now, sir, one of the committees of this body has made its report. That report is before this body, and, sir, it is high time that we should begin to consider that report, if we expect to complete the labors of this body within the one hundred days. It seems to me to be thoroughly fallacious that time is necessary for committees to sit hereafter in the daytime. We know that adjournments are continually advocated in order to sit on committees. What is the result? After the adjournment is made, if you would call the roll at the railroad depot, or on the cars going to San Francisco, you would find a majority of the members there. We have all seen it, and now I say to the members here it is ample time that we should do something. If this continues the same, there will be delays asked all the time, and we might as well commence now as any other time. I am opposed to including the seventh subdivision, in reference to the introduction of propositions, but I hope that the amendment will be adopted to include the ninth subdivision—that in reference to the special order.

THE PRESIDENT. The gentleman from Sacramento moves that all that part of rule seventeenth after the seventh sub-division be suspended until Monday, November fourth. The gentleman from Trinity moves to amend so as to except the ninth subdivision.

Mr. Tinnin's amendment was lost.

THE PRESIDENT. The question is on the motion of the gentleman from Sacramento, Mr. Edgerton, to suspend all of rule seventeenth after the seventh subdivision until Monday, November fourth.

MR. MCCALLUM. I rise to a point of order, that this requires a two-third vote.

MR. ROLFE. I seconded this motion in its original shape. I shall now vote against it because it includes the seventh subdivision, in relation to the introduction of propositions. I think we have got more propositions now than ten Conventions can manage, and I think we should cut them off as soon as possible.

The ayes and noes were demanded by Messrs McCallum, White, and Tinnin.

The roll was called, and the motion was lost by the following vote:

AYES.

Ayers,	Hall,	Shurtleff,
Biggs,	Hitchcock,	Smith, of 4th District,
Blackmer,	Inman,	Stevenson,
Chapman,	Jones,	Stuart,
Charles,	Kelley,	Terry,
Cowden,	Lewis,	Thompson,
Crouch,	Martin, of Alameda,	Van Voorhies,
Edgerton,	Porter,	Wilson, of 1st District,
Graves,	Pulliam,	Winans,
Gregg,	Schell,	Mr. President—32.
Hale,	Schomp,	

NOES.

Andrews,	Graee,	Nelson,
Barbour,	Harrison,	Neunaber,
Barry,	Harvey,	O'Donnell,
Barton,	Heiskell,	O'Sullivan,
Beerstecher,	Herold,	Overton,
Belcher,	Herrington,	Prouty,
Bell,	Hilborn,	Reddy,
Boggs,	Howard,	Rhodes,
Boucher,	Hughey,	Ringgold,
Brown,	Hunter,	Rolfe,
Burt,	Joyce,	Shoemaker,
Caples,	Kenny,	Smith, of Santa Clara,
Condon,	Keyes,	Soule,
Cross,	Kleine,	Stedman,
Davis,	Laine,	Steele,
Dean,	Lampson,	Swenson,
Dowling,	Larkin,	Swing,
Doyle,	Larue,	Tinnin,
Dudley, of San Joaquin,	Lavigne,	Townsend,
Dudley, of Solano,	Lindow,	Turner,
Dunlap,	Mansfield,	Tuttle,
Estey,	McCallum,	Vacquerel,
Evey,	McComas,	Walker, of Tuolumne,
Farrell,	McConnell,	Waters,
Fawcett,	McCoy,	Weller,
Filcher,	McNutt,	Wellin,
Finney,	Mills,	West,
Freud,	Moreland,	Wickes,
Garvey,	Morse,	White,
Glascock,	Murphy,	Wilson, of Tehama,
Gorman,	Nason,	Wyatt—93.

LEAVE OF ABSENCE.

MR. FILCHER. I will move to-morrow to amend rule sixty-four, so as to read as follows:

"No leave of absence shall be granted until the reasons therefor shall have been fully stated and approved by a vote of the Convention."

QUESTION OF PRIVILEGE.

MR. BEERSTECHER. I rise, under rule thirty-nine, upon a question of privilege. I will state, sir, what the question of privilege is, that the Chair may decide in accordance with rule thirty-nine whether or no I am entitled to be heard upon it. On Friday last, during the debate upon ——

THE PRESIDENT. The Chair will request the gentleman to put down his question in writing. The Chair has the privilege of requiring any proposition to be put in writing.

MR. GREGG. I move to adjourn.

The motion was lost.

MR. BEERSTECHER. I would state that it would be impossible for me to reduce the matter to writing this evening, and I will have it prepared for to-morrow morning. I move to adjourn.

Carried.

And at four o'clock and thirty-one minutes P. M. the Convention stood adjourned until to-morrow morning at ten o'clock.

THIRTY-SECOND DAY.

SACRAMENTO, Tuesday, October 29th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

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The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Harrison,	Overton,
Ayers,	Harvey,	Porter,
Barbour,	Heiskell,	Prouty,
Barry,	Herold,	Pulliam,
Barton,	Herrington,	Reddy,
Beerstecher,	Hilborn,	Reed,
Belcher,	Hitchcock,	Rhodes,
Bell,	Howard,	Ringgold,
Biggs,	Huestis,	Rolfe,
Blackmer,	Hughey,	Schell,
Boggs,	Hunter,	Schomp,
Boucher,	Inman,	Shafter,
Brown,	Johnson,	Shoemaker,
Burt,	Jones,	Shurtleff,
Campbell,	Joyce,	Smith, of Santa Clara,
Caples,	Kelley,	Smith, of 4th District,
Casserly,	Kenny,	Smith, of San Francisco,
Chapman,	Keyes,	Soule,
Charles,	Kleine,	Stedman,
Condon,	Laine,	Steele,
Cowden,	Lampson,	Stevenson,
Cross,	Larkin,	Stuart,
Crouch,	Larue,	Swenson,
Davis,	Lavigne,	Swing,
Dean,	Lewis,	Terry,
Dowling,	Lindow,	Thompson,
Doyle,	Mansfield,	Tinnin,
Dudley, of San Joaquin,	Martin, of Alameda,	Tully,
Dudley, of Solano,	McCallum,	Turner,
Dunlap,	McComas,	Tuttle,
Eagon,	McConnell,	Vacquerel,
Edgerton,	McCoy,	Van Dyke,
Estee,	McFarland,	VanVoorhies,
Estey,	McNutt,	Walker, of Marin,
Evey,	Miller,	Walker, of Tuolumne,
Farrell,	Mills,	Waters,
Fawcett,	Moffat,	Webster,
Filcher,	Moreland,	Weller,
Finney,	Morse,	Wellin,
Freud,	Murphy,	Wickes,
Garvey,	Nason,	White,
Glascock,	Nelson,	Wilson, of Tehama,
Gorman,	Neunaber,	Wilson, of 1st District,
Grace,	Noel,	Winans,
Graves,	O'Donnell,	Wyatt,
Gregg,	Ohleyer,	Mr. President.
Hall,	O'Sullivan,	

ABSENT.

Barnes,	Hale,	Strong,
Berry,	Holmes,	Sweasey,
Freeman,	Martin, of Santa Cruz,	Townsend,
Hager,	Reynolds,	West.

The Journal of yesterday was read and approved.

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. Strong for one day, on account of sickness; to Mr. Holmes, on account of sickness.

MEMORIALS.

Mr. BEERSTECHER presented the following memorial from a large number of citizens of San Francisco, asking the exemption from taxation of certain property, which was referred to the Committee on Revenue and Taxation:

To the honorable the members of the Constitutional Convention of the State of California, Sacramento, California:

We, the undersigned, residents and taxpayers of the City and County of San Francisco and adjacent towns, having noticed with much satisfaction the introduction by Mr. Beerstecher, from this county, to your honorable body, of a bill exempting from taxation, to a certain amount, the property of deaf and dumb and blind persons, do earnestly commend the same to the early and favorable consideration of your honorable body, believing it to be a just and proper measure; and should the same become a law, it would redound in an eminent degree to the credit of our State and people.

San Francisco, October, 1878.

Accompanying the memorial was the following extract from the "Wasp," of April twenty-seventh, eighteen hundred and seventy-eight:

"A Suggestion.

"A Constitutional Convention will soon be held, and various changes in the organic instrument will doubtless be made. There is one that we desire particularly to say should be considered. There should be a clause inserted relieving the blind, deaf, and dumb from the burden of taxation. There are several of these unfortunates in this city and State, who are doing their best to keep out of the public institutions provided for their support by the State. The blind and deaf have a hard lot at best, and the people of the State of California should be magnanimous enough to let the poorer portion of her afflicted citizens go untaxed. Moreover, it is really to the interest of taxpayers; for the blind, deaf, and dumb must be supported in any case, and it is much better to give them the opportunity of supporting themselves, and thereby retaining their manhood and self-respect, than to force them into charitable institutions by taxation. The aggregate taxes paid by this class of citizens is very small, but it is a vital consideration to them, and the law under which they are now taxed should be repealed. It would be an act at once of generosity and good policy, and an incalculable assistance to these afflicted individuals. We hope the gentlemen who may be called upon to draft the new Constitution will give this matter their attention."

COMMUNICATION.

The following communication was received:

Joseph Ramsey, a citizen of the United States, and a resident of Shelbyville, Bedford County, Tennessee, to the delegates composing the State Constitutional Convention for the purpose of revising, altering, or amending the organic law of California:

Although a non-resident of your State, I would respectfully submit to your consideration the inclosed plan and form for a State Constitution, or organism. You will readily see there is some radical and unprecedented changes from the Federal and State Constitutions. In the first place, you will see I have dispensed with population and territory as a basis for representation, and have substituted important interests, and election districts, and have incorporated the concurrent instead of the numerical majority, simply requiring the vote to be taken by committees, requiring two thirds of the members of any committee to enable their vote to count, and two thirds of the committees to pass any bill, law, rule, or resolution. This provision applies to the judicial as well as the legislative department, hence you will see that it necessarily dispenses with a separate house called a Senate, also the Governor's veto, both of which was only intended as negative powers. That power is now more perfectly and economically applied by the exercise of the concurrent majority. Are not the labors of your session of more importance than an ordinary session of the General Assembly, whose acts can be repealed at a succeeding session? You will find that these important interests on which each can protect itself, will be as homogeneous as the different members of the human body. That antipathy and antagonism always manifested between rival political parties, which are continually striving for the ascendancy, and each, when they gain the ascendancy, is as absolute and tyrannical as any monarchy in the world. This concurrent principle applied to the important interest above named will not only expel, but will annihilate the demon of party spirit, which is the legitimate offspring of an inherent defect in the numerical majority principle. Although not so simple, is far safer, as much more so as our trial by jury system is to be preferred (although it requires the unanimous concurrence of all twelve to render a verdict,) to a one man power. There is many more reasons and illustrations I could give if I had room and time and you had patience. Although my magazine is small and my artillery light, yet my ammunition is neither exhausted nor diminished. With truth and sound philosophy to back me, I feel that my bulwarks are as formidable as the walls of Gibraltar. If further information is desired, address—

JOSEPH RAMSEY,
Shelbyville, Tennessee.

P. S.—Would be glad some member would inform me how the plan is received, and what objections are offered.

J. R.

THE PLAN.

A Plan containing the Elements and Cardinal Principles for a State Government, viz:

We, the people of the State of California, bounded as follows (here give the boundaries) do hereby adopt, ratify, ordain, and proclaim the following (covenant) Constitution as the fundamental law of the State:

Said government shall be known and designated as a Democratic Republic, containing three independent and coördinate departments, each sovereign in its sphere, so that no one shall exercise the powers delegated to the others.

The legislative department shall be chosen by the qualified voters of each division of election district, without regard to population or territory, in the following manner, viz.: The State being divided into three divisions (called election districts), and that each of the following named interests, viz: Agricultural, manufacturing, mechanical, commercial, transportation, mining, educational, grazing, and professional, shall be entitled to an equal representation of their own selection. Each of the nine (9) interests above named shall be entitled to three (3) representatives from each (division) district, allowing each thus to have nine (9) representatives constituting the Legislative Council of eighty-one (81) representatives, these eighty-one representatives shall constitute nine (9) standing committees.

Before entering upon the discharge of the functions of their office they shall each subscribe their names to the following affirmation, oath, or obligation, viz.:

I, A. B., solemnly pledge my word upon the sacred altar of my honor that I will faithfully discharge the duties and obligations imposed upon me, and that I will not knowingly usurp and exercise powers not clearly delegated to me, and that I have not given money or any valuable thing to procure my election, nor promised to give or bestow any official favor on any person for their support, and if on conviction I submit my body, powers, and privileges, to such penalties as the law and Court may impose.

Signed, A. B.

And when such representatives thus chosen and assembled, at the time and place specified, and have signed the above obligation, they shall proceed to organize by the election of a presiding officer, styled Speaker or Chairman, a resident citizen of the State, and such other clerical officers as are necessary to complete their organization, such as clerks, secretary, comptroller. All shall be required to subscribe to the obligation above set forth; but no man shall be held ineligible of account of nationality, race, color, or religion. The legislative council shall likewise elect a chief executive officer, styled Governor; all of whose tenure of office shall be regulated by law, likewise the salaries of each and all; but no salary to be increased or diminished during the term for which they were elected. Each representative member will be required to present a certificate of the Judges who held the election and counted the votes, that said representative is entitled to his seat; but should there be a tie vote, the same constituency shall hold another election, and when qualified shall hold their office for —— years, and until their successors are elected and qualified. In the passage of all laws, rules,

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regulations, and by-laws, and all elections shall be taken by the committees, each committee to count one vote, and requiring two thirds (⅔) of each committee concurring to enable the vote of the committee to be counted, and two thirds (⅔) of the nine (9) committees to concur in the passage of all bills, laws, rules, regulations, by-laws, and elections.

Said legislative council shall have power to censure, suspend, or, for such crime as they deem necessary and proper, may expel any member of their body, or any officer they may have elected. These misdemeanors shall consist in bribery, perjury, forgery, theft, and drunkenness.

Bribery shall consist in giving, or offering to give, money, or any valuable thing, from any person, company, corporation, or foreign power, or in receiving, or offering to receive, money, or any valuable thing, from any person, company, corporation, or foreign power. The penalties apply to any officer or private citizen who shall be guilty. This only applies to officers who receive gifts during their official term.

Perjury shall consist of having made a false statement of any fact, or to have suppressed the truth, or willfully having perverted the same.

Forgery shall consist in signing the name or names of any person or persons to any instrument of writing without his or her knowledge and consent.

Theft shall consist in taking the property of another without his or their knowledge or consent and appropriating the same to his use, or fraudulently having concealed the same.

Drunkenness shall consist in the use of intoxicating drink so as to disqualify the person for the time being to intelligibly discharge the duties of his official position.

When a vacancy shall occur in the legislative department by death, resignation, removal, or otherwise, the interest to which he belonged shall as soon as possible proceed to supply his place, the Governor giving notice of such vacancy.

The time of the convening and adjourning shall be regulated by law; convening once in two years, and on extraordinary occasions the Governor may convene them, and when convened he shall state the object and purpose for which they were convened, and they shall entertain no other question whatever. Should a miscellaneous question arise, then each one of the nine committees shall select one of their number, and they (9) shall compose a committee on said miscellaneous question, and report as any other committee to a Committee of the Whole, and shall be disposed of as any other question; and all laws, bills, rules, and regulations shall be signed by the presiding officer and Governor, and be attested by the clerk.

II.

The judicial department shall consist in one Supreme Court, composed of three Judges or Jurists, one from each division of the State known as an election district. Said three Judges shall be chosen or elected by the Legislature, who shall vote by committees, each committee counting one vote, and two thirds of them concurring necessary, and two thirds of the committees necessary to a choice; they shall be elected and hold their office for —— years, and until their successors are elected and qualified, and shall be eligible to reëlection one more term.

This Supreme Court shall be termed the guardian protector of the reserved rights, and shall exercise original and appellate jurisdiction, and from their decision there is no appeal; they shall decide all questions of a constitutional character.

The legislative department shall likewise have power to establish such other inferior judicial tribunals, in such manner and with such powers as they deem necessary and proper.

The right of trial by jury to remain inviolate.

III.

The executive department shall consist of one chief executive officer, styled Governor, elected as provided by the foregoing provision.

It shall be his duty to see that the law shall be faithfully executed. He shall likewise have power to exercise executive clemency, when persons have committed crimes against the peace and dignity of the State, and when the Court and jury who tried the case shall concur in recommending the criminal to executive clemency.

He, with the Comptroller and Treasurer, shall constitute the State's financial agent in the adjustment of her financial business. It shall likewise be his duty to report to the Legislative Council, at its regular sessions, the condition of the State and its different departments, and to recommend such measures and policy as he thinks will promote the happiness and prosperity of the State.

But he shall have no power to arrest their laws by his veto. In case of a vacancy in his office by resignation, death, removal, or otherwise, the presiding officer of the legislative department shall fill the position. When the regular session of the General Assembly shall convene, then the presiding officer shall fill the unexpired term by the election of a successor, which shall be the first business they attend to, and a vacancy in any other department shall be filled in a similar manner.

The Legislature shall have no power to pass any *ex post facto* law which shall impair contract, nor no law to apply to crimes and misdemeanors committed prior to the passage of such law, nor to make any decision a precedent and of legal authority that was rendered in any case subsequent to the origin of any suit pending in any Court.

Amendments to this Constitution may be made for two purposes and in two ways: one for the purpose of enlarging the powers delegated, the other for reducing the powers delegated.

In the first place, if the legislative department shall be of the opinion their powers are so restricted that it impedes their usefulness, and that it could be enlarged without danger to the rights of the people, and should pass a resolution in clear and unambiguous terms, the powers they ask to have extended, and submit the same to the next ensuing election for ratification or rejection, and if a majority of two thirds of the different interests shall concur, the same shall be incorporated as part and parcel of the organic law.

But should the people conclude they had delegated more power than was safe or necessary, and two thirds of the people should express themselves that way by two thirds of their representatives having clearly stated the power they wish reduced, then said amendment shall be adopted and incorporated as part and parcel of the Constitution. But in no event shall more than one change be proposed at any one time.

The legislative department shall have the entire control of the elective franchise.

All power not herein delegated shall be reserved to the people from whence it came.

REPORTS.

MR. LARKIN made the following report from the Committee on Privileges and Elections:

MR. PRESIDENT: Your Committee on Privileges and Elections beg leave to report as follows: That proposition number sixteen, by Mr. Johnson, be indefinitely postponed; that proposition number eighty-eight be referred to the Committee on Executive Department, and that propositions number one hundred and eight, by Mr. Grace, number one hundred and ninety-nine, by Mr. Freeman, be referred to the Committee on the Right of Suffrage; and that number two hundred and ten, by Mr. Lindow, be referred to its author for segregation.

The report was adopted, and the references made as recommended.

PROPOSITIONS AND RESOLUTIONS RELATING TO THE CONSTITUTION.

THE PRESIDENT. Propositions and resolutions relating to the Constitution are now in order.

IN RELATION TO CORPORATIONS.

MR. ROLFE introduced the following proposed amendment of section thirty-one of article four of the Constitution:

ARTICLE IV.

SEC. 31. Corporations may be formed under general laws, but shall not be created, modified, abolished, or changed in any manner by special Act, except that counties may be created or abolished and their boundaries defined or changed by special Act. All general laws and special Acts passed pursuant to this section may be altered from time to time, or repealed.

Referred to the Committee on City, County, and Township Organizations.

ELIGIBILITY OF OFFICERS.

MR. EVEY introduced the following proposed amendment to the Constitution:

Any person elected to a State office, either executive, legislative, or judicial, shall not be eligible to any other office in this State or the United States during the term for which they were elected.

Referred to the Committee on Legislative Department.

EXEMPTION OF PROPERTY.

MR. EVEY introduced the following proposed amendment to the Constitution, in relation to exempting public highways of this State from taxation:

Resolved, That the Committee on Revenue and Taxation be instructed to inquire into the propriety of exempting all lands from taxes in the public highways in this State.

Referred to the Committee on Revenue and Taxation.

OVERFLOWED LANDS.

MR. SMITH, of Santa Clara, introduced the following proposed amendment to the Constitution, regulating the rights of owners of land in overflowed and reclamation districts:

All elections for Trustees for the management of any swamp and overflowed land reclamation in this State shall be by ballot; and each person owning land in any district shall be entitled to but one vote; and the Legislature shall enforce the foregoing by appropriate legislation.

Referred to the Committee on Agriculture and Commerce.

RELATING TO SAN FRANCISCO.

MR. DOWLING introduced the following proposed amendment to the Constitution, in relation to San Francisco:

SECTION 1. The municipality of the City and County of San Francisco is empowered and authorized to legislate exclusively for itself, and attend to its own local affairs, independent of the Legislature. The Legislature shall enforce the above provision by appropriate legislation.

Referred to Committee on City, County, and Township Organizations.

REVENUE AND TAXATION.

MR. HERRINGTON introduced the following proposed amendment to the Constitution, relative to revenue and taxation:

SEC. —. The Legislature shall provide by law for the publication of all delinquent lists of property for State and county, city, city and county, town, village, and district taxes, so that all such delinquent lists shall be published (and posted) at the same time, in the same manner, and for the same period. The Legislature shall also provide a special time at which the sales of all property for any such delinquent taxes shall be commenced in each year, and a period within which such sales shall be completed, and the places at which such sales shall be made.

Referred to the Committee on Revenue and Taxation.

PUBLIC SCHOOL TEACHERS.

MR. DOYLE introduced the following proposed amendment to the Constitution, relating to public school teachers:

SECTION —. That all teachers in the school department of the City and County of San Francisco, who have taught one year, shall not be disqualified without an open and impartial investigation.

Referred to the Committee on Education.

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BOARD OF PUBLIC WORKS.

MR. DOYLE introduced the following proposition, to establish a Board of Public Works for the City and County of San Francisco:

SECTION 1. A Board of Public Works shall be established for the City and County of San Francisco.

SEC. 2. Said Board shall consist of three Commissioners, who shall be elected by the people at the next municipal election for other city and county officers.

SEC. 3. The salary of each of said Commissioners shall be three thousand dollars per annum, and said Commissioners shall not be eligible (while acting as such) to hold any other State, Federal, or municipal office.

SEC. 4. The term of office of said Commissioners shall be the same as that of other municipal officers, to wit, two years.

SEC. 5. The said Board shall have full and exclusive control of all street improvements for the said City and County of San Francisco; shall advertise and invite bids for street work, make all necessary contracts on behalf of said city and county, and exercise all the functions and powers now by law vested in the Superintendent of Public Streets, Highways, and Squares of said City and County of San Francisco.

SEC. 6. The power of the Board of Supervisors of inviting bids for street work, and ordering such work done on behalf of the said city and county, are hereby revoked, and all said powers of said Board of Supervisors are hereby vested in the aforesaid Board of Public Works.

SEC. 7. The office of Superintendent of Public Streets, Highways, and Squares, is (at the expiration of the term of office of the present incumbent) abolished.

SEC. 8. The said Board of Public Works shall also have full and exclusive control of the management, completion, and erection of all public buildings for the use of said city and county now in progress, or hereafter to be erected for said city and county.

SEC. 9. The authority of the Commissioners appointed for the superintendence and management of the construction of the new City Hall, in said city and county (at the expiration of the term of office of the present and existing Commission, to wit, at the municipal election for city and county officers, September, eighteen hundred and seventy-nine), is hereby revoked, and the said Commission shall hereafter be abolished.

SEC. 10. No Commission (other than the Commission created by this resolution) shall hereafter be appointed or created for the superintendence, management, or control of any public buildings or public works, to be hereafter erected or done for the use and benefit of the City and County of San Francisco.

Referred to the Committee on Legislative Department.

MEMBERS OF CONSTITUTIONAL CONVENTIONS.

MR. SHAFTER introduced the following proposition, amending article ten of the Constitution:

That article ten of the Constitution be so amended that membership in Constitutional Conventions, to be hereafter called, shall be confined to the qualified electors of this State; and in all elections provided for in said article ten, the right to vote shall be confined to such electors.

Referred to Committee on Judiciary and Judicial Department.

ATTACHMENT FOR DEBT.

MR. HOWARD, of Los Angeles, introduced the following proposed amendment to the Constitution in relation to arrest and attachment for debt:

ARTICLE —.

There shall be no arrest or imprisonment for debt, except in case of fraud or breach of trust.

Attachments shall not issue against the property of the debtor in a civil or other action, except in case of fraud, breach of trust, or non-residence, or prolonged absence of the debtor from the State.

No warrant of arrest for debt, or attachment against property for debt, shall be issued, except upon the order of a judicial officer, and for cause shown.

No agreement by a mortgagor or other debtor, to pay attorney's, counsel, or agent's fees, or any penalty or forfeiture, or expense of foreclosure, or suit for the recovery of such mortgage or other debt, except such fees, penalty, forfeiture, or expenses as may be specially provided by law, shall be valid.

Referred to the Committee on Legislative Department.

APPOINTING A NEW COMMITTEE.

MR. JOYCE. Mr. Chairman: I have a proposition I would like to offer, as follows:

Resolved, That there be an official committee of fifteen appointed from the San Francisco delegation on Water and Water Rights, in the interest of the City and County of San Francisco.

THE PRESIDENT. The resolution is not in order under the present rule.

AMENDING THE RULES.

MR. FILCHER. Mr. President: Under this head I rise to make a motion, pursuant to notice given yesterday, to amend rule sixty-four, to read as indicated in the minutes of this morning.

THE PRESIDENT. The motion is not in order at the present time. When we reach the eleventh head it will be in order. The subject next in order is the report of the Committee on Preamble and Bill of Rights.

A QUESTION OF PRIVILEGE.

MR. BEERSTECHER. Mr. President: Before that order is taken up, I desire to rise to a question of privilege. I will send up my statement and ask that it be read by the Secretary.

THE SECRETARY read as follows:

MR. PRESIDENT: In the Constitutional Convention, on Friday, October twenty-fifth, eighteen hundred and seventy-eight, on the question of the eligibility of Hon. Eugene Fawcett to a seat in this Convention, Mr. Vacquerel spoke as follows:

"There is not one delegate of San Francisco here that has not violated his oath to the party, and that is prior to the oath he took in this hall. If these gentlemen will remember the oath they have taken in San Francisco they will remember that it says they will not vote for or support anybody who has not affiliated with the Workingmen's party."

In the same speech Mr. Vacquerel refers to me personally:

"I hold the reports of one of the sessions of this Convention, and what do I find, 'That no right is denied, unless the right of the will of the people.' 'We also desire to have the right of the people recognized.' Now, when I see gentlemen on this floor that have sustained these principles, go right against it to-day," etc.

Mr. Vacquerel, in making this statement in open Convention, committed a grave error, and was wholly mistaken as to every portion of his statement.

I desire to show on a question of privilege that no oath or pledge was taken, of the nature and effect as stated by Mr Vacquerel, and that the Workingmen's party is not bound by an oath, nor are the delegates thereof, nor by a pledge in the manner stated.

October 29th, 1878. BEERSTECHER.

THE PRESIDENT. The Chair is of the opinion that the matter involves a question of privilege. The gentleman will proceed.

MR. BEERSTECHER. Mr. President: Rising to this question of privilege, it is with no feelings of hostility against the gentleman from San Francisco, Mr. Vacquerel. But I do so for the purpose of giving that gentleman an opportunity of fully explaining what he meant by what I have just called the attention of the Convention to, in the reading of the points upon which I base this question of privilege.

Mr. Vacquerel was undoubtedly mistaken, and not only was the gentleman mistaken, but, being a foreigner, and therefore not thoroughly conversant with the English language, in his expressions made before this Convention, he undoubtedly made use of such words and such phrases as conveyed a different idea from that which he intended to convey. I have no doubt at all but what the gentleman intended to make a statement of facts as they really existed. But I find upon the Journal of this Convention an entry that Mr. Vacquerel, on the evening of the twenty-fifth day of October, rose for the purpose of making an explanation. The Journal says, to make an explanation in relation to his statement in regard to the oath taken by the Workingmen's party. I will read it:

"MR. VACQUEREL. Mr. President: This afternoon it appears that I have made a false statement. I wish to rectify it. As a good many members of the San Francisco delegation have stated to me that they have not taken any oath to the Workingmen's party, I stand up, sir, to apologize to my colleagues, as it appears that an oath and a pledge have a very different meaning. I, sir, acknowledge having taken pledges and having violated them, thinking it would benefit the people. It shall not occur again. But, sir, in explanation to myself, I still maintain that if those gentlemen have not taken the pledge of the Workingmen's party, they stand in direct opposition to the laws established by the party."

Now, Mr. President, the Workingmen's party never took an oath of any character. The delegates of the Workingmen's party have never taken an oath of any kind, either in the City of San Francisco or in the City of Sacramento. But the Convention called by the elements composing the Workingmen's party, which assembled in the City of San Francisco on the seventeenth day of May, of the present year, of which I had the honor to be a member, and which framed the present platform and constitution of the Workingmen's party of this State, the question of administering an oath to the delegates to be elected by the Workingmen's party came up, upon Saturday morning, May eighteenth. I read now from the San Francisco Call:

"Mr. Farrell, a member of the Convention, then moved that a committee of five be appointed to prepare a pledge or oath for the candidates to take before being nominated.

"Mr. Beerstecher said this was all bosh; the oath would not be binding under the law, and a man could not be punished for violating it. The platform, if indorsed by the candidates honestly and in good faith, would be a sufficient pledge.

"Mr. Beerstecher moved a reconsideration of the vote whereby the Convention declined to enforce the taking of a pledge by candidates, and submitted an obligation for candidates to take, pledging themselves to sustain the principles of the party, and to resign when requested to do so.

"The vote was reconsidered, and the pledge adopted."

The members took a pledge when they joined the clubs, and the delegates took a pledge when they were nominated. There is no other pledge that has been taken by the members of the party, or by the delegates elected from San Francisco, except that which was introduced in the Convention, and remains a part of the present Constitution of the party. I call attention to the two pledges that were embodied in the Constitution and platform of the Workingmen's party. I call your particular attention to the fact that these pledges did not constrain any gentleman or bind any delegate of the Workingmen's party to vote for none but a Workingman. Every delegate has full liberty of action, although the newspapers have seen fit to talk a great deal about iron-clad oaths, and about the party lash, and I think it is fair to ask Mr. Vacquerel to rise upon this floor and state whether any member of the Workingmen's party swung any lash over him in any way, or endeavored to coerce him to vote in any certain way upon the question of the eligibility of Judge Fawcett. I approached that gentleman and came out squarely with him on the subject. I said it would not surprise me if the vote on Judge Fawcett's case would be a very close one. That the gentleman would probably succeed in retaining his seat, but I did not believe from the prevailing sentiment, as I had heard it expressed, that he would succeed by more than three or four votes. I told Mr. Vacquerel if that should be the case, and if Judge Fawcett should remain in his seat by only two or three votes, it might become a very serious question for him to answer before his constituency in San Francisco as to the reasons of his vote. But that if he felt in his own conscience that he could answer to them, it was a matter that rested wholly with him, and he should go and vote just as he saw fit and proper. I did not desire to coerce him in any way, but I desired to point out the matter distinctly, and if he thought he could satisfy his constituency, it would satisfy me. That was the only conversation I had with him; that was the only lash

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that was swung over his head, and the gentleman will bear me out in the statement.

Now, the first pledge embodied in the Constitution of the Workingmen's party is this—and it is taken by every man who desires to become a member of that party. It is not taken secretly; it is not taken with closed doors, but taken openly, in open meetings, where any man, even if he be hostile to the party, can hear and see:

"I, C. D., do solemnly pledge myself that from henceforth I will dissolve all affiliation with all other political parties; that I will work faithfully for the establishment and maintenance of good government through the Workingmen's party of California, and place in power only those pledged to its support; that I will discourage all office seeking; that I will not employ in any manner any Chinese labor, and I will discourage such employment by others, and that I will work and vote for the election to office of all persons of known honesty and integrity, nominated by the Workingmen's party."

Everything is public, and any man can step into the ward clubs at any time and hear this pledge administered. That is the pledge taken by the individual members of the party, but it has been decided by the Council of the Workingmen's party that it is perfectly proper to go outside of the party, outside of the ward clubs, and nominate men of known honesty and integrity and political purity. A man can be nominated who is not a member of any ward club, and who has never taken this particular pledge. The pledge that was introduced by myself, on the seventeenth day of last May, is as follows, and this is the pledge that was administered to every delegate from San Francisco who is sitting here in this Convention. The pledge was administered openly, the Secretary reading it over, and the delegate repeating it over after him, line by line. It reads as follows:

"I, C. D., do hereby pledge my sacred honor that I will support the platform and declared principles of the Workingmen's party of California, and in every instance use my best efforts to secure their adoption, and that if elected, will in every instance conform to the wishes of my constituents; and if requested by them to resign, I will at once comply, under penalty of thereafter being considered a man without honor or principle, and a person unworthy ever afterwards to be a candidate for any office of trust in the nation."

Now, sir, there has never been any other pledge taken save these two pledges, and it has been decided, as I before stated, that a man can be nominated who is not a member of any ward club, and in such case the pledge which I last read is the one administered. No oath is ever taken—no man's conscience is ever trampled on by an oath—and no man from San Francisco who sits here, as far as I know, from any other county which is represented by the Workingmen's party of California, has ever taken any oath that he will or will not vote for any one who is not a Workingman, or who does not stand upon the principles of the Workingmen's party. I do not think that the gentleman from San Francisco, Mr. Vacquerel, really intended to say that he did so. I don't think he really intended to say that the delegates from San Francisco have broken their oaths. How can a man break an oath when he has never taken any oath? His statement made at the evening session was not sufficiently clear and explicit. He spoke about the rights of the people, saying that they should be respected, and alluded to the case of Judge Sharpstein. I desire to call attention to the fact that the cases were not at all parallel. That the gentleman who was advocated by the Workingmen's party of California at that time was a man who was under no constitutional or legal disabilities. If the gentleman from Santa Barbara had been under no constitutional or legal disabilities, as we believed at that time, then, of course, the will of the people, of necessity, must have been recognized. But believing that the gentleman was under constitutional and legal disabilities, we opposed him, because we recognize the fact that the people themselves have no right to override the law. The people themselves are just as much bound by the Constitution, and laws made under and in pursuance of the Constitution, as this body is. The people have no right to override the laws.

MR. ROLFE. Mr. President: I rise to a point of order. The gentleman is not speaking to a question of privilege, he is branching off on the eligibility of Judge Fawcett, which has been settled by this Convention.

MR. BEERSTECHER. If the people have a right to ignore the laws, then the people have a right to resolve themselves into chaos, and that is a right I shall never concede; and I know that the gentleman from San Francisco, Mr. Vacquerel, does not desire to have the people resolved into chaos. And I hope, Mr. President, that hereafter the question as to whether the Workingmen's delegates in this Convention are bound by an iron-clad oath, or any other kind of an oath, will never be questioned. I hope it will be settled definitely and positively that they are untrammeled and unbound by any oath. I don't believe in any oaths in a free country like the United States of North America. No oath should trammel the conscience of a free American citizen.

MR. VACQUEREL. Mr. President: I regret that we are making so much expense to the people. I notice that clock, and when talking I always bear in mind that we are talking at the rate of about five dollars and sixty-five cents a minute, and I wish that the gentleman would bear that in mind, too. It appears, sir, that I have stated that we have all taken an oath. Well, in my misconstruction of the word I may have made a mistake. I got up and apologized, as it appears that an oath and a pledge are different. Of course, as I came here to vote, and not to speak, as Mr. Beerstecher came here to do the talking, I might have made the mistake. This is the way I understand an oath and a pledge now. I swear to a gentleman to-day that I will pay him twenty dollars, and if I only promise I will pay him twenty dollars, it appears that when I swear to pay him twenty dollars I am bound to do it; but if I have only promised to pay him twenty dollars, then I may do as I please about it. [Laughter.] Now, Mr. President, I wish to be well understood. If I have said anything that has hurt the feelings of my colleagues, I stood up before and apologized and asked pardon for it, and I stand up again for it. The gentleman from San Francisco, Mr. Beerstecher, yesterday made us a great speech on humanity. I wish the gentleman, in arguing this principle, would commence at home first. When the gentleman has stood on this floor and used such words as political tricksters, or some such words, he apologized for it, and that was the end of it. But it appears that they wish to have me always apologizing, and I have to be always getting up here and begging pardon. What is good for the goose is good for the gander. [Laughter.] Now, if the gentlemen have taken a pledge, and have not taken an oath, it puts me in a better situation myself. In that pledge I pledged when I became a member of the Workingmen's party, that I would not employ Chinamen directly or indirectly, and that I would not vote for any man for any office or position that was not a member, and was not sustained by the workingmen. Then I am very glad to be relieved of my pledge. I will give a good illustration of it: I happened to go, when I came up here, to a hotel where there were no Chinamen employed. I could not live on the food they had, so I went to another place. But I found there was a Chinaman employed there, and I was going to leave the place, though it was a very good place to board. But now I find, sir, that the pledge is dead since the nineteenth of June last, and as I have only pledged myself, I will continue to eat at that restaurant. [Laughter.] Now I am sorry, very sorry, to see that the members of the San Francisco delegation should take it so much to heart. I have apologized, and it was perfectly specified in my speech that I meant the pledge of the members of the Workingmen's party, and not the pledge of candidates of the Workingmen's party. The pledge of the candidates is only taken by a few, while the pledge of the party is taken by every member of the party, and the member that does not take that pledge, I hold, is not a member of the party. Now, these reports always come from a newspaper; and one paper pretends that I speak broken French. Well, sir, I speak French very correctly. I may speak broken English, but no broken French. [Laughter.] That paper states things that I never said. The gentleman has said that there are too many lawyers. Now, sir, if there is any profession or any class of gentlemen I have a veneration for it is the law profession and for lawyers. There are honest lawyers as well as any other class. One paper, I am very kind in calling it a paper, has contained a lot of falsehoods about me. If you will read any other paper you will find exactly what I did say. I apologize again for saying that the members of that party took an oath. They took a pledge which was taken openly in public. If that pledge is dead since the nineteenth of June with them it is not with me. I am a man that holds if I took a pledge then, that pledge is good yet.

MR. BARBOUR. I wish to inform the gentleman that I never took an oath or a pledge, and I regret exceedingly that he should read me out of the party.

PREAMBLE AND BILL OF RIGHTS.

THE PRESIDENT. The preamble and bill of rights, which was made the special order, is now in order.

MR. VAN DYKE. I move that the Convention do now resolve itself into Committee of the Whole, for the purpose of considering the report of the Committee on Preamble and Bill of Rights.

THE PRESIDENT. It must be read first. The Secretary will read the report.

MR. DUDLEY, of Solano. That report is on the desk of every member, and I see no necessity for spending time in reading it. I move that it be taken up section by section so that we can act upon it.

THE PRESIDENT. The gentleman is out of order. By the rules the report must be read once in the house.

MR. VAN DYKE. Then I move that the rules be suspended.

MR. TINNIN. Mr. President: I hope the rule will not be suspended.

MR. VAN DYKE. I withdraw the motion.

THE SECRETARY read the majority and minority reports, as follows:

REPORTS FROM COMMITTEE

On Preamble and Bill of Rights; submitting draft for preamble and article one, new Constitution.

The following is the report which will come up in the Convention as the special order for this day:

MR. PRESIDENT: The Committee on Preamble and Bill of Rights beg leave to report that they have had under consideration, for a number of sessions, the subject-matter referred to them, and, having agreed upon a draft for a preamble and declaration of rights, submit the same herewith to the Convention for its consideration.

At the outset of their deliberations, the committee adopted the plan to take up, in their order, the preamble and different sections of article one of the present Constitution, and consider the same as a basis for their action, with the understanding that only such provisions should be altered or amended as the public interest seemed to demand. Acting upon this plan, the committee first informally considered and acted upon the old preamble and separate sections of article one, seriatim, in connection with the various propositions bearing thereon which have from time to time been referred to us by the Convention. Afterwards the committee went over the work again, in the same manner, for final action.

PREAMBLE.

It being the opinion of the committee that the substance and general style of the present preamble should be preserved, they have reported the same, with only slight verbal amendment, as the preamble for the new Constitution. It expresses in brief and appropriate language the people's gratitude to the Supreme Being for their freedom, and their desire and determination to secure and perpetuate its blessings by the establishment of a Constitution and government. This is all that seems to be required, without loading it down with unnecessary recitals.

DECLARATION OF RIGHTS.

SECTIONS 1–2. Sections one and two of article one have been retained with the same numbers in the new article, without any alteration. The former declares the inalienable rights of man, and the latter the object

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and purposes of government, in a manner and style that cannot well be improved.

Sec. 3. Section three of the old article, relating to the right of trial by jury, has been materially changed. There were a large number of propositions referred to the committee, having in view some modification of the jury system, and after giving them due consideration and devoting considerable time to the subject, the committee agreed upon the section as reported, which has been inserted in the place of the old section seven, immediately preceding the section relating to the Grand Jury, and numbered accordingly. As section three of the article here reported, the committee have adopted a new section which recognizes the Constitution of the United States as the paramount law of the land.

Sec. 4. Section four, in reference to the free exercise and enjoyment of religious profession and worship, has been retained with the insertion of the words "or juror," after the word "witness," in the sentence, "and no person shall be rendered incompetent as a witness on account of his opinions on matters of religious belief."

A number of memorials, quite numerously signed, having in view some modification of, or addition to, what is contained in section four, have been referred to us. A representative of the clergy also favored the committee with a brief statement of the reasons assigned by a large class of our people for desiring such changes. But after giving to the subject-matter all the consideration its importance demanded, the committee, with all deference to the memorialists, still remain of the opinion that it would be unwise to materially alter or add to the section as it stands in the old Constitution.

Sec. 5. Section five, relating to the writ of habeas corpus, remains as in the original article.

Secs. 6–7. Sections six and seven, in addition to the declaration in the former against excessive fines, cruel and unusual punishments, and the unnecessary detention of witnesses, bear upon the same subject; namely, the matter of bail. The committee, therefore, have transposed and consolidated these sections, and have added, by way of amendment to the clause relating to detaining witnesses, a prohibition against confining them in jails, or rooms where criminals are generally imprisoned. At present it not unfrequently happens that a stranger or poor person so unfortunate as to witness the commission of a crime, for want of bail, is confined in some noisome prison cell, while the criminal, more blessed in the possession of friends or property, goes at large on bail.

Sec. 7. For section seven, as already stated, we have inserted the old section three, as amended. As thus amended, the right of a jury in criminal trials is still retained, but in cases not amounting to felony the Legislature may fix the number to constitute such jury; and in all civil cases the whole matter is left to be provided by law.

Sec. 8. Section eight has been divided, so as to form, with the amendments proposed, three sections. The portion relating to the Grand Jury forms the eighth section of the new article. As amended, it provides for a Grand Jury in cases punishable by death or imprisonment in the State Prison, with the usual exceptions, and in other criminal cases permits a prosecution by information or complaint, as may be prescribed by law. It also provides, that while the Grand Jury is retained two thirds may find a true bill, thereby making it more difficult to defeat action against influential parties than under the old system. Power is also conferred upon the Legislature, by a two-thirds vote of all the members elected to each house, to abolish and restore the whole Grand Jury system. In regard to the Grand Jury, as well as the trial jury, the action of the committee may not have been as radical as the public sentiment demands, judging from the various propositions before them bearing upon the subject; but if so, there is a degree of elasticity in the new system which the old did not possess; and the Legislature, guided by experience, will be enabled to meet the wants of the people in this respect.

Sec. 9. Section nine, declaring the right of freedom of speech and of the press, and prescribing a rule in criminal prosecutions for libel, has been retained as it existed in the old article.

Sec. 10. Section ten, declaring the right of the people freely to assemble together to consult for the common good, etc., has also been retained.

The committee, after duly considering the subject-matter of the two foregoing sections, came to the conclusion that it would be unwise to propose amendments to them, or to tamper with them in any respect. Their provisions have been construed, and are well understood, and it is hazardous to make experiments in such matters.

Sec. 11. Section eleven, declaring that all laws of a general nature shall have a uniform operation, is retained.

Sec. 12. Section twelve, providing that the military shall be subordinate to the civil power, etc., has been amended by striking out the last clause, which limits an appropriation for army purposes, as that matter is covered by section twenty-two of the present article, added by way of amendment in eighteen hundred and sixty-six and eighteen hundred and seventy-one; and the latter section has also been left out of our draft, on the ground that it belongs more properly to the legislative article. To section twelve, as thus amended, we have added section thirteen of the old article, as it bears upon the same matter of restricting the military power.

Sec. 13. Section thirteen has been provided for by inserting in place of the old section, already disposed of, that portion of the old section eight, in regard to the right of the accused in a criminal trial, and has been amended. The amendment consists in adding certain other usually enumerated rights, mostly taken from article six of the amendments to the Constitution of the United States, and which seem to have been omitted from that portion of the old section eight. We have also altered the clause in regard to putting a person twice in jeopardy, so as to remove any doubt, in case a jury on the trial should, for any reason, be discharged without rendering a verdict.

Sec. 14. The committee struck out the old section of this number, relating to apportionment, as it more properly belongs to the Committee on Apportionment and Representation. The committee have constructed a new section on the subject-matter of the last clause in the old section eight—that is, taking private property for public uses. In the section as reported in our draft for section fourteen, it is provided that the time or services of the citizen, when required for the public, shall also be compensated in a manner to be provided by law. It may be that the labor of an individual is his only capital or means of support, and when his time or services shall be required for the public benefit there appears to be no reason why compensation should not be made the same as when private property is taken.

Sec. 15. Section fifteen prohibits imprisonment for debt, except in cases of fraud, and prohibits imprisonment for a militia fine. It has been retained in its place without alteration.

Sec. 16. Section sixteen, declaring against ex post facto laws and laws impairing the obligation of contracts, has been so amended as to prevent impairing the remedy for the enforcement or breach of contract.

Sec. 17. Section seventeen, in regard to the right of foreign residents to possess, enjoy, and inherit property, has been amended so as to exclude from its provisions foreigners not eligible to become citizens.

Sec. 18. Section eighteen, prohibiting slavery and involuntary servitude, has been so amended as to read: "No form of slavery shall ever exist in this State, and there shall be no involuntary servitude, except for the punishment of crime of which the party shall have been duly convicted."

Sec. 19. Section nineteen, relative to the right of the people to be secure from unreasonable seizures and searches, is retained without amendment.

Sec. 20. Section twenty, in regard to treason, and the rights of a person on trial charged with the same, remains intact.

Sec. 21. Section twenty-one, declaring that this enumeration of rights shall not be construed to impair or deny others retained by the people, was the last section of the original article, and we have retained it as the last in our draft, and changed the number accordingly. In its place as section twenty-one, we have inserted a new section declaring against special privileges and immunities. Several propositions were referred to us bearing upon this subject, and many of the Constitutions of other States contain similar provisions.

Sec. 22. The present section of this number added by amendment, as already stated, has been dropped from our draft as properly belonging to another article. The committee have prepared a new section to take the place of twenty-one, declaring against appropriations or grants to any corporation, association, asylum, hospital, or any institution, not under the exclusive management and control of the State. Judging from the various propositions on this subject, there would seem to be a public demand for some provision of this kind, in order to prevent the funds and property of the State from being diverted and used for other than public purposes.

Sec. 23. Section twenty-three is a new section, in which it is declared that the provisions of the new Constitution, unless when declared to be otherwise, shall be mandatory and prohibitory. The purpose of this is that where plain language is used in the Constitution declaring what shall be done and what shall not be done, it must not be construed, in convenient cases, to be merely directory. This section has also been presented in deference to what seems to be a public demand for something of the kind.

Sec. 24. This is the last section in the new article, and, as already stated, is the same as the twenty-first or last section in the original article.

Several other new sections were proposed before the committee, but failed of adoption—some for the reason that they were considered unnecessary or inappropriate, and others for the reason, simply, that they more properly belonged to some other department.

Herewith the committee returns to the Convention various memorials and propositions bearing upon the matters under consideration, up to this time referred to them, and would recommend that so much of any or all the provisions contained therein as may not be embodied in the draft herewith submitted, be not adopted.

All of which is respectfully submitted.

WALTER VAN DYKE, Chairman.

MINORITY REPORT.

Mr. President and Gentlemen of the Convention: We, the undersigned, minority of your Committee on Preamble and Bill of Rights, beg leave to report the following two additional sections for insertion in the bill of rights of the new Constitution:

Section —. No property qualification shall ever be required for any person to vote, hold office, or become a juror.

Sec. —. The penalty for all crimes, except petty misdemeanors, shall be imprisonment, which shall be proportioned to the character and degree of the offense.

J. RICHARD FREUD,
JAMES N. BARTON,
CHAS. S. RINGGOLD,
A. E. NOEL.

DRAFT FOR PREAMBLE AND DECLARATION OF RIGHTS.

PREAMBLE.

We, the people of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

Article I.

DECLARATION OF RIGHTS.

Section 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and

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defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

SEC. 3. We recognise the Constitution of the United States of America as the great charter of our liberties, and the paramount law of the land.

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience, hereby secured, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

SEC. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishment be inflicted; nor shall witnesses be unreasonably detained, or confined in any jail or room where criminals are usually imprisoned.

SEC. 7. In criminal cases, the right of trial by jury shall remain. In all cases, except felony, the Legislature may provide, by law, the number necessary to constitute a jury, and in all civil cases the number necessary to render a verdict.

SEC. 8. No person shall be held to answer for a crime, or other public offense, punishable by death or imprisonment in the State Prison (except in cases of impeachment, and in cases of militia, when in actual service, and in the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace), unless on presentment or indictment of a Grand Jury. In all other cases, offenses shall be prosecuted by indictment, information, accusation, or complaint, as concurrent remedies, as may be prescribed by law. A Grand Jury shall consist of not less than fifteen nor more than eighteen persons, two thirds of whom may find an indictment or true bill. The Legislature, by a two-thirds vote of all the members elected to each house, may abolish and restore the Grand Jury system.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions on indictments for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

SEC. 10. The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

SEC. 11. All laws of a general nature shall have a uniform operation.

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace, and no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

SEC. 13. In criminal prosecutions in any Court whatever, the party accused shall have the right to a speedy and public trial; to appear and defend, in person and with counsel; to demand the nature and cause of the accusation, and to have a copy thereof; to meet the witnesses face to face, and to have process to compel the attendance of witnesses in his behalf. No person, after having been once acquitted by a jury, or discharged by the Court, shall again be put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

SEC. 14. Private property shall not be taken or damaged for public use, without just compensation having been made to or paid into Court for the owner, except in cases of war, riot, fire, or great public peril; in which cases compensation shall afterwards be made; such compensation or damages to be assessed by a jury, unless waived by the parties; nor shall the time or service of any person, except when held or under arrest for crime, be taken without just compensation to be fixed and provided by law.

SEC. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, or the remedy for the enforcement or breach thereof, shall ever be passed.

SEC. 17. Foreigners eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this State, shall have the same rights in respect to the possession, enjoyment, and inheritance of property as native born citizens.

SEC. 18. No form of slavery shall ever exist in this State, and there shall be no involuntary servitude unless for the punishment of crime of which the party shall have been duly convicted.

SEC. 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizure and searches, shall not be violated; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

SEC. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid or comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open Court.

SEC. 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

SEC. 22. No money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State; nor shall any grant or donation of property ever be made thereto by the State.

SEC. 23. The provisions of this Constitution are mandatory and prohibitory, unless by express words it is declared to be otherwise.

SEC. 24. This enumeration of rights shall not be construed to impair or deny others retained by the people.

MR. VAN DYKE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, for the purpose of considering the report of the Committee on Preamble and Bill of Rights.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

President Hoge in the chair.

THE CHAIRMAN. The Convention having resolved itself into Committee of the Whole, the Secretary will read section one of the draft.

THE SECRETARY read section one, as follows:

ARTICLE I.

DECLARATION OF RIGHTS.

SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness.

MR. WYATT. I move to transpose the section so as to read, after the word "liberty," "pursuing and obtaining safety and happiness, and acquiring, possessing, and protecting property."

MR. WATERS. I would suggest, Mr. President, that the Secretary has proceeded to read the bill of rights, and has not read the preamble.

THE PRESIDENT. The preamble has been read in Convention, and will be taken up and considered after we have gone through with the bill of rights.

MR. WICKES. Mr. President: I move to amend by striking out the clause "all men are by nature free and independent," and substitute the following: "All men are endowed with a measure of liberty under restraint—they are equal before the law."

THE CHAIRMAN. There is already an amendment offered by the gentleman from Monterey, Mr. Wyatt.

MR. WYATT. I have my amendment in writing, which I will send up. It is merely a transposition of the two clauses.

THE CHAIRMAN. The Chair hears no second to the amendment.

MR. WICKES. I now offer the following amendment:

"All men are endowed with a measure of liberty under restraint—they are equal before the law."

THE CHAIRMAN. The Chair hears no second to the amendment.

MR. BLACKMER. Mr. Chairman: I wish to offer this as an amendment to the first section:

THE SECRETARY read:

"Strike out the word "men" in the first line, and insert the word "persons."

MR. BEERSTECHER. I second the motion.

MR. BLACKMER. Mr. Chairman: I offer this amendment for the sake of making plain the phraseology of this section, and expressing precisely what we mean by it. I know that this word has been used in all of the instruments of this kind heretofore. This does not touch any question except that which belongs to the inalienable rights of all citizens. If we say that all men are born free and equal, or free and independent, we do not mean to confine it to men when we say so, neither do the committee who make this report intend a narrow and strict construction of that word, which includes all *persons* that are born, and it ought to read "all *persons* are born free and independent." I know the construction of this word has always been that it should include other classes besides men, and my reason for offering this amendment was that we ought to say precisely what we mean.

Now, sir, one other section of this same report of this committee we find, in my judgment, the same people referred to, the same class to which this word applies, and they are called "persons." If you will look at the fourth section, for instance, where we speak of "the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief." It does not mean that no *man* simply shall be disqualified as a witness or juror on account of his religious belief, but no *person*, and it says so in plain English.

Again, in section six of this same report we read: "All persons shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident and the presumption great," etc.

That certainly does not mean that no one but men shall be bailable. And so also in section eight we find the same word used that I wish inserted here: "No person shall be held to answer for a crime," etc. That means that all people, all *persons*, may be brought up and held to answer for crimes. It does not mean that none but men shall be held to answer. Now, Mr. President, this does not touch the question of the elective franchise in any manner—has nothing whatever to do with it; it is simply to take this word out and replace it with a word which shall express what we mean. We mean that all persons are born free and independent, and I hope that we will say so. I trust the amendment will prevail.

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Mr. BROWN. Mr. Chairman: I have not heard anything yet to change my mind on this subject. It appears to me that the language is sufficiently clear when it says "all men." We understand what is meant by "all men." Now, I am one of those who do not believe in sudden departures from old landmarks. When matters have been sufficiently clear to be understood, sufficiently comprehensive, I see no reason whatever in making any change in the form of the language. It is claimed that the phrase "all men" should be changed so as to read "all persons." Why, sir, when the first child was born into the world, to commence his race in the human line, he was called a man child. If we go back to the original language, we shall find that the same principle holds good. I say that nothing is to be obtained by changing this language by any means. It seems more forcible, more clear, and I hope that unless something substantial, something really more proper, can be presented before this Convention, the language will be retained as it is.

Mr. ROLFE. Mr. Chairman: I think the gentleman offering this amendment covers more ground than he intended to cover. "Men," as I understand it, is a generic term, used in the Bible as well as in other works, which includes men, women, and children. We use it in its generic sense. Now substitute the word "person," for this word "men." The word person includes artificial as well as natural persons, and is a more comprehensive term than the other, and therefore corporations would be included in this grant of rights which is a proposition I am not willing to accede to. If the gentleman will substitute "people," or "human beings," I think he would accomplish his object. Neither would I object to allowing it to remain as it is.

Mr. O'DONNELL. I move to amend by inserting after the word "men" in the first line, the words, "who are capable of becoming citizens of the United States."

Mr. McFARLAND. I second the amendment. [Laughter.]

The CHAIRMAN. The Secretary will read it as amended.

The SECRETARY read:

"All men who are capable of becoming citizens of the United States, are by nature free and independent." [Laughter.]

The CHAIRMAN. The question is on the amendment of the gentleman from San Diego, Mr. Blackmer.

Mr. VAN DYKE. Mr. Chairman: That section is precisely the old Constitution as it stands, and it is the same language as is in the Declaration of Independence, and well understood, and I hope the Convention will not change well understood language when it is not demanded by some public necessity.

The amendment was rejected.

The question being on the amendment offered by the gentleman from San Francisco, Mr. O'Donnell, it was rejected.

Mr. BEERSTECHER offered the following amendment:

Strike out the word "men" and insert in lieu thereof, "human beings."

The CHAIRMAN. The amendment is not in order. The committee have just refused to strike out the word "men."

Mr. SMITH, of Santa Clara. Will it be in order to move the adoption of that section?

The CHAIRMAN. No, sir. If there is no other amendment, the Secretary will read section two.

The SECRETARY read section two, as follows:

Sec. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it.

The CHAIRMAN. Are there any amendments to section two?

Mr. BARBOUR offered the following amendment to section two, in the nature of a substitute:

"The people of the State have the inherent, sole, and exclusive right to regulate their internal government, and the police thereof. They have the right to determine what is detrimental to the well-being of the State, and to exhaust the power of the State to prohibit and prevent it. They have the right to alter or abolish their Constitution and form of government whenever they may deem it necessary for their safety and happiness. Public officers are the trustees and servants of the people, and at all times amenable to them."

Mr. HERRINGTON. I move to strike out the word "sole" in that amendment. The word "exclusive" is sufficient.

Lost.

Mr. LARKIN. I move to strike out of the amendment the words "and form of government," so that the amendment will read:

"The people of the State have the inherent, sole, and exclusive right to regulate their internal government, and the police thereof. They have the right to determine what is detrimental to the well-being of the State, and to exhaust the power of the State to prohibit and prevent it. They have the right to alter or abolish their Constitution whenever they may deem it necessary for their safety and happiness. Public officers are the trustees and servants of the people, and at all times amenable to them."

The people of this State have no right to alter or change their form of government.

Mr. EDGERTON. I rise to a point of order. The substitute has not yet been adopted, and is not open to amendment.

The CHAIRMAN. This is an amendment to an amendment. It is capable of amendment.

Mr. ESTEE. Mr. President: What right has this Convention, or the people of the State of California, to change our form of government? That is one of the rights that is expressly guaranteed. I know of no instance where a State, by its organic law, can reserve the right to change a republican form of government.

The CHAIRMAN. The question is on the amendment offered by the gentleman from El Dorado, Mr. Larkin.

Lost.

The CHAIRMAN. The question is on the amendment offered by the gentleman from San Francisco, Mr. Barbour.

Mr. McFARLAND. Mr. Chairman: Whether the questions embraced in the amendment are correct or not, certainly it seems to me that this is not the proper place for it. This second section is a mere declaration of principles of the American system of government, and should stand where it is. If the gentleman desires to incorporate any of the propositions claimed in his amendment, let him do it at some other time, and in some other section. It talks about the duties of officers, and it should be in a separate section, and not introduced in this section.

Mr. BARTON. Mr. Chairman: I would like for the mover of this amendment, Mr. Barbour, to inform this Convention of any guarantee that he proposes in his amendment that is not now guaranteed to the people of this State by this article, in section two. It says:

"All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it."

Now, as a citizen of the United States, and a citizen of the State of California, I believe that it embodies everything that is necessary for the welfare and safety of the people. I would therefore like to hear some reason given why this amendment should be adopted.

Mr. BARBOUR. I have offered this, and I find the substance contained therein is in the present Constitution of the State of Georgia, and of the State of Illinois, and in the recent Constitution adopted by Colorado. Now, as I understand our duty here as Constitution makers, it is to adopt such fundamental principles as are demanded by our peculiar situation and condition. First, however, I will answer the gentleman who objects to the phraseology of this amendment, which I have taken from the Constitution of Colorado. It is carried along, not as a revolutionary declaration, for I see here immediately afterwards a sentence recognizing the Constitution of the United States as the paramount law of the land. I don't care whether you put it in that shape, or in some other shape. If the new section is adopted as proposed by the Committee, recognizing the Constitution of the United States, both must be construed together. I maintain, sir, that this section, as amended by the committee, is not, at the present time, good for the State of California, in the nature of things, because of the peculiar situation of this people. In the first place, we have an overshadowing curse everywhere present, in this State, and we want an emphatic declaration in the Constitution, declaring that this State has the right to regulate her own internal government. Therefore, when we come to the declaration of the powers of the State, there is the place where we want to make this declaration of our powers.

Taking the subject of public officers. It is true that it is but a general declaration of the relations of public officers to the government. But there is the place to put it, right here where you have declared the power of the government and of the people, and following that declaration as an opening wedge, with the restrictions that can be imposed on them. There are men in this country who have declared themselves to be above the law. They claim that they hold some sort of divine or peculiar position which renders them higher than the law, and I want to make them all amenable to the law, and right here where the power of the people is declared is the place to put that declaration. This doctrine has been preached here on this floor, that there are men in office at the present time who can make use of their time as against the time belonging to the people, and it is for the State herself to determine, the State itself must be the judge of what is detrimental to its welfare, and I want gentlemen to come out squarely and say whether they are in favor of the State regulating her own internal affairs, and the power of the State to impose some obligations also on her officers.

Mr. CROSS. Mr. Chairman: I shall speak but briefly on this matter. We are, as a great State, one of the parties of a great compact—the greatest compact, perhaps, in the history of nations. One of the parties to this compact is the United States, or the General Government. The other parties to the compact are the several States of the Union. And now, as the Government of the United States, one of the parties to this compact, has declared the relation of the several States to the General Government, so we, as a party to this compact, have a right, and it is our duty, in this the only place where we can express our views of our relations to the General Government, to give a clear statement of what we consider these relations to be. And if it be the sentiment of the people of the State of California that no power outside of the State of California has a right to interfere in our police regulations, and prevent our taking such steps to formulate such measures as we shall think for the interest, for the protection, of the people of this State, we have a right, and it is our duty, to declare ourselves upon such propositions. And, while perhaps it comes very nearly to the old principle of States rights, yet in this statement it is so modified, and so clearly stated, there is not even an element of anything revolutionary against the government of the United States in this declaration, but it is so modified, and so plainly stated as, I believe, to meet with the approval of the people of this State. I think the General Government has no right to interfere with our police regulations, and I think we have a right to protect ourselves. Furthermore, I believe that we should put in this declaration in regard to public officers, and if this is not the place, I would ask where is the proper place.

Mr. NOEL. I would inquire what section we are considering.

The CHAIRMAN. Section two.

Mr. NOEL. I hope, sir, that the section as reported will receive no amendments. The section as reported here is identical with the corresponding section in the old Constitution of the State; and I mean no disrespect to the gentlemen offering amendments, but that section was framed by statesmen, and has stood a long test, and it should be allowed to stand. It is simply a declaration of general principles. It is a declaration of the inherent rights of the people, and any amendment

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that may be offered can add nothing to those rights; nor can they be taken away by any declaration we may make.

MR. WILSON, of First District. Mr. Chairman: It seems to me that things of a very diverse character are contained in the proposition of the gentleman from San Francisco, Mr. Barbour. It refers at one time to certain inherent powers of the people, involving some original principles, and then it comes down to the question of the responsibility of public officers. It involves, also, some questions concerning the police power of the State. As I understand it, section two is simply a declaration of certain original inherent powers of the people. I do not think any one can find any fault with the wording of section two. It seems terse, compact, and clear. It has been construed over and over again, and has a plain significant meaning. I do not think the substitute as clear and concise as the original section; and I think the questions involved in the substitute can all be presented somewhere else, in another shape, at another time. I understood the gentleman to say that this amendment is contained in substance in the Colorado Constitution. I do not find it there. Of course I do not want to contradict the gentleman, but I do not find that clause in the bill of rights of the Colorado Constitution. The first and second sections of the bill of rights of the Colorado Constitution read as follows:

"SECTION 1. That all political power is vested in and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

"SEC. 2. That the people of this State have the sole and exclusive right of governing themselves as a free, sovereign, and independent State; and to alter and abolish their Constitution and form of government whenever they may deem it necessary to their safety and happiness, provided such change be not repugnant to the Constitution of the United States."

It seems to me that is much more like our original section here, and it seems to me that the proposition of the gentleman from San Francisco is out of place here. His proposition says: "The people of the State have the inherent, sole, and exclusive right to regulate their internal government and the police thereof. They have the right to determine what is detrimental to the well-being of the State, and to exhaust the power of the State to prohibit and prevent it," etc.

Now, the proposition in the Colorado Constitution is much more compact than even in our own Constitution. I prefer to vote upon these original principles, upon which there is no great difference of opinion, than the proposition involving the views of the gentleman from San Francisco, which had better be passed upon as a separate proposition. I think, however, it is worthy of consideration, but there will be great difference of opinion, and I do not want it put in at this point. Those two sections, taken as they are, are sufficient declarations of the principles upon which the American Government is based: "All political power is inherent in the people." Nobody can object to that; it is tersely and strongly expressed. It is an expression of the great principles upon which all American governments are founded: "Government is instituted for the protection, security, and benefit of the people."

Nobody can make any objection to that; it is plainly and tersely expressed. It seems to me that this is certainly good as far as it goes, and I am in favor of adopting so much of the old Constitution as we can adopt, without altering the phraseology, upon the common sense principle that it has been construed over and over again by the Courts; therefore, a proposition involving other questions should be passed upon as a separate proposition, and I prefer the original section without amendment.

MR. VAN DYKE. Mr. Chairman: That section, like section one, simply contains political sentiments that are contained in the Declaration of Independence, and which are not disputed, while the amendment contains sentiments that can be disputed, and controversies will arise with reference to it. He wants to lay down a proposition without regard to whether it conflicts with the Federal Constitution or not. That would raise a very serious question here. Suppose we do consider a certain measure here against the interests of the people of California; but suppose it is known that we are running counter to the will of the General Government and the Constitution of the United States, and a matter over which the people of the United States have the sole power; will the gentleman from San Francisco, or any other member on this floor, maintain that we can dispose of that question? I think not.

MR. LARKIN. I wish to offer an amendment, in order to explain the amendment which I offered before. I offer this as an amendment:

"Provided such change be not repugnant to the Constitution of the United States."

I wish to add that immediately after the word "happiness" in Mr. Barbour's amendment.

MR. BARBOUR. I accept the amendment.

MR. MILLER. Mr. Chairman: The text of the amendment seems to be plain and clear, without any circumlocution, in relation to the police power of the State, without making any attempt to define precisely what the police power is, or the limits of it. Now, I have no kind of objection doing that in the proper place and at the proper time. It is evident that a long debate will be provoked here, as to the rights and powers of the States, and as to the rights and powers of the General Government. That discussion will necessarily come up in the consideration of the measures or propositions which have been already introduced here, and which are now before the Committee on Chinese. I think the propositions of the gentleman from San Francisco, Mr. Barbour, more properly comes within the article on miscellaneous provisions, and it will save time if we consider all the propositions relating to the Chinese subject in Committee of the Whole at some other time. This proposition is intended by the gentleman to affect the Chinese, and the discussion which it will call out will involve the Chinese question, so called. It seems to me that this second section of the old Constitution, which the committee has reported, is one that should be in the declaration of rights, whether we adopt the proposition of Mr. Barbour or not. I have no kind of objections to declaring that there is such a thing as the police power of the State, but this is not the place for it. I think it would more properly come in the article on miscellaneous provisions.

MR. AYERS. Mr. Chairman: I am in entire sympathy with the object of this amendment. It is an object which shall meet with my approval at the proper time. I believe, however, that it will be the true course for this Convention to pursue, to place all the propositions relating to this great and serious question together, and have them discussed thoroughly at the proper time. For my part, when this question comes regularly before the Convention, I intend that my views shall have expression upon this point, without any reservation. I believe, however, with the gentleman from San Francisco, Mr. Miller, that we had better, in order that these propositions may be discussed thoroughly and completely, and conclusively, remand them over to a special time, a special session, so that under this head every gentleman on this floor who desires to be heard, shall be enabled to make himself thoroughly understood. I am not prepared to discuss that question at the present time in all its amplitude, but I shall be prepared when it comes properly before this Convention. I agree with the gentleman who last spoke that probably the best place for the amendment would be in a separate proposition under the head of miscellaneous subjects. I hope that the gentleman who has offered the amendment, who I know is sincere in his desire to meet the evil, will accept the suggestion and withdraw the amendment.

MR. BARTON. Mr. Chairman: I do not wish to be understood as opposed to the amendment offered by the gentleman from San Francisco, Mr. Barbour, but my object was to ask for an explanation of the principles contained in this amendment, for the purpose of knowing and satisfying myself whether this was the proper place for it or not. I believe it is eminently proper that this section two should remain as it is, and I concur with the remarks made by General Miller and Mr. Ayers, and I hope that I will have an opportunity to vote for the ideas expressed by my friend Barbour, but I believe this is not the time and place for the amendment.

MR. WATERS. I move that the committee now rise, report progress and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen of the Convention: The Committee of the Whole have had under consideration the article on preamble and bill of rights, and have instructed me to so report to the Convention, and ask leave to sit again.

MR. EDGERTON. Before recess I desire to give notice that the Committee on Revenue and Taxation will meet immediately after adjournment in the Supreme Court-room.

ADJOURNMENT.

MR. HOWARD, of Los Angeles. Mr. President: With a view of giving the committees a chance to work, I move that the Convention do now adjourn until to-morrow morning at ten o'clock.

Carried, and at twelve o'clock M., the Convention adjourned.

THIRTY-THIRD DAY.

SACRAMENTO, Wednesday, October 30th, 1878.

The Convention met in regular session at ten A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Dunlap,	Huestis,
Ayers,	Eagon,	Hughey,
Barbour,	Edgerton,	Hunter,
Barnes,	Estee,	Inman,
Barry,	Estey,	Johnson,
Barton,	Evey,	Jones,
Beerstecher,	Farrell,	Joyce,
Belcher,	Fawcett,	Kelley,
Bell,	Filcher,	Kenny,
Biggs,	Finney,	Keyes,
Blackmer,	Freeman,	Kleine,
Boggs,	Freud,	Laine,
Boucher,	Garvey,	Lampson,
Brown,	Glascock,	Larkin,
Burt,	Gorman,	Larue,
Campbell,	Graves,	Lavigne,
Caples,	Gregg,	Lewis,
Casserly,	Hager,	Lindow,
Chapman,	Hale,	Mansfield,
Charles,	Hall,	Martin, of Alameda,
Condon,	Harrison,	Martin, of Santa Cruz,
Cross,	Harvey,	McCallum,
Crouch,	Heiskell,	McComas,
Davis,	Herold,	McConnell,
Dean,	Herrington,	McCoy,
Dowling,	Hilborn,	McFarland,
Doyle,	Hitchcock,	McNutt,
Dudley, of San Joaquin,	Holmes,	Miller,
Dudley, of Solano,	Howard,	Mills,

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Moffat,	Schell,	Turner,
Moreland,	Schomp,	Tuttle,
Morse,	Shafter,	Vacquerel,
Nason,	Shoemaker,	Van Dyke,
Nelson,	Shurtleff,	Van Voorhies,
Neunaber,	Smith, of Santa Clara,	Walker, of Marin,
Noel,	Smith, of 4th District,	Walker, of Tuolumne,
O'Donnell,	Smith, of San Francisco,	Waters,
Ohleyer,	Stedman,	Webster,
O'Sullivan,	Steele,	Weller,
Overton,	Stevenson,	Wellin,
Porter,	Stuart,	West,
Prouty,	Sweasey,	Wickes,
Pulliam,	Swenson,	White,
Reed,	Swing,	Wilson, of Tehama,
Reynolds,	Terry,	Wilson, of 1st District,
Rhodes,	Thompson,	Winans,
Ringgold,	Tinnin,	Wyatt,
Rolfe,	Townsend,	Mr. President.

ABSENT.

Berry,	Murphy,	Strong,
Cowden,	Reddy,	Tully.
Grace,	Soule,	

LEAVE OF ABSENCE.

Two days' leave of absence was granted Mr. Dean.

The Journal of yesterday was read and approved.

COMMUNICATION.

The President presented the following communication from the Assessor of the City and County of San Francisco:

OFFICE OF THE CITY AND COUNTY ASSESSOR,
SAN FRANCISCO, October 28th, 1878.

To the Constitutional Convention:

GENTLEMEN: In compliance with the resolution passed by your Convention on the twenty-second instant, calling for information in regard to certain assessments, I beg to submit the following:

The amount assessed on mining stocks in this city and county, according to the last assessment roll, is nine hundred thousand dollars ($900,000).

The amount assessed on churches in this city and county, according to the last assessment roll, is three hundred and twelve thousand three hundred and fifty dollars ($312,350), and the lands on which the said churches are erected are assessed at one million three hundred and forty-seven thousand and seventy dollars ($1,347,070).

The assessment on mining stocks, though small, was deemed necessarily so because in most instances the claim of double taxation and claim of non-taxability of solvent debts were interposed to prevent the separate assessment of this species of property.

The instances, however, in which I have been able to make such assessments will suffice to enable your Convention to determine whether more effectual modes cannot be devised for reaching this species of property for the purpose of taxation, if, in your judgment, this should be expedient.

All of which is respectfully submitted.

A. BADLAM, Assessor.

By R. R. JOHNSON, Chief Deputy.

THE PRESIDENT. It will be referred to the Committee on Revenue and Taxation.

MR. BEERSTECHER. I move that it be printed.

Carried.

REPORT ON CORPORATIONS.

MR. ESTEE presented the following report from the Committee on Corporations other than Municipal:

SACRAMENTO, CALIFORNIA, October 30th, 1878.

MR. PRESIDENT: Your Committee on Corporations other than Municipal respectfully report that resolutions and propositions numbers two hundred and one, one hundred and ninety-one, one hundred and ninety-two, one hundred and seventy-five, three hundred and fourteen, one hundred and twenty-two, three hundred and forty, three hundred and forty-four, two hundred and seventy-nine, two hundred and thirteen, one hundred and sixty-eight, one hundred and fourteen, forty-seven, forty-one, thirty-four. one hundred and thirty nine, one hundred and fifty-seven, thirteen, fifty, one hundred and thirteen, five, eleven, eighty-two, two hundred and ninety-eight, fifty-eight, eleven, three hundred and seventy-four, three hundred and fifty three, one hundred and forty-seven, and three hundred and seventy-two have been duly considered by your committee, and the same are reported back to the Convention with the recommendation that no further action be taken thereon, as such portions of the above propositions deemed of value will be found in the article on corporations accompanying this report.

Your committee recommend that a separate article on "corporations other than municipal" be embodied in the Constitution, to be subdivided into "corporations in general" and "railroad corporations."

Your committee respectfully submit twenty-three sections, forming an article on the subject of corporations other than municipal, and recommend their adoption.

M. M. ESTEE,	V. A. GREGG,
JNO. M. RHODES,	J. V. WEBSTER,
V. E. HOWARD,	CHAS. F. REED,
JOS. W. WINANS,	GEO. STEELE,
P. DUNLAP,	H. C. BOGGS,
JOHN P. WEST,	PATRICK REDDY.
GEO. W. SCHELL,	

MR. ESTEE. I move that the report of the committee be laid on the table and ordered printed.

THE PRESIDENT. Under rule fifty-three it will have to be read. The Secretary will read the article submitted by the committee.

THE SECRETARY read:

SECTION 1. Corporations may be formed under general laws, but shall not be created by special Act. All laws passed pursuant to this section may be altered from time to time or repealed.

SEC. 2. Dues from corporations shall be secured by such individual liabilities of the corporators and other means as may be prescribed by law.

MR. LARKIN. I move that the further reading of that be dispensed with, and that the usual number of copies be ordered printed.

MR. MANSFIELD. I desire to have it read.

THE PRESIDENT. It must be read. The rule cannot be suspended.

THE SECRETARY continued the reading:

SEC. 3. Each stockholder of a corporation, or joint stock association, shall be individually and personally liable for his proportion of all its debts and liabilities.

SEC. 4. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue and shall be subject to be sued, in all Courts, in like cases as natural persons.

SEC. 5. The Legislature shall have no power to pass any Act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws; but no corporation or association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money in this State, except the lawful money of the United States.

SEC. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter have no validity.

SEC. 7. The Legislature shall not extend any franchise or charter, or remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State.

SEC. 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies and subject them to public use the same as the property of individuals, and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State.

SEC. 9. No corporation shall engage in business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold any real estate for a longer period than five years, except such as may be necessary for carrying on its business, or which is incident thereto.

SEC. 10. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

SEC. 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting called for that purpose, first giving sixty days' public notice, as may be provided by law.

SEC. 12. The Legislature shall provide by law that in all elections for directors or managers of incorporated companies every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

SEC. 13. The State shall not subscribe to or be interested in the stock of, or in any manner loan its credit to, any person, company, association, or corporation.

SEC. 14. Every corporation organized or doing business in this State, under the laws or authority thereof, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

RAILROADS.

SEC. 15. All railroads, canal, and transportation companies shall be common carriers and subject to legislative control. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination.

SEC. 16. No president, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company.

SEC. 17. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket, by a member of the Legislature or any public officer, shall work a forfeiture of his office.

SEC. 18. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

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SEC. 19. No discrimination in charges or facilities for transportation shall be made by any railroad or transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station, port, or landing. Excursion and commutation ticket may be issued at special rates.

SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State at the regular gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the sole power, and it shall be their duty, to correct abuses by railroad corporations or other transportation companies; establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; report to the Governor, annually, their proceedings, and such other facts as may be deemed important; hear and determine complaints against railroad or other transportation companies; affix penalties and enforce them through the medium of the Courts, and perform such other duties as may be prescribed by law. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in the foregoing sections.

SEC. 21. The State shall be divided into three railroad districts as nearly equal in population as practicable, from each of which one of the three Railroad Commissioners shall be elected.

SEC. 22. Until the Legislature shall district the State, the following shall be the railroad districts: The First District shall be composed of the Counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one Railroad Commissioner shall be elected. The Second District shall be composed of the Counties of Marin, San Francisco, and San Mateo, from which one Railroad Commissioner shall be elected. The Third District shall be composed of the Counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, from which one Railroad Commissioner shall be elected.

SEC. 23. The Legislature shall pass all laws necessary for the enforcement of the provisions of this article.

M. M. ESTEE,
V. E. HOWARD,
JOS. W. WINANS,
JNO. M. RHODES,
P. DUNLAP,
JOHN P. WEST,
GEO. W. SCHELL,
V. A. GREGG,
J. V. WEBSTER,
CHAS. F. REED,
GEO. STEELE,
H. C. BOGGS,
PATRICK REDDY.

THE PRESIDENT. The report will be laid on the table and printed.

REPORTS.

Mr. Belcher, from the Committee on Labor and Capital, made the following report:

MR. PRESIDENT: Your Committee on Labor and Capital beg leave to report back to the Convention proposition number eighty-four, introduced by Mr Condon, and ask that it be referred to the Committee on State Institutions and Public Buildings.

I. S. BELCHER, Chairman.

REPORTING AND PRINTING.

Mr. Ayers, from the Committee on Reporting and Printing, made the following report:

MR. PRESIDENT: Your Committee on Reporting and Printing, to whom were referred the resolution of inquiry, adopted October twenty-sixth, requiring them to inquire into and report the expediency and probable cost of transcribing, indexing, and printing the Journal of this Convention, beg leave to submit the following:

As to the expediency of printing the Journal, we consider it urgent that each member of this Convention should be placed in possession of a printed copy of the minutes of each day's proceedings. We believe it would facilitate business, give members a clearer view of the work in hand, and economize the time of the Convention. Besides, the Journal, when in its bound form, would afford a record of the proceedings of the body only less valuable for reference than a verbatim printed report of the same.

Your committee have taken the figures made up by the State Printer at an early stage of this session, to determine the cost of printing the Journal, both in its transient and permanent form, and find that it will cost for five hundred (printer's count) bound copies of the Journal, if it make five hundred pages, the sum of one thousand and thirty-nine dollars. Should the Convention require an appendix, in which would be printed the various reports from State officers, and other matter not pertaining to the body of the Journal, such an addition, estimated at two hundred and fifty pages, would cost five hundred and nineteen dollars and fifty cents. The probable cost of indexing the Journal would be about one hundred and fifty dollars, and the extra expense for two hundred and forty slips of the Daily Journal, for the use of the members, would not exceed two hundred dollars.

These items summarized would present the following total:

For five hundred copies of Journal, in book form	$1,039 00
For addition of two hundred and fifty pages, appendix	519 50
Estimated cost of indexing	150 00
For two hundred and forty copies of Daily Journal	200 00
Total cost	$1,908 50

Your committee would further report that there need be no expense for transcription of the Journal, as the minutes of the Minute Clerk can be used as copy by the printers.

This, we are assured, has been done in setting up the Journal of the Senate, and there is no reason why it cannot be done in setting up the Journal of this Convention.

Respectfully,

AYERS, for the Committee.

MR. AYERS. Having made that report, I now move that the journals of this Convention be printed as recommended in that report.

MR. MCFARLAND. I merely rise to inquire if they are to be printed and laid on our desks every morning.

MR. AYERS. Yes, sir.

The motion prevailed.

PARDONING POWER.

MR. SHAFTER, from the Committee on the Pardoning Power, submitted the following report:

MR. PRESIDENT: The Committee on Pardoning Power, to whom were referred proposed amendment number thirteen, introduced by Mr. Vacquerel; number nineteen, introduced by Mr. H. W. Smith; number twenty-one, introduced by Mr. Moreland; number sixty-nine, by Mr. Barry; number one hundred and one, introduced by Mr. Fawcett; number one hundred and twenty-one, introduced by Mr. Herold—have had the same under consideration, and recommend that they be not adopted.

The committee have retained the right of reprieve in the Governor, but yielding to an apparent public desire, have joined the Chief Justice of the Supreme Court to the Governor, as a Commission of Pardons and Commutations. We have recommended that neither pardons nor reprieves should be extended to persons thrice convicted of felony, and we have further required the reasons for pardon or commutation to be given.

We herewith report a draft of the proposed section thirteen, article five.

J. MCM. SHAFTER, for the Committee.

ARTICLE V.

SEC. 13. The Governor shall have the power to grant reprieves, and the Governor and the Chief Justice of the Supreme Court shall have power to grant pardons and commutations of sentence, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as they may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature, at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the pardon and reprieve, and the reasons for granting the same. Neither the Governor and Chief Justice nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been previously thrice convicted of felony.

Laid on the table and ordered printed.

MISCELLANEOUS SUBJECTS.

MR. SCHOMP. The Committee on Miscellaneous Subjects desire to report progress, and have requested me to ask for further time to report.

THE PRESIDENT. If there are no objections, further time will be granted. Hearing none, it is so ordered.

STATIONERY.

MR. HILBORN, from the Committee on Mileage and Contingent Expenses, made the following report:

MR. PRESIDENT: Your Committee on Mileage and Contingent Expenses, to whom was referred resolution number sixty-two, introduced by Mr. Larkin, limiting the amount of stationery each member might draw, have had the same under consideration, and herewith report back a substitute therefor, and recommend the adoption of the substitute.

S. G. HILBORN, Chairman.

The report was received, and the following substitute, reported by the committee, was taken up and adopted:

Resolved, That each standing committee, and each member of this Convention, be allowed all needful stationery, not exceeding the value of ten dollars.

CHINESE.

MR. MILLER offered the following resolution:

Resolved, That proposition number sixty-four, by Mr. Ayers, together with the report of the Committee on Chinese thereon, be taken from the general file and recommitted to the Committee on Chinese.

Adopted.

NEW PROPOSITIONS.

THE PRESIDENT. The next order of business is the introduction of propositions relating to the Constitution.

SUPPORT OF ILLEGITIMATE CHILDREN.

MR. BEERSTECHER introduced the following proposed amendment to the Constitution, providing that the father shall support and educate his illegitimate children:

ARTICLE —.

MISCELLANEOUS PROVISIONS.

SECTION —. The Legislature shall, by law, secure the custody to the mother of every illegitimate unmarried minor, and the father shall support and educate such child, and compensate the mother for her care and custody until such child can support itself.

Referred to Committee on Miscellaneous Subjects.

COURT OF CLAIMS.

MR. TINNIN introduced the following proposed amendment to the Constitution, creating a Court of Claims:

SECTION 1. The State shall be uniformly and equitably just in all its dealings and transactions with all persons; and no debt, liability, or obligation incurred by the State, or under authority of its laws, or whereof it may have received the benefits, shall be repudiated.

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SEC. 2. There shall be established by appropriate legislation a "Court of Claims," to consist of not less than three members, which shall be intrusted with a general supervision over the financial operations and transactions of the State, and its officers exercising functions relating to the collection and disbursement of its revenues. To this Court shall be submitted, with the proper vouchers, all claims and demands against the State or its treasury, legal or equitable, not specially exempted by law from the operation of this section and article of the Constitution, for approval before payment.

SEC. 3. All claims or demands against the State or its treasury, arising from whatever cause, legal or equitable, capable of pecuniary estimation, may be prosecuted by action in the "Court of Claims" by the creditor or claimant, and defended by the Controller and Attorney-General; and the Legislature shall provide by appropriation for the payment, out of the State treasury, of all judgments finally entered up in said Court. The Supreme Court of the State shall have and exercise appellate jurisdiction over all actions instituted in the "Court of Claims" on questions of law alone.

Referred to Committee on State and Municipal Indebtedness.

PUBLIC WORK.

MR. FREUD introduced the following proposed amendment to the Constitution, relating to public work:

SECTION —. All public works of every description, State, county, or municipal, and any modification, repair, excavation, or addition, of any nature whatsoever, to the same, when the cost of such work, modification, repair, excavation, or addition shall exceed the sum of five hundred dollars, shall be let by public contract to the lowest bidder, in such a manner and under such regulations as the contract law of the State shall prescribe.

Referred to Committee on State Institutions and Public Buildings.

STATE BOARD OF EDUCATION.

MR. WICKES introduced the following proposed amendment to the Constitution, relative to the constitution and powers of the State Board of Education:

The State Board of Education shall be composed of two members from each Congressional District, to serve for the same number of years as the Governor of the State, and to be elected at the same time the Governor is elected, but to be elected from the Congressional Districts in the same manner that Representatives to Congress are now elected. The State Superintendent of Public Instruction shall be ex officio a member of said Board. Said Board shall have power:

1. To adopt and prescribe a course of study for the public schools of the State (except in incorporated cities);
2. To prescribe general rules for the government of the public schools of the State;
3. To adopt and prescribe text-books to be used in the public schools of the State (except in incorporated cities);
4. To provide for the examination of candidates for teachers' certificates, and to grant certificates to such candidates;
5. To direct and control the State Normal School;
6. To appoint, and for good cause to remove, County or District Superintendents or Inspectors of Public Schools;
7. To direct and control the State University.

OTHER PROVISIONS.

1. The State Superintendent ought to be elected at the same time and for the same term that the Governor is elected;
2. All the moneys mentioned in section two, of article nine, of present Constitution, should go into a Common School Fund, and a clause inserted to prohibit the Legislature from appropriating any moneys raised by taxation to the support of any sectarian or denominational institution;
3. The word "three," in section three, article nine, should be changed to "six."

Referred to Committee on Education.

TO ENCOURAGE MINING.

MR. DOWLING introduced the following proposed amendment to the Constitution, to encourage mining in the State of California:

SECTION 1. Any miner or prospector who shall discover a lode or ledge of gold or silver-bearing quartz, in the State of California, shall be entitled to a reward of one thousand dollars, United States gold coin; *provided, however*, that said miner or prospector shall have sunk a shaft or winze along the vein or lode to the depth of one hundred feet downwards from the croppings.

SEC. 2. The Legislature shall provide for the enforcement of the foregoing provision by appropriate legislation.

Referred to Committee on Mines and Mining.

RAILROAD COMMISSIONERS.

MR. HALL introduced the following proposed amendment to the Constitution, concerning the duties of Railroad Commissioners:

SECTION —. No railroad company or corporation shall establish or construct any line of railroad in this State for the transportation of passengers or freights, except street railroads in incorporated cities and villages, nor establish any terminal point thereof, nor establish nor maintain any depot, station, or other business place for receiving or discharging passengers or freights, except with the approval, to be duly certified, of said Railroad Commissioners, or a majority of them; and said Commissioners shall have power, and it shall be their duty in said matters, to exercise general supervisory control over all railroads to be operated as public highways in this State, other than said street railroads, and the Legislature shall enact laws to render such control effective.

Referred to Committee on Corporations other that Municipal.

TAXATION OF CORPORATIONS.

MR. WINANS introduced the following proposed amendment to the Constitution, respecting taxation of corporations:

All corporations shall be subject to taxation upon their capital stock, the value whereof, for the purpose of such taxation, shall be the market value of the same at the time of its assessment. The real and personal property of said corporations shall be separately assessed and taxed, and said taxes paid in the several counties respectively in which the same may be situated, and the aggregate amount of such taxes upon real and personal property shall be deducted from the amount of said tax upon the capital stock of said corporations. The residue of said tax upon said capital stock shall be payable by said corporations in the counties respectively in which their principal offices or places of business shall be severally located—in which counties the said capital stock shall also be assessed. The stock held by each stockholder in such corporation shall be exempt from taxation. It shall be the duty of the Legislature to pass such law or laws as may be necessary for the strict enforcement of the provisions of this section.

Referred to Committee on Revenue and Taxation.

LOCAL GOVERNMENTS.

MR. HERRINGTON introduced the following proposed amendment to the Constitution, relative to local governments:

SECTION —. The Legislature shall provide, by general laws, for the establishment of local governments in the municipalities and political subdivisions of the State, giving to the officers charged with the exercise of governmental functions such powers, rights, and privileges, executive, legislative, and judicial, as shall be deemed expedient for the orderly conduct thereof, and for the safety and happiness of their inhabitants.

Referred to Committee on City, County, and Township Organizations.

STATE DEBT.

MR. CASSERLY introduced the following resolution:

Resolved, That the Controller of State be and he is hereby requested to transmit to this Convention the following information, namely:

First—The amount of the debt due by the State, and how the same is held, and at what rate of interest, and the annual amount of interest payable by the State, on what account, and for what purpose or purposes, and how the interest-bearing debt is held; and if said debt is funded, how it is funded; and what have been the expenses of the State government for the past ten years, including the present year.

Second—The amount of the debt, funded or floating, due by the cities of the State, including San Francisco, for the years eighteen hundred and seventy five-six and eighteen hundred and seventy-six-seven, and the average rate of interest paid thereon, and what was the taxable property of San Francisco for the years above mentioned.

Third—The total debt due by the cities and counties of the State in the years above named, and the total taxable property of such cities and counties in said years.

Fourth—The amount of taxable property in the City of San Francisco; also, the amount of tax levy thereon, including the special taxes for the current fiscal year.

Together with any other information, within his control, bearing upon the objects of this resolution.

Adopted.

COMMITTEE CLERK.

MR. NOEL. I move to take up from the table the following resolution:

Resolved, That the Committee on Enrollment and Engrossment be authorized and empowered to employ a clerk, at a salary of five dollars per day, whenever necessary.

The motion prevailed, and the resolution was adopted.

SPECIAL ORDER—BILL OF RIGHTS.

MR. VAN DYKE. I move that the Convention resolve itself into Committee of the Whole, the President in the chair, to take into consideration the report of the Committee on Preamble and Bill of Rights.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read the pending amendment. The question is on the amendment offered by Mr. Barbour to section two of article one.

THE SECRETARY read:

"The people of the State have the inherent, sole, and exclusive right to regulate their internal government, and the police thereof. They have the right to determine what is detrimental to the well-being of the State, and to exhaust the power of the State to prohibit and prevent it. They have the right to alter or abolish their Constitution and form of government whenever they may deem it necessary for their safety and happiness; *provided*, that such change be not repugnant to the Constitution of the United States. Public officers are the trustees and servants of the people, and at all times amenable to them."

MR. WILSON, of First District. I ask that the original section offered by the committee, for which this is a substitute, be read.

THE SECRETARY read:

"SEC. 2. All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right to alter or reform the same whenever the public good may require it."

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was lost, on a standing vote: ayes, 44; noes, 84.

THE SECRETARY read section three, as follows:

SEC. 3. We recognize the Constitution of the United States of America as the great charter of our liberties, and the paramount law of the land.

MR. HOWARD. I move to strike out that section and insert the following:

"In the United States of America the powers of sovereignty are divided between the Government of the Union and those of the States. They are each sovereign with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other."

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MR. HOWARD. I object to this section, sir, because it practically ignores the States and the Constitutions of the States as any part of the charters of American liberties. Now, sir, that proposition is untrue historically, and it is untrue legally. It has no foundation, either in history or in law. If the proposition had been that the Constitution of the United States and the Constitution of the State of California were the charters of our liberties, I should not have objected; but as it is now, sir, it is clearly in opposition to the spirit of the Constitution of the United States itself. Now, sir, the language which I have proposed is that of Chief Justice Marshall, in McCulloch vs. the State of Maryland. It is succinct, it is clear, it is unmistakable; and it recognizes the true theory of American government. He says: "In America the powers of sovereignty are divided between the Government of the United States and those of the States. They are each sovereign with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other." Now, sir, if we are going to recognize the Constitution as the charter of our liberties, let us recognize it as the Constitution of the United States is, that all the reserve powers and sovereignty is in the State and not in the Government of the Union. And therefore it necessarily follows as a result from the express provisions of the Constitution of the United States, reserving all the powers not granted, to the States, or to the people. And that, sir, in a late case has been held to be the law. It is so held after our Constitutions have escaped from the contests of the rebellion. In the case of the United States vs. Dale, 11 Wallace, 424, the Court says: "The General Government and the States, although both exist within the same territorial limits, are separate and distinct sovereignties, acting separately and independently of each other within their respective spheres. The former in its appropriate sphere is supreme; but the States within the limits of their powers not granted, or, in the language of the amendment, 'reserved,' are as independent of the General Government as that Government within its sphere is independent of the States." Now, sir, if we are going to talk about charter of liberties at all let us talk about the whole charter. Let us take the language of the Federal Courts, who say that the United States is sovereign as to the powers granted to the Federal Government, and that the States are sovereign as to the powers reserved. That is well settled. That admits of no controversy. This attempt of the bill of rights to ignore the State is, to say the least, a blunder; and let me add, still further, that if there is a State in this Union that ought to insist upon State rights, that ought to maintain State sovereignty, it is precisely the State of California, in its present position and in its present attitude with regard to several very important questions. Now, sir, it was the intention of the framers of the United States Constitution to maintain State rights—to maintain the sovereign character of the States as to all powers not granted to the Federal Government; and therefore when this bill of rights ignores, practically, the government of States, and sets up the Constitution of the United States, practically, as the charter of our liberties, I say that it is a mistake historically, a mistake in law, and it is a blunder all around.

MR. ROLFE. I have an amendment. I move to amend by striking out this section three entirely, and leaving it out. I offer that as an amendment. I make that motion because I conceive that this third section is entirely unnecessary. This brings up a question here for us to pass upon in this Convention which is more proper for the judicial department.

MR. SMITH of Santa Clara. A motion to strike out is not an amendment.

MR. ROLFE. My motion is to strike out the whole section.

THE PRESIDENT. The first question will be on your motion, to strike out the whole section.

MR. ROLFE. My motion is to strike out the whole section. I deem this a question more proper to be determined by the Courts of the country. It is a question that is being determined by the Courts of our country every day. Although I am a pretty strong Republican, and always have been since the Republican party was organized, I do not recognize the Constitution of the United States as the great charter of our liberties. We had State charters before there was any Constitution of the United States. The Constitution of the United States is a limit upon the powers of the States. However, I am not disposed to discuss that matter any further here. I simply propose to leave that matter entirely with the judicial department of our government to determine to what extent we have powers and authority under the Constitution of the United States, and to what extent we look to the Constitution of the State for our liberties and our powers and our authority. Therefore, I think it is very proper that this section, as reported by the committee, or as offered to be amended by the gentleman from Los Angeles, neither one should have a place on the preamble and bill of rights of our Constitution of the State.

MR. VAN DYKE. Now, the difficulty suggested by the gentleman from Los Angeles, General Howard, and the gentleman from San Bernardino, Mr. Rolfe, could be obviated by an amendment leaving out the words "the great charter of our liberties and;" it would then read: "We recognize the Constitution of the United States of America as the paramount law of the land." Leave out all about the charter of our liberties. That is, simply that we recognise the Constitution of the United States as being the permanent law of the land. Now, this might not have been in the old Constitution, but I will call the attention of the members to the fact, that I believe every Constitutional Convention held since the rebellion has inserted some such provision as that in its State Constitution. I look over the books here upon the State Constitutions and I find it in fourteen of the revisions since the rebellion. Our neighboring State of Nevada has it in. I believe all the States—perhaps I am mistaken—but I believe all the States that have revised their Constitutions since the rebellion, have such a declaration as that. Now, with the amendment I propose, I cannot see what objection any gentleman can have to it. I move to strike out the words, "the great charter of our liberties and," so that it will read: "We recognize the Constitution of the United States of America as the paramount law of the land."

MR. HOWARD. That does not remove the objection. It is not the paramount law of the land, except as to the powers delegated to the Federal Government.

MR. VAN DYKE. We understand that.

MR. HOWARD. But you don't say that. You don't say what you mean. The Constitution of the United States is not the paramount law of the land, except as to the powers delegated to the Federal Government.

MR. VAN DYKE. I understand the Constitution of the United States to be that delegation of power to the General Government—that is, the expressed powers and the necessarily implied powers; nothing more nor less.

MR. WHITE. I hope, sir, that this section will be adopted, and for this simple reason: that it is true in every word. We all know that the Constitution and laws of the United States are the paramount law of this land, and we should declare it so, that our children may recognize it and not fall into the terrible calamity through which this nation has lately passed. The same doctrine is broached here that was broached before the rebellion, and it educated half the people into believing that there was no paramount law of the land. I say that this is the truth, and why do they object to announcing the truth upon this subject any more than that the government lies in the people. That we all agree to, and yet we refuse to declare it. Why shrink from declaring the truth? I am tired of this idea that we must go to law books to understand everything. The gentleman from Los Angeles can understand all the decisions that are made upon this subject, and everything appears clear to him; but, Mr. President, is it for us to say, who never read more law than is necessary to do our business in the country? We want the plain facts there, so that our children shall understand that the Constitution of the United States is the paramount law of the land. And we want you to look to it. Take it away, and what charter have we? What charter of our liberties have we if you take it away? This paragraph is taken from the platform of the Workingmen's party of California. Communists as they are, they pledge themselves to stand by the Constitution of the United States, as the paramount law of the land; and yet we are communists; I want those men on this side here, and I hope there will be a chance of getting the ayes and noes on this question, and see where the communists are. I trust that this proposition will be adopted by this committee.

MR. BROWN. Mr. President: It appears to me that this is a matter of no small magnitude. It is one that concerns us all, and it is a matter of the utmost consequence that the finest discrimination and judgment should be used with regard to this matter. Now, Mr. President, it is a plain case as to what the object of the Constitution of the United States originally was. Certain powers from the different free and independent States were delegated thereunder to the General Government, and in addition to that, those powers and those rights as defined in the Constitution that were not delegated to the General Government were reserved by the people. Now it becomes a matter of great consequence for us to consider this within our minds. I have not time, neither would it be justice to you to dwell upon those rights that were reserved to the States. Article nine of the Constitution of the United States says: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." Other rights that were reserved by the people were not in any sense of the word to be disparaged by those powers that were granted to the General Government, and nothing belonged to the General Government only those delegated rights which were given by the different States. This great principle remains true to this day, that powers not delegated to the United States by the Constitution, nor prohibited by the Constitutions of the States, are reserved to the States respectively, and to the people. This great principle, Mr. President, remains true. Principles never die. I am in hopes that no member on this floor will so far forget himself as to speak of rebellion, or anything of the kind.

The great constitutional principles upon which our government has been established, and by which we expect the ship of State to steer clear of the rocks and over the turbulent seas of conflicting opinions, must be maintained, and the only way to do that is by adhering strictly to the great doctrines of our country. Now we hear men say that when State laws and State Constitutions come in conflict with the laws and Constitution of the United States, that the State laws must give way. Now that is all a mistake and a misunderstanding. There is no conflict between State Constitutions and the United States Constitution, or between State laws, strictly speaking, and the laws of the United States, for both have their respective spheres, and as both have their respective spheres and restrictions defined, there is no need of a conflict in this particular, and this great principle should be considered. I see no reason why we should conclude to use some other terms because other States have done so. Why should we say that the Constitution of the United States is the paramount law of the land, when the Constitution of the United States itself says that "the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people?" We are going too far. We are giving to the General Government more than was asked, and as this State is not accused of disloyalty, I am convinced that there is no need whatever of trenching upon the rights reserved by the people by anything of the kind. I therefore feel disposed to oppose this article three, and to be in favor of the amendment offered by the gentleman from Los Angeles, General Howard.

MR. SMITH, of Fourth District. I have an amendment to the amendment of General Howard.

MR. ROLFE. I rise to the point of order that my amendment to the amendment is before the house, and that is the only one now that can be acted on. My amendment is to strike out the whole thing.

MR. SMITH, of Fourth District. "We recognize the Constitution of

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the United States of America as the charter of perpetual union of the States, and the paramount law between the States and foreign powers." Now, Mr. President, I do not think there is a difference of opinion on this floor as to a matter of law, or as to the powers between the States and in relation to the General Government; but I do think there is a difference of opinion here upon terms. I do not think that those gentlemen who are in favor of the clause, as reported by the committee, understand the full extent of the term therein used, in regard to the Constitution of the United States being the charter of our liberties and the paramount law of the land. If it is the paramount law of the land, it is the paramount law of the whole land. It is the paramount law of the State of California. I do not think there is a gentleman on the floor but who will admit that the Constitution of the State of California, within the State of California, is paramount—is higher than the Constitution of the United States; that the Constitution of the United States is only a grant of certain powers belonging to the government of the United States, which is a government between the States and having authority with foreign powers.

Now, it will not do to say that the Constitution of the United States is the paramount law of the land, because it interferes with other questions that these gentlemen upon my right have introduced in favor of State police powers, and other questions embodied in their resolutions. This carries us too far; yet I do think that it is due to the State of California to express its sentiment in regard to the perpetuity of that union which has been so firmly established, and also to give some recognition as to the powers between the States and the power of the General Government over the States. Therefore, I offer this amendment, and if it is not in order now, I will withhold it for the present.

THE PRESIDENT. There is an amendment to an amendment already pending.

MR. MCCALLUM. I understand the gentleman from Los Angeles to say, in positive terms, that the Constitution of the United States is not the paramount law of the land.

MR. HOWARD. Let me correct the gentleman. I said that it was the paramount law of the land as to the powers granted to the Federal Government, and not the paramount law of the land as to the reserved rights of the States. I used the language of the Supreme Court of the United States, in repeated decisions.

MR. MCCALLUM. I must take it as he now states it. At any rate, Mr. President, the Constitution of the United States itself settles this question as to what power it has, so far as it is necessary and proper for us to declare here. Article six of the amendments to the Constitution of the United States declares; "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land." To that extent I admit that it is very proper at this time, in view of all the circumstances—not even omitting the circumstances of the debate here upon this question—to make this provision which, it is true, is an addition to the bill of rights. I shall vote for the motion to strike out, because in certain senses the State Constitution I conceive to be the charter of our liberties, and at any rate that general phraseology is more suitable, perhaps, to the stump than it is to the Constitution. I prefer the language of the Constitution of the United States itself. That Constitution is the supreme law of the land. In the early Constitutions of the United States there were a great many general phrases used and they got into our Constitutions, and no proposition has been made to amend. If it were not for my great aversion to amendment where amendment does not seem really absolutely necessary, I would have preferred to have amended the second section, which involves this question to a certain extent, for there are generalities borrowed from the old Constitutions which are not correct. This thing, for instance, of the right of the people to alter or reform their government whenever the public good may require it—without any provision whatever as to the manner—an assertion from which revolutionists forever find at least a shadow of authority in the very suggestion itself, instead of saying, as I claim is the true proposition, "the right to alter or reform the same as provided in this Constitution, or otherwise, when the cause exists," defining the direct causes.

After what has occurred in our recent national history, it appears to me that every State which has a Constitutional Convention ought to adopt a proposition of the nature that is proposed to constitute section three of this bill of rights, and especially in view of the fact that it seems as if the old controversy would never die, but must come up from time to time. As the question has been raised in this body, it furnishes an additional argument that we should make that declaration; therefore, I propose to vote, first, to strike out, and then I understand it will be proper to move to insert.

THE PRESIDENT. The first proposition will be the amendment to strike out the words, "great charter of our liberties and."

MR. MCCALLUM. Under that ruling of the Chair, then, my position must be to vote against striking out.

THE PRESIDENT. If the Convention refuse to strike out the whole section, you will have an opportunity to amend.

MR. JOHNSON. Mr. Chairman: We have just passed a section here without amendment: "All political power is inherent in the people." I understand by that, that all power is innate in the people; that is, it is not derivative, but is a right which is born with them, and which inheres in the people or in the people. Now, sir, it is proposed here to supplement that action, in immediate juxtaposition with this one now pending, which states that their liberties are derivative.

MR. VAN DYKE. I moved to strike that out.

MR. JOHNSON. It appears to me that the two sections would be manifestly repugnant. The one says that the power inheres in the people, and the other that the great charter of American liberty is the Constitution of the United States. It would seem, then, that after we are born with this inherent right, that it is necessary to place an enabling Act in the Constitution to secure it to us. The way I look at this matter is this: it used to be that this democratic doctrine, or republican doctrine—call it as you please—that all power is inherent in the people, was not a notion. That belongs to America and American Constitutions; and we have adopted that in section two, virtually, by passing it without amendment. A long time ago a different theory prevailed; not that power inhered in the people, but that it existed in the sovereign, and that it was derived by the people through the medium of the sovereign. That is the reason magna charta is called the great charter of liberty; because it was supposed that these privileges and immunities were derived from the sovereign; and those barons who fought at Runymede and gained by their swords that concession from King John, apparently did not know that after the lapse of several centuries this new dogma, which is now established in our Constitutions, that all power is inherent in the people, would prevail.

Now, in the twenty-ninth section of magna charta there is a provision that no freeman shall be taken or imprisoned unless by lawful judgment of his peers, or the law of the land. That is one of those inherent powers which is recognized by section two. Come farther along. Come to the time of Charles I, when the declaratory statute of the right of petition was passed. What do we see? That those loans or benevolences, so called, should no longer be exacted by the sovereign unless voted by Parliament. It is one of the inherent powers under the Constitution, that taxation should be voted by our representatives. Come farther along, to the habeas corpus Act of sixteen hundred and seventy-nine that secured the personal liberty of the citizen. That is one of the inherent powers. And, sir, in the bill of rights of sixteen hundred and eighty-eight we find that nearly all the provisions in our present State Constitutions are embodied, or a great many of them at least. These powers are inherent in the people. Now, as I understand it, the government of the United States has no power except such as is delegated to it by the Constitution of the United States, or prohibited by it to the States. These powers are delegated; they come from the people. How, then, can it be called the great charter of American liberty, which is synonymous with a grant?

The people grant, and yet you are now asked to say that by granting they get the charter of American liberty. Why, it inhered in them. The fact is, that these powers which are granted to the General Government are enumerated, but these other great powers, which constitute the palladium of American liberty, are reserved. This power of habeas corpus is reserved, because it is not granted except in case of revolution or rebellion. And so, without specifically mentioning them, a great many powers are reserved; and it is this residium which constitutes the great charter of American liberty. Now, as a matter of course, in construing this Constitution we see what are the grants. In construing the State Constitutions, we see what are the limitations. We have, then, these bills of rights inserted in our State Constitutions, for there is no such thing in the United States Constitution; and these bills of rights are by way of limitation, that the Legislature shall not do this thing and that thing, these powers being reserved to the people. And yet at the same time it is not so very important about the ramifications of these bills of rights, if we have some forcible provision in the Constitution, such as that the powers not herein enumerated are reserved to the people.

Now, I suppose that the true theory of the legislative power is this: that it is the same as the British Parliament, subject to the Constitutions. What Constitutions? Subject to the Constitution of the United States; subject to the Constitution of this State. In the British Parliament their Constitution comes in the shape of laws that are passed by that Parliament. They are the law-making power; they are the Constitution of the realm. But here we distribute our powers into executive, legislative, and judicial departments; and it is this distribution, it is this limitation engrafted upon our Federal and State Constitutions, which makes the difference in the powers exercised by the British Parliament and to be exercised by the State Legislature. The sixth article of the Constitution of the United States says that the Constitution of the United States and the laws passed in pursuance thereof, and the treaties established by authority of the United States, are the supreme law of the land. Now, whether there is any provision in this Constitution or not on that subject, it will not alter that provision. It will be just as binding as ever, and it does not require any recognition on the part of the framers of this Constitution whatever. But, at the same time, Mr. President, this Constitution will come up before this people for ratification, and some of them may say, "I will not vote for that Constitution, because there is no recognition of the Constitution of the United States in it." So it occurs to me that the whole difficulty might be bridged over in this way: "We recognize the Constitution, laws, and treaties of the United States, within their constitutional scope, as the paramount law of the land." Within their constitutional scope. The Constitution itself, within its constitutional scope, the laws passed in pursuance thereof, within their constitutional scope, and the treaties the same. This language would not be subject to any objection at all, and would not endanger the ratification of this instrument before the people; and therefore, at the proper time, when it is in order, I will offer an amendment to this effect: "We recognize the Constitution of the United States, the laws and treaties of the United States within the scope of that Constitution, as the supreme law to each and every State in the American Union." I have simply added "each and every State in the American Union" for this reason, that some might claim that inasmuch as we engraft the Constitution of the United States upon this Constitution, that we thereby recognize certain provisions in the Constitution of the United States which grant certain rights to the Government of the United States which are not applicable to our State government. But by putting in this phraseology, that it is the supreme law to each and every State of the Union, we show that we are not referring to any such provisions that are applicable to the United States Government only, but we are simply reaffirming

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article six of the Constitution of the United States. When in order I will offer this by way of amendment.

MR. HALL. Mr. Chairman: I feel it to be my duty to explain as briefly as possible my position with regard to the matter which is now before this committee. The proposition in its present form cannot receive my consent, neither can the amendment proposed by the gentleman from Los Angeles County, Mr. Howard, receive my approval. I think that in the shape in which the original proposition is presented by the committee that it is out of place. It has no place in an article declaratory of the rights of the people, and for the same reason, Mr. Chairman, it occurs to me that the substitute that has been proposed by the honorable gentleman from Los Angeles, amending the doctrines which we all admit, that the powers of government have been divided between the Federal and State governments, and that each is sovereign in its sphere, have no place in an article upon the subject of the rights of the people. I yield to none, Mr. Chairman, in my profound respect for the Constitution of the United States, in my recognition of its power and in my allegiance to its requirements. But, sir, I cannot regard it as the charter of our liberties, as this article proposed to amend it.

MR. VAN DYKE. The Chairman of the Convention moved to amend by omitting that part; to have that stricken out.

THE PRESIDENT. The first question will be upon that amendment.

MR. HALL. I understand that the point before the committee is upon the proposition reading as follows: "We recognize the Constitution of the United States as the paramount law of the land." If that be the single proposition, Mr. Chairman, that is before the committee, I have but one objection to it, and that objection will be obviated by adopting the suggestion of Mr. McCallum, to substitute the word "supreme" for the word "paramount." If that be the single question before the committee, it seems to me that my remarks should be brought to a close, because I am prepared to accept it in that form, although I believe, sir, that even in that form it should not have a place in this declaration of rights. But I was about to add, Mr. Chairman, that whilst I regard the Constitution of the United States as our shield and as our sword, at one and the same time, whilst it guarantees to the States a republican form of government, and whilst it protects the States against foreign invasion and domestic insurrection, I am not prepared to subscribe to the doctrine that our liberties flow from that instrument as a charter. Why the very meaning of the word implies something different. We understand by the word "charter" a paper, a writing, an instrument in writing which conveys or restores certain rights or privileges; a deed or grant of power. Now, is the Constitution of the United States a grant of liberty? The Constitution of the United States is a guard to the people and to the States. All its powers have been derived from the States, represented by their delegates in Convention in seventeen hundred and eighty-seven, and it possesses no other powers than those expressly given or those necessarily required in order to carry them into effect. It imposes certain limitations upon the powers of the State, but we have not derived our liberties from that instrument. Our liberties were secured by the colonies. They were enunciated in that great instrument which was put forth to the world on the fourth of July, seventeen hundred and seventy-six, and if any paper is to be characterized as constituting the charter of our liberties, it seems to me that it ought to be the Declaration of Independence, promulgated on the fourth of July, eighteen hundred and seventy-six.

Why, sir, we are now engaged in the work of framing the charter of our liberties. We have before us the charter framed in eighteen hundred and forty-nine, by our predecessors, which is submitted to us by the people for revision. We are now engaged in the work of setting forth certain great rights with which the people have not parted; such as the right of trial by jury; such as the right to be tried by Grand Juries; the right to be brought publicly to confront the charges against us; the freedom of speech and of the press, and a number of other rights, Mr. Chairman, which it was thought in eighteen hundred and forty-nine, and it is thought in eighteen hundred and seventy-eight by this Convention, ought to be declared in this instrument in order that they may be the more certainly assured to us, because it is well known that the declarations of the Constitution of the United States operate merely as a limitation upon the powers of the Federal Union, and not upon the powers of the States, and hence the necessity of reëngrafting them in this portion of our Constitution under the title of "declaration of rights."

For these reasons, Mr. Chairman, I am opposed to the adoption of article three as it is now submitted in the report of this committee, but in the form in which it has been modified by the Chairman of the committee to whom this subject has been committed, it shall receive my assent, to wit, in these words: "We recognize the Constitution of the United States of America as the supreme law of the land."

MR. VAN DYKE. I have no objection to that.

MR. STEDMAN. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. The Committee of the Whole have instructed me to report that they have had under consideration the article on preamble and bill of rights, report progress, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and a quorum present.

MR. VAN DYKE. I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Preamble and Bill of Rights.

Carried.

IN COMMITTEE OF THE WHOLE.

MR. O'DONNELL. I offer a substitute for that section three of the bill of rights. It reads thus: "We recognize the Constitution of the United States of America as the paramount law of the land. The doctrine asserted in the Declaration of Independence is sound in principle and——

THE CHAIRMAN. The amendment is out of order. The first question is on the adoption of the amendment offered by the Chairman of the committee, to strike out the words "great charter of our liberties and the."

MR. HAGER. There are so many propositions and amendments in regard to this section that I do not know precisely the question now pending, but I believe it is a motion to strike out and insert. I am not in favor of retaining this section three; not because I do not recognize the Constitution of the United States to some extent as the paramount law of the land—to every extent, I may say, where it is the authority. But I do not recognize that it is the charter of our liberties entirely. Some people think that the Declaration of Independence is the charter of our liberties——

MR. VAN DYKE. The committee itself moves to strike that part out.

MR. HAGER. Still I have a right to speak upon it.

MR. VAN DYKE. You have a right, of course.

MR. HAGER. The next great charter, perhaps, was the Articles of Confederation, under which we existed for a certain time before the adoption of the Constitution of the United States. Now I do not object to having a clause of this nature in here, as I said before, because I am in any way opposed to the Constitution of the United States, but we are here for the purpose of framing a Constitution for the government of this State. We are not here for the purpose of framing a Constitution of the United States, or to put any interpretation upon that Constitution. That is a matter that should be left to the Courts, and whatever power or whatever validity that Constitution may have is not for us in this Convention to determine, and whatever we may do in that regard would be nugatory and idle, because we have no authority to do it.

Now, then, let us see where we stand. Section two of article six of the Constitution of the United States has been read, but I will read it again: "This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

Now what can we do to that by our, I had almost said, puny efforts here, in attempting to establish a rule in our Constitution which should in any way affect that provision. Is it not all powerful in itself?

Then further: "And the Judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

Is not that binding upon us all? What further do we wish? I am perfectly willing to incorporate that provision if anybody thinks it is necessary to the State of California. But it is in the Constitution of the United States, which I regard, so far as that provision is concerned, as binding upon me and binding upon every man in the State of California, whether we reiterate it here or not.

Well, now, another clause in the Constitution of the United States, which has been referred to:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Then the Constitution of the United States is not altogether the paramount law of the land, because certain rights are reserved to the States which have never been conceded to the Government of the United States. But it is the paramount law of the land so far as the provisions contained herein go, which have been ratified by the States in the proper way. Therefore, without going any farther into this debate, which has been prolonged too much, I am in favor of striking this provision out, for the reason that it is unnecessarily there, and will lead to nothing else but confusion in case we should attempt to engraft it there.

MR. McFARLAND. I understand that the question now before the committee is upon the motion of the gentleman from Alameda, to strike out that portion of section three which recognizes the Constitution of the United States as the great charter of our liberties.

THE CHAIRMAN. That is the question.

MR. McFARLAND. Mr. President: I understand that the question now before the Convention is upon the motion of the gentleman from Alameda, to strike out that portion of section three which recognizes the Constitution of the United States as the great charter of our liberties.

THE PRESIDENT. That is the question.

MR. McFARLAND. I am somewhat astonished that the committee which reported this section should be willing to abandon their guns at the first sign of conflict. Now, sir, I am opposed to striking that out. The gentleman from Los Angeles, Mr. Howard, and the gentleman from San Francisco, Mr. Hager, talk as if we were trying to put some construction upon the Constitution of the United States. I do not understand that the committee has reported any construction whatever. They simply take the naked instrument. If one set of gentlemen choose to construe it after the manner of Judge Marshall and Daniel Webster, they can do so. If another class of gentlemen desire to construe it after the manner of Calhoun, and Haines, they can do so. It is not proposed to put any construction on it whatever. It is proposed to say that the Constitution itself, without any construction, is the paramount law of this land and the charter of our liberty. Who objects to that? It is an astonishing thing to me how nervous some gentlemen get when it is proposed to recognize at all the Government of the United States. They are

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willing to recognize Almighty God, or anything else, but they want this Constitution, from the first word to the end, to say nothing about the Government of the United States. They do not want to recognize the fact—they do not want to teach their children to know the fact, that the people of California are but a small part of a greater and grander people—the people of the United States of America. I am perfectly at a loss to know what objection any gentleman can have to putting that in the Constitution. The gentleman from San Francisco, Mr. Hager, says that it is unnecessary. Well, sir, if it is unnecessary, what else is there that is necessary in the bill of rights? The first section declares, "all men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and preserving and obtaining safety and happiness." Is that necessary? Who denies the proposition involved there? But when you go to declare in any way that we owe any allegiance to the Government of the United States, I find gentlemen very nervous. What is the meaning of it? I supposed, sir, that this question as to whether the Government of the United States was paramount had been determined when the United States Constitution was voted for—when the people in their Conventions were considering the question whether it should be adopted.

And, sir, the principle of denying national power to the government of the United States in the Constitution had the ablest defenders this country ever saw. Luther Martin, in Maryland, and Patrick Henry, in Virginia, with a power of reason and eloquence rarely surpassed, advocated the doctrine that we should have no common country. And in Virginia it was only through the efforts of such men as Randolph and James Madison that it was carried at all; and then it would not have been carried, if it had not been for the overwhelming influence of the Father of our Country—George Washington—which was thrown into one side of the balance. When the Constitution was adopted, the doctrine of State rights was still contended for, and then they had the whole war over again in the Courts. But Virginia, among her other great men, happened to send one of her greatest into the Supreme Court of the United States, and he judicially destroyed the doctrine that we are not a nation. And then it came into the legislative arena, and it was fought there by the men who followed Daniel Webster, and the men who followed Calhoun and Haines, and it was defeated there. And then it came to a more serious struggle, to which I do not desire to refer, except to say that the principle that had been triumphantly advocated by reason, was triumphantly advocated by force. And yet to-day, in this State of California, at this hour, we find gentlemen nervous about recognizing the Constitution of the United States. I know, sir, that California is a peculiar State. I know that she has a population here not only from all parts of our common country, but from all parts of the world. I know she has representatives here—native born representatives—who never did believe in the sovereignty of the United States. And I know she has men here from foreign countries who are not yet rid of the opinions that come from birth. If gentlemen want to vote against the sovereignty of the United States, let them do it; but let them understand what they are doing.

The gentlemen object to the word "charter." They do not want it to be said here that the Constitution of the United States is the charter of our liberties, and they try to evade it by putting upon it the old construction used five hundred years ago in England. They say that a charter means a grant of the crown. That is not the original meaning of the word at all. It is simply a deed. The word comes from the word *charta*, which means paper. They speak of charters of various kinds as the grants of the crown; as if the English people took the magna charta, and the petition of right, and the writ of habeas corpus which are their great charter of liberty, as simply the gracious gifts of the crown. No, sir, magna charta was not a gift of King John. It was a thing taken by the Barons at Runymede, and it was the declaration of the rights of Englishmen. But when we speak of the Constitution of the United States as being the charter of American liberties, we mean that it is the great sheet in which the rights of the American people are declared, and upon which the foundation of our government is established. In that sense it is a charter, and it is the greatest charter that we have. It is a charter made by the people, of course. The very first line says, "We, the people of the United States." Are we afraid of the word "charter"? We merely say that the Constitution of the United States is the particular instrument which forms the paramount law for all time for the government organized under it, and under which alone we have any secure liberty. It looks to me like a very small objection to say that because the word charter is used that we mean a charter from the crown of England. It is a declaration by the American people, and by the whole American people. Now, sir, we have in this country to-day—I know that we have to-day in the State of California, any quantity of men of power and influence, who are not attached to the Government of the United States; who are in favor to-day, as they always have been, of a Pacific Republic. [Sensation.] I know that a few years ago, during the time of the civil war, there were men here who were enemies of the United States Government. And at the time of the late Presidential election there were numerous gentlemen in this State, who were sorry when the plan was adopted to settle that difficulty, hoping that the opportunity might occur during the agitation to establish a Pacific Republic on this coast. That is the sentiment of a large number of men in this State to-day. I fear it is the sentiment of some in this Convention, although I hope not.

Now, sir, if we believe we are a part of the American people—if we believe that the Constitution of the United States is paramount—why should we hesitate in declaring it in the instrument that forms our organic law? Gentlemen talk about sovereignty, and give different meanings to the term. This does not say a word about sovereignty. It is not named here. It simply says that the Constitution of the United States is the paramount law of the land and the charter of our liberties; says nothing about sovereignty. Gentlemen need not be afraid about sovereignty. When you come to talk about sovereignty, what is it? States have occasionally been called sovereign, simply because they have the power to make certain kinds of laws; and it is sometimes said that the sovereign alone is capable of making a law. That is not the whole definition. A sovereign power, under the law of nations, is a power which stands independent and equal with all other powers. It is a power that has the right to deal with other nations. It is a power that has the right to make war, to declare peace, to make treaties, to impose duties, and to do anything that other nations which are independent powers can do. And if you have not these attributes you have not the attributes of sovereignty. A State has no such power. There is no sovereignty, in the general sense of the term—no sovereignty recognized by nations and by the law of nations—except the sovereignty of the whole people of the United States, represented through the Government of the United States. That is the only kind of sovereignty, sir, which we can speak of that means sovereignty in anything like its full extent. I say that has been construed to be the meaning of the Constitution. If we say that the Constitution is the paramount law of the land, we do not mean to say that Congress has certain powers under that Constitution. We are not called upon to quarrel over what the powers of the government are. If this bill of rights undertook to say that Congress, or the President, or the government, under the Constitution of the United States, had certain powers, which gentlemen denied, then these questions might arise. It contains nothing of the kind. It simply says the Constitution of the United States is paramount. Who denies that? We do not undertake to say how far the powers go under the Constitution, but we simply recognize in the Constitution of our State that the Constitution of the United States is the paramount law of the land. That is all it does. Who objects to it? For my part, I can see no objection on the part of any person who believes that the State of California is a State of the United States; and that the State of California itself is subject to the Constitution and the laws of the United States; and that the State of California itself is simply a part and parcel of a greater and grander country—the United States of America. And the man that does that, I cannot understand how he can oppose this little bit of a declaration of that principle in this bill of rights, when he is in favor of declaring everything else that you can think of. I hope not only that the section will be adopted, but that the amendment will be defeated, and that we shall put the people of the State of California in the position of saying that we, as citizens of California, believe that we are a part of that nation—a part of that government—and are not afraid to declare it. [Applause.]

MR. FILCHER. Mr. Chairman: This matter being of more than usual importance, I feel that I would like to say a word about it. In the first place it seems to me that this section is entirely useless; that it signifies nothing more than is universally accepted. It has no more significance there than would a declaration that we recognize that Victoria is the sovereign of England. The fact will remain, whether this Convention acknowledges it as such or not, and the motives that gave rise to this should be understood in the discussion of its merits. The Workingmen's party of California were accused generally of being communists, and as a declaration of their loyalty they saw fit to incorporate in their State platform these words; and if you please, gentlemen of the Convention, notice the section of the Constitution, or the proposed section, while I read: "*Resolved*, first, that we recognize the Constitution of the United States of America as the great charter of our liberties and the paramount law of the land," verbatim from the State platform of the Workingmen's party of California.

Now, Mr. Chairman, it so happens that one of this body, feeling called upon, no doubt, to carry out the principles of the party, made a fight in the committee for the incorporation of that idea in this Constitution. As I understand it, though that was a general political stump declaration, or a declaration that might be made by any of us with consistency as an evidence of our loyalty, it is not contemplated by a majority of the members of that party on this floor to incorporate the doctrine in the Constitution so long as its significance is of no import. As I understand the declaration of rights, or at least declarations, under this head, they should declare some specific right that might be jeopardized if not mentioned. Here there is nothing declared or acknowledged but what is universally conceded, and unless it means something more than is at present understood, why should we waste time with it? "We recognize the Constitution of the United States of America as the supreme law of the land." There might be a serious question come in there as regards the sovereign power of the people, so elaborately boasted of here. My friend who has just sat down seems to want to dodge behind it and asks "who is talking about sovereignty?"

Now, Mr. Chairman, we are here incorporating in our State Constitution the Constitution of the Federal Union. We are making the Constitution of the United States a part and parcel of the Constitution of California, and it is said, "where is the objection?" I answer, sir that there are certain limitations in the Federal Constitution; certain provisions which are understood to apply directly to Federal enactments and Federal Courts. For instance, take the Grand Jury bill. I believe that the best lawyers in the State, and in the United States, have conceded that the States have a right to act on that matter as in their judgment they may see fit; and yet the Constitution of the United States emphatically declares that no man shall be arraigned for trial except upon previous conviction by a Grand Jury. We propose to declare that the Grand Jury system shall be abolished. I am emphatically in favor of strking the whole thing out.

MR. BARBOUR. I propose to support the motion to strike out, and I do so for the reason that I have never been able to find what office in the Constitution of this State the declaration in section three will perform. It is not that the principle is not a correct principle, but it is because we have nothing to do in laying the foundation of the govern-

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ment of this State, with declaring what the powers of the Federal Government are. Now, sir, the Constitution of the United States, of course, is the paramount law of the land within its sphere, wherever it has sway. No man can dispute the proposition. But suppose you declare it in this Constitution. Where are we? What power are we? Do we strengthen our position, or do we strengthen the position of the Federal Government? Why, that declaration will be construed into the doctrine of centralization. Our purpose and duty is to lay down and declare the power of this State, and not the power of the Federal Government. I offered a proposition this morning to that effect, in which I maintain there is abundant recognition of the power of the Federal Government, where we assert the doctrine of the Declaration of Independence with regard to the right of the people to change, to alter, or abolish the form of government. I there provided that it should not conflict with the Constitution of the United States. That instrument guarantees to every State a republican form of government. Do we strengthen that any by declaring it in the Constitution? Not at all, sir. But I recognize it there, and I maintain that any change we make, except perhaps, by revolution, must be a change in consonance with the principles of republican government.

Now, this question has been debated long before we were born. In one sense it led to the war. Involved in it, sir, was the question of slavery. I believe that the principles and doctrines that were asserted by Calhoun were correct, and would have been maintained by the people of the United States if the element of slavery had been out of the consideration. The sentiment of the country was against that which was involved in the proposition, and not against the proposition itself; and that was the reason it failed. That was the reason that the stern arbitrament of the sword pronounced judgment against it. But the principle still lives, and I say we ought to declare it here—as John C. Calhoun declared the doctrine of the sovereignty of the States—not for the purpose of preserving slavery, but for the purpose of destroying a slavery as bad as that of the South. That is what we want to do, sir, and yet gentlemen voted my proposition down, which was the business we came here to perform, and that is, to declare the rights of the State, not attempt to dilute the power of the Federal Government by our thin water poured into it.

MR. WYATT. Mr. Chairman: I want the attention of the Chair and the house one moment upon this subject. I do not like to trespass upon your patience. I think, however, that upon this proposition, we ought to regard the original principles of government, and the antagonisms of government of the present day are certainly these: First—That the crowned heads of Europe claim to rule by divine right, and that the power of the government is in the crown. The people of the States hold the doctrine that all the powers of the government are inherent in the people. The position occupied by the Government of the United States is between these—is that of a middle position—deriving its powers in a secondary manner, being a concession from the States. That brings us to the point in which all the reserve powers of the kingdoms of Europe reside in the crown; all the powers of the government in the States reside in the people. The United States has no reserve powers. The grants which the States have made to the General Government have been made; they have been construed and are established facts. We are bound by the Government of the United States to the rules which we have conceded to them, be those rules whatever they may be. A declaration upon our part now neither can contract or enlarge them. I am in favor of the motion of Judge Rolfe, of San Bernardino, to strike the clause out. I say, however, that I do not believe in the doctrine that the Constitution of the United States is the great charter of our liberties. That starts at the wrong end of the proposition. The powers of the Government of the United States are derived from the people through the government of the States, and wherever there is a reserved power it is with the people and not with the United States.

MR. DOWLING. Mr. Chairman: I am in favor of striking this out because we are here to frame a Constitution that every word, every syllable, in fact every punctuation mark, will have vitality. By incorporating this in our Constitution, sir, we shall not make it any more binding than it is. I do not believe there is a man in the United States to-day but recognizes the Constitution of the United States not only as the paramount law but the great groundwork of our liberty, but I deny, sir, that the Constitution of the United States is the great charter of our liberty. I believe the great charter of our liberty, sir, is the blood that was spilt and sanctified the soil before ever the Constitution was framed

Now, sir, I happened to be the Secretary of the State Convention of the Workingmen's party when this plank, or resolution as it was then, was adopted. It was simply put in there, or adopted, because there was not a paper in the country scarcely, but called us communists and thieves, cutthroats, and houseless and homeless vagabonds, and in order to persuade the people that we were nothing of the kind we put this in. Now, sir, I am sorry to see gentlemen get up on this floor and flaunt the bloody shirt in the face of a motion if it declares the least particle of States rights. I have before me a copy of the Constitution of the State of New Hampshire, and I believe that it can never be placed in the category of seceding States. It reads, verbatim, as follows:

"The people of this State have the sole and exclusive right of governing themselves as a free, sovereign, and independent State, and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction, and right pertaining thereto, which is not or may not hereafter be by them expressly delegated to the United States of America in Congress assembled."

Now, sir, it seems to me that government was instituted by the people for the protection of the people, and if it had not been for the several States of the Union we would have no Federal Government. Hence I hold that the Federal Government derives its power from the States, because if we had no States we would have a centralized government, and we are opposed to any centralized form of government whatever. Section two of article six of the Constitution of the United States reads as follows:

"This Constitution, and all the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land."

Now, sir, Congress, in Washington, on the first day of July, eighteen hundred and sixty-four, passed an Act whereby a land grant to the Central Pacific railways was declared. A bond subsidy of thirty million dollars of the government's first mortgage bonds on the road was exchanged with the companies for a second mortgage. This Act was passed in the House of Representatives by a vote of acclamation without calling the ayes and noes, and nobody knows to this day who voted for or against it. The responsibility cannot be attached to whom it belongs, yet by that vote the government was involved in bonds and interest to the extent of more than two hundred million dollars. It is a mild expression to call this sort of legislation infamous. It is worse than grand larceny or highway robbery, for it involves the crimes of perjury and bribery. Now, sir, if we are bound by such legislation from Congress, what in the name of God is our great country going to come to?

Now Congress is looking placidly on the State of California; she is looking on us driven to despair and disruption by making this a receptacle for the slums of China. Again, sir, when men get up on this floor and accuse men of being secessionists, I would call their attention to the fact that we are not here to open up the gaps and wounds that were caused by the great rebellion. We are here to close them and to heal them, and to drown them in the abyss of oblivion, never to rise again.

Again, sir, there was some allusion made to the Workingmen's party to-day as being truly great and patriotic. Well, I will concede that their patriotism is boundless, but I will also state that the Workingmen's party was never intended to be a step-ladder or a stepping-stone to raise men into prominence and power. Our intentions are to place every man on the same political plane; to administer a good and equitable form of government; good for the general welfare and prosperity of the people.

MR. VAN DYKE. I hope that the Convention will vote on the amendment, and bring it down to the question itself.

THE CHAIRMAN. The third section is under consideration. The gentleman from Los Angeles, Gen. Howard, moves to amend that section by striking out all of its words and inserting some other words. The gentleman from San Bernardino, Mr. Rolfe, moves to amend by striking out the words proposed to be inserted. In that state of the question, the Chairman of the committee desires to perfect the section. He therefore moves to strike out these words, "great charter of our liberties and the."

MR. WHITE. I trust it will not be stricken out, sir, for this reason: that I am anxious to pay the greatest government a compliment by the acts of the Convention assembled here. I am anxious that our children should know that we have paid this compliment. I say that when we say it is the charter of our liberties, I want to raise in their hearts respect for it, and that they may never flinch from it under any circumstances whatever. I conceive this to be one of our greatest duties as assembled here. We are told that this is a very little body that is assembled here. Here, sir, are assembled the people of the State of California. They may never be assembled again for twenty years, and I want them to compliment the mighty government, this great temple of liberty that has opened its arms to the world and received them here in their hospitable hearts. I want them not to pass by this great government. I am astonished to see men propose to pass by this great government and we assembled here as the whole people of California.

We are told that this plank was put in the platform of the Workingmen's party for claptrap—to set us right before the people. Sir, I was one of those men who drew that platform, and I am proud of it. There was not one single article in that platform that brought down the house and received such cheers in that convention as that did. Communists as they are, and looked down upon and despised for going to that convention, yet, sir, that whole convention responded like one man when that article was announced. I do not say that gentlemen may not change their views, and they have a right to vote as they like about it, but I do not want that party to be put into a wrong position. I know their feelings, and I know that that was the feeling with which that article was received. I hope it will be passed, particularly because it has been a disputed question upon this floor.

MR. RINGGOLD. In attempting to address this assemblage I would not presume to assume the character of an instructor. But, sir, not all the intellect of the world combined, nor the ingenious construction of language, ever made wrong right. I desire that the people of California should know that I comprised the minority in that committee that produced this extraordinary section. It does not draw any line between powers conferred and powers reserved. The doctrine of State sovereignty might as well be announced here as anywhere else. We are building too much upon precedents. If all these documents were returned, perhaps the people might get into this Convention a political structure that would be in accordance with the spirit of the age. The Declaration of Independence declares that government derives its power from the consent of the governed. The Constitution of the United States denies it. The Declaration of Independence is a political expression. The Constitution of the United States is a political abortion. It exacts taxation from millions of citizens, yet deprives them of the right of representation. It has ever been construed in the interest of capital. I do not misrepresent my constituents when I claim that liberty, protected by the Constitution and the enforcement of its provisions, shall be reserved, or we will have a constitutional death. Talk not of allegiance to Constitutions whilst the very heavens reverberate with the wail of suffering humanity. The Constitution of the United States has been violated in the interest of capital in every section and article. It has outlived its usefulness. So long as the South shook the Constitution in the face of

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the North slavery was protected, but when the Constitution was swept aside then were four million human souls set free. If to preserve the Constitution liberty must be suppressed, then abolish the Constitution. I cannot indorse this section, for it strikes at all State sovereignty. I believe in State sovereignty, and shall ever stand by it as long as I live.

MR. VAN DYKE. Some gentleman has suggested the use of the word "supreme" in the place of "paramount." I would like to modify my amendment so as to include the word "supreme" instead of "paramount."

THE CHAIRMAN. The question will then be on the motion to strike out the words "great charter of our liberties and the," and insert the word "supreme" in place of the word "paramount."

The amendment was adopted.

THE CHAIRMAN. The question recurs on the amendment offered by the gentleman from San Bernardino, Mr. Rolfe, to strike out of the amendment offered by the gentleman from Los Angeles the words he propoées in place of the section. The result of that motion, if carried, will be to strike out this article three.

MR. HOWARD. For the purpose of bringing the committee to a direct vote, I will withdraw my amendment.

MR. ROLFE. I ask that my motion be put.

THE CHAIRMAN. The question is upon striking out the entire section.

MR. O'DONNELL. I wish to offer an amendment to the amendment.

THE CHAIRMAN. The question is on the motion of the gentleman from San Bernardino to strike out section three.

The amendment was adopted on a standing vote: ayes, 73; noes, 64.

MR. ESTEE. I offer a substitute for the section that was just stricken out; it is copied from the Constitutions of several of the States.

THE SECRETARY read:

SEC. 3. That this State shall ever remain a member of the American Union; that the people thereof are a part of the American nation; that there is no right on the part of this State to secede, and that all attempts, from whatever source or upon whatever pretext, to dissolve said Union, or sever said nation, shall be resisted by the whole power of the State.

MR. LARKIN. I move the adoption of the section.

MR. FILCHER. I move that the consideration of the whole subject be indefinitely postponed.

THE CHAIRMAN. No such motion as that can be put to the Committee of the Whole.

The amendment was adopted on a standing vote: ayes, 76; noes, 58.

THE SECRETARY read section four, as follows:

SEC. 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

MR. VACQUEREL. I move to strike out of line two the words "without discrimination or preference," and insert in the seventh line, after the word "State," the following: "And the Legislatnre shall not, under any consideration, enact any law giving preference to any religious sect or mode of worship," so that the section will read:

SEC. 3. The free exercise and enjoyment of religious profession and worship shall forever be allowed in this State; and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State; and the Legislature shall not, under any consideration, enact any law giving preference to any religious sect or mode of worship.

MR. BEERSTECHER. I offer the following substitute. I do not care to make any argument upon it now:

THE SECRETARY read:

"SEC. 4. The free exercise and enjoyment of religious opinions and worship, without discrimination or preference, shall forever be guaranteed in this State. And no person shall be rendered incompetent, in any manner, nor shall any person be questioned, or forced to answer any questions, concerning or on account of opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be construed so as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State. No law shall ever be enacted by the Legislature making it unlawful to do on any day that which may be lawful on any other day."

MR. VACQUEREL. My idea in offering that amendment is, to have it well understood that the Legislature should have nothing to do with the liberty of conscience of the people. Ten years ago I remember that a law was passed, and in some cases was enforced, but was declared unconstitutional. If we have that article, it is perfectly understood by the people that the people themselves, alone, and nobody else, have the right to change that article of the Constitution.

Mr. Vacquerel's amendment was lost.

THE CHAIRMAN. The question is on the substitute offered by the gentleman from San Francisco, Mr. Beerstecher.

MR. O'SULLIVAN. I shall support the substitute offered by my colleague, Mr. Beerstecher, for this reason: the word "allowed," in the second line of section four of the declaration of rights, as read to the committee, clearly implies the right to disallow or deny; in other words, instead of being an inherent right, it implies a privilege granted by somebody. Now, sir, any such assumption, by implication or otherwise, is, or should be, repugnant to every man. The word "guaranteed" is better, because it clearly implies an acknowledgment or guarantee of rights, and not the granting of them.

The substitute was lost.

MR. BARBOUR. I move to amend by striking out the words, "and no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief," and insert, "and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions." I can briefly state the object of my amendment. The section as it stands provides that no person shall be rendered incompetent to be a witness or juror on account of his opinions on matters of religious belief, and under the rule that the expression of the one is the exclusion of the other it might be construed that they could exclude people from holding office. My amendment is intended to extend to all political and civil rights.

MR. WILSON, of First District. In my judgment, if the amendment prevails the Legislature may render witnesses and jurors incompetent on account of religious belief. It might be a very serious question whether to sit on a jury is a privilege or not. Many men do not consider it a privilege. It might also be a question as to whether it is a privilege to be a witness.

MR. BARBOUR. The gentleman omits the word "capacity." The amendment says, "any civil or political right, privilege, or capacity."

MR. WILSON, of First District. I think it renders it very doubtful whether the Legislature may not exclude persons on account of religious belief.

MR. VAN DYKE. I suggest that when we come to the qualification of officers it would be a more proper place to put that clause. It seems to me to be unnecessary here.

The amendment was lost.

MR. HAGER. I offer the following substitute:

"All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No man can of right be compelled to attend, erect, or support any place of worship, or to maintain any ministry, against his consent. No human authority can in any case whatever control or interfere with the rights of conscience. No preference shall ever be given by law to any religious establishment or mode of worship, and no person shall be incompetent to be a witness, or a juror, on account of his opinions on matters of religious belief."

I offer this as a substitute. It is taken substantially from the last Constitution of the State of Pennsylvania. I think its phraseology has an advantage over that contained in our Constitution, and which has been reported back by the committee. It would apply to all those cases, like the Mormons, who are compelled to perform religious worship according to a particular code.

MR. MCFARLAND. I object to the term "worship Almighty God." We know that some of the highest civilized nations worshiped a god that was not Almighty. The Greeks and Romans did not believe in any one Almighty deity. They worshiped Jupiter, Neptune, Mars, Venus; [laughter] and it might raise a very nice question.

MR. HAGER. As the gentleman appears to be an authority on the question I move to strike out "Almighty."

MR. MCFARLAND. I accept the amendment. [Laughter.]

The substitute was lost.

MR. HERRINGTON. I move to amend section four of the bill of rights by striking out the word "juror" in line three, and insert "to hold office or discharge any public trust or duty." The amendment covers the whole objection made by the gentleman from San Francisco, Mr. Barbour. It also has the merit of completing what in my opinion was intended by this same section. That is to say, under that section the Legislature cannot prevent any one from holding office or discharging any trust or duty on account of religious belief.

The amendment was lost.

Section five was then read, as follows:

SEC. 5. The privilege of the writ of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require its suspension.

There being no amendment, section six was read, as follows:

SEC. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishment be inflicted; nor shall witnesses be unreasonably detained, or confined in any jail or room where criminals are usually imprisoned.

MR. CAMPBELL. I offer the following: Amend section six by striking out all after "inflicted" and insert the following: "But nothing herein contained shall be construed to prohibit the infliction of corporal punishment for crimes; witnesses shall not be unreasonably detained, or confined in any jail or room where criminals are usually imprisoned."

I will state briefly the reason of offering that amendment. Three or four years ago the State of California passed an Act providing for the infliction of the punishment of whipping upon men who beat their wives, and allowing the Courts in their discretion to substitute for or add that to imprisonment. One of the District Judges of this State decided the law to be unconstitutional, and discharged a party brought before him on habeas corpus upon the ground that the Act conflicted with the provision in the Constitution which forbid the infliction of cruel or unusual punishment. While I think that the Judge erred, and while I think that as a position of law it is perfectly clear that the punishment which existed at common law, and which to this day exists in one or two of the States of the Union, could not be so classed, I want to prevent the possible defeat of any enactment which the Legislature may hereafter pass upon this subject, and for that reason I have offered this amendment. We have found that our system of punishments in this State is grossly defective. We find to-day in the City of San Fran-

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cisco that life is unsafe frequently. We find that houses are broken open by burglars armed to the teeth, and willing and ready to take human life when they cannot otherwise accomplish their purposes, and it is the judgment of the community generally, as I think, that we require some severer system of discipline.

In England the punishment of whipping was abolished. Within the last three or four years they have found it necessary, from the great increase of crimes of the character to which I allude, to reënact the law authorizing that punishment in all that class of cases; such as garroters, highway robbers, and midnight burglars; and the Legislature ought to have the power here. It has worked admirably in England. It has stopped crime of that description to an enormous extent there, and experience, the best teacher, has proven that it is the only means to put any substantial stop to that kind of crime.

I saw by the paper this morning, that on last night, in one of the most public streets of San Francisco, in the very heart of the city, a man was attacked by a gang of these people and actually kicked and beaten to death—there on Sansome Street, in the very heart of the City of San Francisco. Now, sir, we have here the worst system of prison discipline in the world, and one which will encourage crime and bring criminals among us in enormous numbers. If you go to-day to your State Prison, as you enter the door or gates, what do you see? Is there anything suggestive of imprisonment within your sight? At the very entrance you are received by a gentlemanly looking "trusty," who will probably offer you a cigar. And then you pass out into a beautiful flower garden where you are greeted with the odor of flowers, where you find the finest buildings, where the music of canary birds delights your ear, and where, so far from judging it was a prison, you would think you were entering a palace. You find that out of some fifteen hundred and odd prisoners there, but about five hundred of them have any employment at all. The rest are engaged in amusing themselves as best they may. A large portion of the men who are now in our State Prison are better off there than out of it. They are deprived, it is true, of certain dissipations which they were apt to indulge in outside, but they are supported in idleness at the public expense. For them the punishment which they receive has no terrors. As soon as their terms expire, they immediately resume a career of crime, and within a few weeks are in the hands of the officers again for a repetition of their offenses.

This system must be changed if we desire law and order to rule in California. Let us profit by the experience of the past, and give the Legislature the power which it ought to have to inflict a punishment which will bring terror to the hearts of criminals. Take the men who are now in the State Prison, and, with the exception of those who have not been accustomed to a life of crime, they care nothing for the punishment. To some who have committed crimes and been sent there, and who still feel that they are men, and who still feel their sense of duty to society, and who feel ashamed of their position—I say that that class of men is the one which suffers real punishment by confinement in the State Prison.

This thing has been tried in England, and there it has put a stop to that system of highway robbery and garroting which had appeared there. The object of this amendment is simply to enable the Legislature, in its discretion, to provide a similar punishment for that class of criminals. I have not that kind of sympathy which would say to me, "It won't do to degrade a man; you must let him go on and commit robbery; you must let him knock a man down in the street with a sand-club for the sake of getting fifty cents out of his pocket; and if you inflict upon him a flogging, that is degradation." The duty of society is to use such punishments as will secure the safety of honest and respectable men; as will enable you to go home at night without the fear of being knocked down by a sand-club or some instrument of that description. For these reasons, I offer this amendment, and hope that it will be adopted, and that it will be one step, at least, towards enabling the Legislature to pass laws that will stop this class of crimes.

MR. GREGG. Approving everything, the gentleman from Alameda, Mr. Campbell, has said, I offer the following substitute:

"SEC. 6. Excessive bail shall not be required nor excessive fines imposed; nor shall cruel and unusual punishments be inflicted; but whipping shall not be deemed cruel or unusual as a punishment; nor shall witnesses be unnecessarily detained, or confined where criminals are imprisoned."

MR. REDDY. Mr. Chairman: The fact that this business of whipping was known to the common law, I am sure is no reason to assign why we should revive it; I am sure that we do not wish to revive all the cruel punishments known to the common law because crimes are committed and go unpunished in certain communities. I do not think that is any reason why this whole State should be disgraced with the sound of the lash. I never want to hear the crack of the whip in America upon any man. I never want to see the lash descend upon any man's shoulders, I care not what his crime may be. If you commence whipping, why then you run directly against the theory that punishments are to be reformatory and not vindictive. If they are to become vindictive, why I should say that the amendment offered here by Judge Campbell does not go far enough, for if you once allow the lash to descend upon a man, his manhood is dead, and when that is dead there is no chance for reform. I would say confine it to the gentleman's clients and I have no objection, but do not make it general in this free State. That it is cruel has been announced from the highest Court in the land. That it is cruel is the common verdict of all mankind, and it is too late in the history of civilization to renew any of those old and barbarous punishments. Whip a man in America! For my part I could not tolerate the bare idea of doing such a thing, much less to enact it, or place it as a black mark upon the Constitution of this State. Perhaps the gentleman has seen and known of a long list of crimes which have gone unpunished. It is not improbable that a great many of the crimes mentioned have gone unpunished in the City of San Francisco, and if the gentlemen are so desirous to prevent the evil, perhaps there is another way that that thing can be accomplished without the use of the lash.

MR. CAPLES. Mr. Chairman: The amendment proposed by the gentleman from Alameda, Judge Campbell, presents to this Convention a very important question; a vital question; a question that we cannot give more attention than is due to it. That question is no more nor no less than this: Is our Penal Code effective? Does it accomplish the end for which penal codes are enacted? That is the question. I appeal to every gentleman on this floor. I appeal to the legal gentlemen in particular, to answer that question and say if our penal laws are effective for the prevention of crime and the protection of society. I assert that it is not. It is not, Mr. Chairman. Hence the necessity, the absolute and vital necessity that the chains should be removed from the law-making power in order that society may be protected from crime; and I demand that the shackles be taken off, and that society have the right to defend itself.

Mr. Chairman, the laws of all civilized countries concede to the individual the right to take life. That is, to take life in self-defense. Would you deny to the body corporate, the body politic, the right to take life? To adopt this or that mode of defending itself? I deny that there is any right to deprive society of the right of self-defense when that right is freely conceded to the private individual.

Now, in regard to this provision of the Constitution that is proposed to be obviated by Judge Campbell's amendment. I hold that under the operation or under a strict construction of that provision of the Constitution—"nor shall cruel or unusual punishment be inflicted"—I hold that no man can be hanged, because who will assert that to take a man and drag him up and let him choke to death is not cruel? We all know that it is cruel. There can be nothing more cruel conceived by the mind of man. It is torture the most horrible. And yet it is done. But it is done under a strained construction of that provision; and that is what Judge Campbell proposes to obviate.

I demand, Mr. Chairman, in the name of honesty, in the name of virtue, in the name of everything that is sacred, that the law-making power of the commonwealth of California be unshackled and left in a position to defend society against crime.

MR. KLEINE. Mr. Chairman: I do not see any reason why we should go back to the dark ages, inflicting corporation punishment upon those who have committed a crime. [Laughter.] Let us first remove the cause. Here in the State of California we have at least four thousand white men out of employment. Is it a wonder we have crime committed? Is it a wonder, when the coolie can come every time and crowd our white fellow citizens out of employment? Is it a wonder we have crime? We may inflict corporal punishment upon criminals, but I assure you that it will not lessen crime at all. In San Francisco, as the gentleman says, some one got knocked down. Is it a wonder that instead of one that fifty or a hundred are not knocked down every day? Look at the fearful state of things in the City of San Francisco. It is almost impossible that a man can get employment. I hope that this will not pass. I have not the least doubt that the gentlemen upon this floor will not vote for such a bill as this; to go back to the dark ages. Let us remove the cause, gentlemen, and then we won't have so many crimes committed in our midst.

MR. BARBOUR. Mr. Chairman: This extraordinary proposition which is thrown in here is also supported by an extraordinary reason. It seems to be based upon the ground of the failure of the administration of justice; and the facts stated by the gentleman from Alameda, that when he goes on his professional visit to San Quentin that he lights upon a territory of flowers, and is presented by a "trusty" with a cigar, is reason for restoring to this world instruments of barbarism in this day and in this age. Why not propose something here to reform that administration of justice, and place all criminals on the same footing? That is what gentlemen want to do, place the petty thief and petty hoodlum upon the same footing. I speak but as an individual, my own feelings. Should the lash be laid upon my shoulders by any man it would be the purpose of my life to hunt out and retaliate upon that man the injury he had done me. If you want this extraordinary method resurrected, why not take it all? Why not go back and enact the old blue laws at once, the stocks and the pillory? Why not stick the mark of disgrace in the middle of the forehead at once? That will accomplish it. It is true that it is barbarous. If gentlemen desire to be consistent, they ought to adopt them all, or propose to incorporate them all.

MR. O'DONNELL. I am opposed to corporal punishment, because I have seen the effects of it. I had occasion to go to San Quentin to examine two young men; one was flogged to death, and the other was in a dying condition. I called upon the official there, who said that it was impossible for me to see him at that time. Finally I insisted, and told him I came there for that purpose, and intended to see the boys. I went in one room where one of the boys had been flogged to death—he had died the night previous. In the other room I found the other man, about nineteen years of age, who never was in a State Prison before. He was used as a "trusty," and was sent out to attend the brick kiln. It appears that the watchman of the brick kiln had gone to sleep, and he sloped off. He finally was arrested seven days afterwards, brought back to San Quentin, and with a rawhide five feet long, with the end cut off, the thickness of my little finger, he got one hundred lashes across his bare back. The effect was that it produced pus, and the consequence was, from the effect of the wound, that pyæmia set in and he died.

That is the reason I am opposed to corporal punishment, because they do not know how far to go. I was told by the officer at San Quentin, himself, that he would not perform this duty, but he was compelled by the Lieutenant-Governor to administer from fifty to one hundred

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lashes for the simplest crimes. Now, Mr. Chairman, that is one reason why I object to this corporal punishment, and I hope that there will be no delegate in this Convention that will lose his manhood to vote for such a section in the Constitution.

Mr. STEDMAN. I hope the amendment offered by the gentleman from Alameda, Judge Campbell, will be adopted. I understand that this provision for corporal punishment only contemplates the punishment of the man—in name—who has whipped his wife. Now, Mr. Chairman, I say that the man who would raise his hand to strike a woman, whether she be his wife or not, should be tied to the whipping post and receive corporal punishment; should receive at the hands of a strong man lashes upon his bare body. I care not whether it be on his back or where. [Laughter.] I do not believe that this would be carrying us back to the dark ages. I believe that we could adopt it in this nineteenth century, and it would be considered by the people as a reform. I think it is a reform that is sadly needed, and I shall cast my vote for the amendment.

Mr. BLACKMER. Mr. Chairman: I cannot for a moment entertain the thought that an amendment of this kind can be adopted by this Convention. Why, sir, it is not to open the door, as suggested by the gentleman from San Francisco, Mr. Stedman, so that a man who whips his wife can be tied up to the whipping-post, but it opens the door to the whole of that principle. It opens the door for all of those barbarous punishments that have gone with those other terrible things of the dark ages. Is it possible that we are to turn back the hand upon the dial, and take the State of California back to the times of Salem witchcraft; back to the time when in England they hung a man for poaching; when horse stealing was a capital offense?

We are told by the gentleman who introduced this amendment that the prison system of punishment is not effective. Is it the fault of the law, I ask? Is it the fault of the Judges that the punishment that is determined upon by the statutes is not carried out? It is claimed here that if we have the right to take life we have the right to do this. Mr. Chairman, I deny our right to do any such thing, and base it upon the grand eternal principle of right. If we are to mould our Constitution upon precedents, where are we to stop? Although I know I am not able to make an argument such as ought to be made upon this question—although my language cannot do it justice—I cannot sit still and see a gentleman taking that position without raising my voice against it. We shall regret it, gentleman, if this amendment should be adopted.

My position is this: if our State Prison is not effective, why we should take hold of the State Prison discipline and reform it. If our laws are not carried out, we should see to it that they are. If the law is not properly administered, we should not put into it other and barbarous punishments, more than we have now, but we should see to it that those that are provided are carried out whenever a criminal is brought to justice. Is that true to-day? If we had a system under which they were sure of punishment—if we had a system under which crime was sure to meet with its reward—we would not have the trouble that we have to-day. But the fact is, that criminals, instead of being punished, too often escape. There is in many cases a reprieve, and other opportunities to shirk the responsibility of the crimes they have committed.

There is another point. It is stated here that we have a right to take life under the law, and it is admitted on all hands that it is a cruel punishment. I want to ask the gentleman if it deters from the crime of murder. Does the fact that we have the right, and that that law is carried out in many instances, deter people from committing that crime of murder? Not at all. The reason is not in the law, but because there is something in the passion of man that carries him beyond all law, and beyond all fear of punishment. Now, sir, it seems to me that we are at work at the wrong end of this business. We are attempting after the tree is grown, after the branches have spread themselves, and the fruit, pernicious as it is, begins to fall, we are turning our efforts to the boughs and branches, and leaving the root of the matter untouched. Gentlemen, if we would take a step forward in this direction, we must go to the root of this matter and educate. We are bringing up our boys and our girls for "hoodlums," simply because our system of education is wrong from the beginning. There are no opportunities for young men and young women; there are no incentives; there are no inducements; and it is growing worse and worse, and that is the reason why this tree of crime is growing and overshadowing us. And now gentlemen propose by the lash to take off the branches and boughs, and leave the trunk and the root as vigorous as ever. I cannot believe that this Convention will adopt this amendment. I cannot believe that we are ready to take that stand before the intelligent men and women of this State. I certainly must vote against it.

Mr. FAWCETT. Mr. Chairman: I think it has been correctly stated that this is one of the gravest and most serious question, that has been or will be presented in this Convention. I think it is apparent to all thinking men that there is something radically wrong in the administration of criminal justice in the State of California, and if there is anything which this Convention can do—it cannot do much—but if there be anything in its power, anything which it can do to correct the existing faults, the Convention ought to take that action.

It appears, sir, from reading the criminal records of this State, that at present there are about one thousand five hundred felons confined in the State Prison of this State. Our population will reach a total of about nine hundred thousand. By comparing the criminal population here with that in other States—take, for example, the State of Ohio—we find that our criminal population, our felons, are about as three to one. That is to say, the State Prison of this State contains to-day, in proportion to the total population of the State of California, about three times as many criminals as the State Prison of the State of Ohio. The State Prison of that State contains about the same number as San Quentin, but the State contains within her borders a population of nearly three million of inhabitants. By further examining the records here, we find that crime has been increasing rapidly, and that out of all proportion with the increase, the natural increase in the population of the State. At a time when we had about six hundred thousand people in this State the criminal population at San Quentin numbered about nine hundred. Now, with a population of fifty per cent. greater—an increase in the population of fifty per cent.—we have an increase of the criminal population, of felons confined at San Quentin, of about sixty-six or seventy per cent., and that percentage, sir, is rapidly increasing, out of all proportion, out of all ratio with the increase of population in this State. This fact alone, sir, shows that there is radical wrong in the administration of criminal justice in this State, and it is time, sir, that the remedy was applied. It is time that something had been discovered to stop the tide of crime, and to correct the evil from which we are suffering to-day.

Why, sir, it has been correctly said that under the prison system that has been adopted in this State, the criminals confined at San Quentin are better housed there than they ever were anywhere else in the whole course of their lives. Better fed, better clothed, better treated, half of them, than they ever were elsewhere in the whole natural course of their lives. And the result of that has been that nearly one half of the criminals in San Quentin to-day are there undergoing their second and third, and, in some cases, fourth terms of imprisonment in that prison. If the object of punishment is reformation, then the system totally fails to accomplish the object. If the object of punishment is to deter men from committing crime, that also has failed, because the system we have here to-day is not good in that particular at all.

Now, sir, I am not one of that school of sentimentalists who believe that there is anything specially degrading in the infliction of corporal punishment. I believe, sir, that the time when the criminal is degraded is when he commits the crime; and having become so degraded as to commit crime once, twice, or thrice, repeatedly—as often as he may possess the ability—he is none too degraded to feel upon the back the lash. There are certain States in this Union in which that kind of punishment has always been inflicted. One occurs to me at this moment, and that is the State of Delaware. That sort of punishment has been inflicted in that State always, upon all classes of criminals. The statistics there show that it is a very unusual thing for the same criminal to be punished in that State a second time. They have a system there, gentlemen, which, if not reformatory, is at least preventive of crime. Their statistics show that where a criminal is apprehended and convicted there, and subjected to the punishment of the lash, and he is enlarged again upon society, that if he sees fit to raise his hands against society again, he betakes himself to some other State, where the whipping-post does not exist. He finds crime unprofitable in Delaware—he finds it unproductive. His back, I apprehend, feels a lively recollection of certain tingles, which cause his nature to be satisfied. That is the result of that kind of punishment in Delaware. Virginia and Kentucky also have this punishment. There is too much sentimentalism spent upon the criminal. There is a school existing which looks upon the criminal as a ward to be tenderly nurtured. Another school looks upon crime as a disease—to be treated as a disease; to be cured as a disease. Why, sir, I do not believe in regarding or treating the incendiary, the robber, the murderer, and the ravisher in that style at all. I think there is a large class of people in this world—the criminal class—who are lost to all moral sense, and who stop at no crime; whose backs were made to be lashed, and there is nothing degrading in that sort of punishment to that class of people. The degradation began farther back, when the crime began to be committed.

The gentleman from San Diego, Mr. Blackmer, speaks in this Convention of capital punishment and asks the Convention the question, does hanging, which is denominated by some as cruel, prevent murder? I answer him in the affirmative, and I have only to cite him to the recent case in the State of Iowa, where four years ago, under the pressure of long-haired sentimentalists, capital punishment was abolished, and I tell you that at once throughout the length and breadth of that State there was a carnival of crime. Within less than a year the effect was marked. Murder succeeded murder until it became so in that State that lynch law, which had never before prospered there, became to be the rule all over the State upon the slightest provocation. The people felt obliged to take the law into their own hands and to execute summary justice. The effect was demoralizing. They went so far as to break the doors of a prison and to take hence a murderer who had been convicted and sentenced to imprisonment for life and hang him. The Legislature became alarmed, and last winter they passed a law returning to the old system of executing persons who were convicted of murder in the first degree. So I say that experience in that State has been to the effect that hanging does prevent murder, and I am equally clear that experience would be to the effect that if the punishment of the whipping-post was inflicted crime would be bridled.

Now, it has been decided in this State that the punishment of whipping is cruel and unusual. I do not think the decision legally sound, because that language was used in Constitutions all over the Union at the time when the whipping-post flourished, and therefore the judicial construction that has been given to that section is probably wrong, but still it has been so construed, and probably will be so construed again, and I propose to vote on this question to have all doubt removed, and making it so plain that there can be no misconstruction.

I believe in treating criminals to personal pain and chastisement, as a means of suppressing crime. I believe that there are criminals who cannot be treated in any other way, and that the effect of a change in the laws would be instantaneous as applied to some classes of criminals; as it has been in England, where whipping has been introduced for garroting, and where it resulted in breaking up that crime substantially. The effect would be instantaneous here, and some change is needed. The Legislature should be, in the language of my friend from Sacramento—should be left at liberty to provide such a system as experience may show is needed, or is proper to be provided; should be left free to

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provide such punishment as it sees fit. With that view, I shall vote for this amendment.

MR. LARKIN. I regret to hear a Judge that has a right to sit upon the bench in this State express the views that he does upon this occasion. I regret that any man occupying the position of Judge of the one of the highest Courts should not have one particle of the milk of human kindness in his veins; whose sternness would crush the poor criminal, and give him the whip, and disgrace him forever. I regret that such men as this are sitting upon the bench of this State. It is unfortunate. And why? In the history of this States we find that the greater criminals—this kind who rob the people, who have robbed the State and the United States—have gone free through the connivance of Courts. They have escaped. And yet a Judge rises here and recommends the lash if a petty offense is committed. I say it is a pity that these men do not find some means to protect the people against these men who rob the people.

MR. FAWCETT. I would like to whip them, too.

MR. LARKIN. Why don't you say so? My friend from Sacramento would like to imprison a man in the penitentiary for stealing a small lamb he has got, a lamb that is not worth a bit; but there is no way in our laws and our Constitution to catch some of these large thieves. It is the fault of the administration of the government, you will say, that this bank robber or this treasury thief has escaped justice. You will see plenty of lawyers ready to take fees to free him. No matter what crime he has committed he can always get a lawyer to attend his case if he is rich, and a Judge to hear his case. It has become fashionable to rob the people, and to-day the people regard these men who have been successful thieves as model men in society. There is the fault. It is not in the administration of justice. It is not that our laws are not strict enough, but it is the leniency of the Courts to these men who are rich. Throughout the State and the United States the men that are rich cannot be punished in our Courts. You gentlemen sitting on the bench, you attorneys attending causes before our Courts, see that you do not turn away a man who has got money to escape.

Again, our laws—both the laws of this State and most of the States—are so framed to protect the criminal that it is almost impossible to convict. None knows that better than the distinguished gentleman from Alameda, Mr. Campbell. He knows that legislators have sought in every way possible by legislation to provide for the escape of criminals. Here is the misfortune. Let laws provide to punish the great criminal and we will not have much complaint about these parties stealing little things.

MR. BARTON. Mr. Chairman: I do not really know or understand the temper of this Convention upon this very important matter; but if by any word that I in my feeble way might utter I could prevent the intelligence of this Convention from voting in favor of the adoption of the amendment offered by the gentleman from Alameda, I should certainly feel a thousand times thankful in behalf of humanity, in behalf, Mr. Chairman, also of the honor of the State of California. I do not believe the people of this State are ready to see her representatives in a constitutional body take a step backwards towards the dark ages of barbarism, and erect upon the free soil of America the whipping-post—and if you please the guillotine. These, my fellow countrymen, are things of the dead past, and it is not for you or me to resurrect them.

Mr. Chairman, the fault is in another direction. It is not the fault of the laws so much as it is in the administration of the laws. Look, if you please, at our Marcuse, our Davis, and the untold number of criminals in the City of Sacramento to-day that have become embezzlers, and have stolen the people's money and have gone unpunished, and what is the trouble? The trouble is, sir, that the very men who to-day are the men of fees, who by education and by nature are men of fees, have interest that these criminals shall go unpunished before the law; and it is for us not to take a step backwards in this dark and terrible direction, but to insist upon the indiscriminate execution of the law. Let the people have officers to enforce the law, and I think, Mr. Chairman, we will not need the lash. I hope and trust in God's name that this Convention will not sanction any such unheard of thing in the nineteenth century; that when a man beats his wife there will be a proper law to provide for his punishment; but to return to the dark ages, to bring men to the whipping-post, is something that my nature revolts from. I hope the amendment will not be adopted.

MR. MCCALLUM. The way of the transgressor is hard, and for the protection of society it should be, too. Perhaps it ought to be harder than it is now. I think the argument of the gentlemen who are in favor of restoring corporal punishment has proved that proposition, but I cannot admit that they have proved that the way to make it harder is by returning to the dark ages. Two or three States of the Union have such laws, says my colleague. I hope California will not be the second, nor the third, especially in view of the fact that of all the Constitutions I have before me here, not one contains what is proposed that ours shall contain, an invitation to return to corporal punishment; many of them, at least some of them, expressly prohibit corporal punishment, and say it shall not be inflicted. But two or three States have tried it, they say. The gentleman from Santa Barbara, Judge Fawcett, tells us that in Ohio there are but one third as many criminals in proportion to the population as we have here. I waited to hear the point of the argument; whether they had the whipping post in Ohio, and I am happy to say they have nothing of the kind there. Having once lived there for many years I am glad, for the credit of the State, that they have not. Delaware is the only one where I have heard of it, but I understand that they have it in Virginia and Kentucky. But it seems to me that the provisions of their Constitutions are substantially the same as ours, and if the difficulty is in the word "unusual," then it is a sufficient answer to say that if it is to become fashionable, let it become fashionable elsewhere first, and the objection that it is unusual will cease to apply to our Courts.

The gentlemen say that the Courts decided wrong, and they rendered that decision many years ago. I do not know what their decision might be now; but I do know that I do not propose, so far as my vote goes, that the Constitution of California shall be the first to invite corporal punishment. This has been a great question in these United States. In the Congress of the United States an amendment was adopted to the Constitution of the United States prohibiting cruel and unusual punishments. Some years ago, I remember, that this question of such punishment in the navy was the subject of discussion there. I believe for a time it was abolished. I am unable to state the condition of the question now, but for a time it was abolished. The tendency of the age has all been in that direction. Now it is proposed that we return to it; but the whole argument is that the punishment is not sufficient. The argument seems to prove it, but no argument has been presented here to show that it is the only kind of punishment that will make the way of the transgressor more hard. Why don't some of the gentlemen suggest some means by which crime may be lessened by a greater certainty of punishment which would be secured by some proposition pending before this Convention? Is there anything cruel or unusual in condemning a criminal to hard labor? It is not cruel or unusual, and at the same time it is not brutal. Might not the criminal be condemned to a diet of bread and water, and then not even given that if he does not labor? If the punishment is not great enough seek some other means, but not return to this brutal system. I have heard it said that the worst thing you can do with a man is to hang him. I deny it. The worst thing is to publicly whip him, and turn him loose upon society. You had better hang him in the first instance.

MR. GORMAN. I can remember, when a small child, of a picture in about the first book I ever studied in—a picture of whipping at the post in Delaware. It was in a geography. From that moment I always was against whipping, for it seemed to be a cruel and unusual mode of punishment. I hope that it will not be introduced into this State. The picture of that criminal has taken hold of my mind from that day, small boy as I was, until the present time; and I shall always be against the adoption of that system of punishment. They say that the laws are not efficient to prevent crime in this State. I believe they are if rightfully carried out.

Now, who are the criminals that are brought before the bars in this State? A great many of them are from foreign countries, as this is a great center. As San Francisco is a great commercial center, they come from all countries; consequently we have more criminals, and we expect more than places that are inland and are not great commercial centers. We get them from all portions of the world. This State has been a flourishing State. It is a place where money has been plenty, and consequently criminals have been attracted here in great numbers. We have had crimes committed here in Sacramento very lately. We have had steals to an unusual amount in banks and other institutions here, and the men have gone free and are not punished. We see the same in San Francisco. Whose fault is it? The laws are there if they are carried out, and I believe that they are not carried out as they should be.

Now, a great many of the criminals of the State come from the boys of the State. Boys growing up in this country are almost without a means of gaining a living. They are crowded out by a certain class of people. I am a mechanic and I know that the boys come to all the shops of the State asking for work—boys that are really good; brought up by good parents. If they go to any part of the State they find a class there ahead of them that takes away their chance of earning a living. They cannot get work. They will not starve, and they steal before they will starve. They have no work in the daytime, consequently they stay around nights, and the first thing get into low dives and cellars, and from that they very soon get to be criminals, first on a small scale, and then the great criminals of the State. These are facts known to every one that lives anywhere around the City of San Francisco. They cannot get anything to do, and they have got to commit crime to make a living.

They speak about capital punishment as though it should be abolished. It has been abolished in a great many States, and reënacted. They talk about this in the same light, but I cannot see that capital punishment can be compared to it at all. I should be in favor of capital punishment but not in favor of this, for capital punishment is where life is taken, and this is for petty offenses. Let any one examine the criminal records of this State and they will very soon decide where the criminals are educated, and how this system can be changed so that there will not be so many criminals in this State, and that will be on the question of Chinese.

MR. LINDOW. Gentlemen of the Convention: I am very sorry to see that this is introduced, but I am glad that Mr. Campbell did it. Here we are represented from the whole State, and we discuss this for an hour and a half, and if it goes wrong we soon see on which side we have got the good men. The parties that will vote for a bill they say it is a good one, and the ones that vote against it of course they say it is bad. That is my idea. It settles it just as plain as anything. The gentleman from San Francisco says the boys want work. That is all very well to say. They say, "Well, we can't get work; we have to steal." I have got five children myself, and if they ever make an attempt to steal I go and gives them the lash. I never let them go to the whipping post. It seems to me that some gentlemen are afraid of it. You can keep out of it if you like. Keep straight forward and you never get at the whipping post any.

Now, the boys they come into mine store, and I could give them work if I could have control of them, but you have got no control of a boy here. There is work, but the boys wants to work when he likes, and he leaves you when he is some account. Nobody wants to beat the boy. It would be a beast of a man that would raise his hand to a strange child to give him the lash. I was a man, twenty-two years of age, and I have got a lickin' from my mother. I never was before a Court in my life, but still I always got to work. If the master had the control of a

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child as he would of his own, I would take a boy to learn the trade; but you have got to take the boy and support him and pay him, and some of these days his temper will get up, and he goes off. Now, if we have control of children fourteen or fifteen years of age, to train them up to learn the business, we would not have so much hoodlums. Because why? You have got the control of them. But if this whipping post would come in they would get whipped if they go to steal, and they would go to work, because they would not like it. Now, a man spends his time on these boys to learn them the trade, and they want to be paid right off big wages. Now, I have learned a trade at seventy-five dollars a year, and furnished everything except food, and I was very glad to learn it that way. Now, gentlemen, it is no use to talk. Let us go and vote on this question and see how this case stands.

Mr. SHOEMAKER. I move that the committee rise, report progress, and ask leave to sit again.

The motion was lost, on a division—ayes, 60; noes, 88.

Mr. VAN DYKE. Just one word, Mr. Chairman. I hope this amendment will not be adopted. I think that the members of this Convention do not see the scope which it embraces. Now, it includes all corporal punishments. The gentleman from San Francisco, Mr. Stedman, said he was in favor of flogging wife beaters. The gentleman from Santa Barbara, Judge Fawcett, gives statistics in reference to State Prisons. Now, wife beaters do not go to the State Prison. So that if the gentleman from San Francisco wishes to confine it to them, of course the statistics of Judge Fawcett do not support his argument at all. All it proposes is to return to the old repudiated plan of corporal punishment. Now, we can reform the prison system in this State. Put the ball and chain to these confirmed criminals, and put them to work, and not disgrace the State by returning to barbarism in this age of the world. I am opposed to the amendment.

Mr. JOYCE. The gentleman from Santa Barbara, Judge Fawcett, says that if there is anything that can be done by this Convention to stop crime, we should do it. In that I agree with the gentleman. But why has not this learned gentleman of so many years' experience given us some idea of what can be done? Now, the fact is patent, Mr. President, to yourself, as being a practitioner before the Courts, as much as any other living man, that to-day in the State of California there is a premium on grand larceny, while petty larceny thieves are punished. These men pretend to say that petty larceny thieves ought to be punished more, while such men as Ralston go unpunished. Why don't they picture out this class of crime as the others were pictured by our friend, Judge Campbell. It is a mild term to call this fraud grand larceny. Flood, Sharon, and others, rob men of their hard earnings, and then leave them without a dollar to get their families food to eat. If they show us any practical way to lash them, I will say lash them, and lash every inch of their bodies off; but until they do that, I am opposed to lashing one class of criminals and grant a premium to another. Our friend from Sacramento wants to protect society. What form of society is it? Why, it is these grand larceny thieves who have built themselves up by plundering the people under the pretense of law. What has built up the millionaires of the City and County of San Francisco and the State of California? Why, it is their manipulations in stocks of various descriptions—mining stocks, water stocks, railroad stocks, and land grabbing. This is what forms society here, and this is the class that wants the lash. They want to lash the petty larceny criminal, but not the grand larceny thieves.

Mr. FAWCETT. I beg to correct the gentleman. I said nothing of the kind, and entertain no such opinions. I believe in making a law to bear perfectly equal upon all classes, and in whipping all classes who show by their crime that they are deserving of that punishment.

Mr. JOYCE. We know that the laws are there, but these men do not get punished. Mr. Wilson told us that we had no right to legislate for a coming generation. I know that the laws are optional with the Judges, and we all know that some counsel have great influence on the opinions of Judges, as we read from the decisions of late in this State. If these gentlemen can show us that this worst class of criminals in this State, these grand larceny thieves, will be lashed, I will go for giving the lash to them.

Mr. CAMPBELL. Mr. Chairman: I desire to say but a very few words. I do not think that this amendment is thoroughly understood by some gentlemen who have spoken upon this floor. My colleague says that this term means any kind of torture. The language is plain. It means the whipping-post, and nothing more or less. This amendment does not reëstablish the whipping-post. It merely gives the Legislature the power, if such a state of things shall be found to exist as to render the reëstablishment of the whipping-post necessary, to do so. Of course the natural feeling of all of us is against undue severity of punishment, but if you find that other means of repressing crime are not effectual, you must remember that the very first object of punishing crime is to protect society. The reformation of the offender is a mere secondary object. Those laws which are necessary to preserve the peace and order of society ought to be reënacted; and if in the future it shall appear that other punishment will repress crime you can abolish it altogether; but if it shall appear that it will have an influence in repressing and preventing crime, that it will save our citizens from outrage, and protect them from wrong and personal violence, and from fraud—if the Legislature shall find it necessary in the future, why not do that which may be necessary for the protection of society.

This does not specify any particular species of crime. That is necessarily left to legislative discretion. I do not think myself that it would be a bad exercise of legislative discretion if the men who robbed the people of millions were triced up to the whipping-post. I have no objection to it. And let me say this, sir, that certain gentlemen speak here as if we were endeavoring to oppose all reforms. I do not oppose any reforms here. In the course of this Convention, if no other gentleman shall propose measures which are calculated to repress the swindling by officers of corporations, I shall propose them myself. I shall do all in my power to repress crime in all states and conditions of society, but at the same time I do not desire to shackle the hands of the Legislature. This particular kind of punishment has proved immensely beneficial in Great Britain, where experience shows that a man who has received one whipping rarely comes back for a second. I say, if the Legislature can, by establishing that punishment in the future, repress crime, I am in favor of it, and opposed to that sickly sentimentality which sees a fellow knock you down and nearly kill you, to rob you, but says it will be very inhuman to let him have lashes on his back.

Why, sir, there would be a discretion in these Courts if the Legislature should pass any Act of this description. It would be applied where offenses were of such a description, and showed such a degradation of manhood, that the infliction of the lash would be no additional degradation to the offender—where he was lost to all sense of shame and decency before; where he was a public enemy, and where it was necessary to resort to the infliction of that physical suffering which would prevent him from committing crime if he had lost all moral sense.

Mr. WICKES. I have been compelled in my profession to use the rod; and it has been thought that members of my profession are partial to its use; but, sir, it is a laceration to the feelings of any one to use the rod. There is nothing dignified in its use whatever. In the administration of school discipline, perhaps, it may be necessary. An ancient savant says, "spare the rod, and spoil the child," but he never says "man" once. I do not believe that man is in a pupilage, or that he can be benefited by the whip. The older nations in the dark ages resorted to all kinds of brutal punishments; but I think we should avoid copying after such uncivilized and barbarous peoples. I do not believe that we should give the Legislature all this power. I know that the practice of flogging obtained in the navy, but through Commodore Stockton it was abolished, and the discipline of the navy has been better ever since. I am opposed to the amendment, because I know the impropriety of using the lash. In regard to capital punishment, there is something dignified in that which deters from crime.

Mr. KLEINE. I think the punishment of criminals is too severe to the small criminals. I know of one boy, nine years of age, that snatched the purse of a lady, containing five cents, was sent five years to State Prison, whilst men who have stolen five or six millions of the earnings of the people have gone scot free. I hold that this amendment is going back three hundred years ago. I say that the punishment is too severe. I never knew a case yet—I never knew a criminal yet in my life that was reformed by the whipping-post. For my own part, the man that would lay the whip upon me I am sure I know what I would do with him. Mr. President, I say as I said before, we should take compassion upon the poor criminal. If these State Prison keepers were men of humanity, if they would treat prisoners more like human beings, I assure you we would not have half the prisoners that we have to-day.

The CHAIRMAN. The question is on the adoption of the amendment offered by Judge Campbell.

The amendment was adopted, on a division: ayes, 69; noes, 63.

Mr. GARVEY. I move that the Committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

The PRESIDENT. Gentlemen, the Committee of the Whole have instructed me to report that they have had under consideration the article on preamble and bill of rights, report progress, and ask leave to sit again.

ADJOURNMENT.

Mr. LARKIN. I move we adjourn.

The motion prevailed, and at five o'clock P. M. the Convention stood adjourned until to-morrow, at ten o'clock A. M.

THIRTY-FOURTH DAY.

SACRAMENTO, Thursday, October 31st, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Crouch,	Graves,
Ayers,	Davis,	Gregg,
Barbour,	Dowling,	Hager,
Barnes,	Doyle,	Hale,
Barry,	Dudley, of San Joaquin,	Hall,
Barton,	Dudley, of Solano,	Harrison,
Beerstecher,	Dunlap,	Harvey,
Belcher,	Eagon,	Heiskell,
Bell,	Edgerton,	Herold,
Biggs,	Estee,	Herrington,
Blackmer,	Estey,	Hilborn,
Boggs,	Evey,	Hitchcock,
Boucher,	Farrell,	Holmes,
Brown,	Fawcett,	Howard,
Burt,	Filcher,	Huestis,
Campbell,	Finney,	Hughey,
Caples,	Freeman,	Hunter,
Casserly,	Freud,	Inman,
Chapman,	Garvey,	Johnson,
Charles,	Glascock,	Jones,
Condon,	Gorman,	Joyce,
Cowden,	Grace,	Kelley

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Kenny,	O'Donnell,	Sweasey,
Keyes,	Ohleyer,	Swenson,
Kleine,	O'Sullivan,	Swing,
Laine,	Overton,	Terry,
Lampson,	Porter,	Thompson,
Larkin,	Prouty,	Tinnin,
Larue,	Pulliam,	Townsend,
Lavigne,	Reddy,	Tully,
Lewis,	Reed,	Turner,
Mansfield,	Reynolds,	Tuttle,
Martin, of Alameda,	Rhodes,	Vacquerel,
Martin, of Santa Cruz,	Ringgold,	Van Dyke,
McCallum,	Rolfe,	Van Voorhies,
McComas,	Schell,	Walker, of Marin,
McConnell,	Schomp,	Walker, of Tuolumne,
McCoy,	Shafter,	Waters,
McFarland,	Shoemaker,	Webster,
McNutt,	Shurtleff,	Weller,
Miller,	Smith, of Santa Clara,	Wellin,
Mills,	Smith, of 4th District,	West,
Moffat,	Smith, of San Francisco,	Wickes,
Moreland,	Soule,	White,
Morse,	Stedman,	Wilson, of Tehama,
Murphy,	Steele,	Wilson, of 1st District,
Nason,	Stevenson,	Winans,
Nelson,	Strong,	Wyatt,
Neunaber,	Stuart,	Mr. President.
Noel,		

ABSENT.

Berry,	Dean,	Lindow.
Cross,		

LEAVE OF ABSENCE.

One day's leave of absence was granted to Mr. Cross, and two days' leave to Mr. Herold.

MR. HILBORN. I move that the reading of the minutes of yesterday be dispensed with.

Carried.

PETITION—LOCAL OPTION.

MR. HAGER presented the following petition, signed by a large number of citizens of San Francisco, asking for a provision in the Constitution for a local option law:

To the honorable Constitutional Convention of the State of California:

We, the undersigned, respectfully petition your honorable body to insert in the new Constitution of this State a clause similar to that now in force in the State of Texas, to wit:

SECTION —. The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, voting precinct, town, or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.

Referred to Committee on Legislative Department.

FURTHER TIME.

MR. BLACKMER. The Committee on Future Amendments desire to report progress, and ask for further time.

THE PRESIDENT. If there be no objection, further time will be granted. Hearing none, it is so ordered.

REPORT ON CHINESE.

MR. MILLER, from the Committee on Chinese, presented the following report:

MR. PRESIDENT: The Committee on Chinese, to whom was referred certain proposed amendments to the Constitution, relating to Chinese, beg leave to report back to the Convention the following propositions, with the recommendation that no further action be taken thereon, viz.: Proposition number one, introduced by Mr. Dowling; number seventeen, introduced by Mr. Joyce; number seventy, introduced by Mr. Barry; number one hundred and thirty, introduced by Mr. Kenny; number two hundred and sixty-six, introduced by Mr. Kleine; number eighteen, introduced by Mr. Joyce; number sixty, introduced by Mr. O'Donnell; number seventeen, introduced by Mr. Murphy; number one hundred and seventy three, introduced by Mr. Wellin; number three hundred and twenty-one, introduced by Mr. O'Donnell; number three hundred and ninety, introduced by Mr. Joyce; number three hundred and eighty-eight, introduced by Mr. O'Donnell; number four hundred and twenty-three, introduced by Mr. Estee; number forty-four, introduced by Mr. Turner; number one hundred and thirty-one, introduced by Mr. Kleine; and the second and third sections of number two hundred and ninety-two, by Mr. Tuttle.

The committee has carefully considered the foregoing, and adopted, in substance, such portions as have been deemed of practical value, and included the same in the amendments to the Constitution herewith presented for the action of the Convention.

Your committee also begs leave to report back the amendment number three hundred and fifty-two, proposed by Mr. Miller, amended as the same appears in section one of the draft of amendments accompanying this report, with the unanimous recommendation that the same be adopted as amended.

A majority of the committee has agreed to and instructed me to report to the Convention the first section of proposition number two hundred and ninety-two, by Mr. Tuttle, amended as the same appears in section two of the draft of amendments herewith, with the recommendation that the same be adopted as amended; also, proposition number twenty-three, by Mr. Nelson, which furnishes section three of the accompanying draft of amendments, with like recommendation; also, proposition number sixty-four, by Mr. Ayers, amended as the same appears in section four of the accompanying draft of amendments, with the recommendation that the same be adopted as amended; also, the first section of proposition number nineteen, by Mr. Larkin, which forms section five of the accompanying draft, with the recommendation that the same be adopted.

In addition to the foregoing, a majority of the committee has agreed to and instructed me to present, for the consideration of the Convention, the four sections, numbered six, seven, eight, and nine, respectively, in the draft of amendments herewith, with the recommendation that the same be adopted.

Your committee begs to submit the result of its labors without comment, it being reserved, by common consent, for each member of the committee to sustain or oppose, in Convention, the whole or any portion of this report.

Respectfully submitted.

JNO. F. MILLER, Chairman.

DRAFT OF AMENDMENTS TO THE CONSTITUTION, PRESENTED BY THE COMMITTEE ON CHINESE.

ARTICLE —.

SECTION 1. The Legislature shall have, and shall exercise the power, to enact all needful laws, and prescribe necessary regulations, for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are, or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State, upon failure or refusal to comply with such conditions, *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations, as it may deem necessary.

SEC. 2. Any corporation incorporated by or under the laws of this State, or doing business in this State, shall forfeit its franchises and all legal rights thereunder, if it ever employs, in any capacity whatever, foreigners who are not eligible to become citizens of the United States under the laws of Congress. This section shall be enforced by appropriate legislation.

SEC. 3. No alien ineligible to become a citizen of the United States shall ever be employed on any State, county, municipal, or other public work in this State after the adoption of this Constitution.

SEC. 4. All further immigration to this State, of Chinese, and all other persons ineligible to become citizens of the United States under the naturalization laws thereof, is hereby prohibited. The Legislature shall provide for the enforcement of this section by appropriate legislation.

SEC. 5. No person who is not eligible to become a citizen of the United States shall be permitted to settle in this State, after the adoption of this Constitution.

SEC. 6. Foreigners ineligible to become citizens of the United States, shall not have the right to sue or be sued in any of the Courts of this State, and any lawyer appearing for or against them, or any of them, in a civil proceeding, shall forfeit his license to practice law. No such foreigner shall be granted license to carry on any business, trade, or occupation in this State, nor shall such license be granted to any person or corporation employing them. No such foreigner shall have the right to catch fish in any of the waters under the jurisdiction of the State; nor to purchase, own, or lease real property in this State, and all contracts of conveyance or lease of real estate to any such foreigners shall be void.

SEC. 7. The presence of foreigners, ineligible to become citizens of the United States, is declared herein to be dangerous to the well being of the State, and the Legislature shall discourage their immigration by all the means within its power. It shall provide for their exclusion from residence or settlement in any portion of the State it may see fit, or from the State, and provide suitable methods, by their taxation or otherwise, for the expense of such exclusion. It shall prescribe suitable penalties for the punishment of persons convicted of introducing them within forbidden limits. It shall delegate all necessary power to the incorporated cities and towns of this State for their removal without the limits of such cities and towns.

SEC. 8. Public officers within this State are forbidden to employ Chinese in any capacity whatever; violation of this provision shall be ground for removal from office; and no person shall be eligible to any office in this State who at the time of election, and for three months before, employed Chinese.

SEC. 9. The exercise of the right of suffrage shall be denied to any person employing Chinese in this State; and it shall be a sufficient challenge that the person offering to vote is employing Chinese, or has employed them within three months next preceding the election.

MR. MILLER. I move that the amendment lie on the table, and be ordered printed.

THE PRESIDENT. So ordered.

PROPOSED AMENDMENTS.

THE PRESIDENT. The next order of business is the introduction of resolutions and propositions relative to the Constitution.

MR. WILSON, of First District. I desire to send up a proposition, at the request of the Committee on Judiciary and Judicial Departments, and ask that it be printed out of its order, and referred to that committee:

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish in any incorporated city or town.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of two Justices shall be necessary to transact any business in either of the departments, except such as may be done at chambers, and the concurrence of two

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Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within sixty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. If the order be not made within the time above limited, the judgment shall be final. No judgment by a department shall become final until the expiration of the period of sixty days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument, and judgment may be pronounced by a majority thereof; and if they are equally divided in opinion, the judgment or order appealed from shall stand affirmed. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall select one of their number as presiding Justice. All sessions of the Court, whether in bank or in departments, shall be held at the capital of the State. In case of the absence of the Chief Justice from the place at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

Sec. 3. The Chief Justice shall be appointed by the Governor, with the advice and consent of the Senate, and shall hold office during good behavior. The Associate Justices shall be elected by the qualified electors of the State at large, and the term of office shall be twelve years, from and after the first Monday of January next succeeding their election; *provided*, that the six Justices elected at the first election shall, at their first meeting, so classify themselves, by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of Associate Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of the Associate Justices shall be at the first general election after the adoption and ratification of this Constitution.

Sec. 4. The salary of the Chief Justice shall be ten thousand dollars per annum, and the salary of each Associate Justice shall be eight thousand dollars per annum.

Sec. 5. The Supreme Court shall have appellate jurisdiction in all cases in equity; also in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; and also in all criminal cases amounting to felony on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof. Any Justice of the Supreme Court may allow alternative writs and orders to show cause, with or without a temporary restraining order. In cases of which the Court has original jurisdiction, all issues of law and fact shall be determined by the Court in bank, or one of the departments, in such manner as may be provided by law or the rules of the Court.

Sec. 6. There shall be a Superior Court in each county of the State.

Sec. 7. In the County of San Francisco there shall be twelve Judges of the Superior Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are Judges thereof. The said Judges shall choose, from their own number, a presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the Superior Court, held by any one or more of the Judges of said Courts, respectively, shall be equally effectual as if all the Judges of said respective Courts presided at such session. [Here provide for the number of Judges for the Superior Court in each of the other counties.] The term of office of Judges of the Superior Courts shall be six years, from and after the first Monday of January next succeeding their election; *provided*, that the twelve Judges of the Superior Court, elected in the County of San Francisco at the first election held under this Constitution, shall, at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State. The first election of Judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term.

Sec. 8. The salary of a Judge of the Superior Court in the County of San Francisco shall be the same as that of an Associate Justice of the Supreme Court of the State. [Here provide for salaries in other counties.]

Sec. 9. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof, and upon the request of the Governor it shall be his duty so to do.

Sec. 10. The Legislature of the State may, at any time, two thirds of the members of the Senate and two thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county in the State; *provided*, that no such reduction shall affect any Judge who has been elected.

Sec. 11. The Superior Courts shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest, amounts to two hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; also, in actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance, of divorce, and for annulment of marriage, and all such special cases and proceedings as are not otherwise provided for; also, of all matters of probate. And said Courts shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties on questions of law only as may be prescribed by law. Said Courts shall be always open (legal holidays and non-judicial days excepted), and their original jurisdiction shall extend to all parts of the State. Said Courts, and their Judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody, in their respective counties.

Sec. 12. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both houses of the Legislature, if two thirds of all the members of the Assembly and a majority of all the members elected to the Senate concur therein. All other judicial officers, except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the Journal, or unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

The PRESIDENT. The Chairman of the Committee on Judiciary and Judicial Department presents this proposition, and asks that it be printed out of order and referred to that committee. If there be no objections it is so ordered.

Mr. STEDMAN. Mr. President: By request of Mr. Lindow, I send up the following proposition:

ELECTIVE FRANCHISE AND PRIVILEGES.

ARTICLE —.

SECTION 1. All elections shall be conducted openly and free from restraint.

Sec. 2. All elections shall be by ballot.

Sec. 3. Electors shall in all cases, except felony or breach of the peace, be privileged from arrest on the day of election during their attendance at such election, and in going to and returning from the same. No elector shall be obliged to do military duty on the day of election, except in time of war or public danger.

Sec. 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas, nor while a student in any institution of learning, nor while kept at any almshouse or other asylum, nor while confined in any public prison; but no person, while confined in any prison, shall have any right to vote during such confinement. No person who shall have been convicted of any crime which is punishable by imprisonment in a penitentiary shall be entitled to the privileges of an elector.

Sec. 5. No soldier, seaman, or mariner in the army or navy of the United States shall be deemed a resident of this State in consequence of being stationed therein.

Sec. 6. No person shall be elected or appointed to any office in this State, civil or military, who is not a citizen of the United States, and who shall not have resided in this State one year next preceding the election or appointment.

Sec. 7. No idiot or insane person shall be entitled to the privileges of an elector.

Sec. 8. Every male citizen of Mexico, who shall have been elected to become a citizen of the United States under the treaty of peace established and ratified at Queretaro, on the thirtieth day of May, eighteen hundred and forty-eight, shall be an elector and citizen of this State, and entitled to all the privileges of a native-born citizen of the United States.

Sec. 9. Every person shall be disqualified from holding office during the term for which he may have been elected, who shall have given or offered a bribe, threat, or reward, to procure his election.

Sec. 10. No person who shall hereafter be a collector or holder of public money, or receiver of money as an officer, shall be eligible to any

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office of trust or profit until he shall have accounted for, and paid according to law, all money for which he is or may be liable.

SEC. 11. General municipal elections shall be held biennially on the first Tuesday after the first Monday in November. At all elections by the people, the polls shall be open from six A. M. to seven P. M.

Referred to Committee on Privileges and Elections.

ELIGIBILITY OF JUDGES.

MR. BARBOUR introduced the following proposition to amend section sixteen of article six:

SEC. 16. The Justices of the Supreme Court, and the District Judges, and the County Judges, shall be ineligible to any other office than a judicial office, or to any public employment whatever, other than of a judicial character, during the term for which they shall have been elected.

Referred to Committee on Judiciary and Judicial Department.

CORPORATIONS.

MR. MCCONNELL introduced the following proposition, relating to corporations other than municipal:

SECTION —. No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State. The Legislature shall enforce this section by appropriate legislation.

Referred to Committee on Corporations other than Municipal.

CLAIMS AGAINST THE STATE.

MR. BARNES introduced the following proposed amendment to the Constitution, in relation to claims against the State, or any county, city and county, town, or municipal organization:

ARTICLE —.

SECTION —. Every person having a disputed claim against the State, or any county, city and county, town, or municipal organization, shall have a judicial remedy therefor, to be provided by general laws by the Legislature; and no appropriation of money for the payment of any disputed claim shall be made by the Legislature, or by any county, city and county, town, or municipal organization, except in pursuance of and in obedience to the judgment of a Court of competent jurisdiction, duly had and obtained.

Referred to Committee on Legislative Department.

STATE BOARD OF EDUCATION.

MR. WICKES introduced the following proposition, to amend amendment to article ——, sections ——, entitled "Constitution and powers of State Board of Education:"

To amend amendment to article ——, sections ——, entitled "Constitution and powers of State Board of Education," by striking out "except in incorporated cities," wherever such clause occurs, making its powers general and complete.

Referred to the Committee on Education.

CORPORATIONS.

MR. VACQUEREL introduced the following proposed amendment to the Constitution, relative to corporations other than municipal:

Resolved, That each and every corporation now formed, or may be formed in this State, shall be and they are hereby prohibited from permitting any person or persons, company or corporation, to solicit for any business or occupation whatsoever on board of any car or cars, steamboats or steamers, or any other conveyance owned or controlled by such corporations now formed or may be formed as aforesaid. Any violation of this section, in any manner whatsoever, shall be punished, upon conviction of the offender, whether it be the corporation, or the employé or servant thereof, by the total and absolute forfeiture of any charter or franchise that the corporation so offending and violating may now possess or obtain hereafter.

Referred to Committee on Corporations other than Municipal.

BIGAMY AND POLYGAMY.

MR. DOWLING introduced the following proposed amendment to the Constitution, to prohibit bigamy and polygamy:

SECTION —. The Legislature of this State shall provide that bigamy nor polygamy shall never be tolerated in the State of California.

Referred to Committee on Legislative Department.

STATE UNIVERSITY.

MR. MARTIN, of Santa Cruz, offered the following resolution:

Resolved, That the President of the Board of Regents of the University of the State of California, be requested to furnish this Convention with full information respecting the annual expenses paid for salaries of all officers, employés, and attachés of said University; also all incidental expenses connected with said institution; also to give full detailed information of the amount of money received from the State, from individuals, and from all other sources, for the maintenance of said institution, and the disposition made of such funds.

MR. HAGER. I would suggest that the resolution be amended so as to read "President and Secretary." The Secretary has charge of all the books and archives.

MR. MARTIN, of Santa Cruz. I accept the amendment.

The resolution as amended was adopted.

PREAMBLE AND BILL OF RIGHTS.

MR. VAN DYKE. I move that the Convention resolve itself into a Committee of the Whole, President Hoge in the chair, to further consider the report of the committee on preamble and bill of rights.

Carried.

IN COMMITTEE OF THE WHOLE.

MR. GREGG. I will withdraw the substitute that I offered to section six yesterday.

THE CHAIRMAN. The Secretary will read section six as amended.

THE SECRETARY read:

SEC. 6. All persons shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed; nor shall cruel or unusual punishments be inflicted. But nothing herein contained shall be construed to prohibit the infliction of corporal punishment for crimes. Witnesses shall not be unreasonably detained or confined in any jail or room where criminals are usually imprisoned.

MR. VAN DYKE. I move to amend the section by inserting after the word "criminals," in the sixth line, the words "or persons charged with crime," so that it will read; "Witnesses shall not be unreasonably detained, or confined in any jail or room where criminals or persons charged with crime are usually confined."

MR. TERRY. There is no jail in the State that has a separate building for witnesses who are detained. If he is confined at all he must be confined at the jail, though he need not be confined in the same room with the criminals.

MR. VAN DYKE. Strike out "jail or."

MR. WILSON, of First District. I would suggest that they might be confined with criminals then unless the word "usually" is stricken out.

MR. VAN DYKE. I accept the amendment.

THE CHAIRMAN. The Chairman of the committee moves to strike out the words "jail or" and the word "usually."

MR. VAN DYKE. Mr. Chairman: The only amendment to the old section is adding on after the word "detained" the balance of the clause. We have added on, "or confined in any room where criminals or persons charged with crime are imprisoned." The purpose is very obvious. As the law now is it frequently occurs that a party who is so unfortunate as to witness the commission of a crime is imprisoned in an unfit cell or room and herded with criminals, while the criminal himself perhaps may be able to give bail and go at large upon the streets. We think that is all wrong. Any city or county that is not able to build a proper and suitable place for the detention of witnesses should not be allowed to hold them, if they are to be herded with criminals.

MR. JONES. Mr. Chairman: I hope the amendment will not be adopted. I think the object aimed at might be attained and preserve the protection that was designed for witnesses detained. The object was, as stated by the Chairman of the committee, to protect innocent men whose testimony may be needed upon the trial of cases at a future time, and who, by virtue of being strangers and in a strange land, and without means, are unable to give bail. Now the section as it first stood was designed to secure those persons in that condition, who were detained for a considerable length of time, perhaps, should not be put into the attitude of common felons—of common criminals—and herded with them; that they should not be put into the place where such criminals are confined. As it stood it would have attained that end. But the gentleman from San Joaquin suggests that there may not be any other place than the jail in the county. I submit that if there be none they should provide one. The striking out of the word "jail" and leaving in the word "room" will have just simply this effect, that the witnesses detained will be taken to the common jail, to a place where felons are taken and persons charged with crime, and there will be incarcerated in the building, in a room which the public do not know from the room that the criminals are occupying.

Now, I fancy that it is not so much the hardship of occupying a room with a criminal, as it is the disgrace, to a private citizen, without offense, to be incarcerated in a place, in a jail, in a prison, in an institution which is used for the purpose of confining criminals and persons charged with crime. It seems to me the amendment loses the whole salutary benefit of the section as it stood, so far as it is designed to protect honest citizens who simply have the misfortune to be witnesses; and if that amendment be not carried, I am certain that an amendment can be made that will accomplish the purpose designed. It may be true that they might not have the means in some counties of providing suitable buildings, but I submit that in such cases they have seldom occasion to detain a witness, and when they do, it should be the duty of the public to provide a place—I do not care, though it might be some expense and some trouble—rather than sacrifice the right of a citizen. I understand that by the amendment the room shall not be one in which criminals or persons charged with crime are confined, but I submit that is not enough for the protection of the citizen. It ought to be a place not connected with any infamy at all.

MR. TERRY. Mr. Chairman: It is a fact, I believe, that in every county of the State which has a jail there are apartments usually used by the Deputy Sheriff or the Jailer in charge of the institution. Prisoners are never confined therein. The object of the amendment was that these persons who were detained as witnesses might be kept in that portion of the building, and not compelled to herd with prisoners or persons charged with crime. It seems to me that a witness would not be any more disgraced in being detained in the rooms usually occupied by the Deputy Sheriff than in any other building, and it would be a very considerable expense to any county to be compelled to provide a separate place every time a witness was detained for a few days—for I hope that this Convention will provide a means whereby it will be unnecessary to detain any witness more than a few days, by having the deposition of witnesses taken before an examining magistrate for use in case the witness is absent or cannot be procured on the trial. But it would be putting the counties to unnecessary expense to require them to provide outside accommodations for men for the three or four days occupied in the examinations. I do not understand that there will be any particular hardship in detaining a man in a room usually occupied

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by the Deputy Sheriff, and I think there is no jail in the State that has not apartments of that kind.

Mr. LAINE. As I understand it, the amendment is to insert the words "or persons charged with crime."

The CHAIRMAN. The amendment which the Chairman of the committee now offers is to strike out the words "jail or," and the word "usually."

Mr. LAINE. Then there are two propositions, an amendment and an amendment to an amendment. Now, Mr. President, it seems to me that we ought to abolish this matter of imprisoning witnesses altogether. At the present time we have laws, and we should stick to them, providing that witnesses may be examined and not imprisoned. Hence, I am in favor of voting down this amendment, and then striking out the words "or confined in any jail or room where criminals are usually confined," so that it will read that they shall not be unreasonably detained or imprisoned. I do not believe in imprisoning witnesses at all.

Mr. NOEL. Mr. Chairman: I have an amendment which I would like to offer.

The CHAIRMAN. There are two amendments already.

Mr. JONES. Mr. Chairman: The gentleman from San Joaquin, Judge Terry, says there are no jails in which there is not a room in which criminals are never confined. I do not know how many there are. I am not so well acquainted with the jails of the State as the gentleman from San Joaquin, but we have in my own county a very good jail, a very strong one, and there is no place whatever of the description of which he speaks. No Sheriff or Deputy Sheriff ever remains there longer than to take care of the prisoners and feed them. I think that is the case in several of the counties.

Mr. NOEL. Mr. Chairman: I think the section sufficiently guarded as it is. That would exclude them from being confined in a jail at all, or in any room whatever in which criminals are usually confined, and if they are to be confined at all they must be confined somewhere else. I think that the section as it reads now sufficiently protects the rights of witnesses without any further amendment or any amendment whatever.

Mr. VAN DYKE. I withdraw my amendment to strike out "jail or."

The CHAIRMAN. The next amendment is to insert, "or persons charged with crime."

Mr. VAN DYKE. The object of that amendment is this: it might be understood to mean convicted persons, and I wish to make it apply to persons charged with crime.

The CHAIRMAN. The Chairman of the committee seems to forget that the Committee of the Whole yesterday adopted the amendment of Judge Campbell. The amendments are both out of order.

Mr. NOEL. I move to amend by adding after the word "crime" the following words: "But criminals when punished by whipping shall not be stripped naked; nor shall married women ever be whipped by any one except their husbands."

The CHAIRMAN. The amendment is out of order.

Mr. WYATT. I move to add to section six the following words: "*Provided*, corporal punishment shall only be inflicted on male persons convicted of the crime of felony."

The CHAIRMAN. The amendment is out of order. The committee has determined already what that portion of the section shall contain.

Mr. REYNOLDS. I offer an amendment to the amendment adopted by the committee.

The CHAIRMAN. The amendment is not in order.

Mr. REYNOLDS. I appeal from the decision of the Chair. I desire to offer this amendment: "But nothing herein contained shall be construed to prohibit the infliction of corporal punishment for the crime of embezzlement."

Mr. WYATT. I second the appeal.

The CHAIRMAN. It requires three members to appeal from the decision of the Chair.

Mr. McCALLUM. If no further amendments be offered to section six, I wish to raise the question that the proper way would be to take a vote on section six, and see if we agree to it after being amended. Now, my judgment is that we should take a vote on section six as amended, and I call for that vote.

The CHAIRMAN. There is no such thing as such a vote in Committee of the Whole. No such question can be presented in Committee of the Whole. The sections are read, and if amendments are made they are all sent back to the Convention, and then amendments can be offered if desired. But no such vote is taken in Committee of the Whole.

Mr. REYNOLDS. I am striving to arrive at an understanding, as to whether it is in order to amend section six.

The CHAIRMAN. It is in order to amend section six in any other portion of it than that which the Committee of the Whole has already adopted.

Mr. REYNOLDS. I have no difference to discuss with the Chair, but I do desire a distinct understanding, that there may be a ruling of the Chair, or by the house, and no misapprehension. I desire to amend section six as it now stands, and upon that proposition I offer an amendment. Now, if the Chair rules that amendment out of order, I respectfully take an appeal, and ask the sense of the Convention.

The CHAIRMAN. There was no second to your demand for an appeal. The gentleman is out of order. It takes three to call for an appeal under the rule.

Mr. HERRINGTON. Mr. Chairman: I move to amend section six as follows: Strike out all after the word "inflicted," and add "the Legislature shall provide for taking the depositions of witnesses to be used in criminal cases. Witnesses shall not be unreasonably detained or imprisoned after sufficient time and opportunity has been given for taking their depositions." I submit that that amendment ought to be made. I am opposed to imprisoning witnesses at all.

The CHAIRMAN. The amendment is out of order. On motion of Judge Campbell the committee struck out all after the word "inflicted" and inserted some other words. The gentleman from Santa Clara now moves to strike out these words that the committee have already inserted. The Chair rules that it is out of order.

Mr. HERRINGTON. I do not insist on it if that is so.

The CHAIRMAN. It is precisely the same language Judge Campbell moved to strike out.

Mr. HAGER. Mr. Chairman: If I understand the section as it now reads, after the word "crimes" it says: "Witnesses shall not be unreasonably detained, or confined in any jail or room where criminals are usually imprisoned." It should read: "Witnesses shall not be unreasonably detained, nor shall they be confined in any jail." As it stands, it means witnesses shall not be unreasonably confined. I presume that the intention is that they shall not be unreasonably detained, and shall not be confined in any jail or room where criminals are usually imprisoned. It should read: "Witnesses shall not be unreasonably detained, nor shall they be confined in any jail or room where criminals are usually imprisoned." We should strike out the word "or," and insert the words "nor shall they be."

Mr. VAN DYKE. We cannot get to it until we get back into the Convention.

The CHAIRMAN. When the article is taken up in the Convention, every amendment made in Committee of the Whole will come up in its order. You can then vote down the amendment if desired.

Mr. REYNOLDS. I now again offer my amendment, and I do so for the purpose of calling the attention of the Chair to the fact that the committee, on yesterday, adopted the amendment offered by the gentleman from Alameda, Judge Campbell, and upon that ground, I understand, the Chair ruled my amendment out of order. Now, as another amendment has been adopted this morning that strikes out the whole of the amendment and adopts a substitute ——

The CHAIRMAN. The gentleman is mistaken. No amendment whatever has been adopted this morning.

Mr. REYNOLDS. It is my misfortune to be seated so far from the center of business as not to be able to understand what is going on at the desk.

The CHAIRMAN. The Secretary will read section seven.

The SECRETARY read:

SEC. 7. In criminal cases the right of trial by jury shall remain. In all cases, except felony, the Legislature may provide by law the number necessary to constitute a jury, and in all civil cases the number necessary to render a verdict.

Mr. WILSON, of First District. I move that this committee rise and report back to the Convention sections seven and eight of the draft for a preamble and declaration of rights, with the recommendation that they be omitted from the declaration of rights, and that the subject-matter thereof be referred to the Committee on Judiciary and Judicial Department to report upon the same in connection with the judicial department. I do this, Mr. Chairman, from the fact that the question of juries and Grand Juries have been very considerably discussed in the Committee on Judiciary. It is an important subject, and one which I presume the Convention is hardly prepared at this time to act upon. It seems to me that the subject belongs more properly to the judicial department than it does to the bill of rights. When that is reached the committee will be prepared to act upon the subject of juries and Grand Juries. Of course, the committee, after it shall report to the Convention, will resolve itself back with the Committee of the Whole for the purpose of considering the balance.

The CHAIRMAN. The gentleman from San Francisco, Mr. Wilson, moves that the committee rise and report back to the Convention sections seven and eight of the draft, for a preamble and declaration of rights, with the recommendation that they be omitted from the declaration of rights, and that the subject-matter be referred to the Committee on Judiciary and Judicial Department.

Mr. HAGER. Mr. Chairman: I would suggest that section thirteen be taken into that category.

Mr. WILSON, of First District. I accept that amendment.

Mr. McCALLUM. I would suggest to the gentleman that there is no necessity of the committee rising. We can pass the sections, and when we do rise we will report to the Convention that these sections be referred.

The SECRETARY read:

"That the committee rise and report back to the Convention sections seven, eight, and thirteen of the draft for a preamble and declaration of rights, with the recommendation that they be omitted from the declaration of rights, and that the subject-matter thereof be referred to the Committee on Judiciary and Judicial Department, to report on the same in connection with the judicial department."

Mr. BARBOUR. I will also suggest that section nine ought to be referred, because that involves a very great legal question. That ought to go to the Judiciary Committee to report upon.

Mr. VAN DYKE. Mr. Chairman: I have no choice as to where this matter of the jury system goes in the Constitution, and I have no pride of opinion about this matter, but I would suggest to the Chairman of the Committee on Judiciary and Judicial Department, that the bill of rights is the place where the declaration of the right to a jury is contained in all the Constitutions, I believe, without exception. Now, it is true, that in the National Constitution there was not any declaration of rights. That was afterwards discovered to be a great omission, and amendments were at once proposed and adopted which really constitute a declaration of rights. But in all the State Constitutions in reference to the trial by jury, it is contained in the declaration of rights, and it strikes me that that is the proper place for it. If it is determined by the Convention to strike out the right of a Grand Jury, why, then, the matter of regulating the practice in criminal cases can be put in the judicial department. But here the reference to a trial jury, in section seven, is the declaration of a right: "In criminal cases the right of trial

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by jury shall remain." Now that is one of the fundamental rights of the citizen, and is so recognized in the National Constitution, and in the various State Constitutions. The proper place for that declaration is in this bill of rights. If the gentlemen are not prepared now to go on with that section, we can pass it and go on with others. It does seem to me that we should not go contrary to the principles in every other State in reference to this declaration of the right of every citizen to a trial by jury. That is its proper place here.

Now in reference to the suggestion—I do not know whether it was seconded or not—to transfer the ninth section also. That is in regard to the freedom of speech and of the press. If that is not the place for that, in the bill of rights, I do not know where the place is. So in regard to the right of a citizen accused of crime on his trial of meeting his accuser face to face; having counsel; having the right of answering; having the cause and nature of the accusation. All these things are fundamental rights of the citizen, and the proper place for them, evidently, is in the declaration of rights. Therefore I am opposed to the course suggested by the Chairman of the Judiciary Committee in transferring this declaration of the rights of the citizen to a trial by jury, from the declaration of rights to any other part of the Constitution.

MR. HAGER. Mr. Chairman: I do not understand that the motion here is to displace these propositions from the declaration of rights, but to have them considered by the Committee on Judiciary and Judicial Departments, in connection with the system which they propose before they shall be finally adopted by this Convention. That is my understanding of it.

MR. VAN DYKE. Then I misunderstood it.

MR. HAGER. The proposition I submitted was not to include section thirteen in the plan for a judicial system, but to have it considered by the Judiciary Committee. These propositions are frequently taken from the Constitution of the United States, or other Constitutions, and in the course of printing and reprinting errors have crept in.

MR. VAN DYKE. I have no objection if that is the motion of the Chairman of the Judiciary Committee.

MR. HAGER. That is the intention. It might as well be understood now as any other time that all these propositions, when it comes to the final adjustment of the Constitution, may be changed from one place to another into their proper places. The same proposition may come before the Convention, and the same proposition may be adopted from different committees, but when it comes to be adjusted into one complete whole, why, whenever they are duplicated only one proposition will be put in, and that under its proper head. There is a committee appointed for that purpose.

MR. VAN DYKE. I am aware of the fact suggested by Judge Hager, that if one proposition should be adopted, and should be ascertained to be in an inappropriate place, it would be changed by the Committee on Revision and Adjustment; but the point was that the declaration of the right of the citizen to a trial by jury, that this was the proper place for it. But if the Chairman of the Committee on Judiciary wishes his committee to consider this declaration in reference to trial by jury, as well as the Grand Jury, I have no objection; but I most certainly object to its being transferred from this part of the Constitution to some other part. If the Chairman of the Judiciary Committee will state that that is the only object I have no objection.

MR. HERRINGTON. Mr. Chairman: I understand that the effect of the motion will be to produce precisely the opposite result from that stated by the gentleman from San Francisco, Judge Hager. I understand that it is a recommendation by this Committee of the Whole to the Convention that these propositions, embraced in these various sections, be incorporated into the judiciary system. I ask for the reading of it.

THE SECRETARY read:

"That the committee rise and report back to the Convention sections seven, eight, and thirteen, of the draft for a preamble and declaration of rights, with the recommendation that they be omitted from the declaration of rights, and that the subject-matter thereof be referred to the Committee on Judiciary and Judicial Department, to report on the same in connection with the judicial department."

MR. HERRINGTON. Precisely the result that I anticipated. It is a recommendation on the part of this Committee of the Whole to the Convention that these propositions be referred to the Judiciary Committee, with instructions that that committee report upon them in connection with their report upon the judicial system; and that they be omitted—that is the language of this resolution—that they be omitted from this declaration of rights. That is precisely the result that we do not desire. Individually I do not desire it. I certainly think that it is not a part of the procedure, so far as this is concerned, in criminal cases. It is attempted by these sections to confer an absolute right upon the individual, as contradistinguished from the mass of society, and to give him the power to determine that he shall be tried by a jury. Now, I do submit that their proper place is in the declaration of rights, and not in the judicial system.

Most of the provisions embraced in these various sections have been so long in use that they are familiar to us all, and we never will understand them any better, perhaps. Even if their language should be changed, there would be a necessity for a new consideration of them; and I apprehend that the way they are now proposed is as good as they ever will be. If these sections go to the Committee on Judiciary and Judicial Department, under this motion, they will come back engrafted in the judicial system. Changes will have been made so far as the arrangement is concerned. I do not undertake to say that the Judiciary Committee would not report them back, to be included in this declaration of rights, but the recommendation of the Committee of the Whole that they be reported upon in connection with the report on the judicial system, is an indication that they are requested to so engraft it upon that system. I submit that they are in their proper position, and that they ought to be kept just where they are.

MR. MCCALLUM. Mr. Chairman: In the whole number of sections which fall to the judicial department—from number one to number nineteen—the subject of juries is not included. All the propositions which have been introduced in this Convention have been very properly referred to the Committee on Preamble and Bill of Rights. That is the only committee to which they could be properly referred. This proposition, in plain English, is to refer to the Judiciary Committee that business which belongs to the Committee on Preamble and Bill of Rights. The plain English of it is that the Committee on the Bill of Rights were not competent to advise the Convention sufficiently upon this subject, and that it ought to be referred to the Judiciary Committee. I have not the fortune, or misfortune, to belong to either of the committees, but I do not believe in this practice. If I correctly understand, the Judiciary Committee itself has not yet reported its own business, and it has had an extension of one week's time in which to do it. They have a great amount of business before them, and the crowding of business is not going to be in the committees hereafter, but in the Convention. I am opposed to this idea of a committee rising for the purpose of reporting the business of one committee to another. I do not remember of a single proposition on this subject—or if there is, it is exceptional—which has ever been referred to the Judiciary Committee. If they have taken action—as reported in the papers the other morning—taking up the report of the committee on their own motion, it does appear to me that that committee ought at least to have waited until this Convention asked it for its opinion as to the work of any other committee.

Talk about legal questions, sir. The greatest legal questions here in the Convention are involved in the article called the declaration of rights. There are those in the Convention who, perhaps, may be enabled to vote upon these questions, who are not entirely impressed with the importance of having the opinion of the Committee on Judiciary upon these questions that belong to another committee. This comes up in its regular order. Business proceeds. A distinct, square proposition is presented to this Convention in section seven: "In criminal cases the right of trial by jury shall remain." There is a plain, distinct proposition. It does not need the action of the Judiciary Committee to tell us what that plain language means. If we are not for it, let us vote against it. It is a change from the old Constitution, but there is no necessity for the Judiciary Committee to inform this Convention as to how it ought to act. The Chairman of the Committee on Preamble and Bill of Rights says if the object is to restore it back there, all right. My judgment is that, as it belongs there, and will have to be passed upon there, that the matter may just as well be disposed of here and now. I will be very well satisfied if the Committee on Judiciary perform their own duties, and leave the other committees to perform theirs.

MR. BROWN. Mr. Chairman: I do not intend to detain this body any length of time, but it appeared from the manner in which this subject was discussed that the proposition was for this matter contained in sections seven, eight, and thirteen to go to the Judiciary Committee, and for them to investigate the great judicial principles upon which those sections rest, and to have them presented in a proper form before us. Now upon a close examination it seems when the proposition is read to us that the object was that this should be inserted in the judicial department of the Constitution. I feel like Mr. McCallum upon this subject, that if every committee is able to do its own part of the business, and that which comes immediately under its own revision, within the proper time, it will be doing exceedingly well. I do not see the propriety of referring this matter.

MR. ESTEE. Mr. Chairman: I rise to a point of order; that a motion that the committee rise shall be decided without debate.

THE CHAIRMAN. That is the rule, but the Chair has permitted some latitude in order that the proposition might be thoroughly understood.

MR. BROWN. I am under the impression, Mr. Chairman, that this should remain in the bill of rights, and that this body, aside from the Judiciary Committee, is competent to decide upon it. I think it has the capacity to investigate and decide every time. I am therefore opposed to this being referred to the Judiciary Committee, or being placed in the judicial department of the Constitution, with due respect to every member of every committee of this house.

MR. EDGERTON. Is the question debatable?

THE CHAIRMAN. It is not under the rule, but the Chair has permitted some latitude.

MR. EDGERTON. I hope the indulgence of the Chair will be extended to me for about two minutes and a half. Mr. Chairman, when the Committee on Rules made their report they named a committee on judicial department, that being one of the departments of the Constitution. Some gentlemen in the Convention moved that that be changed to the Committee on Judiciary and Judicial Department, and the reason stated then was that that committee should be an advisory committee to the Convention, and also to other committees of the Convention.

Now, sir, I do not think that the motion of the gentleman from San Francisco, the Chairman of this committee, implies any discourtesy to the Committee on Preamble and Bill of Rights, or anything that need move the sensibilities of any gentleman upon this floor. It is well understood in parliamentary matters that the Committee on Judiciary of every legislative body occupies that position. In the Senate and Assembly of this State, in the Senate of the United States, in the House of Representatives, it is a matter of frequent practice for the Chairmen of other committees to request that certain matters before them be referred for the consideration and action of the Judiciary Committee.

I think there is nothing improper in the motion at all, and I desire to call the attention of the committee for a moment to one of the reasons why this action should be taken. Look one moment at section seven:

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"In criminal cases the right of trial by jury shall remain. In all cases, except felony, the Legislature may provide by law the number necessary to constitute a jury, and in all civil cases the number necessary to render a verdict." It is a very serious question in my mind whether under that section the right of trial by jury is not limited to criminal cases, and that it is left entirely a matter with the Legislature to say whether there shall be any jury at all in civil cases. Section eight involves the question of the abolition of Grand Juries, and then the gentleman from San Francisco, Mr. Barbour, has suggested that section nine be included, and I think very properly. If gentlemen will refer to section fourteen of this draft they will find there provisions which are, to say the least, startling. That proposes a reversal of the rules of jurisprudence as they prevail all over the United States, so far as I am informed, in reference to the subject-matter therein set forth, and rules that have prevailed in this State more than a quarter of a century. They are rules that certainly should be considered by the Judiciary Committee. I move that we add section fourteen, so that the motion will embrace sections seven, eight, nine, thirteen, and fourteen.

Mr. WILSON, of First District. I accept that suggestion.

Mr. BARBOUR. I called attention to section nine as illustrating the impropriety of the motion, and showing that almost every proposition contains matter which requires judicial investigation. I am in favor of the Convention judging of this matter, and of every member deciding for himself whether he is in favor of abolishing Grand Juries. It is not a matter necessary to refer to the Judiciary Committee. Here are sixty lawyers in this Convention—or seventy lawyers—and in the Judiciary Committee nineteen lawyers. They have their chance here in this Committee of the Whole. I am in favor of going on with this article and not referring it here or there.

The CHAIRMAN. The Chair must enforce the rule.

Mr. BARTON. As a member of that committee I would like to be heard a half minute. I hope that the gentleman will accept all the amendments, and that the discretion and good sound judgment of this Convention will vote it down accordingly.

The CHAIRMAN. The Secretary will read the motion as now amended.

The SECRETARY read:

"That the committee rise and report back to the Convention sections seven, eight, nine, thirteen, and fourteen of the draft for a preamble and declaration of rights, with the recommendation that they be omitted from the declaration of rights, and that the subject-matter thereof be referred to the Committee on Judiciary and Judicial Department, to report on the same in connection with the judicial department."

Mr. WILSON, of First District. The addition of these several sections, some of which ought to be in the bill of rights, makes it necessary for me to reform the original motion, and I ask to modify it so as to read in this way: "That the committee rise and report back sections seven, eight, nine, thirteen, and fourteen, and that the subject-matter thereof be referred to the Committee on Judiciary and Judicial Department, to report in connection with the same, and that further action on them be postponed until the coming in of the report of the Committee on Judiciary."

Mr. VAN DYKE. I understand that they shall be transferred. I wish to ascertain what the gentleman's proposition now is. I want to ascertain whether it is to transfer these four sections to the judicial article?

Mr. WILSON, of First District. No, sir; merely that the further consideration of them be postponed until the coming in of the report of the Committee on Judiciary and Judicial Department, and that they be referred to that committee for consideration.

Mr. MILLER. I move that section seventeen be included.

Mr. LARKIN. I move to amend, by including the balance of the bill of rights.

Mr. McCALLUM. I move to include all the other sections of the Constitution that are about legal questions.

The CHAIRMAN. The question is on the motion of the gentleman from San Francisco, Mr. Wilson.

The motion was lost.

Mr. SMITH, of Santa Clara. I move to amend the section so as to read as follows: "The right of trial by jury shall be secure to all and remain inviolate forever; but a jury trial may be waived by the parties; but in all trials in civil cases, also criminal offenses below felony, two thirds of the jury shall be competent to find a verdict."

Mr. HERRINGTON. I offer the following amendment to the amendment: "The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties in civil actions, and the Legislature may prescribe the number of jurors in civil cases and the majority required to render a verdict thereunder; in criminal cases, amounting only to misdemeanor, defendants shall have the right of trial by jury or by the Court as they shall elect."

The amendment to the amendment, as presented, secures the right of trial by jury beyond peradventure, in all cases where it has been heretofore used, and from the form of its language it will bear the same construction that has heretofore been put to that section by the Supreme Court of this and other States. It has the advantage, therefore, of a determined and fixed meaning to that extent. [Cries of "louder!"] If you will listen carefully you will hear. The alterations that may be made by the Legislature has reference to civil cases—empowering the Legislature in those cases to determine the number which shall constitute a jury and the majority to render a verdict. In criminal cases it permits the defendant, where the offense amounts only to a misdemeanor, to elect whether he will be tried by a jury or by the Court.

Heretofore, as I understand the practice—in fact in County Courts it has been held that it was not competent for our County Courts to try any case without the intervention of a jury, both a grand and a petit jury. The consequence has been that it was impossible for defendants, even when they elected to be tried by the Court, in cases of misdemeanor, to be tried that way; and I submit that they ought to be permitted, if they so elect, to be tried by the Court. It is less expensive in such cases. It certainly would be both to the advantage of the State and to the satisfaction of those against whom the law is invoked. I have given the subject some little thought, and in my judgment this is about the only change that would be either to the advantage of the State or to the advantage of the defendants who are to be tried by the laws of the State. As to the form of its draft, it may be changed or altered to suit the taste of either the Judicial Committee or any other committee, or this Committee of the Whole. But it embodies the idea which, in my judgment, ought to be laid down in this bill of rights.

The CHAIRMAN. The Secretary will read the amendment and the amendment to the amendment.

The SECRETARY read the amendment offered by Mr. Smith, of Santa Clara, as follows:

"The right of trial by jury shall be secure to all and remain inviolate forever, but a jury trial may be waived by the parties; but in all trials in civil cases, also criminal offenses below felony, two thirds of the jury shall be competent to find a verdict."

The SECRETARY read the amendment to the amendment offered by Mr. Herrington, as follows:

"The right of trial by jury shall be secured to all and remain inviolate forever; but a jury trial may be waived by the parties in civil actions, and the Legislature may prescribe the number of jurors in civil cases and the majority required to render a verdict thereunder; in criminal cases amounting only to misdemeanor, defendants shall have the right of trial by jury, or by the Court, as they shall elect."

The amendment to the amendment, and the amendment, were both lost.

Mr. DUDLEY, of San Joaquin. I have a substitute for the original draft which I desire to submit as an amendment.

The SECRETARY read:

"The right of trial by jury shall be secured to all and remain inviolate forever; but in all cases, civil or criminal, except felony, the Legislature may provide by law the number necessary to constitute a jury and to render a verdict; but in all cases except felony the jury may be waived by the parties."

Mr. HALE. Mr. Chairman: I am well pleased with the draft of this substitute, except in two points—really, one point. I move to amend the substitute, by striking out the words "except felony" where they occur. I can see no reason, either founded in experience or otherwise, why it should not be competent for parties to waive trial by jury.

Mr. DUDLEY, of San Joaquin. I accept the amendment.

The CHAIRMAN. The Secretary will read the amendment as it will stand then.

The SECRETARY read:

"The right of trial by jury shall be secured to all and remain inviolate forever; but in all cases, civil or criminal, the Legislature may provide by law the number necessary to constitute a jury and to render a verdict; but in all cases the jury may be waived by the parties."

Mr. HALE. Now, Mr. Chairman, the proposition becomes a very simple one on the basis of this substitute, in its present form. It provides that the right of trial by jury is inviolate; second, that while this right of trial by jury is thus inviolate, it gives to the parties—not to one party, but to both parties—the right of waiving trial by jury. I should like to hear from some gentleman if this view is not acceptable, and founded in experience; and I appeal to the members of the legal fraternity for an expression upon this point. What reason can be given why the parties to any litigation, whether it be civil or criminal, should not have the right to waive a trial by jury and submit the issues for trial to the judgment and decision of the Court upon questions of law and fact alike.

Mr. Chairman, I believe I express the average opinion of the legal fraternity of the State of California, and I think I may go farther and say that I believe I express the average judgment of the legal fraternity of the United States, when I say that, while they would preserve the right of trial by jury upon the demand of either party, in all cases it is safe for the ends of justice and the preservation of private rights and the public interest that it shall be competent for the parties to waive the trial by jury. Now, as lawyers, we know well that the right of trial by jury commenced with the Grand Jury, and then running along eventuated in a system of trial juries. The reasons upon which this system was established have in a large measure passed away. Not wholly, sir, yet the moving interests which prompted their institution have, as a matter of fact, passed away.

Again, it may be said upon the basis of the original resolution, that exception is made in cases of felony. Of course that would include capital cases. Can anybody tell me why a trial might not take place before the Court—always conceding that the people and the defendant alike consent to it—in this class of cases? We select our Judges, we constitute our judiciary, with a view first to their learning, next to their probity, third to their experience in judicial affairs. When, therefore, the parties to litigation in cases of felony, including even capital cases, consent that the Court shall try the issue, what substantial reason can be given why it should not be done. That it will hasten the administration of justice is obvious to the mind of every lawyer. I think this will not be questioned.

One of the faults of our jury system as it has come to us in our experience in this State, and all over the United States, is this: that after you summon a jury, and go through all the work of a trial, the probable result is that in about one third of the criminal cases, and perhaps a less proportion of civil cases, you get a verdict. The result is that a trial involving immense expense ends in a mistrial and all the work done has to be thrown aside, and you must commence again. Now I submit

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that we should preserve the system of trial by jury as a right to be demanded by either party, but we should give the right to a trial by the Court, without the intervention of a jury, when the parties to it consent.

This substitute also deals with the question that a less number than a full jury may render a verdict. I need not recount the experience of the bar of the country upon this question. We know, as a matter of fact, in our every day experience, that the ends of justice are not unfrequently entirely defeated by this jury system. You require now a jury of twelve. You must not only have a concurrence of judgment of eight, nine, ten, or eleven, but you must have the concurrent judgment of twelve men to render a verdict. In practical experience it is an almost every day occurrence that in a trial where the popular judgment, the judgment of the Judge upon the bench, the judgment of the bar and of the whole community, knowing the facts, all concur; yet you will find a jury out four, six, ten, twenty, or forty hours, and then come in and be discharged, finding that some one of the twelve men could not be made to concur with the eleven, and all the work is lost. These things, Mr. Chairman, work to defeat the ends of justice. They are the source of great complaint; just complaint too. The defeat of justice and the discontent that exists in the popular mind grows out of this condition of things. I would go farther and would put into this Constitution a provision—the substitute leaves the question with the Legislature—that three fourths of a jury, nine out of twelve, might render a verdict, in place of twelve out of twelve. I am aware that there are gentlemen who will agree with this proposition in part, but would still make an exception in cases of felony or perhaps in capital cases. I see no reason for that distinction. I think that the defeat of justice by reason of the non-agreement or disagreement of juries is more frequent in these cases of felony, and especially capital cases, than in any other. A man is put upon trial for his life, or for felony. He has but one thing to do to defeat justice, and that is to secure some one man on the jury who will not consent to a verdict of conviction. It is a thing of very frequent occurrence. Can any reason be given why this should be so. Now, sir, if there were some system by which we could make selection of juries in these important cases, and could guard equally against imposition, or incompetency, or interest, or bias, as we can and do with the Judge on the bench and other judicial functionaries, there might be some reason for retaining this clause to apply in criminal cases and certain Courts. But we know how juries are made up. They are drawn from the body of the people. They are examined by the County Judge and the Clerk upon a simple system prescribed by the Constitution. They are required to be taxpayers, citizens, residents, etc. You know nothing more about them than that. They get there on the roll, and the prosecution, at least, is limited to a few challenges. The truth is that you are compelled to accept the jury pretty much as it comes. Take our Judges of the Supreme Court, sitting here to pass upon cases on appeal from the various districts. It is not, at least, over three times out of four that all the Judges concur, and yet these are trained lawyers selected for their wisdom and for their experience. How much more unreasonable is it to expect that on these important questions you shall obtain a concurrence of these twelve untrained men. I trust that this substitute will be adopted in its present form, with perhaps the modification that I have already suggested.

MR. CAMPBELL. I would like to hear the amendment read as proposed to be amended.

THE SECRETARY read:

"The right of trial by jury shall be secured to all and remain inviolate forever but in all cases, civil or criminal, the Legislature may provide by law the number necessary to constitute a jury and to render a verdict; but in all cases the jury may be waived by the parties."

MR. CAMPBELL. Mr. Chairman: As I understand it, the amendment proposes that in all criminal cases the Legislature shall have the power to designate the number that must agree upon a verdict; in other words, if the Legislature say that if eight men out of twelve deem a man guilty of murder that he shall be hung. Now, sir, so far as criminal cases are concerned, this is not only a departure from all past practice and all past experience, but it is a departure from the very principle upon which the right of trial by jury rests. I think the experience of all lawyers who are familar with the subject will show that it is a most mischievous and dangerous innovation. Why, sir, there are plenty of cases—or there are but comparatively few—but I know of several cases now on the records of our Supreme Court, where men have been convicted by juries of twelve men, under the influence of public prejudice or passion existing in their locality at the time, and where the Supreme Court, though it is extremely careful not to interfere on questions of fact, have said that the convictions were such outrages upon public justice that they would not permit them to stand, and for that reason have reversed the judgments. All men of experience in these matters know that it often happens that in a particular case public sentiment is excited and public feeling aroused to fever heat, and that often with a jury of twelve men it is extremely difficult to obtain anything like a fair trial. We all know that in a very large number of cases jurymen come into the box with their prejudices in the case, and although they think they can try it impartially, the impression in their minds is so strong that it is extremely difficult to remove it by evidence.

Now, sir, it is against the sentiment of the civilized world to deprive a man of his life or to condemn him as a felon, where there is not sufficient evidence of his guilt to satisfy twelve reasonable men that he is guilty. If you go to diminishing the number, you in that way take from him the safeguards which have always existed—which are really, in my judgment, essential for the protection of innocence. So far as this matter of guilty men escaping through the verdicts of juries is concerned, I undertake to say that, at the present time, criminals, as a general thing—of course there are, and always will be, exceptions—but as a general thing the criminal justice of the State is well administered by the Courts when the cases get there, and the guilty are punished, with the exception of a certain class of cases—a class of frauds which never do get to a jury, and which do not even get into the shape of an indictment. But where indictments are found for crimes actually committed, I appeal to the gentlemen around me if it is not time that, as a general thing, the guilty do not escape.

Allusion was made to the fact that we have now a larger proportion of criminals in our State Prison than there are in any State Prison in the Union. Does that show an unwillingness of juries to convict? Does that show that we ought to take from those who are accused the safeguards which they now possess? Now while in civil cases I am perfectly willing to leave this to the discretion of the Legislature, while even in cases of misdemeanor I think it simply a doubtful policy to make any change, yet I feel that in cases of felony, in cases where a man's life and liberty is at stake, that there ought to be, as there has always been, a unanimous verdict of a jury in order to hold him guilty.

I do not desire to occupy the time of the Convention, and I merely submit these few remarks upon this subject, expressing the hope that this innovation will not be adopted.

MR. MCFARLAND. Mr. Chairman: I was entirely in favor of the substitute as offered, but I am opposed to it with the amendment suggested by the gentleman from Placer, Judge Hale, and which was accepted. I move to amend by inserting the words "except felony." I do not object to giving the Legislature the power to say what shall be the number to constitute a jury or find a verdict in all cases except felony. I move, therefore, to reinsert in the proposition offered by the gentleman from San Joaquin, Mr. Dudley, the words "except felony."

MR. FILCHER. Mr. Chairman: I rise to second the motion made by the gentleman from Sacramento, Judge McFarland. I have taken upon myself the responsibility of talking about this matter among the legal fraternity, and I have found many of them to be in favor of allowing a certain proportion of a jury, say three fourths, to find a verdict in civil cases and in minor criminal cases, but I have found the lawyers and the people almost unanimously opposed to allowing any fractional part of a jury to render a verdict in cases of felony. I believe, Mr. Chairman, from the remarks I have heard among members of the Convention upon the subject, that the amendment as offered by the gentleman from San Joaquin will be adopted, and I believe it ought to be adopted.

MR. LAINE. It is time for the committee to rise. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have directed me to report that they have had under consideration the article on preamble and declaration of rights, report progress, and ask leave to sit again.

The hour having arrived, the Convention took the usual recess until two P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

MAKING A SPECIAL ORDER.

MR. ESTEE. Mr. President: I move that the article reported by the Committee on Corporations other than Municipal, that has now been printed and placed on the desks of members, be made the special order for next Tuesday, immediately after reading the Journal.

MR. CAMPBELL. Would it not be better to make a special order of the article on Chinese for Monday, and dispose of that before taking up the other matter?

MR. ESTEE. Why? I don't see any necessity for it. We will probably not be through with this by that time.

MR. WILSON, of First District. I move that that be fixed for Tuesday next. I do not believe that the Convention will be ready before that time to take it up.

MR. BARBOUR. I make the point, that under the rule the business must be taken up in the order in which it is reported.

MR. ESTEE. There is such a rule, but that does not hinder the house from making special orders. I do not care particularly about making it for Tuesday; but it can be fixed for that date, and then if we are not ready, it can be put off.

The motion to make it a special order for Tuesday prevailed.

MR. VAN DYKE. I move that the Convention now resolve itself into Committee of the Whole, for the purpose of further considering the article on preamble and bill of rights.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

BILL OF RIGHTS.

THE CHAIRMAN. Section seven, of the article on bill of rights, is before the committee. The Secretary will read the section.

THE SECRETARY read:

SEC. 7. In criminal cases the right of trial by jury shall remain. In all cases, except felony, the Legislature may provide by law the number necessary to constitute a jury, and in all civil cases the number necessary to render a verdict.

MR. LAINE. Mr. Chairman: As I understand the condition of the question, it is this: that section seven of the report of the Committee on Bill of Rights is now before the Committee of the Whole, and the substitute before offered, so there are two propositions.

THE CHAIRMAN. Yes, sir, the gentleman from Santa Clara, Mr. Smith, moved an amendment, by way of a substitute, and the gentleman from Santa Clara, Mr. Herrington, moved an amendment to the amendment.

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Mr. LAINE. I thought those two propositions were voted down.

The CHAIRMAN. Yes, sir, and the question is on the substitute moved by the gentleman from San Joaquin.

Mr. LAINE. So believing I offered a substitute for the two propositions.

The CHAIRMAN. It is not in order. There is an amendment offered by the gentleman from Sacramento, Mr. McFarland, to the amendment.

Mr. LAINE. Mr. Chairman: As to the proposition reported by the Committee on Preamble and Bill of Rights, I am unable to support it, for reasons which I will state in very few words. The very first line takes away the right of trial by jury in civil cases, because it is a well known canon of law that the mention of one thing is the exclusion of the other, and for that reason I cannot support the proposition. I do not believe in taking away this great right in civil cases any more than in criminal cases.

There is a further objection to the proposition, that it leaves it in the power of the Legislature to destroy the right of a trial by jury, in that it leaves it to them to fix the number of the jury. The Legislature could then fix the number at one or two, and thereby destroy the right of trial by jury altogether or render it of no value whatever. And these substitutes or amendments are open to the same criticism. Therefore I cannot sustain them. I then desire to say to the Convention that I hope these propositions will be voted down. I believe a majority of this Convention are in favor of securing the right of trial by jury to all, and then we can provide that a jury may be waived in all cases with the consent of the Court. I can see no objections to such a course that can be urged. If this other is voted down, then I shall offer my substitute, which reads in this way:

"The right of trial by jury shall be secured to all, and remain inviolate forever; but a trial by jury may be waived by the parties in all cases, with the consent of the Court, in the manner prescribed by law. Three fourths of the jury, in all civil cases and misdemeanors, may render a verdict, and in such cases any number not exceeding twelve shall constitute the jury if the parties so elect."

The CHAIRMAN. The question is on the amendment offered by the gentleman from Sacramento, Mr. McFarland, to the amendment of the gentleman from San Joaquin, Mr. Dudley, as follows: "The right of trial by jury shall be secured to all, and remain inviolate forever; but in all cases, civil or criminal, the Legislature may provide by law the number necessary to constitute a jury and to render a verdict; but in all cases the jury may be waived by the parties." Mr. McFarland moves to reinsert the words "except felony."

Mr. McFARLAND. Mr. Chairman: The amendment which I offer is simply to reinsert the words "except felony" in two places. Now, the sole purpose and scope of the amendment is simply to take away the right of the Legislature to limit the number of jurymen in a case of felony. It takes away the right to waive a jury in case of felony, and I do not think, sir, that the Legislature should have the power in high crimes to lessen the number on a jury; I do not think it will be safe to allow even the defendant to waive a jury in this high class of crimes. I do not believe that any one man, be he Judge or jury, should have the right to pass upon the liberty or the life of any citizen, and we all know that persons charged with crimes frequently act without due consideration, and without advice, and might frequently be led to waive a jury, when really their own rights would be jeopardized by so doing, and I do not believe any Court would take the responsibility of passing on the life or liberty of a human being. I think a number of men should share the responsibility on an occasion like that.

In the case of a misdemeanor I think the defendant should have the right to waive a trial by jury if he so desires. I can see no harm to come of it. It is done in some instances in Justices' Courts; but it is a very grave question of law whether, under the Constitution, a conviction without a jury in any criminal offense whatever would be valid. My own opinion as a lawyer is that a man cannot waive his right to a trial by jury. It has been held that it could be done, but it is certainly a very grave question of law. I do not believe he can under the Constitution. No man will claim that a man being tried for murder could waive a jury, and there is no possible difference between murder and chicken stealing before the law; but I think he should have that right in cases of misdemeanor.

Mr. BELCHER. I am unable to see any good reason why a defendant cannot be permitted to waive a jury trial in any case. Cases do arise sometimes when a jury may be waived, even in a case of felony, when it would be just as well for the defendant to be tried by the Judge as by twelve men. Now, why the right of the defendant to waive a jury should be denied is more than I am able to see. I would give the right in any case to the defendant to waive a jury with the consent of the Court. Now, in civil cases, cases now very often come before the Courts, when the parties choose to waive a jury, but the Court wants a jury and calls one; and so in these criminal cases the Court will call a jury if there is any question. But if the Court is willing, and the defendant is willing to waive a jury, I am unable to see any good reason why they should not be suffered to do so. The next question is about juries in cases of misdemeanor and in civil cases. Now, I prefer to keep the rule of twelve jurors unless the parties elect to have a smaller number, with the further provision that a less number than twelve may render a verdict.

The CHAIRMAN. The question is on the amendment of the gentleman from Sacramento.

Lost.

The CHAIRMAN. The question is on the substitute offered by the gentleman from San Joaquin, Mr. Dudley: "The right of trial by jury shall be secured to all, and remain inviolate forever; but in all cases, civil or criminal, the Legislature may provide by law the number necessary to constitute a jury and to render a verdict; but in all cases the jury may be waived by the parties."

The amendment was rejected.

Mr. LAINE. I now offer my amendment as a substitute to the section as reported by the committee:

"The right of trial by jury shall be secured to all and remain inviolate forever, but a trial by jury may be waived by the parties in all cases with the consent of the Court in the manner prescribed by law. Three fourths of the jury in all civil cases and misdemeanors may render a verdict, and in such cases any number not exceeding twelve shall constitute the jury, if the parties so elect."

Mr. PORTER. I now offer a substitute to the amendment.

The SECRETARY read:

"The right of trial by jury shall be secured to all persons, and shall remain inviolate forever, in all criminal cases amounting to felony, and in all civil cases at law involving one hundred dollars in value. In all trials of persons accused of crime punishable with death, the jury shall consist of fifteen persons, but twelve of them shall be sufficient to render a verdict. In all other criminal cases amounting to felony, the jury shall consist of twelve persons, and nine of them shall be sufficient to render a verdict. In civil cases the jury shall consist of twelve persons, but the parties may agree upon a less number, or waive a jury; and in all civil cases tried by a jury, three fourths of the jury shall be sufficient to render a verdict. Cases of misdemeanors, and civil cases at law involving less than one hundred dollars in value, may be tried with such a jury, or without a jury, as the Legislature may direct."

The CHAIRMAN. The question is on the amendment to the amendment.

Lost.

Mr. McFARLAND. I move to amend the substitute of the gentleman from Santa Clara, Mr. Laine, by adding after the word "cases," where it first occurs, the words, "except felony." I do not believe that a man should be allowed to waive his right to a trial by jury in any case amounting to the dignity of felony; and this is a more important thing than gentlemen seem to think. Men who are charged with crime are not always in a position to know what is for their own interests. In the first place, they fall in the hands of a policeman, who always think that a man is guilty whenever he is arrested, and they are the first ones to influence his conduct. They are the first men from whom he derives counsel and advice, whether guilty or not; and, sir, we all know what insane things men often do under the advice and counsel of these men, when arrested for crime. We know that the judgment is not always clear when men are in a position of that kind, and also that a great many men arrested are innocent men, and even with the usual degree of self-possession hardly know what course to take. We know that criminals are often kept confined, without a chance of consulting with friends, until their minds have become biased and influenced by the blandishments of these policemen. I can understand how men in that way can be induced to waive their right to a trial by jury. I think, sir, that Judges also are liable to be biased to some extent, and I do not think, sir, that we should allow this class of citizens to be induced to give up their right to a trial by jury, and place themselves in the hands of one man. You may say, sir, that they are free agents; that they have the power to do as they please. Sir, they do not do as they please always, and often do not have the judgment to do as they should do, and I do not believe myself that any man ought to be deprived of his life or liberty unless by a verdict of twelve of his peers; and it is no satisfactory argument to say that he can demand a jury. We have all of us known men to confess to crimes of which they were entirely innocent, and we can see very easily how a man might be induced to put his case in the hands of a Judge who is so far above him in position. I do not believe that men charged with high crimes should be allowed to waive their right to a trial by jury.

Mr. BARBOUR. Mr. Chairman: I rise for the purpose of seconding the amendment offered by the gentleman from Sacramento, Mr. McFarland. The proposition itself will be such a one as I can vote for, though I should have liked to have had an amendment to prohibit the Legislature from making the jury to consist of less than a certain number, say six. But on this proposition of allowing parties in cases of felony to consent to a waiver of a jury, that is utterly and entirely wrong in principle. In civil cases the matter only concerns the parties—only involves a question of dollars and cents, but in criminal cases it involves the punishment by death or imprisonment in the State Prison, and no man has a right to consent away his rights, and ought not to be punished except that punishment and the magnitude or degree of his crime be found by a jury of twelve of his peers. This, sir, is a dangerous innovation. I am in no hurry to do away with a system that has endeared itself to the hearts of the American people. The people themselves, as well as the accused, are interested in this matter. I have known one man to bring a whole jury over to his side by showing them wherein they were mistaken. That is the right of the accused, that is a right which belongs to the community, and I hope the amendment will be adopted.

Mr. REDDY. Mr. Chairman: I believe the object here is to prevent, or rather take some power away from the Legislature with respect to this matter. Now, we say that a party shall have a right to demand a jury trial, and then, in the same breath, say that the Legislature shall have the right to say how that jury may be waived. Then does not the power go right back to the Legislature to say whether a man shall have a jury trial or not? You say he can demand it, and then we say to the Legislature, you can say under what conditions; it is for you to say when a man has waived that right—you can say, if you choose, that, for instance, unless a man sneezes three times before going into the Court-room, his right to a trial by jury is waived. If you are going to give the Legislature any such power as that over the rights held sacred by the American people, you might as well leave it all to the Legislature.

I see how that thing can be remedied, by making the Constitution, or

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rather this amendment of the gentleman, say that in cases of felony, and in all cases, if you like, the right of trial by jury may be expressly waived; not that the Legislature may take that right away from a man by implication, as they do in civil cases. Under this provision proposed the Legislature may do precisely what they do in civil cases. We may say, in arguing this case, that we must place some confidence in the Legislature. If so, let us leave the whole matter to them. I do not believe in leaving a matter of this kind, fraught with so much consequence, in such a condition as that. The whole right may be taken away. Leave the Legislature either full discretion, or leave them none at all in this matter. I do not believe that any of our American Constitutions have ever yet gone so far, have ever yet taken a step as far as this seems to go, in criminal cases.

I agree with Judge McFarland entirely, that we should not permit a party charged with crime to waive his right to a trial by jury, for various reasons. The reasons are numerous why we should not permit a party to waive that right. In the first place, as has been suggested by the gentleman from Sacramento, Judge McFarland, the first person who interviews a party accused of crime is the police officer or some detective officer who may take an interest in securing a conviction for their own personal ends, and who may so advise a party, and make him believe that it will be better for his own interests to submit to a trial by the Court, instead of calling on a jury of his peers. And the very object which the officer may have in view may be the conviction of the party accused.

Again, the prisoner may be led to believe, by various arts, that his interests would be better protected if he be tried before the Court than they would be to submit his case to a jury. Some gentlemen related to me a few days ago a circumstance where a party in a civil case was misled in that way. The party overheard the Judge remark, as he came out of the Court-room, after the case had been submitted to the jury, and after they had been deliberating on the case for some time—the Judge said: "I don't see why the jury is out so long: I would render a verdict in a few minutes for the plaintiff." The plaintiff immediately went to the defendant and said he would be perfectly willing to try the case before the Judge on the next trial, upon the testimony already taken. The defendant consented, and they did so, and the Court rendered a verdict against the plaintiff. Now suppose a Judge, in times of great political excitement—it would be an easy thing for him to drop some remark which would lead the prisoner to believe that the Court was favorable to him, for the purpose of entrapping the prisoner. Now, it is true that our Judges are too honorable to do anything of that kind, but such Judges as Jeffries have existed, and may exist again. While our Judges are honorable men, and no man on this floor has a greater respect for an honest Judge than I have, but unfortunately there have been bad men placed on the bench, and it is to guard against cases of that kind that our legislation is now aimed.

It is proposed here to permit a party accused to waive his right to a trial by jury. He should not be permitted to do so in any case. But if he may waive it at all, let us, in the fundamental law of the land, say how it shall be waived, and not leave it to the power of the Legislature to do away with the right entirely upon some technicality with which the party is not familiar. The jury is the proper party to try a man accused of crime, any way, for reasons well understood by every lawyer. It is a well understood fact that the Judge, who is charged with the administration of criminal justice, becomes, like other officers, like executive officers, calloused, so that it is only necessary to accuse a man and immediately his feelings incline against his innocence, while a jury, selected from the various callings and professions, not in continual contact with criminals, their minds are freer and in better condition to administer impartial justice. Their sympathies are not already frozen by continual contact with crime, and it is the very object of the law that a man accused of crime shall be tried by such men. There are a number of other equally potent reasons why the right of trial by jury should remain inviolate without the power of being waived.

MR. WICKES. Mr. Chairman: I do not believe in submitting this matter to the Legislature. I would rather stand by the usages handed down to us by our fathers in the course of human progress. The principles involved are these: the office of the jury is to acquit, not to convict. In law, a person charged with a crime is supposed to be innocent until his guilt is undoubtedly proven, and I do not believe that a criminal should be allowed to waive a jury trial.

MR. BARNES. Mr. Chairman: As far as civil cases are concerned, I have no objection to that part; that is to say, parties in civil cases may waive any constitutional privileges which they may have. But when it comes down to a question of administering the criminal law, that is a matter in which the State is interested as well as the individual. I think it will be a dangerous innovation to put a clause in the Constitution that in any case involving the liberty of the citizen he should not be entitled to a fair trial by a jury of his countrymen. I can see no possible reason why this change should be made. It is true, it was stated the other day by the gentleman from Alameda, Mr. Campbell, that there had been cases where one man hung the jury. Well, sir, I think if a man is to be hung by a jury he should be hung by the whole jury, and not by any part of a jury, and he should not be hung in any other manner. There is no provision older, or more valuable, than this constitutional provision which says that the right of trial by jury cannot be waived by the prisoner. There is a very celebrated case on that subject to which I call your attention, in the Court of last resort, in the City of New York. It was a case of a man accused of murder, and in that case, by the consent of counsel, entered in open Court, one juror was withdrawn and the trial proceeded before eleven jurors, and when the matter came before a higher Court, they held that it was a privilege which he could not waive; that it was not in the interest of public justice that he should be allowed to waive it. Now, while I am aware that some of us haven't much regard for adjudicated cases and decisions of Courts—and I remember one gentleman said here the other day that if the law library could be locked up and all these books that the members bring here thrown out of sight, we could go to work and build a Constitution out of our heads, out of our own inner consciences. I believe he said that would represent the common sense of the present day. As far as these ancient rights and privileges are concerned, I am not of that opinion. I have a reverence for the opinions of the world's greatest men on these subjects. Now, the Court of Appeals say, in regard to this case:

"It is conceded on the part of the people, and it is very clear, that but for the consent of the plaintiff in error, he could not lawfully have been tried by eleven jurors."

Recollect that a jury consists of twelve persons, and our Constitution declares that a trial by jury in all cases shall remain inviolate forever, and that twelve persons shall constitute a jury. The Court goes on to say:

"A legal jury, according to the common law, consists of twelve persons. Our Constitution (article one, paragraph two,) declares that 'the trial by jury, in all cases in which it has heretofore been used, shall remain inviolate forever,' and the revised statutes provide in reference to trials in criminal cases, that the twelve first jurors who shall appear on being called, and be approved as indifferent, shall constitute the jury * * *.

"But it is insisted that the plaintiff in error might waive his right to a trial by twelve persons, and that having done so, the trial and conviction in this case were valid. The researches of the counsel have not enabled them to refer the Court to any case directly in point, either in favor of or against the proposition, nor are the Court aware of any such case; and hence it must be examined and decided in the light of principle, and such analogies as reported decisions afford.

"There is, obviously, a wide and important distinction between civil suits and criminal prosecutions, as to the legal right of a defendant to waive a strict and substantial adherence to the established, constitutional, statutory, and common law mode and rules of judicial proceedings. This distinction arises from the great difference in the nature of such cases, in respect to the interests involved and the objects to be accomplished.

"Civil suits relate to and affect—as to the parties against whom they are brought—only individual rights which are within their individual control, and which they may part with at their pleasure. The design of such suits is the enforcement of merely private obligations and duties. Any departure from legal rules in the conduct of such suits, with the consent of the defendants, is, therefore, a voluntary relinquishment of what belongs to the defendants exclusively; and, hence, there is manifest propriety in the law allowing such consent to have the effect designed by it, in most cases, as to matters within the jurisdiction of the Courts. The law does recognize the doctrine of waiver to a great extent; in some instances, even to the deprivation of constitutional private rights. * * * But it is settled that even in civil cases consent will not confer jurisdiction of the subject-matter; and where such jurisdiction exists, a change, by consent, of the mode of proceedings, may be so extensive as to convert the case from a judicial proceeding into a mere arbitration. * * * The substantial constitution of the legal tribunal, and the fundamental mode of its proceeding, are not within the power of the parties. It was deemed necessary to insert in our present Constitution a provision that 'a jury trial may be waived by the parties, in all civil cases, in the manner prescribed by law,' to authorize even the Legislature to confer a right to dispense with that mode of trial. This is a solemn judgment of the organic law, that, without such a provision, the trial by jury, in cases where it had theretofore been used, could not be dispensed with.

"Criminal prosecutions involve public wrongs, 'a breach and violations of public rights and duties,' which affect 'the whole community, considered as a community, in its social and aggregate capacity.' * * The end they have in view is the prevention of similar offenses, not atonement or expiation for crime committed. * * * The penalties or punishments, for the enforcement of which they are a means to the end, are not within the discretion or control of the parties accused; for no one has a right, by his own voluntary act, to surrender his liberty or part with his life. The State, the public, have an interest in the preservation of the liberties and the lives of the citizens, and will not allow them to be taken away 'without due process of law,' when forfeited, as they may be, as a punishment for crimes. Criminal prosecutions proceed on the assumption of such a forfeiture, which, to sustain them, must be ascertained and declared as the law has prescribed. Blackstone, vol. 4, 189, says: 'The King has an interest in all his subjects.' And again, vol. 1, 133, that the 'natural life, being the immediate donation of the great Creator, cannot legally be disposed of or destroyed by any individual, neither by the person himself nor by any other of his fellow creatures, merely upon their own authority.' These considerations make it apparent that the right of a defendant in a criminal prosecution to affect, by consent, the conduct of the case, should be much more limited than in civil actions. It should not be permitted to extend so far as to work radical changes in great and leading provisions as to the organization of the tribunals or the mode of proceeding prescribed by the Constitution and the laws. Effect may justly and safely be given to such consent in many particulars; and the law does, in respect to various matters, regard and act upon it as valid.

Objections to jurors may be waived; the Court may be substituted for triers to dispose of challenges to jurors; secondary in place of primary evidence may be received; admissions of facts are allowed; and in similar particulars, as well as in relation to mere formal proceedings generally, consent will render valid what without it would be erroneous. A plea of guilty to any indictment, whatever may be the grade of the crime, will be received and acted upon if it is made clearly to appear that the nature and effect of it are understood by the accused. In such a case the preliminary investigation of a Grand Jury, with the admis-

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sion of the accusation in the indictment, is supposed to be a sufficient safeguard to the public interests. But when issue is joined upon an indictment, the trial must be by the tribunal and in the mode which the Constitution and laws provide, without any essential change. The public officer prosecuting for the people has no authority to consent to such a change, nor has the defendant.

"Applying the above reasoning to the present case, the conclusion necessarily follows, that the consent of the plaintiff in error to the withdrawal of one juror, and that the remaining eleven might render a verdict, could not lawfully be recognized by the Court, at the circuit, and was a nullity. If a deficiency of one juror can be waived, there appears to be no good reason why a deficiency might not be; and it is difficult to say why, upon the same principle, the entire panel might not be dispensed with, and the trial committed to the Court alone. It would be a highly dangerous innovation, in reference to criminal cases, upon the ancient and invaluable institution of trial by jury, and the Constitution and laws establishing and securing that mode of trial, for the Court to allow of any number short of a full panel of twelve jurors, and we think it ought not to be tolerated.

"The opinion of the Court of King's Bench, in the case of Lord Dacres, tried in the reign of Henry VIII for treason, strongly fortifies the conclusion above expressed. One question in that case was whether the prisoner might waive a trial by his peers and be tried by the country; and the Judges agreed that he could not, for the statute of magna charta was in the negative, and the prosecution was at the King's suit. * * * Woodeson, in his lectures (vol. 1, 346), says, the same was again resolved on the arraignment of Lord Audley, in the seventh year of the reign of Charles I, and that the reason was that the mode of trial was not so properly a privilege of the nobility as a part of the law of the land, like the trial of commoners by commoners, enacted, or rather declared, by magna charta. In 3 Just., 30, the doctrine is stated that 'a nobleman cannot waive his trial by his peers and put himself upon the trial of the country, that is, of twelve freeholders; for the statute of magna charta is that he must be tried *per pares*, and so it was resolved in Lord Dacres' case.'

"It is unnecessary to pursue this discussion further; and it remains only to add, as the result of the foregoing views, that in the opinion of the Court the judgment below should be reversed, and a new trial ordered."

Now, sir, I apply that argument to our Constitution. We are to say whether we will make an innovation upon these ancient privileges, that whenever a man is accused of crime he shall be brought face to face with twelve of his peers, who shall pass upon the question of his guilt after hearing all the evidence, and after mature deliberation; and I know of no reason why, if you can try a case with eleven jurors, you cannot just as legally try a case with six jurors, or why you could not do away with the jury altogether. Sir, I know of nothing that is more essential to the rights of the people of these United States than the right of trial by jury, where twelve good men and true stand between the man accused of crime and the officers of the law. I say again, I can see no reason why any such change should be made with reference to the criminal law. It is a right that is sacred to the people, and they will guard it with a jealous eye. It is a right which has been recognized ever since the existence of free government, and I hope it may continue to exist as long as time shall last. I hope no change will be attempted in our organic law that will affect the right of trial by jury in any case that may affect the life or liberty of the citizen.

Mr. HALE. Mr. Chairman, would it be permissible to offer an amendment.

The CHAIRMAN. No, sir, not at the present time.

Mr. HALE. The Convention, or rather the Committee of the Whole, has not had an opportunity to express its judgment upon the broad proposition involved here, and I would like to have a chance to test the sense of the committee upon a proposition a little broader than that covered by the amendment to the amendment offered by the gentleman from Santa Clara, Mr. Laine. For the purpose of illustrating my argument, I desire to read an amendment which I have prepared, and which I shall offer at the proper time:

"The right of trial by jury shall be secured to all, and remain inviolate forever, but in all cases whatever, except criminal cases, where the punishment may be death, or imprisonment for life, a jury may be expressly waived by the parties with consent of the Court. The jury shall consist of twelve persons, except that in all civil cases and criminal cases not amounting to felony, the parties may agree upon a less number, and in all cases except criminal cases punishable by death or imprisonment for life, a verdict may be rendered by the concurrence of three fourths of the jury."

Now, it will be recognized by all that the number of cases of felony tried in our Courts is exceedingly large as compared with the whole number of criminal cases; whereas, the number of criminal cases punishable by death or imprisonment for life are comparatively few. I take it that the committee has practically expressed its judgment against extending these provisions to cases which may involve the taking of life or imprisonment for life. But I would like to test the sense of the committee on the question of extending this right of waiver to less than all of the jury in criminal cases not punishable by death or imprisonment for life. If the committee should reject the present proposition I shall offer this to test the sense of the body.

Mr. ESTEE. This section as reported by the committee reads as follows:

"In criminal cases the right of trial by jury shall remain. In all cases except felony the Legislature may provide by law the number necessary to constitute a jury, and in all civil cases the number necessary to render a verdict."

As I construe that, sir, in all cases except felony, the Legislature may fix the number of the jury. Now, what are they going to do in cases of felony? We are not making criminal law, we are making a Constitution. It strikes me that the language is very peculiar, and very susceptible of a different construction, and very uncertain, and I move that the committee now rise, and report it back to the Convention, with the recommendation that sections seven, eight, nine, thirteen, and fourteen be referred to the Committee on Judiciary and Judicial Department. I certainly think that such a grave and important question should receive more careful consideration.

Mr. McCALLUM. I rise to a point of order. It is that the motion that the committee rise is debatable, as I learned a few moments ago.

Mr. HALE. I second the motion that the committee rise.

Division having been called for, the motion was lost by a vote of fifty-eight ayes to seventy-two noes.

Mr. EDGERTON. Mr. Chairman: I am altogether opposed to any innovation on the right of trial by jury, as far as it affects a criminal case. And I am also opposed to any change in the law with regard to civil cases, that shall not be accompanied with the condition that the Legislature may at any time restore it to the old plan. I have found in the Constitution of Nevada a provision covering this subject that commends itself to my judgment, and I shall vote against the amendment, and also against the provision as it now stands, for the purpose of offering that clause in the Nevada Constitution, if I am permitted so to do. That clause reads as follows:

"The right of trial by jury shall be secured to all, and remain inviolate forever. A jury trial may be waived by the parties by the consent of the Court in all civil cases, as provided by law. In civil cases, if three fourths of the jury agree upon a verdict, it shall stand and have the same force and effect as a verdict of the whole jury, provided the Legislature, by a law passed by three fourths of all the members elected, may require a unanimous verdict, notwithstanding this provision."

This obviates the objections made by some of the gentlemen, by providing that it must be by consent of the Court, and in the mode prescribed by law. It preserves to every man charged with any kind of crime the sacred right of trial by jury. Farther, if, after actual experience, the people should discover that it is unwise, the power is lodged with the Legislature to restore it as it stood before. I think it is a good provision.

The CHAIRMAN. The question is on the amendment to insert the words "except felony."

Mr. HAGER. Mr. Chairman: I regret, sir, that the proposition before the committee has not been referred to the Judiciary Committee. It relates to the administration of justice; it is a very important matter, one that we cannot very well manipulate in this large body. The report of the committee I disagree with, and I presume three fourths of the Convention will oppose the radical change proposed by the committee that make this report. That would substantially do away with a jury altogether, except in criminal cases amounting to felony. But perhaps public sentiment is undergoing a change in regard to the so-called jury system as known to us under the common law. At common law a jury consists of twelve persons, and every Constitution contains a provision in relation to trial by jury, which means a jury of twelve men, and any attempt to evade it of course would be a mistrial, when it comes before the Court. But, notwithstanding all this, we have a right to engraft in our Constitution a provision making six, or ten, or eighteen men a jury in criminal or civil cases, because it is the fundamental law, the organic law, and we have a right to prescribe rules, and as I said before, it is not a question which can be very readily settled in so large a body as this. It requires the consultation of some clear-headed men, otherwise we will become muddled over it.

Now, the proposition of my friend from Santa Clara, Mr. Laine, proposes that three fourths of a jury shall render a verdict. I am in favor of that proposition. The proposed amendment embodied that proposition, which I have here before me. But the last clause of the proposition says that the jury shall consist of any number less than twelve, if the parties agree. Well, suppose they agree upon a jury of ten; the question comes in, what number constitutes three fourths of ten? If you have a jury of twelve, and you get eight out of the twelve to sign a verdict, you have it.

Now, in Scotland, the jury system that has prevailed there for years is this: In criminal or civil cases the jury is composed of eighteen members, and twelve of the eighteen are required to render a verdict. That is a very good system, according to my opinion. It has been in force there for years, and has operated very well, while in England it is still a unanimous verdict of twelve men. I believe here in these United States, in various of the States, they have changed their jury system, and some of them have abolished jury trials in certain cases, even in criminal cases. A great many of them have made changes. The party undoubtedly waives a jury trial; but it is said here that a party ought not to be allowed to waive a trial by jury. Well, sir, when he comes before the Court and pleads guilty, is not that a waiver of jury trial? He may come before the Court and say, "I wish to waive a jury, and simply wish the Court to look into this matter." Well, if I was the Judge, I would say no; I will not consent to a waiver of a jury; I shall not consent to have this burden thrown upon me. Neither would a Judge consent, where the damages are of an uncertain character, to have a jury waived; and I do not think this burden should be imposed upon the Court where the damages are so uncertain that it can only be arrived at approximately any way, or in a case where the judgment may be in the nature of exemplary damages.

Now, since we have this matter here, I will refer to some of the objections. Now, take the Constitutions of Arkansas, of Minnesota, and Wisconsin, which read:

"The right of trial by jury shall remain inviolate, but a jury trial may be waived in all cases."

As I understand it, it relates to criminal as well as civil cases. Again, take the Constitution of New York:

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"The trial by jury in all cases in which it has been heretofore used, shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law."

MR. WINANS. That is the language of the Constitution of this State.

MR. HAGER. Now I pass again to the Constitution of Maryland:

"The parties to any cause may submit the same to the Court for determination without the aid of a jury; and the Judge or Judges of any Court of this State, except the Court of Appeals, shall order and direct the record of proceedings in any suit or action, issue or petition, presentment or indictment, pending in such Court, to be transmitted to some other Court (and of a different circuit, if the party applying shall so elect,) having jurisdiction in such cases, whenever any party to such cause, or the counsel of any party, shall make a suggestion in writing, supported by the affidavit of such party, or his counsel, or other proper evidence, that the party cannot have a fair or impartial trial in the Court in which such suit or action, issue or petition, presentment or indictment is pending, or when the Judges of said Court shall be disqualified under the provisions of this Constitution to sit in any such suit, action, issue or petition, presentment or indictment," etc.

Then we take up the Constitution of Michigan:

"The right of trial by jury shall remain inviolate.

"In all criminal prosecutions the accused shall have the right to a speedy and public trial by an impartial jury of the vicinage; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; to have the assistance of counsel for his defense; and in all civil cases, in which personal liberty may be involved, the trial by jury shall not be refused."

And this is the Nebraska Constitution:

"The right of trial by jury shall remain inviolate; but the Legislature may authorize trial by jury of a less number than twelve men, in Courts inferior to the District Court."

The point I wish to illustrate is, that we may change the jury system by a constitutional provision; that we are not bound strictly to adhere to the old common law rule of twelve men; that we may depart from that rule. Then we have the Constitution of Nevada, which was referred to by the gentleman from Sacramento, Mr. Edgerton:

"The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law; and in civil cases, if three fourths of the jurors agree upon a verdict, it shall stand and have the same force and effect as a verdict by the whole jury; *provided*, the Legislature, by a law passed by a two thirds vote of all the members elected to each branch thereof, may require a unanimous verdict, notwithstanding this provision."

Then we have the Constitution of North Carolina:

"In all issues of fact, joined in any Court, the parties may waive the right to have the same determined by a jury, in which case the finding of the Judge upon the facts shall have the force and effect of a verdict of a jury."

I simply read these various provisions in order that the Convention may understand that we have the right to change the jury system, and make it not only different from what it now is, but in conflict to what has been known to be the principles of the common law. In other words, we may say that a jury shall be composed of six men, in all civil actions; or, in criminal actions we may say that two thirds or three fourths of a jury may render a verdict. And now the matter to be determined is, what is the sentiment of this Convention in regard to these different propositions? If we should offer a resolution that a jury shall consist of twelve men, that would get at the sentiment of the Convention, and all amendments could be formulated on that decision. If we should offer a resolution that a verdict might be rendered by two thirds of three fourths of a jury, that would be a decision as to that part of it. But we are here struggling over various propositions without arriving at the judgment of the Convention on any one of them.

As I said before, at the commencement, public opinion is to some extent undergoing a change. I think it is. A great many men who have reflected upon this subject have serious doubts about the jury system as it now exists as a proper mode of administering justice. There seems to be an impression prevailing that men on the jury may be tampered with. Where you require a unanimous verdict of twelve men, a man who is being tried may have a friend among the twelve who is able to defeat the ends of justice. Cases are often seen where one man hangs the jury. This practice is used over and over again. Again and again we see men of influence and wealth evading punishment in that way, and these things have a tendency to cast a doubt on the wisdom of retaining the present jury system. Now, let some man of great wealth be indicted for some crime, and he is put upon trial before a jury of twelve men, and if it turns out that one of the jurors, or two or three of them, stand out persistently for acquittal, that is sufficient to create a suspicion that they may have been tampered with. That is what we do not know. I am inclined to the conclusion that we will have to dispense with this unanimous verdict on the part of the jury, and take something less than that; and I hope this Constitution will be so framed as to meet public opinion on this subject.

MR. CAPLES. Mr. Chairman: Mr. Hager has aptly said that public opinion is undergoing a change in regard to the jury system, and he has expressed a great deal of truth in a very few words. Mr. Chairman, for forty years I have been a doctor, and I have learned something in regard to the change he refers to. Forty years ago the popular idea with Americans was the palladium of our liberties. To-day the popular idea, even among the legal profession, is that the jury system is the bulwark of thieves. That is illustrative in some measure of the change of popular sentiment.

But, Mr. Chairman, this is one phase of this question that I particularly feel interested in. It may be that the legal gentlemen in this Convention, notwithstanding that they admit in private conversation that it is a delusion, desire to perpetuate it. But there is one proposition in which I am particularly interested, and that is the reduction of the number of jurors. If gentlemen are determined to perpetuate the jury system, I at least, in the interest of the citizens, and of the taxpayers, demand that the number shall be reduced. I have the figures here showing the cost of the jury system in Sacramento County, and multiplying that by twenty-four, which is the difference between Sacramento County and the State of California, shows that a reduction of the number of jurors from twelve to seven would be a saving of three hundred and eighty thousand dollars a year. And when the time comes I propose to offer a substitute, that the number be reduced to seven, and I shall demand to know why and wherefore seven jurors are not as good as seventy, if the interest of the public is considered. I assert that seven jurors are as good as seventy or seven thousand. For the present I am not at liberty to offer an amendment, but I will make the suggestion, simply to confirm what Judge Hager has said, that there is a very great change in popular sentiment, and I think the people are demanding relief from one end to the other of the country.

Here, for instance, we have at the present time a law requiring that jurors shall be drawn by the County Judge, and serve one year. About two thirds or three fourths are exempt, from some cause or other, and this expense is all saddled upon the taxpayers. Farmers are taken away from their farms, and they are complaining loudly and bitterly, for their time is taken from them without any compensation. True, they receive two dollars per day, and that pays their board, but their time is a total loss, and, as I said before, they demand of us that we give them some relief; if not entire relief, at least a partial relief, such as would be afforded by the reduction of the number.

MR. ANDREWS. Mr. Chairman: I am in hopes that the amendment offered by the gentleman from Sacramento, Mr. McFarland, will be voted down. I also prefer the present Constitution to any Constitution I have heard quoted. The jury system is plain and simple. This jury system has been in existence for ages, and I think time has vindicated the wisdom of ages. I differ with the gentleman from San Francisco, Mr. Hager, when he says that public opinion is against the jury system. I am not in favor of an innovation which I believe to be dangerous to society. In regard to this matter of allowing less than the whole of the jury to bring in a verdict, in any case, I say this, as has been well said by the gentleman from San Francisco, that I believe in requiring a unanimous verdict; and I hope that the amendment of the gentleman from Sacramento, Mr. McFarland, will be voted down. I will merely say that I will offer this amendment at the time when it will be in order, so as to make the present constitutional provisions conform to the old Constitution:

"SEC. 3. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties, in all civil cases, in the manner to be prescribed by law."

THE CHAIRMAN. The question is on the amendment of the gentleman from Sacramento, Mr. McFarland.

MR. WILSON, of First District. Mr. Chairman: I do not intend to speak at length upon this subject. I am satisfied that the Convention is ready for the question, and was ready for it some time ago, and the debate has satisfied me still more upon the truth of that proposition. That this section should have gone to the Judiciary Committee I am satisfied. The proposition that was presented this morning should have prevailed. The section here which has been reported by the Committee on Preamble and Bill of Rights, I will say, without any disrespect to that committee, is not as neatly drawn, not as compact and clear as it should be. I will call attention to the reading and construction of it:

"In criminal cases the right of trial by jury shall remain."

Remain where? It remains in criminal cases and nowhere else. It practically abolishes jury trials in civil cases. It especially reserves it in criminal cases alone, leaving the Legislature untrammeled on that subject, having the power to adopt or not adopt a jury for civil cases. The language is not as good in that respect even as section three of the old bill of rights: "The right of trial by jury shall be secured to all, and remain inviolate forever," is much stronger and better language; and then it follows on: "In all cases," that includes criminal cases, "except felonies, the Legislature may provide by law the number necessary to constitute a jury." They are not obliged to have a jury at all, but they may provide by law the number necessary to constitute a jury, except in case of felony; there they cannot. In cases of felony there would be a right remaining to the old common law jury of twelve and a unanimous verdict; but in any other case the Legislature may provide by law the number necessary to constitute a jury, but it is not obliged to have any jury at all. And then in any civil case it says the Legislature may prescribe the number to render a verdict, but they are not required to have a jury at all in any of these cases.

I do not believe that a majority of this Convention are prepared to adopt a section into the Constitution which abolishes jury trials in all cases except felonies, or to leave it to the Legislature to determine whether, in that great class of crimes called misdemeanors, there shall be a jury or not, as it sees fit, and in civil cases there may be a jury or not, as the Legislature shall determine. That is my interpretation of section seven, and if I am correct, why it certainly should be expressed in such manner that such a construction cannot be placed upon it. I am sincere in my construction of it, believing as I have stated, that it is capable of this construction—abolishes all right to a trial by jury, except in cases of felony; leaves it to the Legislature to determine whether, in misdemeanors and civil cases, there shall be a jury or not.

Now, in regard to the proposition of the gentleman from Santa Clara, it is clearer, but still I do not think it contains exactly what would be the sense of the Convention: "The right of trial by jury shall be secured to all and remain inviolate forever, but trial by jury may be waived by the parties in all cases, with the consent of the Court, in the

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manner prescribed by law." Now, according to that, in civil cases, the parties themselves cannot control their own case unless by the consent of the Court. I do not see why, in a civil case, where counsel agree, they cannot waive a jury and have the case determined by the Court. But this proposition makes the consent of the Court necessary in civil cases to the waiver of a jury. This brings me back again to my proposition that this section should go to the Judiciary Committee, and be carefully considered and reported upon; and without wishing to be considered obstinate, I renew my motion that this committee now rise and report to the Convention a recommendation that all further action upon sections seven and eight be suspended, and the subject-matter referred to the Judiciary Committee to report upon the same. However, I will confine it to section seven alone. There are some other questions involved here which I have not discussed at all. If it does not go to the Judiciary Committee it can be discussed in open Convention. I think some of the amendments to the Constitution of the United States are involved in this, but I do not care to discuss them now at this place; therefore I think it should go to the Judiciary Committee in order to examine it as to that matter. And I say it without any disrespect to the members of the committee. I know that anything, however skillfully drawn, when it comes afterward to be carefully looked into and criticised, may be found to be defective; and a person who draws a section may himself see that it is not what he intended it to be; and we have now had a chance to lay bare the defects in this section, and ought to have a most careful and critical consideration. It is for these reasons that I have renewed my motion without any disrespect to the Convention, or to any member of the Convention.

MR. HAGER. I offer an amendment to the motion, that the committee be instructed to report at an early day in order that the Convention may not be delayed in the consideration of this article. I would ask that the committee be instructed to report on Saturday morning, or to-morrow morning.

THE CHAIRMAN. The motion that the committee rise is not debatable.

MR. VAN DYKE. I haven't heard any objection.

MR. WILSON. I accept the amendment.

THE CHAIRMAN. The motion is that the committee rise, report back the section, and recommend that it be referred to the Judiciary Committee, with instructions to report to-morrow morning.

The motion prevailed on a standing vote: ayes, 73; noes, 43.

IN CONVENTION.

MR. VAN DYKE. Mr. President: Is the motion open to debate now.

THE PRESIDENT. No, sir; no debate. The report of the Committee of the Whole, with its recommendation, is now before the Convention. It is not a debatable question. The motion is now to refer to the Judiciary Committee, with instructions.

MR. VAN DYKE. Mr. President: I wish to say this to the members of the Convention, that if we had arrived at any conclusion—if we had arrived at some determination here, so that all that was required was to put it in proper shape—then something would be accomplished by referring it to the Judiciary Committee. But it must be apparent that we have not arrived at any conclusion whatever as to the framing of this section. There is a division of sentiment in this Convention on the question of whether the common law jury shall be retained in all cases of felony, and upon the other question of whether in cases of misdemeanor the matter shall be left to the Legislature, and also upon the question of a waiver of jury, and how far it shall extend. We have not arrived at any conclusion whatever on these questions, and it will do no good to refer it to the Judiciary Committee. Now, sir, suppose this is referred to that committee—and I understand from the debate here that the members of that committee differ among themselves on these questions—suppose a majority of that committee report a section here, why, we will have to go over this same ground again. We have not advanced a step. It will still be subject to amendment, and we will have just as many amendments here as there are different views upon it in the Convention. Now, as Chairman of the Committee on Preamble and Bill of Rights, I have no pride of opinion in reference to this question. It was a compromise section by our committee. I think, however, it is not subject to the criticisms bestowed on it by the Chairman of the Judiciary Committee. And upon the whole, for myself, I think the best thing this Convention could do is to take the section read by the gentleman from Sacramento, Mr. Edgerton, from the Nevada Constitution. It is certainly an improvement upon ours, and I for one would be willing to adopt it. It leaves the matter somewhat elastic; it provides for a verdict by a two-thirds vote in civil cases, and authorizes the Legislature to restore the old system in case the new one does not give satisfaction. I think that is the best thing the Legislature can do under the circumstances. I think it is a wrong idea, whenever a question comes up here that we cannot immediately agree upon, to rush it off to the Judiciary Committee. We want first to ascertain the sentiments of this body upon certain points; find out if we can what they desire to accomplish, so that when it is reported back we will not have to go over the same ground again. It is simply a waste of time, and the long debate we have had over this section has not in any manner indicated the sentiments of the Convention as to any one of the points involved.

MR. MCCALLUM. I am perfectly willing to sit here and listen to any discussion, if at the end of it we can avail ourselves of the benefit of it and come to a vote upon the propositions involved. Here is a proposition pending, coming from the gentleman from Santa Clara, which seems to meet with general favor in this Convention. My impression is that it will meet with favor in this Convention. Gentlemen say we are not resolved on anything. Well, we can't do anything, because they won't give us a chance to vote. I must enter my protest here, once for all, against these motions to rise and refer these matters to committees. We have not come to any conclusion yet. For an hour and a half we have discussed this question, as to what we shall do with this seventh section. Why not vote upon it? Why not return to the Committee of the Whole and vote on these two propositions which were before the committee? What light is this Judiciary Committee going to give this Convention that they cannot give it now? This matter has already been to a committee, and the report of that committee is now before the Convention for action. When will this thing end, if we take the report of one committee, and without arriving at any conclusion refer it to another committee. In that way every section of every article in the Constitution might be referred to different committees before any action has been taken on it. Now, I don't want this whole matter to be renewed again. I have listened to all this discussion, and I would like to have an opportunity to vote on this question this evening, and I believe the gentleman's proposition from Santa Clara will be adopted, and I make a motion now that we return to the Committee of the Whole, in order to get a vote on it.

MR. TINNIN. I move the previous question.

THE PRESIDENT. The motion is to return to the Committee of the Whole.

Division being called for, the motion was lost—ayes forty-seven, not a majority.

THE PRESIDENT. The motion now is to refer it to the Judiciary Committee, according to the recommendation of the Committee of the Whole.

The motion prevailed, on a standing vote—ayes eighty-three, a clear majority.

RESOLUTION.

MR. BARBOUR. I wish to send up a resolution to assist the Judiciary Committee in obtaining the sense of the Convention.

THE SECRETARY read:

Resolved, That it is the sense of this Convention that the common law jury in criminal cases of the grade of felony should not be denied or interfered with.

MR. CAPLES. I offer an amendment, that the number of all juries be fixed at seven:

"To provide that all juries shall be composed of seven jurors."

MR. HOWARD, of Los Angeles. Mr. President: As several of the committees are anxious to sit, I move that the Convention adjourn until to-morrow at ten o'clock.

The motion was lost—ayes, 67; noes, 77.

MR. TURNER. I move to lay the amendment on the table.

THE PRESIDENT. That will carry the resolution there also.

The motion prevailed, and the resolution and amendment were tabled.

MR. ESTEE. I move that the Convention do now resolve itself into a Committee of the Whole, for the purpose of considering section eight of the article on preamble and bill of rights.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section eight.

THE SECRETARY read:

SEC. 8. No person shall be held to answer for a crime, or other public offense, punishable by death, or imprisonment in the State Prison (except in cases of impeachment, and in cases of militia when in actual service, and in the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace), unless on presentment or indictment of a Grand Jury. In all other cases, offenses shall be prosecuted by indictment, information, accusation, or complaint, as concurrent remedies, as may be prescribed by law. A Grand Jury shall consist of not less than fifteen nor more than eighteen persons, two thirds of whom may find an indictment or true bill. The Legislature, by a two-thirds vote of all the members elected to each house, may abolish and restore the Grand Jury system.

MR. EDGERTON. I move that the committee now rise, and report back to the Convention sections eight, nine, thirteen, and fourteen, with the recommendation that they be referred to the Judiciary Committee, with instructions to report the same back to-morrow morning. As the gentleman well observed, there are ten sections on which we can work. There is enough to do, and there is every reason in the world why these sections should be referred.

MR. WHITE. I move that the whole bill of rights be sent to the Judiciary Committee, as an amendment.

MR. FREUD. I move as an amendment, that it be recommitted to the Committee on Preamble and Bill of Rights.

THE CHAIRMAN. That is out of order—we are in Committee of the Whole. The question is now on the motion of the gentleman from Sacramento, Mr. Edgerton, that the committee rise and report the sections back, with the recommendation that they be referred to the Judiciary Committee, with instructions to report to-morrow morning.

Division being called for the motion prevailed—ayes, 75; noes, 47.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have had under consideration the report of the Committee on Preamble and Bill of Rights, and have instructed me to report back to the Convention sections eight, nine, thirteen, and fourteen, with the recommendation that they be referred to the Judiciary Committee, with instructions to report on them to-morrow morning.

MR. EDGERTON. I move that the Convention adopt the report of the Committee of the Whole.

MR. FREUD. Is the report capable of being amended now.

THE PRESIDENT. It is a motion to refer to the Judiciary Committee, and is not amendable.

MR. FREUD. I move, as an amendment, that it be recommitted to the Committee on Preamble and Bill of Rights, and these gentlemen

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can have the privilege of coming before that committee and stating their views. I think this is due, as a matter of courtesy and respect to that committee. I am willing to concede to the Judiciary Committee a great deal of learning and knowledge, but there are other committees of just as much ability.

MR. WATERS. I support this motion to refer these sections to the Judiciary Committee. Gentlemen will all recollect that there have been various propositions introduced in this Convention, all of which have been referred to that committee, and are now pending before it, concerning the Grand and trial jury system. These matters are before that committee, and have been thoroughly considered. Now if this Convention desires to treat that committee right, after sending these various propositions before it, after that committee proceeded to consider these propositions, and before the committee have had time to make a report, to take up the subject-matter and finally dispose of it, I think you may as well dissolve that committee. There are some debatable propositions concerning this jury system, and I think the committee ought to have an opportunity to make a report before the subject-matter is finally disposed of. There is nothing whatever that the Committee on Preamble and Bill of Rights can take offense at. There are various subject-matters involved here in this report which properly belong to the Judiciary Committee, and matters involving the same subject-matter, in part, have been considered by that committee, and they are nearly ready to report; so I think it is entirely proper that all these sections should go to the Judiciary Committee, and let us have unanimity at least, on the part of those who are presumed to know a little more about juries and jury systems than a committee not composed exclusively of lawyers. I think it is fitting and proper that these sections should be referred to that committee. It will save a great deal of time, as they will present them in some shape, that this Convention can know how to act.

MR. JONES. Mr. President: It does not seem possible to me that any time can be saved by such a reference. The mover of that reference, I believe, was the author of the motion or resolution which was adopted by this Convention, that so much of the Constitution as pertained to the bill of rights should be referred to the Committee on Preamble and Bill of Rights; that so much of the existing Constitution as pertains to the legislative department should be referred to the Legislative Committee, and so on through the list. Now it seems to me that this is a violation of that rule. We are proceeding to take this matter out of the hands of the Committee on Bill of Rights before even a vote has been taken; in fact, before there has been any expression of opinion as to its merits in the Convention. If this reference would end all controversy I would most heartily accede to it, but it must be discussed and considered when it comes back from that committee. No committee can bind this Convention and I do not see how this is going to save any time.

MR. FREUD. I call for my amendment.

THE PRESIDENT. The question is on the motion to refer to the Judiciary Committee.

The motion prevailed, and the sections were referred.

ADJOURNMENT.

At four o'clock P. M., on motion of Mr. Shoemaker, the Convention adjourned.

THIRTY-FIFTH DAY.

SACRAMENTO, Friday, November 1st, 1878.

The Convention met in regular session at ten o'clock A. M. President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Estey,	Kleine,
Ayers,	Evey,	Laine,
Barbour,	Farrell,	Lampson,
Barnes,	Fawcett,	Larkin,
Barry,	Filcher,	Larue,
Barton,	Finney,	Lavigne,
Beerstecher,	Freeman,	Lewis,
Belcher,	Freud,	Mansfield,
Bell,	Garvey,	Martin, of Alameda,
Biggs,	Gorman,	Martin, of Santa Cruz,
Blackmer,	Grace,	McCallum,
Boggs,	Graves,	McComas,
Boucher,	Gregg,	McConnell,
Brown,	Hager,	McCoy,
Burt,	Hale,	McFarland,
Campbell,	Hall,	McNutt,
Caples,	Harrison,	Miller,
Casserly,	Harvey,	Mills,
Chapman,	Heiskell,	Moreland,
Charles,	Herrington,	Morse,
Condon,	Hilborn,	Murphy,
Cowden,	Hitchcock,	Nason,
Crouch,	Holmes,	Nelson,
Davis,	Howard,	Neunaber,
Dean,	Huestis,	Noel,
Dowling,	Hughey,	O'Donnell,
Doyle,	Hunter,	Ohleyer,
Dudley, of San Joaquin,	Inman,	O'Sullivan,
Dudley, of Solano,	Johnson,	Overton,
Dunlap,	Jones,	Porter,
Eagon,	Joyce,	Prouty,
Edgerton,	Kelley,	Pulliam,
Estee,	Keyes,	Reed,
Reynolds,	Stevenson,	Walker, of Marin,
Rhodes,	Strong,	Walker, of Tuolumne,
Ringgold,	Sweasey,	Waters,
Rolfe,	Swenson,	Webster,
Schell,	Swing,	Weller,
Schomp,	Terry,	Wellin,
Shafter,	Thompson,	West,
Shoemaker,	Tinnin,	Wickes,
Shurtleff,	Townsend,	White,
Smith, of Santa Clara,	Tully,	Wilson, of Tehama,
Smith, of 4th District,	Turner,	Wilson, of 1st District,
Smith, of San Francisco,	Vacquerel,	Winans,
Soule,	Van Dyke,	Wyatt,
Stedman,	Van Voorhies,	Mr. President.
Steele,		

ABSENT.

Berry,	Kenny,	Reddy,
Cross,	Lindow,	Stuart,
Glascock,	Moffat,	Tuttle.
Herold,		

LEAVE OF ABSENCE.

Mr. Stuart was granted leave of absence, on account of sickness.

One day's leave of absence was granted Messrs. Tuttle and Kenny.

MR. O'DONNELL. I move that the reading of yesterday's Journal be dispensed with.

Carried.

COMMUNICATIONS.

The following communication was received and laid on the table:

"To the Honorable Members of the Constitutional Convention of California:

"The great evils that in our present time are pressing, not only on the poor but on all classes of society, have their origin not in the fault, crime, or corruption of single persons, or not even in corporations of corrupt men, but in the defectiveness of our laws and institutions. The remedy for said evils can therefore never be gained by a change of persons in office, but only by a radical change of our organizations. This truth I wish to impress especially upon the minds of the delegates elected by the Workingmen's party of California. If the leader or President of this party means really to work for the benefit and welfare of the people, he is certainly on a very wrong line by stumping for Ben. Butler.

"The defects under which society suffers are only to be corrected by establishing a real self-government, the Constitution of which is built on the principles laid down in the following sketch, which, to investigate carefully, I, as the speaker of thousands of well-meaning citizens of California, earnestly beseech your honorable body.

"Very respectfully,

"E. STEINLE.

"SKETCH OF THE FRAMEWORK FOR A NEW CONSTITUTION OF CALIFORNIA.

"We, the people of California, in order to establish justice, promote the general welfare, and secure our rights and liberties, do ordain and establish this Constitution for the State of California:

"ARTICLE I.

"GENERAL PRINCIPLES.

"SECTION 1. All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property, and pursuing and attaining safety and happiness.

"SEC. 2. All political power is inherent in the people. The citizens of a free, republican State must never depend from the qualities and good will of single persons, but must carry on all public affairs and business themselves, and retain all governmental power in their own hands.

"SEC. 3. All offices of power for single men shall be forever abolished.

"SEC. 4. The whole body politic of citizens, divided into districts, shall rule all political actions.

"ARTICLE II.

"THE PEOPLE OF CALIFORNIA.

"SECTION 1. The people of this State are divided into four classes: *a:* Citizens; *b:* Persons who intend to become citizens; *c:* Persons who do not want to become citizens; *d:* Persons who cannot become citizens.

"SEC. 2. Citizens are—*a:* All persons born in this State over eighteen years old, without distinction of race or sex; *b:* All inhabitants of this State who are citizens of the United States by birthright, or who have lawfully acquired the right of citizenship in this or any other State of the United States.

"ARTICLE III.

"CONDUCT OF PUBLIC AFFAIRS.

"All political action, conducting of public affairs, and business, is done: 1. By the whole body politic of citizens; 2. By the House of State Agents of the people; 3. By the Boards of Municipal Agents of the people.

"ARTICLE IV.

"POLITICAL ACTION OF THE PEOPLE.

"SECTION 1. It shall be the duty of every citizen, and of every aspirant to citizenship, to take an active part in the political action of the people of California. The neglect of this duty shall be fined in several degrees, in the end, by the loss of the right of citizenship.

"SEC. 2. The State of California shall be divided into districts, each

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of which containing five hundred citizens and an undefined number of aspirants to citizenship.

"SEC. 3. One of these districts shall be the political headquarters of the whole body politic of citizens of the State of California.

"SEC. 4. The members of each district shall be bound to convene once in a month, in order: *a:* To frame instructions for the agents of the people. *b:* To receive and investigate accounts from persons in office or in the service of the people. *c:* To hear and investigate complaints against public agents or persons in the service of the people, and in case of fault to punish or revoke them from their positions. *d:* To hear proposals for new laws, rules or regulations, laid before them by the House of Agents, and to accept or reject them. No law of general importance shall be valid before it is voted upon by the body politic of citizens and approved by a majority. *e:* To elect new agents or persons for offices emptied by former incumbents.

"SEC. 5. Candidates for citizenship have the right to partake in discussions, but cannot vote.

"SEC. 6. Every district shall elect from its members three permanent Secretaries. The Corresponding Secretary shall communicate all important actions to the headquarters of the State. The presiding officer shall be elected for each meeting.

"SEC. 7. Each district shall choose and hold in place one member for the House of Agents.

"SEC. 8. In all litigious cases of general interest, in which the agents of the people or their respective committees could not agree, the body politic of citizens is the last instance and the supreme judge.

"ARTICLE V.

"THE HOUSE OF STATE AGENTS.

"SECTION 1. The House of Agents of the people shall be composed by the delegates elected from each district of citizens.

"SEC. 2. The House of Agents shall combine in itself the legislative, the executive, and the judicial power. The division of power, viz: the division of the Legislature in Senate and Assembly. The offices of Governor and of professional judges shall be abolished.

"SEC. 3. The House of Agents shall select persons for public offices and form committees from its members for conducting all branches of public affairs and business.

"SEC. 4. For the framing and establishing of laws, rules, and regulations, the agents of the people shall be governed by the following observations and principles: The fundamental evil, under which the societies of men in all civilized State organizations suffer, lies in the fact that a small minority of the people holds the riches of the country in their hands, and that in consequence thereof the great majority is poor and suffering from misery and starvation. With wealth is always power and dominion, and with poverty, want of liberty, and servitude connected. With the continuance of the said fundamental evil a democratic republic, a free State, a self-government of the people is an impossibility. The sources of this evil are: *a:* Want of intelligence of the mass of the people. *b:* Want of laws to prevent deceivers of the people to spread superstition, and thereby damage the intelligence of the people. *c:* Want of laws to prevent persons to hold incontrollable positions of power. *d:* Want of energy, strong will, and of political activity of the majority of citizens. *e:* Want of laws by which the accumulation of the riches of the country in the hands of a few is prevented.

"In order to unroot the said evil, the House of Agents shall frame and propose to the people a law by which the most liberal provisions are made for all public institutions of instruction and education; for increasing the salaries of teachers; for the supply of books and utensils used by pupils; for the establishment of institutions for the instruction and practical education of farmers, mechanics, and artists of all kinds.

"In all cases education and instruction is entirely free of any expense for pupils and students.

"*b.* A law that all persons who pretend to be astrologers, to be able to predict the future, to be in connection with spirits or ghosts, to have any knowledge of one or more supernatural beings, to be able to inform the people about one or more such supernatural beings; who also pretend that there are letters or scriptures, often called holy scriptures, of such supernatural beings, or that such letters or scriptures are written by men inspired by a God or spirit, or any other so called supernatural being, shall be compelled to bring indubitable proof of their assertions before an impartial commission, elected by the people, or they shall not be allowed to practice for money or other compensation, to teach in public institutions, or to receive salaries for their practicing.

"*c.* A law by which the real estate of California is declared public property. No single person can be proprietor of land or real estate. For agricultural purposes, for raising of stock, for the erection of any kind of buildings, the land must be rented through the House of Agents. The present owners of real estate property will either be left in the right of using the same as far as it is cultivated or covered with buildings, or they, or their heirs shall be properly indemnified for giving up the same to the State. * [See note at end.]

d. A law by which a progressive income tax is levied, so that an income of one thousand dollars a year or less is entirely free from tax; an income of from one thousand dollars to three thousand dollars yearly shall be taxed with one per cent.; an income of from three thousand dollars to five thousand dollars yearly with five per cent. Every income over five thousand dollars a year shall be taxed in such a way that five thousand dollars is taxed with five per cent.; every one hundred dollars over five thousand dollars, with seventy-five per cent. Out of the money received by the rent of real estate and by the income tax, large general State funds shall be created for school and educational purposes, and for loan institutions, from which every good standing citizen shall have the right to borrow money in order to commence any kind of honest, legal business, the inventory of which shall be held as security. In all such cases only small interest shall be charged. In certain cases, to be defined by the respective committees from the House of Agents, no interest at all shall be charged.

"SEC. 5. The House of Agents shall further provide for State savings banks. These and all other funds are to be held under the constant control of the people.

"SEC. 6. They shall establish rules and laws, according to which the public affairs in the different counties, townships, and communities are conducted in a similar way as for the State, by agents of the people, elected from the districts. These agents shall constitute themselves as a Board of Municipal Agents.

"SEC. 7. The House of Agents shall enact a law to the effect that all persons chosen to an office shall remain in and hold that office until they resign, or until they are revoked from their position by the people for want of trust, or for infidelity or crime.

"SEC. 8. They shall provide for the formation of military companies in each district, which shall be held constantly under the control of the people. Every officer in the militia is subject to the same rules and laws as all persons in office in the service of the people.

"SEC. 9. They shall provide for the establishment: *a:* Of institutions in which all old or sick persons unfit to work are cared for. *b:* Of institutions for insane persons, for drunkards, for vagabonds, unwilling to work from their own free will. *c:* Of institutions for the confinement and correction of criminals.

"SEC. 10. Capital punishment shall be forever abolished, because the commitment of crimes is the natural consequence of the faults of our political, social, or educational institutions, and, therefore, more the fault of society in general than of single persons.

"SEC. 11. The House of Agents shall be in regular convention three months every year, from January first to April first, and each member shall receive ten dollars per day during the time of session.

"SEC. 12. After the adjournment of their sessions, the Secretaries and the committees for conducting public affairs shall remain in action.

"ARTICLE VI.

"THE BOARDS OF MUNICIPAL AGENTS.

"SECTION 1. For conducting public business in the various counties, townships, and communities, the citizens shall elect persons who shall constitute Boards of Municipal Agents. These Boards shall appoint persons for offices and form committees for the conduct of all public affairs and business. The offices of Mayor, Auditor, the Courts, Boards of Supervisors are therefore to be abolished and replaced by committees from the Boards of Agents, and by juries selected by the people.

"SEC. 2. Police officers shall be appointed by the Boards of Agents.

"SEC. 3. The establishment of laws, rules, and regulations by the Boards must be laid before the people to be voted upon.

"ARTICLE VII.

"GENERAL RULES AND OBSERVATIONS.

"SECTION 1. The Constitution of California shall be revised, and, according to the progress of time, improved every ten years, if it is not resolved by the people to do this at an earlier period.

"SEC. 2. Every person residing in this State shall have the right to express his opinion freely by word and by press.

"SEC. 3. No person residing in this State, who is not a citizen, or has not declared his intention to become a citizen, shall be allowed to do any business in this State for supporting himself or family, or to make money.

"SEC. 4. No Chinese or Mongolian can become a citizen of the United States, and, therefore, cannot be permitted to do any business or labor in this State for the purpose of making money.

"Immediately after the acceptance of this Constitution by the people, the delegates, who framed the same shall convene in Sacramento and act as the agents of the people.

"Their first business shall be to constitute themselves as the House of State Agents, appoint secretaries and form committees for the different branches of public business. They shall at once act on the division of the State into districts, appoint the headquarters and regulate the political action of the people. The districts shall, immediately after they are established, elect persons for the Boards of Municipal Agents and notify through the Corresponding Secretary of the political headquarters of the State, all persons who hold public offices under the old Constitution that they have to quit their positions.

"Hon. Members of Constitutional Convention:

"Many alterations, additions, and by-laws will be required to this framework. But if you will only hold on to the principles set forth in Section 4 of Article V, then there is no doubt, provided such a Constitution is accepted by the people, that in a short time the inhabitants of our State will be a union of happy human beings. With the best wishes for your success of framing a Constitution by which this aim will be gained, and by which you will give a glorious example to the whole civilized world, I sign,

"Very respectfully,

"E. STEINLE."

* Note to Sec. 4, Art. V.—This means, not at all and by no means, "Communism." To possess personal property as the main instrument of individual liberty shall be one of the most sacred rights of men. But personal and individual property is only and can only be what is created by the mental and physical process of individuals. What is given by nature, as air, water, and soil, is common property.

STATIONERY BILLS.

MR. CAPLES offered the following resolution:

Resolved, That the Secretary of State be requested to furnish the Convention with a detailed statement of the items of stationery and other articles, and the value thereof in money, supplied to each member of this Convention.

Adopted.

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REPORTS—NIGHT WATCHMAN.

MR. HILBORN, from the Committee on Mileage and Contingent Expenses, made the following report:

MR PRESIDENT: Your Committee on Mileage and Contingent Expenses, to whom was referred Resolution No. 57, introduced by Mr. Eagon, relating to paying James Saltry as Night Watchman — have had the same under consideration, and herewith report the same back, and recommend that it be adopted.

HILBORN, Chairman.

The PRESIDENT. The Secretary will read the resolution.

THE SECRETARY read:

Resolved, That the Controller of State be and he is hereby directed to draw his warrant in favor of James Saltry for one hundred and five dollars, for twenty-one days' service as Night Watchman, and the State Treasurer to pay the same out of the appropriation for the expenses of this Convention.

MR. O'SULLIVAN. I would like to be informed who authorized Mr. Saltry to act as Night Watchman for twenty-one days. I regard it as a steal, an outrageous steal.

MR. HILBORN. I would like to send up and have read an extract from the Journal of Monday, September thirtieth, eighteen hundred and seventy-eight,

THE SECRETARY read:

"The Governor then announced the following appointments, to act until the Convention should be permanently organized: Minute Clerk, A. J. Dobbins; Sergeant-at-Arms, J. M. Farrelly; Watchman, Jas. Saltry; Doorkeeper, B. F. Alexander; Porter, Hiram Clock."

MR. O'SULLIVAN. Mr. Saltry was appointed by the Governor, and his duty ceased the moment that we made a complete organization of this Convention; therefore, I say that he is not entitled to any twenty-one days. He is entitled to pay, probably, for the time he acted under the Governor's appointment.

MR. WELLIN. I think that is rather small. This gentleman, it is true, was appointed by the Governor. He has served the Convention, and if we did not want his services, then we should have discharged him, and not kept him here day after day. I want to know if we propose to practice economy by robbing the laborer of his wages? We accepted his labor, and now we have kept him a week waiting for his pay. I do not want to be a party to the practice of that small economy which will cheat the laborer of his wages.

MR. TINNIN. I desire to call the attention of the Convention to the fact that all these other gentlemen who were appointed at that time have received their pay from this Convention. I see no reason why a distinction should be made against this single individual. All the others were paid.

MR. O'SULLIVAN. If he performed the services he did it on his own volition, not by authority of this Convention. He did so for one week, on authority of the Governor. That we should pay. But I say that when he acted as Night Watchman on his own volition he is not entitled to pay, and we should not pay it.

MR. MARTIN, of Santa Cruz. We have accepted the services of this gentleman, and I see no reason why he should not be paid.

The resolution was adopted.

CHANGE OF REFERENCE.

MR. WINANS, from the Committee on Education, made the following report:

To the Honorable J. P. Hoge, President of the Convention:

The Committee on Education respectfully reports back to the Convention Amendment No. 231, proposed by Mr. Webster, and recommends that it be referred to the Committee on Revenue and Taxation.

WINANS, Chairman.

So ordered.

FURTHER TIME GRANTED.

MR. SMITH, of Santa Clara. Mr. President: The Committee on Land and Homestead Exemptions report progress, and ask for further time.

THE PRESIDENT. If there be no objection further time will be granted. Hearing none, it is so ordered.

DECLARATION OF RIGHTS.

MR. WILSON, of First District, from the Committee on Judiciary and Judicial Department, made the following report:

MR. PRESIDENT: Your Committee on Judiciary and Judicial Department, to whom were referred sections seven (7), eight (8), nine (9), thirteen (13), and fourteen (14), of amendment number four hundred and two, reported by the Committee on Preamble and Bill of Rights, beg leave to report that they have had the same under consideration, and recommend that they be not adopted, but that the sections hereunto annexed be adopted in lieu thereof.

S. M. WILSON, Chairman.

November 1st, 1878.

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions, and in cases of misdemeanor where the punishment does not exceed six months imprisonment or a fine of five hundred dollars, or both, three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases, not amounting to a felony, by the consent of both parties, in open Court expressed, and in civil cases, by the consent of the parties, signified in such manner as may be prescribed by law. In civil cases and cases of misdemeanor the jury may consist of any number, less than twelve, that the parties may agree upon in open Court.

SEC. 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by indictment or information, as may be prescribed by law; but a Grand Jury shall be drawn and summoned at least once a year in each county.

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

SEC. 13. In criminal prosecutions, in any Court whatever, the party accused shall have a right to a speedy and public trial, and to appear and defend in person and with counsel. No person shall be subject to be twice put in jeopardy for the same offense, nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law.

SEC. 14. Private property shall not be taken for public use without just compensation having been first made to or paid into Court for the owner.

MR. LAINE. In a body so numerous as this it is impossible to understand a proposition thoroughly, unless it be printed and laid upon the desk of each member, in that when amendments are offered he may compare the amendment with the printed matter. I therefore move that the report of the committee, that is the draft, be printed and made the special order for Tuesday next, immediately after the reading of the Journal.

MR. BLACKMER. I believe we already have a special order for next Tuesday morning.

THE PRESIDENT. That makes no difference; we can make forty special orders for that day.

MR. LAINE'S motion prevailed.

NEW PROPOSITIONS.

THE PRESIDENT. The next order of business is the introduction of resolutions and propositions relative to the Constitution.

RELATIVE TO OFFICERS.

MR. WELLIN introduced the following proposed amendments to the Constitution, relative to officers:

ARTICLE —.

SECTION —. Members of the Legislature and all officers, judicial and ministerial, shall, before they enter upon the duties of their respective offices, take and subscribe to the following oath or affirmation: "I, ——, do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States, and the Constitution and Government of the State of California, against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State Convention or Legislature to the contrary notwithstanding; and, further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever. And I do further solemnly swear (or affirm) that I have not fought a duel, sent or accepted a challenge to fight a duel, nor been a second to either party, nor in any manner aided or assisted in such duel, nor been knowingly the bearer of such challenge or acceptance, since the adoption of this Constitution of the State of California; and that I will not be so engaged or concerned, directly or indirectly, in or about any such duel during my continuance in office; and that I do not now nor never will employ any Asiatic, Mongolian, or Chinaman, nor be in any manner interested in the profits of his labor; and that I will use all my endeavors as a citizen and an officer to prevent the further importation of any Asiatic, Mongolian, or Chinaman; and further, that I will endeavor, by every constitutional or legal means, to remove from the State all those who are now here; and I do further swear (or affirm) that I have paid no money in the form of a bribe, or donation, nor made any promise of patronage, to secure my election to the office of ——, on which I am now about to enter; (if an oath) so help me God; (if an affirmation) under the pains and penalties of perjury."

Referred to Committee on Miscellaneous Subjects.

LEGISLATION.

MR. CASSERLY introduced the following proposed amendment to the Constitution, relative to special sessions of the Legislature:

While the Legislature shall be convened in special session no legislation shall be had on any subject not designated in the Governor's proclamation calling such session.

Referred to Committee on Legislative Department.

PUBLIC WORKS.

MR. FREUD introduced the following proposed amendment to the Constitution, relative to public works:

SECTION —. All public works of every description, State, county, or municipal, and any modification or addition of any nature whatsoever to the same, shall be performed by the day, at ruling rates, and eight hours shall constitute a day's work.

Referred to Committee on State Institutions and Public Buildings.

RELATIVE TO FOREIGNERS.

MR. BEERSTECHER introduced the following proposed amendment to the Constitution, relative to foreigners:

ARTICLE —.

SECTION —. All persons of foreign birth, before engaging in any manner of employment on their own account, or for others, within this State, shall first procure a certificate of authority; such certificate shall be issued to any applicant of a race eligible to citizenship under the laws of the State, without cost, by any Court of record of the State. No person of foreign birth shall engage or continue in any manner of employment in this State unless possessed of such certificate; nor shall any person, copartnership, company, or corporation, directly or indirectly, employ any person of foreign birth within this State, unless

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such person possess such certificate. The Legislature shall provide for punishment of violations of this section. Prosecutions shall be maintainable against both employers and employés. Each day's violation shall constitute a distinct offense.

Referred to Committee on Chinese.

CITY, COUNTY, AND TOWNSHIP ORGANIZATIONS.

MR. VACQUEREL introduced the following proposed amendment to the Constitution, relative to city, county, and township organizations:

Resolved, That there shall be elected, by each of the executive committees of the several political parties duly organized in the county, three persons, who shall, when so elected, have power to elect, by a majority vote, a competent and suitable person to supervise, inspect, and expert the books and accounts of each and every county officer in the county for which he may be so elected; the said person, when so elected, to have the right and privilege of inspecting said books and accounts as often as he may deem it expedient or necessary; the compensation of said person, elected as aforesaid, to be determined and paid by the Board of Supervisors of the county for which he may have been elected; the said expert or inspector to hold his office till the next municipal election takes place, unless it is certified and proved that he has not satisfactorily fulfilled his duty; and only in such case the committee that nominated him will have power to procure his removal and proceed to re-emplace [re-instate?] him in his situation.

Referred to Committee on City, County, and Township Organizations.

SUBMISSION OF THE CONSTITUTION.

MR. SMITH, of Santa Clara, offered the following:

Resolved, That the Committee on Judiciary be requested to inform the Convention, at an early practicable period, whether the Convention has a legal right to submit the Constitution for ratification in such divisions as the Convention may determine.

The resolution was adopted.

COMMITTEE ROOM PORTER.

MR. BARNES offered the following:

Resolved, That Edward Wason be and he is hereby allowed the sum of eighty-eight dollars, for services as Porter, twenty-two days, in caring for the committee rooms, and that the same be paid out of the appropriation made for the Convention.

I hereby certify that I employed Edward Wason, and that he has worked, as Porter, for the committee rooms, twenty-two days. That he began working on October tenth, in cleaning and getting rooms for committees ready for use, and has taken care of same, and done such other work as was required of him since that time. The work was necessary, and I respectfully recommend that it be allowed.

T. J. SHERWOOD, Sergeant-at-Arms.

October 31st.

Referred to the Committee on Mileage and Contingent Expenses.

THE CHINESE ARTICLE.

MR. MILLER. I move that the report of the Committee on Chinese and the amendments be placed upon the calendar and made the special order immediately after the disposition of the report of the Committee on Corporations other than Municipal.

The motion prevailed.

COMMITTEE CLERK.

MR. BEERSTECHER offered the following resolution:

Resolved, That Carl C. Finkler be allowed ten dollars for two days' services as Clerk of the Judiciary Committee of this Convention, rendered at the request of said committee, through its Chairman, prior to his regular appointment, viz.: on the seventeenth and eighteenth of October, eighteen hundred and seventy-eight, which two days' services were not included in the pay-roll heretofore certified to.

Referred to the Committee on Mileage and Contingent Expenses.

THE DECLARATION OF RIGHTS.

MR. VAN DYKE. Mr. President: Inasmuch as four sections of the Bill of Rights have been put over, I do not know but what it would be as well to postpone the rest until Tuesday. I move that it be made the special order for Tuesday.

MR. LARKIN. We have now been here five weeks postponing matters. I think the business of this Convention ought to proceed. We want no more delays. Unless we intend to proceed we had better adjourn and go home. Yesterday was spent in discussing whether they would refer sections, and now they ask until next Tuesday. I ask this Convention to understand exactly the effect of these motions, which is for delay; postpone until the appropriation is exhausted, and then leave us where we commenced. I desire to see this Convention go on with its work. The people expect that we will, and if we cannot we had better adjourn.

MR. SCHELL. I am in favor of going on with the report as far as we can do it. Unless we proceed with this report of the Committee on Preamble and Bill of Rights, there will be nothing else for us to consider to-day, and the result will be an adjournment. If we are ever going to get through with the business of this Convention, it strikes me that we had better proceed to it. I am decidedly opposed to putting this matter over again.

MR. TINNIN. I move as an amendment, that this Convention do now resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the Preamble and Bill of Rights, commencing at section seven.

MR. WILSON, of First District. In section seven, as reported by the Committee on Judiciary, there are two words omitted. I would ask leave to insert them if there be no objection.

No objection was made.

MR. VAN DYKE. Mr. President: I hope before that last motion is put that the motion to postpone until Tuesday and print will be reconsidered, and I do not see why we cannot take these amendments up to-day just as well as Tuesday. Members can take down the substance as they are read from the Clerk's desk. My object was only to proceed orderly and get through with that report. If we resolve ourselves into Committee of the Whole for the purpose of taking up that article, I am in favor of commencing where we left off, at section seven. If that is the will of the Convention I hope that the motion made by the gentleman from Santa Clara, Mr. Laine, will be reconsidered, so as to commence at section seven. The members of the Convention understand thoroughly the amendments. I do not see any object in printing them, because other amendments will be proposed here, and if it is designed to print every amendment offered in Committee of the Whole, why we never will get through with the business.

MR. LARKIN. It is necessary to reconsider——

THE PRESIDENT. It would be out of order.

MR. TINNIN'S motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The committee had under consideration the report of the Committee on Preamble and Bill of Rights.

MR. VAN DYKE. I see no reason why the amendments of the Committee on Judiciary and Judicial Department could not be proposed right here and go right along.

MR. HALE. It seems to me that we have already ordered the amendments coming from the Committee on Judiciary to be printed and made them the special order and we are now in Committee of the Whole and certainly cannot reverse the action. We can take up anything except what is in the special order.

THE CHAIRMAN. It is perfectly competent for any gentleman to move any of these amendments offered by the Committee on Judiciary.

MR. MCFARLAND. Mr. Chairman: We referred sections seven, eight, nine, thirteen, and fourteen to the Judiciary Committee and on their report we have made it the special order for Tuesday next. It has been ordered printed. Now, sir, there is no gentleman in this committee who can tell what these amendments are without having them printed. We may hear them read a dozen times at the desk, but it is impossible to analyze them and give them proper consideration in that way. It does seem to me that there is plenty of work in the Bill of Rights after these sections. I move that the consideration of sections seven, eight, nine, thirteen, and fourteen, be temporarily postponed, and that we take up section ten.

MR. MCCALLUM. I think, sir, if the Secretary will read the report of the Committee on Judiciary and Judicial Department, and the members at the same time take the report of the proceedings of yesterday, they will find that matters discussed at great length are substantially the same. There is but little difference in them from the propositions that were discussed. I deny the necessity of the printing of the report. If the Secretary will read the report of the committee, and gentlemen will look at the amendments proposed yesterday, they will very readily see the difference.

MR. EDGERTON. I understand the position in this matter to be this, that the Convention ordered these sections reported by the Judiciary Committee to print, and made them the special order for Tuesday.

THE CHAIRMAN. Yes.

MR. EDGERTON. Then I make this point of order: That it is beyond the control of the Committee of the Whole to consider these sections reported by the Judiciary Committee this morning.

THE CHAIRMAN. These sections are not before the Convention, but it is perfectly competent for any member to move any one of them as an amendment.

MR. TINNIN. We were delayed here all day yesterday on that same kind of work. If we commence and repeat it to-day we will accomplish nothing. It certainly is time now that something should be done.

MR. MCFARLAND. I did not make any motion for delay at all. There is more work than we can do on the other sections. We can take up the other sections and act upon them, and not attempt to deal with the sections reported by the Committee on Judiciary, until they are printed. I hope the motion will prevail.

MR. WYATT. I hope that the motion of Judge McFarland will not prevail. This Convention referred this matter to the Judiciary Committee for the purpose of having it put into such language and such form as that it could not be criticised; as that it would come out pure coin from the mint, and there could not be any question of the excellency of the work. That coin has been coined from the mint. It has come to us in such solid chunks of wisdom that there will be no question about it whatever, and I see no impropriety in this committee either accepting or rejecting it. We certainly ought not to delay any longer upon this subject. If we are not now prepared to act upon it, we will not be prepared to act upon it when it has been printed and brought back here again on Tuesday morning. I hope now that this Convention will meet this matter. If this Convention will ever be able to decide what will be a proper jury system for the State of California, they have now got all knowledge of the facts that they will have on Tuesday next. It was supposed, in sending us here, that we were competent to pass upon it. We have had time enough to pass upon it, and I say that delays are grown irksome, getting to be insufferable, and it is high time that we got down to solid work in this Convention. I hope the motion will not prevail.

MR. WATERS. I rise to make a point of order. My point of order is this: This Committee of the Whole only has power to consider such matter as may be referred to it by the house. The action of the house is paramount to and binding upon this Committee of the Whole. The Convention has seen fit to segregate the report of the committee, and part of it, it seems, it has referred to the Committee of the Whole, and a part of it it has fixed as a special order for next Tuesday. This special order was made by a paramount body—by the Convention itself—and this subsequent motion, I contend, only applies to that not made the

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special order. The point of order is, there is nothing before the Committee of the Whole except the residue of the report of the committee. We have not all of that report before this Committee of the Whole. The Convention is paramount to the Committee of the Whole. The Convention has made this other part a special order for the Convention itself upon next Tuesday.

MR. TINNIN. The gentleman is certainly mistaken in the position which he assumes. The Convention, before it went into Committee of the Whole, voted to go into Committee of the Whole to consider the report of the Committee on Preamble and Bill of Rights, commencing at section seven. That necessarily brings the whole of the report of that Committee before this body.

THE CHAIRMAN. The Chair has announced an opinion on the point raised by the gentleman from San Bernardino, that these sections were not before the Convention; but at the same time any member might move as an amendment to any portion of the bill any one of these amendments; but the Convention referred this subject back to the committee with instructions to commence at section seven.

MR. WATERS. If that is the fact, I think the Convention voted under a misapprehension. I move that the committee rise, and that the part of the report set as a special order for next Tuesday be so made. Let us vote intelligently and understandingly. I move that the committee now rise.

MR. HAGER. I want to suggest that we should pass sections seven, eight, and nine temporarily, and go on with the balance.

MR. WATERS. I insist upon the motion, from the fact that we can then have the matter printed, and take it up intelligently.

The motion was lost.

THE CHAIRMAN. The question recurs on the motion of Judge McFarland, that the Convention temporarily pass sections seven, eight, nine, thirteen, and fourteen, and take up section ten.

Carried.

RIGHT TO ASSEMBLE.

THE SECRETARY read section ten, as follows:

SEC. 10. The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

MR. BEERSTECHER offered the following substitute:

SEC. 10. The right of the people to peaceably assemble, for any except immoral purposes, shall in nowise be abridged, nor shall there be any manner of hindrance, molestation, or interference with this right.

MR. BROWN. I cannot see any special improvement upon section ten in that amendment. I can discover nothing of the kind. I do not wish to attempt to dictate to this honorable and august body, but I do believe that, as a general thing, where there is no material evil to be cured it would be much better that amendments should not be thrust upon this body. Here the section says: "The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances." That is quite full and complete, and I think covers the ground that was intended. As I am opposed to amendments when they do not have some special importance, and are not better than those reported by the different committees, I shall vote against this.

MR. VAN DYKE. Section ten, as reported by the committee, is the old section. It has received judicial construction, and we thought proper to retain it.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from San Francisco.

The amendment was lost.

MR. LARKIN offered the following substitute:

SEC. 10. The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to direct the Legislature to redress their grievances.

MR. LARKIN. The only amendment to the present provision is the word "petition." It is a word that does not belong to a republic. It is a word that would have done well enough previous to the formation of the American Government. The sovereign does not petition the agent. As every officer is an agent of the sovereign people, we should instruct or direct our Legislatures, and not petition them. That is my point and the reason why I offer that substitute.

The amendment was lost.

THE SECRETARY read section eleven, as follows:

UNIFORM OPERATION OF LAWS.

SEC. 11. All laws of a general nature shall have a uniform operation.

MR. EDGERTON. I move that that section be indefinitely postponed. I do so for this reason: it is a very indefinite and ambiguous clause. It has given the Courts of this State and of the State of Iowa a great deal of trouble, and it is covered by a provision in the plan of the Committee on Legislative Department, which is to the following effect: that the Legislature shall in no case pass a special law where a general law can be made applicable. I would inquire of the Chairman of that committee if that is correct.

MR. MCFARLAND. Mr. Chairman: I hardly think the gentleman perceives how far his motion would go. Now, sir, it is a fundamental principle in our government that no law shall be passed which affects one person and not the balance of the community. That is the principle, as I understand it, that saves all our personal rights. That you shall not make a law that shall apply to me and not to the whole community; that you shall not tax my property and not the property of others equally; that the Legislature has no right to pass laws affecting a portion of the community and not the balance. I know that there has been some little difficulty in the Courts to construe that section correctly, but I think there would be no safeguard to general personal liberty or personal rights in a Constitution that did not have some provision of that kind in it. I do not think that the proposition referred to in the plan of the Committee on the Legislative Department would involve at all the principle intended to be involved in this. Our liberty depends upon the proposition that the Legislature shall not pass a law that will operate upon me personally and allow you to escape. There may be a serious question as to what is a "general law." I do not understand that it would be safe to strike out of this Constitution that all general laws must be uniform in their bearing.

MR. EDGERTON. The clause as it now stands is from the first Constitution of the State of Iowa. It resulted there in conflicting decisions and puzzled the Courts and everybody else. When they came to revise their Constitution they modified it in about the way that it now stands in the plan of the Committee on the Legislative Department. It has been eliminated from four or five Constitutions. It is in our Constitution and the Courts have found this difficulty. The Committee on Revenue and Taxation have adopted a section that all taxation shall be uniform upon all classes of subjects in the territorial limits of the authority levying them. I think there would be no doubt about the propriety of indefinitely postponing the section.

THE CHAIRMAN. The Chair is of the opinion that the motion made by the gentleman is out of order. You cannot indefinitely postpone any proposition in Committee of the Whole.

MR. EDGERTON. Then I move to strike it out.

MR. VAN DYKE. I suggest that we pass it.

MR. LAINE. This section has stood in the Constitution a long time and has received judicial construction. Why should we grumble at it now? Its meaning was settled by the Supreme Court of this State in a case reported in the 17th California Reports. It is a protection and we still desire it.

MR. EDGERTON. I do not care a straw about it, but I wish to remind the gentleman that the decision he has referred to is a matter of arbitrary judicial legislation, and comes within the class referred to a few days ago by the gentleman from Marin as "Judge-made law."

MR. CROUCH. I move to amend by inserting the following in place of the section as it stands:

SEC. 11. All laws shall be general and have a uniform operation. The Legislature shall have no power to pass any local or special laws.

MR. EDGERTON. My objection to that is that the plan of the Committee of the Legislative Department covers that whole ground.

MR. MCCALLUM. I wish to make but one suggestion. I have had but a few minutes to look over the Constitutions of other States, but I find in several the exact language used that is used in the Constitution now, and which the gentleman moves to strike out. I think we had better not strike it out.

The motion to strike out was lost.

THE CHAIRMAN. The question now recurs on the amendment offered by Judge Crouch.

The amendment was lost.

MR. HAGER. I move to amend by adding to the section, "No power of suspending laws shall be exercised unless by the Legislature or by its authority." The amendment is to add that at the end of the section, so that the whole section will read: "All laws of a general nature shall have a uniform operation; no power of suspending laws shall be exercised unless by the Legislature, or by its authority." I find in most of the Constitutions that provision in the declaration of rights, and I do not know of any more proper place to put it than at the end of the section which is now before the committee. It is contained in the new Constitution of Pennsylvania, which I have before me—section twelve of the declaration of rights. It reads: "No power of suspending laws shall be exercised unless by the Legislature, or by its authority."

MR. HUESTIS. I wish to ask the gentleman from San Francisco, Judge Hager, what power there is to suspend a law except the Legislature?

MR. HAGER. Sometimes we have martial law. Sometimes the military are stronger than the civil power.

MR. HUESTIS. Isn't that done by authority of the Legislature?

MR. HAGER. No, sir; not always. I find the provision in the Constitution of Pennsylvania and in several other Constitutions. They undoubtedly had good reason for adopting it. I do not care to enter into any argument upon it, neither do I care particularly about its adoption. It occurred to me to be a very proper thing, and I see no objection to its being engrafted on our Constitution.

MR. CASSERLY. Mr. Chairman: Let me say that I am opposed to all vague terms in a Constitution. I should like Judge Hager to define what is meant by suspending a law. I do not think I ever saw an Act for suspending a law in my experience. I will ask the Judge to favor the Convention with his construction of the clause.

MR. BARNES. In order that this section proposed by Judge Hager may be readily understood, and that he should be spared the trouble of any such elaborate explanation as my colleague requires, I move to amend by inserting before the word "laws" the word "by," so that it will read: "No power of suspending by-laws shall be exercised unless by the Legislature or by its authority." [Laughter.]

THE CHAIRMAN. Does the gentleman from San Francisco, Judge Hager, accept the amendment?

MR. HAGER. My friend Colonel Barnes belongs to the military power, and I am rather suspicious of his amendment. I would rather say, "Soldier, spare this tree."

The amendment to the amendment was adopted.

The amendment as amended was lost.

MILITARY AND CIVIL POWER.

THE SECRETARY read section twelve as follows:

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace, and no soldier shall, in time of peace, be quartered in any house without the

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consent of the owner; nor in time of war, except in the manner to be prescribed by law.

MR. ANDREWS offered the following substitute:

SEC. 12. The military shall be subordinate to the civil power. No standing army shall be kept up by this State in time of peace; and, in time of war, no appropriation for a standing army shall be for a longer time than two years.

MR. ANDREWS. I would state that this is just as the section of our present Constitution is, and before we make any changes in our Constitution I want to know some reason why that change should be made.

MR. VAN DYKE. I will inform the gentleman on that subject in a few words. If the gentleman will observe section twenty-two of the same article he will see a section which prohibits appropriations for any purpose—not only military, but for any purpose—for longer than two years. That section is put in by way of amendment to the old section used in the Constitution, and it is altogether unnecessary in connection with the military, because that section covers everything. Otherwise the section is the same as sections twelve and thirteen of the old Constitution. It simply omits that in regard to appropriations for the reason stated, that section twenty-two covers every appropriation. Otherwise it is exactly like the old Constitution.

The amendment was lost, on a division, by a vote of 46 ayes to 57 noes.

IMPRISONMENT FOR DEBT.

THE SECRETARY read section fifteen as follows:

SEC. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud; and no person shall be imprisoned for a militia fine in time of peace.

MR. SHAFTER. I move to insert after the word "fraud" the words "or force." As it now stands, when a man knocks another down and beats him almost to death he cannot be imprisoned on a civil process. I know of no reason why a man should not have a right to recover for personal injury done as well as for injury to property.

MR. McFARLAND. I am opposed to that amendment. I do not believe that a man should be imprisoned in any civil action whatever. I think we ought to be past that old relic of barbarism. Whenever a crime is committed the criminal machinery of the State affords all necessary opportunity for punishment and imprisonment; but in all cases where civil actions are brought—where a man wants to get money for injury—I do not believe that there ought to be any imprisonment. I shall not move to strike out the words "unless in cases of fraud," but I really think they ought to be stricken out. It amounts to a crime which can be punished under criminal process, and I do not believe we should imprison anybody under a civil process. Therefore, I am opposed to the amendment.

MR. BARBOUR. I move to strike out the words "unless in cases of fraud." I do it for another reason. Under this section the man is not imprisoned for debt. It is for fraud. Therefore, it is safe to say simply that there shall be no imprisonment for debt.

MR. EDGERTON. I understand that this clause of the Constitution, and the legislation had in pursuance of it, is employed mostly in cases of absconding debtors—people who owe debts in the State and are trying to leave. In case a debtor is discovered to be about to leave, and he has money, he may be imprisoned to abide the judgment of a Court. I do not see why the words should be stricken out.

MR. BARBOUR. Evidently the gentleman does not understand me. I do not propose the abolition of imprisonment for fraud, but I say that it does not belong in this section. I understand that in the last Constitution of Georgia they have stricken out the clause, because it implies that the imprisonment is for the debt in cases of fraud, whereas it is for the fraud itself. In another place it can be provided for and punished as a crime.

MR. SHAFTER. Mr. Chairman: I think there are good reasons why my amendment should be adopted. In these cases of fraud it is necessary to set up not only the transaction, but to set out in detail the fraud and the acts that constitute it. Now, we undertake to protect the merchant against frauds perpetrated by making the execution come against the party. Ought not the person who is beaten nearly to death be entitled to redress against the party who wronged him? Why should there not be vindictive damages in the one case as well as the other? It is because these outrages are treated as a public offense that the perpetrators escape entirely or get a light sentence in a Police Court. They do not care anything about a civil action. You are put to the expense of a civil action when the judgment is not worth the paper it is written on. I think that class of cases should come within the law. It is true that they are subject to the criminal law, but the individual who is injured has no personal redress. I hope that these words will be inserted and that proper legislation will follow it, and that these men will at least find that they are living under a government of law.

MR. McFARLAND. If you put in the word "force" the Legislature would have the power to include almost every imaginable civil action in either one category or the other. You might include the penalty of imprisonment in four fifths of the civil actions that are brought. Now, if a man commits an assault and battery, you have a remedy. You can indict him criminally. You want to imprison a man for force in a civil process and then imprison him afterwards criminally. I do not think it is right.

MR. McCALLUM. This word "or force" is entirely too comprehensive. The gentleman from Marin, Mr. Shafter, wants to specify such extreme cases as might exist, and possibly it would be proper, but it appears to me that they ought to be specified more specifically, because the word "force" does not necessarily imply, as in the case of fraud, anything criminal whatever. If he forbids parties to enter upon his land, and if there is a provision of law which makes the entry upon land a breaking of the rules, and there is no damage done, there might be no criminality in it whatever, yet, under this provision, it would be a case for imprisonment in a civil action. So with the destruction of personal property, which might be entirely accidental, and which our laws go so far as to require that even insane persons and children are responsible for, because intention has nothing to do with the actual damages, yet it would be a case of force, and under the amendment proposed by the gentleman from Marin, would be punishable by imprisonment. The provision as reported by the committee is exactly the language of our present Constitution. The Courts have given construction to it, and I do not see the necessity of changing a single word, not even as proposed by the gentleman from San Francisco, Mr. Barbour, that is to strike out the words "unless in cases of fraud." I submit that unless some better reason is given, we had better not make the change. In my judgment, and after an experience of about twenty years in the Courts, I think that class of cases which arise upon fraud ought to be punished by imprisonment, because it is in the nature of crime. And in such cases, if the honest creditor can obtain redress, he ought to have it.

MR. BEERSTECHER. I would first inquire, Mr. Chairman, what the condition of the amendments are at the present time.

THE CHAIRMAN. The gentleman from Marin, Mr. Shafter, moves to amend by inserting after the word "fraud," the words, "or force." The gentleman from San Francisco, Mr. Barbour, moves to strike out the words, "unless in cases of fraud."

MR. BEERSTECHER. It seems to me that the word "force" is very indefinite, and by placing it in that connection it might be construed that imprisonment could only be had where there was both fraud and force.

THE CHAIRMAN. Fraud *or* force.

MR. BEERSTECHER. The word "violence" would be much better. "Cases of fraud or violence." When the proper time comes I will offer an amendment to that effect; that no person shall be imprisoned for debt in any civil action on mesne or final process, unless in cases of fraud or violence. The gentleman from San Francisco, Mr. Barbour, says, that there can be no debt in fraud; that fraud is never in the nature of debt. It seems to me, with due deference to the opinions of the gentleman from San Francisco, Mr. Barbour, that there is a time when fraud is created into a debt. If an action is brought where the burden of the complaint is the fraud of a defendant, and a judgment is had upon that action, when that fraud is merged in the judgment it is to all intents and purposes a debt, and therefore, there may be a time when you have a debt in a civil action for fraud. And that is exactly what is meant by the section. At the proper time I shall move to substitute the word "violence," for the word "force," as that seems to be more limited in its operation.

MR. CAMPBELL. Mr. Chairman: This proposition of the gentleman from Marin is more important really than it appears on its face, because if it is carried, in the first place, you will have to make a considerable increase in your judicial force in the large cities, for you will have actions for assault and battery without number. In the next place, the law provides punishment already for all classes of violence. It provides that in a case of simple battery the Court may imprison the defendant for one year and fine him a thousand dollars. In cases where there is an assault with a deadly weapon, and in such manner as to indicate an abandoned and malignant heart, it is made a felony. An assault with intent to commit murder is made a felony of a higher grade; and so far as that is concerned, there is ample punishment by imprisonment provided by law already in all cases of violence. Now, sir, look at its operation. Here is the trouble. A man is knocked down, or something of that kind. Now he can have his remedy immediately by the criminal law. He can have the man punished in proportion to the offense he has committed. But you let him go on and have the party arrested in a civil action. The case perhaps will not be reached for trial for many months. During that time the defendant, if he is poor, is confined in the county jail, and he is kept there even after he may fully have expiated the offense by suitable punishment. He is kept there until final judgment is rendered, without any redress whatever. Now, it seems to me that by adopting this amendment you will not only increase the judicial labors of the Courts to a very large extent, but you will at the same time give rise to a class of actions which are not brought now, which no man dreams of bringing, but which would be prosecuted simply for purposes of personal revenge, even where the defendant was not worth a dollar, and could make no compensation in money. It would be simply to provide a punishment by imprisonment in addition to that which the law already prescribes, and which is ample in proportion to the offense.

MR. WICKES. At another time I will second the motion of the gentleman from San Francisco, Mr. Beerstecher. "Force" is a word that is only used properly in natural physics.

MR. SHAFTER. Mr. Chairman: I understand very well that when the wrongdoer is taken up and sent to prison on a conviction for a breach of the public peace, that the public has been vindicated; but I would like to inquire what salve that is for the wounds of the man who has been knocked down. He goes to bed, lies there for a year, pays a thousand dollars for a physician, loses his business, is racked with pain, and, it may be, disabled for life. What good does it do him that the man who has plenty of money has been enabled to get off with a fine, or light sentence, and has left the State? It does not do him any good. I want the man who has suffered the violence and the outrage, to have some personal redress. I am looking at the back of the man who has been outraged. Suppose a man is worth the amount of money necessary to reimburse the party for all this loss, he is put beyond the operation of the law. You cannot follow him out of the State into another in which to make him liable to imprisonment, because it is a civil debt, and the remedy would depend upon the laws of the State.

MR. CAMPBELL. Take this case, where the assault is justified, and

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the party then sues. The person sued is poor, and is kept in prison under that mesne process during the whole time until the case is reached on the calendar. What condition is he in?

MR. SHAFTER. If he has been arrested without probable cause, he has a remedy against the party that has him arrested. What do you say to the poor victim who has been kept in his bed for six, eight, or ten months? Undoubtedly if a party is committed to jail where he is wrongfully or unjustly accused, there is some sense in saying that he suffers injury. If a party sues a man for damages he cannot get it unless the man happens to be solvent. There are thousands of just such cases that have to be endured. But there is one thing about it, the man whose property has been burned, the man who has been assaulted, whose domestic relations have been infringed upon, who has been utterly ruined, has no redress at all under the law as it now stands, as against the man who is able to take his money and get out of the way.

MR. WILSON, of San Francisco. I am decidedly in favor of the amendment introduced by the gentleman from Marin, but it strikes me the whole of section fifteen will have to be remodeled. Take the section as it is in the original section of the Constitution, as reported by the Committee on Preamble and Bill of Rights. It reads: "No person shall be imprisoned for debt in any civil action or mesne or final process, unless in cases of fraud." Now, the invariable construction placed upon that is this, that your action must be for the debt, or, in the language of lawyers, *ex contractu*, and you must show that the contract was fraudulent or involves some element of fraud in its nature, so that you are compelled always to have a contract, and to show elements of fraud in connection with it, to have the benefit of the legislation under this provision. But insert, as my friend from Marin wants to, "in cases of fraud in force," and it would be inconsistent. "No person shall be imprisoned for debt in any civil action (*ex contractu*) unless in cases of fraud or force," would certainly not be very clear. Therefore, the language ought to be somewhat modified. As I understand the effect of the law heretofore, it has been this: the Legislature passed certain laws authorizing imprisonment on mesne or final process in cases of fraud where there is a contract, but in cases of tort there has been no imprisonment at all. Now this should be remodeled so as to read in this way: "No person shall be imprisoned for debt in any civil action or mesne or final process"—that portion of the section being complete in itself, having no imprisonment for simple debt—"but the Legislature may provide for imprisonment on mesne or final process in cases of fraud or force." The language modified in that way would carry out the views of my friend from Marin, and would obviate any sort of inconsistency in the section as it would read with the amendment. In the first place it would totally abolish imprisonment for debt, and it seems to me that for a debt alone, there being no corrupt circumstances surrounding it, there should be no imprisonment. This is only an enabling act, authorizing the Legislature, in cases of force or fraud, to enact a law by which parties may be imprisoned on mesne or final process. When it is in order, I shall offer what I have read as a substitute for section fifteen.

MR. VAN DYKE. Would not that be accomplished by simply striking out "for debt?"

MR. WILSON, of San Francisco. Then you would have no prohibition for imprisonment for debt at all.

MR. EDGERTON. I would inquire of the Chairman of the Judiciary Committee, or any other lawyer on this floor, if it was ever supposed that this State adopted this clause of the Constitution by way of penalty? I understand not. I understand that it is purely auxiliary to the civil process, and it is only resorted to as an enforcement of the execution—the payment of the debt. The party may pay up the judgment at any time and he is discharged, or if he goes before a Court and makes a showing that he cannot pay it, he is released. I think the reasons urged by the gentleman from Marin are satisfactory and cogent for the amendment. I do not see any reason for the adoption of the word "violence" in place of the word "force," for the latter is a word that has a specific, technical sense in our Courts. Everybody understands it and knows just what it means. I think it is the proper word, as used by the gentleman from Marin.

MR. BARNES. I do not agree with the gentleman from Sacramento, Mr. Edgerton, as to the purpose, the object, or the force, or legal effect of the right to imprison for debt. There is no such cause of action known to our statutes, or known to the law, except it was known to the common law, that a man might be imprisoned for debt. A man is sued for a debt. If he is guilty of fraud in contracting the debt, which is the simplest case to put, he is arrested for the fraud and not for the debt. It is for the fraud that he is imprisoned. It is no part of the remedy at all. A man gets a judgment for his debt. As a means of correcting a fraud he may imprison the party. At common law, the debtor must pay, or his body was in satisfaction of it. Not so here. He pays, or shows he is unable to pay, and is discharged.

MR. BARBOUR. As I understand the proposition of the gentleman from San Francisco, Mr. Wilson, it is such as I can support, and I will withdraw my amendment for the purpose of allowing him to present it. It seems to be a separation of the question of imprisonment for debt from the other provision for the punishment of fraud.

MR. EVEY. Mr. Chairman: I would like to offer a substitute, and for information I would like to have it read. At the proper time I will offer it as a substitute.

THE SECRETARY read for information:

"No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be provided by law, or in cases where there is a strong presumption of fraud."

MR. BIGGS. This question is on fraud, and therefore I move that it be referred to the Committee on Judiciary.

MR. NOEL. I hope that the section will be referred to the Judiciary Committee. It seems that it is necessary that all the sections of the new Constitution be submitted to the supervision and re-supervision of that committee.

MR. WILSON, of San Francisco. I move to amend in the following manner, offering this as a substitute:

SEC. 15. No person shall be imprisoned for debt or in any civil action on mesne or final process; but the Legislature may provide for imprisonment on mesne or final process in civil actions in cases of fraud or force; and no person shall be imprisoned for a military fine in time of peace.

MR. SHAFTER. I accept that amendment.

MR. BEERSTECHER. I move to strike out the word "force" and substitute the word "violence." I do it for this reason: "force" is too comprehensive a term. It has been repeatedly decided that "force" includes both actual and constructive force. That is to say, Mr. President, if a man through mistake happens to step over into his neighbor's land, or happens to get off the public highway into a private domain, the law, as aptly stated by the gentleman from San Francisco, holds that man liable in an action of trespass, in an action of force, although he never intended it; and the law steps in and says, although there is no actual force yet there is constructive force. Now if we pass the section just as it is we allow the Courts to say that a man may be imprisoned for constructive force, for a thing that he never intended. The Courts in some States have gone so far as to say that even in matters of contract there may be constructive force, and we do not desire to have this word "force" used. Now in an action of trespass the pleading runs "force and arms," where there is no actual force employed, but it never did run "violence and arms," because the word "violence" is not as comprehensive as the word "force." The word "violence" means direct force every time, and the word "violence" never can and never does mean anything indirect. I desire to have men imprisoned in certain cases, but not where they merely constructively have done something forcible. I therefore move, Mr. President, that the word "force" be stricken out, and that in its place be substituted the words "personal violence." Then the section will read: "No person shall be imprisoned for debt in any civil action or mesne or final process, unless in cases of fraud or personal violence." I believe that a man ought to be imprisoned for personal violence. If a man commits personal violence upon another man of course he can be imprisoned, but how does that better the condition of the man that is injured? I have known men in the City of San Francisco to commit assaults and batteries upon other men—almost kill these men, cause them to lay out and expend hundreds of dollars, oblige them to be confined to their beds for months. Afterwards one man came from his couch of sickness, entered complaint in Court, had the man prosecuted criminally, and the man paid his fine. The other brought a civil action and got judgment for damages, but you cannot collect the judgment. Now in such cases, gentlemen, I believe that the strong hand of the law should be placed upon that man's neck, and that he should be put in prison in order to be compelled to pay for the damages that he may have done. But I do not believe, Mr. President, that in case of mere constructive force, where a man never intended to do what the law says that he actually did do, that he ought to suffer imprisonment. Therefore, I hope that the word "force" will be stricken out, and that the words "personal violence" may be substituted in its place.

MR. WICKES. I second the motion.

MR. FREEMAN. I see no need of any amendment to the Constitution as it stands now. This Constitution prohibits imprisonment for debt, except in case of fraud. That exception ought to be there. The gentlemen say that the Legislature ought to have the power to authorize imprisonment in cases of tort. Certainly the Legislature has that power. This section does not prohibit it. There can be an action of debt for force. The action must be in the nature of tort, and therefore it is now, as the Constitution stands, without any amendment, within the discretion of the Legislature to impose such remedies as it may from time to time see fit.

MR. MCCALLUM. I understood the ruling of the Chair yesterday to be that an amendment could be offered to an amendment first. If that is correct, I desire to offer an amendment at this time.

THE CHAIRMAN. The gentleman can offer an amendment for the purpose of perfecting the original section as reported.

MR. MCCALLUM. Supposing this amendment is adopted, can I then offer an amendment—after it has been substituted?

THE CHAIRMAN. Not after the substitute has been adopted.

MR. MCCALLUM. I propose to offer now an amendment to the whole section. I am fully convinced that there are additional cases of wrong which should come within this category than those specified by the single word "fraud." I am perfectly satisfied that in cases of malicious and willful injury to property men should be imprisoned the same as in cases of fraud. I do not see any answer, however, to the point heretofore made that "force" is too comprehensive a term, and the word "violence" does not help the matter at all. Violence may be committed accidentally, as well as otherwise, and yet using that word without qualification would make a case for imprisonment, when there was no wrong intended whatever. Now I have drafted this, and I suppose we all desire to put it in the best form possible. I submit that we should strike out the word "debt" from the first line and insert after the word "fraud," in the second line, as follows: "or in case of willful or malicious injury to person or property." Then it would read: "No person shall be imprisoned in any civil action on mesne or final process, unless in case of fraud, or in case of willful or malicious injury to person or property."

MR. BEERSTECHER. I accept the amendment of Mr. McCallum. The recess hour being at hand, I move that the committee rise, report progress and ask leave to sit again.

Carried.

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IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have directed me to report that they have had under consideration the article on Preamble and Declaration of Rights, report progress, and ask leave to sit again. The hour having arrived, the Convention will take a recess, under the rule, until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M. President Hoge in the chair.

Roll call dispensed with.

NOTICE.

MR. WELLIN. Mr. President: I give notice that on to-morrow I will move to amend rule number one, so that the Convention shall meet at nine o'clock A. M., and also rule number two, so as to have a recess of one hour and a half instead of two hours.

MR. VAN DYKE. I move that the Convention do now resolve itself into Committee of the Whole, the President in the chair.

LEAVE OF ABSENCE.

MR. EDGERTON. I desire to make a motion on behalf of the Secretary of the Convention. I move that he have leave of absence for two days, for the reason that he has to answer in a cause called for trial to-morrow morning.

THE PRESIDENT. There being no objections, leave will be granted.

On motion of Mr. Van Dyke, the Convention then resolved itself into Committee of the Whole, for the purpose of further considering the article on Preamble and Bill of Rights.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The first question is on the amendment offered by Mr. McCallum to section fifteen: "No person shall be imprisoned in any civil action on mesne or final process, unless in case of fraud, or in case of willful and malicious injury to person or property."

MR. McCALLUM. I am requested to say a word as to the single word struck out. I have left out the word "debt." I call the attention of the Convention to this: "No person shall be imprisoned for debt on any mesne or final process." As to the point about the word debt, of course there can be no imprisonment for debt unless it is in a civil action. Now this provides that there shall be no imprisonment for anything else. It includes all actions arising from *ex contractu* and *ex delinquo*.

MR. EDGERTON. I merely want to call the attention of the Convention to the suggestion of the gentleman from Sacramento, Mr. Freeman, this morning, as to the Constitution as it stands.

MR. SHAFTER. I would inquire of the gentleman of Alameda, Mr. McCallum, if the words "willful" and "malicious" are disjoined. Is it "willful and malicious," or "willful or malicious."

MR. McCALLUM. "Willful and malicious."

MR. SHAFTER. I hope the gentleman will strike out the word "malicious." There will be a great deal of difficulty in determining such a clause as that. If an offense is willful, that is enough of itself. The word "malicious" should not have been inserted at all.

MR. McCALLUM. I accept the amendment of the gentleman to strike it out.

MR. McFARLAND. Mr. Chairman: If the Convention proposes to enlarge the number of cases in which arrests may be made in civil cases, I think that the proposition of this gentleman is a good one. But I desire to call attention to the fact that, in all probability, if that class of cases are enlarged, the provisions of the Legislature will be about what they are now. Now, the present law itself provides that the County Judge shall, whenever it appears to him from an affidavit of the plaintiff in a case that the necessity for an arrest exists, order an arrest. That has been the general rule. All the plaintiff has to do is to make a strong enough affidavit, and upon that the party has to be arrested. Now, it appears to me that this is sufficient, and we ought to allow the Constitution to stand as it is. It allows arrests in cases of fraud, and I am opposed to enlarging the field. I do not think we are prepared to enlarge on this matter of imprisonment in civil cases. We can punish anybody for crime, and I do not see how the wounded feelings of the plaintiff are better satisfied by imprisonment in a civil process than in a criminal process. Gentlemen say the State punishes by imprisonment, but that does not help the plaintiff. Can a plaintiff gather any more satisfaction out of the fact that the man is imprisoned on his motion than by the State? You might imprison a man for ten years by a criminal process, and then give him one hundred more on a civil process. But I do not understand how the feelings of the plaintiff are going to be assuaged any more by such a course.

MR. BARNES. Mr. Chairman: I would like to inquire how this motion stands. As I understand it the gentleman from Alameda has introduced an amendment, or substitute, or something or other. If it is an amendment to the proposition submitted by the gentleman from San Francisco, Mr. Wilson, or to the proposition submitted by the gentleman from Marin, Mr. Shafter, I would like to know, so as to understand what we are doing.

THE CHAIRMAN. The gentleman from Alameda moves an amendment to the original section by striking out the word "debt" in the first line, and inserting other words. After this is disposed of, the amendment offered by the gentleman from San Francisco, Mr. Wilson, will be before the Convention. The first question is on the amendment to the original section.

MR. BARNES. Then I ask that before the vote is taken the substitute of the gentleman from San Francisco be read, so that we will have an opportunity of knowing what we are doing.

THE SECRETARY read:

"No person shall be imprisoned for debt in any civil action on mesne or final process; but the Legislature may provide for imprisonment on mesne or final process in civil actions in cases of fraud or force; and no person shall be imprisoned for a military fine in time of peace."

THE CHAIRMAN. The first question is on the motion of the gentleman from Alameda, Mr. McCallum, to strike out the word "debt" and insert other words.

MR. BLACKMER. It seems to me the gentleman should include in his amendment the word "for" with the word "debt," or else it will not make sense.

MR. HALL. Mr. Chairman: It is a matter of indifference to me what may be the sense of the Convention on this proposed amendment, but I cannot sustain this proposition. The amendment, in the shape in which it now stands, provides that no person shall be imprisoned in a civil action on mesne or final process. It seems to me that if this proposition is embodied in the Constitution in its present shape, it will cut off the power of the Courts to enforce their judgments in very many cases. The gentlemen of the profession in the Convention will understand me when I say that in a very large class of cases within the jurisdiction of a Court in equity, the power of the Court to enforce judgment lies in its jurisdiction to issue process against the prisoner. A bill is filed in equity to enforce the performance of a contract. A bill is filed to compel the surrender of legal title which the plaintiff claims he has. A bill is filed in divers cases, and the judgment cannot be enforced except the arm of the Court is used by issuing a writ against the prisoner. Now it occurs to me that in cases of that kind, if there shall be a decree in a suit of "A" against "B" requiring "B" to do some act or thing which he has engaged to do under a contract, and he refuses to comply with the judgment of the Court, where is the power of the Court to compel the performance of that act if this proposition shall be inserted in the Constitution in the shape in which it now appears. In any of the cases which I have enumerated, wherein judgment may be rendered by the Court, the Court would be powerless to enforce the execution of its orders, because the Constitution steps in and interferes, and says the man cannot be imprisoned on any mesne or final process. A bill in equity to enforce a contract, and all the cases I have mentioned, as well as many others, are all in this category of civil actions. I ask the gentleman to explain to me how a Court would enforce its decrees in cases of that kind? It may be, Mr. Chairman, that I do not understand this subject, but it certainly seems to me that if you incorporate this provision into the Constitution you will shear the Court of all its power to enforce its decrees and orders which they may render in that large class of cases, and that is something I will not consent to.

MR. McCALLUM. I can see some point in the remarks made by the gentleman, and I ask that the words "for debt" be restored, so as to read, "no person shall be imprisoned for debt in any civil action," etc. That answers the objection made by the gentleman from San Joaquin.

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was lost on a standing vote—ayes, 58; noes, 59.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from San Francisco, Mr. Wilson. The Secretary will read it.

THE SECRETARY read:

"No person shall be imprisoned for debt, or in any civil action on mesne or final process; but the Legislature may provide for imprisonment on mesne or final process in civil actions in cases of fraud or force, and no person shall be imprisoned for a military fine in time of peace."

MR. ROLFE. Mr. Chairman: I confess I am not able to understand that amendment. The original section of the Constitution is plain and can be easily understood, and therefore I shall vote against it, as it is something I cannot understand. This is one of the things which should be so plain and explicit that there can be no two opinions as to the intent and meaning, and such is not the case with this amendment.

MR. CROSS. Mr. Chairman: I have been waiting for gentlemen to express their views on this matter. It seems to me that we should not at this time begin to take the backward path in this matter of imprisonment for debt. Now, we have two kinds of proceedings, civil and criminal. Any man who does anything which makes him deserving of being put in jail is liable to be put there upon criminal process, and that is the only process by which he should be confined. If a man is guilty of any of these crimes which the gentlemen mention, there is law enough to punish him as much as he deserves to be punished. If the laws are not sufficiently severe, then let the responsibility rest with the Legislature of the State, and let that body increase the punishment until it shall be sufficient for every kind of offense.

Now, I am opposed to this matter of punishment coming into civil cases, for the reason that whenever the punishment of a crime comes in a civil case, then it takes it out of the hands of the State and places it in the hands of the individual, whose interest is not to preserve the peace of the State and to protect the property of the citizen, but whose sole interest is to be revenged, perhaps, and gratify his own feelings. For that reason I am opposed to any amendment which drags into the Constitution a provision to punish by imprisonment in civil cases. If there is an offense committed there is a mode of punishment. If an offense is sufficient to entitle a man to be sent to jail, the matter should fall into the hands of the State, and the State should prescribe the punishment to be inflicted, just as it would in a case of murder; but let us not degenerate into a condition where any man can be the cause of imprisoning another in this way. Any man who has been wronged has his redress by going before the Grand Jury, or entering a complaint before the proper officer, and in that way prosecuting the man who has committed an offense, and this is the way that punishment should be meted out, and in no other.

THE CHAIRMAN. The question is on the adoption of the substitute. Division has been called for.

MR. WILSON, of First District. Mr. Chairman: I will say one word, though I know the Convention is tired. Now, the benefit of this

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amendment which I have offered is that the Legislature may have it in their power to make laws which are known to be necessary. A man may have been cruelly beaten or maimed for life, and his assailant, perhaps, slightly punished for assault, and he may flee the country with his money and property before any final determination of a suit for civil damages shall have been determined. Under this amendment the Legislature has power to make a law under which he can be arrested and made to give bail to answer the civil suit for damages. He can be made to pay for the damages and injuries he has inflicted. So in case of fraud, if you cannot imprison a man on mesne process and make him give bail, he will go out of the State with his money in his pocket, leaving the man he has defrauded without any redress in the world until final judgment is entered. In all cases of this kind, you should give an opportunity to hold a man to bail, and make him give security for the payment of any judgment that may be recovered. Certainly the Legislature should be authorized to pass such a code of laws as that. Of course the details must be left to them—we cannot enter details here. We are to clothe them with the authority and to restrict that authority when we think it ought to be restricted. This provision is not for the purpose of punishing anybody, as the gentleman has said, the criminal laws will do that, but to give to the injured party the right to hold his assailant to bail, so that he may not gather up his money and chattels and evade the law by flying from the State before final judgment can be entered.

MR. VAN DYKE. I think the word "force" is too broad. Now if the gentleman will say "personal violence," it would be better. If you leave it to the Legislature that will include all torts. I am opposed to leaving any such power to the Legislature.

THE CHAIRMAN. The question is on the amendment of the gentleman from San Francisco, Mr. Wilson.

Division being called for, the amendment was lost: ayes, 42; noes, 74.

MR. MCFARLAND. I would like to offer a substitute to section fifteen:

"No person shall be imprisoned in any civil action except for contempt of Court, nor for a militia fine in time of peace."

MR. MCFARLAND. I simply offer that as carrying out my idea that there should be no imprisonment in civil cases.

MR. BARRY. There has been a great deal of time wasted in arguing this matter, and I am in hopes it will be fully determined. I will say that I believe the resolution—or substitute—offered by the gentleman from San Francisco, Mr. Wilson, was a good one. I think it ought to have been retained in there. As the matter now stands, I am opposed to any change of the Constitution on this point. I believe the word "force" should remain. I believe, when a man attempts to leave the State for the purposes of fraud he should be brought back. The Legislature has passed laws covering that matter, and I don't think the word should be stricken out of the Constitution; and I don't see any good to come from making any change in the section; and for that reason I shall vote against the amendment.

THE CHAIRMAN. The question is on the amendment.

The amendment was rejected.

MR. EVEY. I wish to offer a substitute. I have taken it from the Illinois Constitution, and I believe it is a good one and should be adopted. It is as follows:

"No person shall be imprisoned for debt, unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law, or in cases where there is strong presumption of fraud."

Now I think that is a good amendment, and I hope, Mr. Chairman, it will be adopted.

The amendment was lost.

THE CHAIRMAN. If there is no further amendment to section fifteen the Secretary will read section sixteen.

THE SECRETARY read:

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, or the remedy for the enforcement or breach thereof, shall ever be passed.

MR. VAN DYKE. Mr. Chairman: The old Constitution reads:

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

Now, the only change made by the Committee on Preamble and Bill of Rights is to add the words, "or the remedy for the enforcement or breach thereof." Now, we all know—at least every lawyer on the committee knows—that the statute of limitations is understood to apply the remedy. There may be cases where the statute of limitations may destroy the right to recover. The purpose of this amendment is to reach just such cases as that. This is the only amendment to the old section, and this is the only purpose of it. It does not prevent the Legislature from changing the remedy at all, but it does prevent the Legislature from so changing the remedy as to impair the right to enforce a contract. Now, suppose there is a promissory note running four years; suppose, after it has run two years, the Legislature shall say the statute of limitations shall run only two years, and apply to existing contracts as well as to contracts to be made afterwards. There would be a very serious question to be determined; and it is to meet such questions that this amendment is made.

MR. NOEL. Mr. Chairman: I move an amendment to the section by striking out all that portion of it embraced between the word "contract" in the second line, and the word "shall" in the third line, so as to restore the section of the old Constitution. These words which I move to strike out have been interpolated by the Committee on Preamble and Bill of Rights. It seems to me, sir, that the section as it now reads, as reported by the committee, goes entirely too far. It is true that the right of the citizen in his contract should be protected, that the right should never be impaired by the Legislature; but this section as it now reads it seems to me does more than that; it prohibits the Legislature from altering the means by which his rights were enforced. Under the old section these rights have been protected—amply protected—in my judgment, and the change proposed by the Committee on Preamble and Bill of Rights is not necessary, and I therefore move to strike out the words interpolated by that committee so as to restore the old Constitution. We have lived under it a good many years, and I have yet to hear of any wrong done under that section, and I hope it will stand.

MR. JONES. Mr. Chairman: The only question I understand to be raised by the amendment offered, is to the point that this is not sufficiently distinct, and may be construed to take away the right of the Legislature to change the remedy. Now, as the section stands in the Constitution, it simply prohibits the impairing of the obligations of a contract. Now, the obligation of a contract may have been understood to go to the extent of remedy for the breach as the means of the enforcement, but that is certainly a very close construction. The only object of the amendment made by the Committee on Preamble and Bill of Rights, as stated by the Chairman, Mr. Van Dyke, was to supplement the words, "impairing the obligations of a contract" by the express words "or the remedy for the enforcement or breach thereof." The mere obligation of a contract is of no value to anybody. That is to say, the legal obligation. There is nothing left; if there be anything left, they cannot be enforced at law, and there is nothing left, except the moral obligation, and when we rest upon that, we do not want the statute at all. I submit we cannot reasonably suppose that our appellate Court will not give the construction to these words which are put in here that will be perfectly safe. We cannot reasonably suppose that the highest Court in the State will hold that that means that the Legislature cannot change the remedy for the enforcement of a contract. I see no harm in the world that this amendment, which is incorporated into the section by the committee, can do, unless we are to suppose that the Supreme Court should hold that it would deprive the Legislature of the liberty of making any change in the law in regard to the remedies for breach of contract, and in regard to the means for the enforcement of a contract, which would certainly be a forced interpretation on the section which has been reported by the committee. I think the simple meaning of this is that they shall not impair these contracts. The word impair is plain, and it is difficult to make it any plainer. It is that they shall not render them insufficient, or take away the means by which they are to be enforced, or make any change which shall endanger the rights of the parties. It seems to me that is the meaning, and it is plain as it can be, and I know that there was no other object sought to be accomplished. There are contracts, of which the utility or benefit can only be attained by the enforcement of the contract itself. That is the kind of contract to which this section applies. There are other contracts which can be construed liberally. There certainly should be a requirement that the Legislature shall not take away, by any enactment, the means of having a remedy for the breach of these contracts. If this object is not accomplished by this amendment, we should change it so that it will accomplish the object sought. There certainly can be no objections urged to a proposition in the organic law that the Legislature shall not take away the means for the enforcement of a contract, or take away the remedy for a breach.

MR. WINANS. Mr. Chairman: I hope this Convention will adopt as a cardinal rule of procedure that amendments to the present Constitution in all cases, except where the wishes of the people and the exigencies of the times demand a change, shall not be adopted. Now, sir, the Constitution as it stands in this case in reference to this question is identical with the provisions of the Constitution of the United States, which says: "Congress shall pass no bill of attainder, ex post facto law, or law impairing the obligation of a contract." But the words proposed to be introduced here have a very doubtful meaning. It would be difficult to determine at this time what would be the effect of depriving the Legislature of the right to pass remedial statutes. Now, sir, the rule has always been heretofore and always acceded to as eminently proper in itself, that the Legislature had the right to pass remedial statutes, but under the limitations of the Constitution which forbids the impairment of contracts. Subject to that constitutional limitation, it is entirely proper that the Legislature should have control of the matter. I am opposed to the section as advocated by the Committee on Preamble and Bill of Rights.

MR. GREGG. I offer as a substitute the sections of the old Constitution pertaining to the same subject:

SEC. 16. No bill of attainder, ex post facto law, or law impairing the obligation of contracts, shall ever be passed.

I prefer that to the section reported by the committee, and I move it as a substitute.

THE CHAIRMAN. The motion of the gentleman from Lake, Mr. Noel, leaves it precisely as it was before in the old Constitution, and amounts to the same thing. The question is on the motion to strike out so as to leave the section as it is in the present Constitution.

The motion prevailed and the words were stricken out.

THE CHAIRMAN. The Secretary will read section seventeen.

THE SECRETARY read:

SEC. 17. Foreigners eligible to become citizens of the United States under the naturalization laws thereof, while bona fide residents of this State, shall have the same rights in respect to the possession, enjoyment, and inheritance of property as native born citizens.

MR. VAN DYKE. I move that the section be stricken from the article. It is before another committee, has been considered, and will come up in their report before the Convention in another part of the Constitution. There is no use of considering it twice, and consuming the time, and I therefore move to strike it out.

THE CHAIRMAN. The question is on the motion to strike out the section.

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MR. WHITE. Mr. Chairman: I trust the section will not be stricken out. It belongs right there where it is. I wish to offer an amendment.

MR. VAN DYKE. Mr. President: The reason why I make this motion is to save double discussion. There is a section reported by the Committee on Chinese which embraces that matter, and which will be thoroughly discussed when it comes before the Convention. It is hardly worth while to spend a day or two in discussing this now.

MR. WHITE. Mr. Chairman, I have an amendment I wish to offer to the section, which I send up.

THE SECRETARY read:

"Foreigners who are intending to become citizens of the United States, under the naturalization laws thereof, who now or may hereafter become residents of this State, shall enjoy the same rights respecting the ownership, possession, enjoyment, and inheritance of property as native born citizens. Foreigners not intending to become citizens, under the naturalization laws of the United States, shall not have the right to own any real property, nor to make a will, nor to take any property by inheritance; and all contracts made by them, with a view to the renting or occupation of land, houses, or tenements, shall in the future be void."

THE CHAIRMAN. The first question will be on the motion of the gentleman from Alameda, Mr. Van Dyke, to strike out the section.

The motion prevailed, and the section was stricken out.

THE CHAIRMAN. The Secretary will read section eighteen.

THE SECRETARY read:

SEC. 18. No form of slavery shall ever exist in this State, and there shall be no involuntary servitude unless for the punishment of crime of which the party shall have been duly convicted.

MR. FREUD. Mr. Chairman: I move to insert in lieu of section eighteen, as read, the first section of the report of the minority of the Committee on Preamble and Bill of Rights, as follows:

"No property qualification shall ever be required for any person to vote or hold office, or to become a juror."

MR. FREUD. Mr. Chairman: The section now before us is one of no slight significance. It involves principles vital to the stability and perpetuity of free institutions. Its adoption or rejection will mark the growth or decay of the American republic. Upon a question of such momentous consequences I cannot refrain from uttering my innermost sentiments. With a view to brevity and precision, the proposition is readily divisible into three heads: First, no property qualification shall ever be required for any person to vote; second, to hold office; and third, to become a juror. Let me briefly call your attention to the provisions relating to this subject in the various State Constitutions. Section Eighteen, Article One, Bill of Rights of the Constitution of Mississippi reads: "No property qualification shall ever be required for any person to become an elector." Section Seventeen, Article One, Bill of Rights of the same Constitution reads: "No property qualification for eligibility to office shall ever be required." These two sections are found in very nearly the same terms in the Bill of Rights of the following State Constitutions: Alabama, Arkansas, Kansas, Louisiana, Minnesota, North Carolina, South Carolina, and one or two others. As to the qualification for jurors, let me read a few lines from Proffatt on Jury Trial:

"Lately the tendency is to dispense with a property qualification, and to make the selection from citizens who are qualified voters. Thus, in Mississippi a property qualification was formerly required, but the Constitution of eighteen hundred and seventy provided that no property qualification shall ever be required of any person to become a juror; and under this it was decided that the juror shall no longer be restricted to a class possessing property of a certain value. So, in Connecticut, a property qualification was formerly required, but since eighteen hundred and thirty-seven a freehold qualification is dispensed with in talesmen as well as other jurors. Up to eighteen hundred and sixty-seven, in Alabama, the list of jurors was taken biennially from householders and freeholders, but by an Act passed in eighteen hundred and sixty-eight, the list is to be taken from the registered voters. There are about a third of our States which require a property qualification for a juror."

In no part of the Constitution of California is there any provision requiring any property qualification for anything. It has been reserved for the legislators of our day to put into the Code of California a property qualification for jurors. Had the members of the Convention of eighteen hundred and forty-nine anticipated such an illiberal and unrepublican Act, they certainly would have inserted in the Constitution of California the declaration now before us. I propose briefly to draw your attention to the scope and value of this section. Let us go to the very bottom of the subject. What qualities should a man possess to be a good citizen, an honest officer, and a faithful juror? What should be the essential attributes of citizenship, of office, and of the jury? They may all, I think, be ranged under the three cardinal virtues, honesty, ability, and patriotism. Look at these three words in their purest and broadest significations and you have before you the three primary elements which together go to form the noblest citizen, the ablest officer, and the worthiest judge. First and foremost of them all is honesty. Without that, all the others are but the echoes of treachery and the fawnings of hypocrisy. Any brain, no matter how capable, any heart, no matter how large, that is not anchored to the rock of honesty, is but the rotten wreck floating upon the polluted waters of the Styx. Now, sir, what relation is there between property and honesty? Are they in any way essential to each other? Why, in the very question is its own answer. To-day the most notorious thoroughfare to property is through perjury, gambling, and crime. It is a sad commentary that few men are now willing to drudge along the dreary road of toil to reach that precious goal.

Under our second head we have placed ability. To be sure the citizen, the officer, and the juror should be men able to discharge their respective duties. Some persons say that as it requires sense, and intelligence, and foresight to acquire property, therefore the property owner, and he only, should be intrusted with the ballot, the office, and the jury. And now while I admit that a peculiar kind of intelligence is in many cases requisite for the acquisition of property, nevertheless I am fully convinced that the possession of property is by no means a criterion of intelligence. You cannot measure a man's brains by the size of his town lots, nor his judgment by the length of his bank account. Under our third head we have placed patriotism. No man, I hold, should be permitted to serve under the American system unless he holds it in reverence and love. No man, I hold, is entitled to the rights and privileges of this republic unless he is willing to die in their defense. Now, sir, let me ask in the name of reason, can no man but a property owner be a patriot? The history of other lands besides our own has illustrated upon many battle fields the fallacy of that assumption. When we come to look into the question there is in reality no laboring man who is not a property owner — no laboring man who is not a taxpayer. Capital is nothing but accumulated labor, and he who assists in the accumulation is no less a capitalist than a laborer. The man who drives my wagon is honest, and honorable, and intelligent, but while he has no property he certainly helps me to pay the taxes upon mine. His name as well as mine should appear upon the assessment roll. He cannot feel otherwise than interested in the welfare of his State. What virtue does he lack that he should be branded with the mark of an unjust discrimination? What crime has he committed that should render him incompetent to judge of his fellow men? I tell you, gentlemen, it is a foul stain upon the statute books of California. The whole matter resolves itself into one short sentence: As political rights and privileges are not dependent on or modified by property, therefore no property qualification should affect the right to vote, to hold office, or to become a juror. Wealth is in no way the index of honesty, integrity, or intelligence. Poverty is not necessarily the brother of crime. No man is a better citizen because he is rich, and no man is a worse citizen because he is poor. If you must have a political test let it be brains and not dollars. If any gentleman will propose a just and practicable educational qualification for suffrage, for office, and for the jury, I pledge him my vote and my hand. But, sir, a property qualification is monstrous. It is unworthy of this liberal age. It is, in truth, a relic of barbarism. You can't find any approach to it in the laws of the United States, and you will not find it in any of the late Constitutions of the various States of the Union. The American republic was founded upon equality. She was born and reared under the broad panoply of liberty to all. She has grown and thrived under the imperial ægis of injustice to none. In my opinion the proudest boast of the republic to-day is that before and under her laws there is no rich and no poor, no proud and no lowly, no weak and no strong. Each citizen is the peer of all and in all each is an equal unit. That is the genius of our free institutions. In that lies their life. Vitiate that spirit and they must fall. California can never afford to depart now from a custom so sanctified and a principle so just. I am not a blind venerator of antiquity. But, sir, when a principle which more than a century ago inspired a great nation is handed down to us as the palladium of our liberties, I cannot silently witness its destruction. Property qualifications of any and every kind are not in consonance with the spirit of an American State. They are equally as oppressive and obnoxious as the infamous tests of religion. I hope, sir, as I believe, that there is sufficient manhood and patriotism in the honorable body to declare to posterity that no property qualification shall ever be required for any person to enjoy the rights and privileges of the State of California.

MR. TINNIN. Mr. Chairman: I desire to say only a word with reference to this question, for it is one to my mind that requires but little elucidation. The gentleman who has just preceded me, has built his argument upon the idea that property is nothing in this government. Now, Mr. Chairman, it is a fact that self-interest always governs men. Now, sir, if there is no local interest, there can be no local object to carry out anything that will protect the community. If you elect a man as Sheriff of your county, you select a man who himself has property to be protected, and then your interest is his interest. You want a man who has something at stake himself, and he will carry out your wishes and preserve order and the public peace. If this section should be adopted, instead of having jurors who feel an interest in the welfare of the community, we would have tramps, and persons who are constantly floating from one State to another, and from one county to another, and who have no interest in the local affairs of the community. I say, Mr. Chairman, it would be a dangerous thing to do: when we adopt such an idea as this, we are treading on dangerous ground, one that comes nearer to our rights and liberties than anything else we can do. I hope the amendment will be voted down, and that this Convention will declare against such a dangerous innovation as this.

MR. EDGERTON. Mr. Chairman: The gentleman from San Francisco, Mr. Freud, has made an exceedingly creditable speech on this subject, to which I have listened with a great deal of pleasure. I think, however, he overlooks the clear distinction between the office, duty, function, or whatever you may call it, of a juror, and the right of a person to the exercise of the right of suffrage and the right to hold office. The two latter are clearly right. A man has a right to seek an office. He has a right to vote. Certainly that right should not be dependent upon the amount of property he owns. But, sir, when it comes to serving on the jury, it is a different matter, and he is indeed treading on dangerous ground. That is an obligation which every citizen is wont to shirk, and every lawyer knows that the very best citizens shift in every way possible to find an excuse to get rid of that duty. The law as it now stands requires that the names of jurymen shall be on the assessment roll for real or personal property. That is a custom that has been sanctioned by experience in this State for a quarter of a century. It is regarded as a conservative guard to the liberty and property and lives of the citizens of the State. I think, as far as the jury system is concerned, in this respect it should be left as it is now.

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MR. VAN DYKE. Mr. Chairman: I will state the reason why the majority of the committee declined to entertain that section. One of the reasons has already been assigned by the gentleman from Sacramento, Mr. Edgerton. The right to vote and the right to hold office are already defined in the other parts of the Constitution, and the only remaining proposition is in regard to who shall be competent jurors. Those are the reasons why the majority of the committee declined to insert that provision in the article on Preamble and Bill of Rights.

MR. BIGGS. Mr. Chairman: I move to strike out all after the word "office," and this will leave out all about the qualifications of jurors. I will remind my esteemed friend from San Francisco that if he refers to the Constitution of Missouri, I know something about that [laughter] and there they require a property qualification before a man can serve in the Senate. He must have paid taxes for twelve months prior to his election to the Senate. I ask if it is not proper for a man to be on the assessment roll before he shall be allowed to serve on a jury? I therefore offer an amendment to strike out all after the word office. Mr. President, it is well known by every gentleman within the sound of my voice, that every man wants to shift the responsibility of serving on the jury. I want them to have an interest in the community before they are allowed to sit on the jury. If my life is in jeopardy, I don't want a lot of tramps and hoodlums to try me. [Laughter and cries of louder.] Oh, I presume you can hear me, if you can't I will stop it.

MR. FREUD. Mr. Chairman: I accept the amendment to strike out all after the word "office."

MR. CAPLES. Mr. Chairman: I simply wish to state, as a member of the Suffrage Committee, that that committee will report on the subject of the qualifications of voters and office holders. The committee will report a qualification that covers the whole ground proposed by the gentleman, except as to jury, and it is as well, perhaps, to strike that out, which leaves nothing but the question as to whether it is proper to insert it here or in the suffrage department. I think, however, it will be a little out of place here; that it belongs in the suffrage department, and will be reported on to the entire satisfaction of the gentlemen who are so uneasy about property qualifications in regard to this matter, for there will be no property qualification provided for in that report.

THE CHAIRMAN. The question is on the motion of the gentleman from San Francisco, Mr. Freud, to insert the following: "No property qualification shall ever be required for any person to vote or hold office."

MR. MILLS. Mr. Chairman: I move that the committee now rise, and recommend that this matter be referred to the Judiciary Committee.

Lost.

The question being upon the substitute offered by the gentleman from San Francisco, Mr. Freud, it was lost.

MR. EDGERTON. Mr. Chairman: I offer a substitute to the section. It is the corresponding section in the old Constitution.

THE SECRETARY read:

SEC. 18. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State.

MR. VAN DYKE. Mr. Chairman: The only change made in the section was to make it conform to the language of the thirteenth amendment of the Constitution of the United States, "of which the party shall have been duly convicted," having been added after the word "crime." It also declares that there shall be no form of slavery existing in this State. That language is taken from the Constitution of Alabama. I call attention of the members to the fact that there is no such thing as slavery for the punishment of crimes, which is the way it stands in the old section. It has reference to slavery as well as to involuntary servitude, so we thought best to put it in this form, that there shall be no form of slavery in this State. The old section says: "Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this State." There is no such thing as "slavery for the punishment of crime." It means involuntary servitude for the punishment of crime.

MR. EDGERTON. Mr. Chairman: This Convention will do well to adhere as strictly as may be with safety to the language, text, and spirit of the old Constitution; to depart from it in no instance, unless there is some real necessity for the change. The old section says: "Neither slavery nor involuntary servitude unless for the punishment of crime." It is precisely the same thing, and with due respect to the gentleman, it is much more aptly expressed in the old Constitution, and I hope it will be adopted.

MR. VAN DYKE. We simply say in addition, "of which the party has been duly convicted."

THE CHAIRMAN. The question is on the substitute offered by the gentleman from Sacramento, Mr. Edgerton, substituting section eighteen of the old Constitution.

The substitute was adopted by a vote of 79 ayes.

THE CHAIRMAN. The Secretary will read section nineteen.

THE SECRETARY read:

SEC. 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue, but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and persons and things to be seized.

THE CHAIRMAN. There being no amendments to section nineteen, the Secretary will read section twenty.

THE SECRETARY read:

SEC. 20. Treason against the State shall consist only in levying war against it, adhering to its enemies, or giving them aid and comfort. No person shall be convicted of treason, unless on the evidence of two witnesses to the same overt act, or confession in open Court.

THE CHAIRMAN. There being no amendments offered, the Secretary will read section twenty-one.

THE SECRETARY read:

SEC. 21. No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature; nor shall any citizen, or class of citizens, be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens.

THE CHAIRMAN. There being no amendments, the Secretary will read section twenty-two.

THE SECRETARY read:

SEC. 22. No money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State; nor shall any grant or donation of property ever be made thereto by the State.

MR. VAN DYKE. Mr. Chairman: I move that section twenty-two be stricken from the article, for the reason that the Committee on Legislative Department have prepared a section embracing the same thing, and I think that is the proper place for it.

THE CHAIRMAN. The question is on the motion to strike out section twenty-two.

The motion prevailed.

THE CHAIRMAN. The Secretary will read section twenty-three.

THE SECRETARY read:

SEC. 23. The provisions of this Constitution are mandatory and prohibitory, unless by express words it is declared to be otherwise.

THE CHAIRMAN. There being no amendments, the Secretary will read section twenty-four.

THE SECRETARY read:

SEC. 24. This enumeration of rights shall not be construed to impair or deny others retained by the people.

MR. REYNOLDS. Mr. Chairman: Section twenty-one was passed before my attention was called to one word in it, which ought to be corrected. I call the attention of the committee to the word "shall," in the fourth line, after the word "terms." It seems to me that the word "may" would be better in that connection.

MR. AYERS. I think the word "shall" is the better word in that connection.

MR. EDGERTON. The suggestion of the gentleman from San Francisco, Mr. Reynolds, it seems to me would destroy the very object of the provision.

THE CHAIRMAN. The motion to change is not in order, unless by unanimous consent of the committee.

MR. EDGERTON. I object.

THE CHAIRMAN. There being an objection, it is out of order.

MR. REYNOLDS. I simply desired to correct the sentence; I do not desire to change the phraseology.

THE CHAIRMAN. The gentleman had an opportunity while that section was under consideration.

MR. BARNES. Mr. Chairman: I ask leave of the Convention to change the language of section twenty-three, which says: "The provisions of this Constitution are mandatory and prohibitory, unless by express words it is declared to be otherwise." I don't know whether it refers to provisions; if so, it should read, "they are," instead of "it." "It are" declared to be otherwise. It certainly ought to be "they are." The Constitution is not mandatory, it is the provisions of the Constitution that are mandatory. It is just as well to be right as to be wrong. There are perhaps fifteen or twenty such discreditable errors in these reports, and I think the Convention should not, knowingly, let them pass.

MR. VAN DYKE. This section was taken from the draft sent up by the gentleman from San Francisco, Judge Hager; so the gentleman can level his batteries across the way.

THE CHAIRMAN. If there is no objection the Secretary will correct it.

MR. BARNES. Mr. Chairman: It is now twenty-five minutes to four o'clock.

MR. AYERS. Not time to adjourn yet.

MR. VAN DYKE. Mr. Chairman: I move that the committee now rise.

The motion prevailed.

IN CONVENTION.

THE PRESIDENT. I am instructed by the Committee of the Whole to report to the Convention that they have had under consideration the report of the Committee on Preamble and Bill of Rights, and ask leave to sit again.

MR. EDGERTON. Mr. President: If it is in order I move to lay the report on the table, for this reason: two or three committees, with one of which I am connected, are anxious to complete their work, and they would like to have a chance to look this over between this and to-morrow morning.

MR. VAN DYKE. Why not make it the special order for Tuesday. I make that motion, that it be made the special order for Tuesday next.

MR. MCCALLUM. I wish to call attention to the fact that we have not yet considered the Preamble. I move that we consider the Preamble.

THE PRESIDENT. That will come off last of all in the entire Constitution.

MR. MCCALLUM. I have not heard any reason why we should not go on and finish it.

THE PRESIDENT. The question is on making the article the special order for Tuesday next.

The motion prevailed.

ADJOURNMENT.

MR. HUESTIS. I move that the Convention do now adjourn.

MR. WHITE. I move that the report of the Committee of the Whole be printed and laid on the desks of members.

THE PRESIDENT. There being no objections it will be so ordered.

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MR. EDGERTON. I desire to give notice that the Committee on Revenue and Taxation will meet immediately.

MR. BLACKMER. The Committee on Future Amendments will meet to-morrow morning.

THE PRESIDENT. The motion is now to adjourn.

Carried.

And at three o'clock and thirty-five minutes P. M. the Convention adjourned.

THIRTY-SIXTH DAY.

SACRAMENTO, Saturday, November 2d, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hale,	Overton,
Ayers,	Hall,	Porter,
Barnes,	Harrison,	Prouty,
Barry,	Harvey,	Pulliam,
Barton,	Heiskell,	Reddy,
Bell,	Hilborn,	Reed,
Biggs,	Hitchcock,	Reynolds,
Blackmer,	Holmes,	Ringgold,
Boggs,	Howard,	Rolfe,
Boucher,	Huestis,	Schell,
Brown,	Hughey,	Schomp,
Burt,	Hunter,	Shafter,
Campbell,	Inman,	Shoemaker,
Caples,	Johnson,	Shurtleff,
Casserly,	Jones,	Smith, of 4th District,
Chapman,	Joyce,	Smith, of San Francisco,
Charles,	Kelley,	Soule,
Condon,	Keyes,	Stedman,
Cowden,	Kleine,	Steele,
Cross,	Laine,	Stevenson,
Crouch,	Lampson,	Strong,
Davis,	Larkin,	Sweasey,
Dowling,	Larue,	Swenson,
Doyle,	Lavigne,	Swing,
Dudley, of Solano,	Lewis,	Tinnin,
Eagon,	Mansfield,	Townsend,
Edgerton,	Martin, of Santa Cruz,	Tully,
Evey,	McCallum,	Turner,
Fawcett,	McConnell,	Vacquerel,
Filcher,	McCoy,	Van Dyke,
Finney,	McFarland,	Van Voorhies,
Freeman,	McNutt,	Walker, of Tuolumne,
Freud,	Mills,	Waters,
Garvey,	Moffat,	Webster,
Glascock,	Moreland,	West,
Gorman,	Morse,	Wickes,
Grace,	Nason,	White,
Graves,	Neunaber,	Wilson, of Tehama,
Gregg,	Noel,	Wyatt,
Hager,	Ohleyer,	Mr. President.

ABSENT.

Barbour,	Herrington,	Smith, of Santa Clara,
Beerstecher,	Kenny,	Stuart,
Belcher,	Lindow,	Terry,
Berry,	Martin, of Alameda,	Thompson,
Dean,	McComas,	Tuttle,
Dudley, of San Joaquin,	Miller,	Walker, of Marin,
Dunlap,	Murphy,	Weller,
Estee,	Nelson,	Wellin,
Estey,	O'Donnell,	Wilson, of 1st District,
Farrell,	O'Sullivan,	Winans.
Herold,	Rhodes,	

LEAVE OF ABSENCE.

One day's leave of absence was granted Messrs. O'Sullivan, Thompson, Beerstecher, Barbour, Dunlap, Winans, Terry, McComas, Dudley, of San Joaquin, Kenny, and Weller.

Two days leave of absence was granted Messrs. Herrington and Martin of Alameda.

MR. VAN DYKE. I move that the reading of the Journal be dispensed with.

Carried.

REPORT.

MR. CAMPBELL, from the Committee on Executive Department, presented the following report:

To Honorable J. P. Hoge, President Constitutional Convention:

MR. PRESIDENT: The Committee on the Executive Department respectfully beg leave to report back to the Convention the following propositions, with the recommendation that no further action be taken thereon, viz.: Proposition No. 5, by Mr. Barbour; No. 88, by Mr. Davis; No. 394, by Mr. Davis; No. 307, by Mr. McConnell; No. 149, by Mr. Shoemaker; No. 133, by Mr. Lewis; No. 22, by Mr. Townsend; No. 299, by Mr. White; No. 324, by Mr. Schell; No. 286, by Mr. H. W. Smith; No. 148, by Mr. Shoemaker; No. 265, by Mr. Joyce; No. 270, by Mr. Lindow; No. 211, by Mr. Martin, of Santa Cruz.

The committee further reports that it has prepared an article, entitled article number five, executive department, which is herewith submitted. In preparing this article we have taken the corresponding article in the present Constitution as the basis of our action, and have proposed but few alterations.

Section one remains unchanged.

In section two the time when the Governor shall enter upon the duties of his office is changed to the Monday after the first Tuesday in January.

In section three the time required for the residence of the Governor in this State prior to his election is changed from two to five years, and he is required to be thirty years of age, instead of twenty-five, at the time of his election.

Sections four, five, six, seven, and eight remain unchanged.

Section nine is altered to as to confine the Legislature, when convened on extraordinary occasions, to the consideration of the subjects mentioned in the proclamation.

Sections ten, eleven, and twelve remain unchanged.

Section thirteen is omitted, the subject-matter thereof having been referred to another committee.

Sections fourteen and fifteen remain unchanged.

Section sixteen is altered by providing that the Lieutenant-Governor shall be incapable of holding any other office during the time for which he shall have been elected, except as provided in this Constitution.

Sections seventeen and eighteen remain unchanged.

Section nineteen is amended by striking out all after the word "law."

Section twenty is omitted.

Section twenty-one is altered by fixing the compensation of the several officers therein named, except the Attorney-General and Surveyor-General, whose compensation is left to be provided for by the Legislature, for the reasons that it is possible that under this Constitution the duties of the Attorney-General may be largely increased, and he may be required by the Legislature to devote his entire time to his official duties. As to the Surveyor-General, the committee is disposed to believe that the duties of the office are less onerous than formerly, and that possibly the office might be dispensed with at no distant period.

All of which is respectfully submitted.

ALEX. CAMPBELL, Chairman.
J. R. W. HITCHCOCK,
BENJ. SHURTLEFF,
A. R. ANDREWS,
JOEL A. HARVEY,
R. S. SWING,
D. W. HERRINGTON,
JOHN P. WEST,
C. V. STUART.

November 1st, 1878.

DRAFT OF EXECUTIVE DEPARTMENT.

The following draft, submitted by the committee, was read by the Secretary:

ARTICLE V.

EXECUTIVE DEPARTMENT.

SECTION 1. The supreme executive power of this State shall be vested in a Chief Magistrate, who shall be styled the Governor of the State of California.

SEC. 2. The Governor shall be elected by the qualified electors, at the time and places of voting for members of the Assembly, and shall hold his office four years from and after the Monday after the first Tuesday in January subsequent to his election, and until his successor is elected and qualified.

SEC. 3. No person shall be eligible to the office of Governor who has not been a citizen of the United States and a resident of this State five years next preceding the election, and attained the age of thirty years at the time of said election.

SEC. 4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Assembly, who shall, during the first week of the session, open and publish them in the presence of both houses of the Legislature. The person having the highest number of votes shall be Governor; but, in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint vote of both houses, choose one of said persons so having an equal and the highest number of votes for Governor.

SEC. 5. The Governor shall be Commander-in-Chief of the militia, the army and navy of this State.

SEC. 6. He shall transact all executive business with the officers of government, civil and military, and may require information, in writing, from the officers of the executive department, upon any subject relating to the duties of their respective offices.

SEC. 7. He shall see that the laws are faithfully executed.

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

SEC. 9. He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto.

SEC. 10. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

SEC. 11. In case of a disagreement between the two houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

SEC. 12. No person shall, while holding any office under the United States or this State, exercise the office of Governor except as hereinafter expressly provided.

SEC. 13. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of California."

SEC. 14. All grants and commissions shall be in the name and by the authority of the people of the State of California, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 15. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner, as the Governor; and his term of office and his qualifications of eligibility shall also be the same. He

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shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President pro tem. of the Senate shall act as Governor until the vacancy be filled or the disability shall cease. The Lieutenant-Governor shall be disqualified from holding any other office, except as specially provided in this Constitution, during the term for which he shall have been elected.

SEC. 16. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

SEC. 17. A Secretary of State, a Controller, a Treasurer, an Attorney-General, and a Surveyor-General shall be elected at the same time and places, and in the same manner as the Governor and Lieutenant-Governor, and whose term of office shall be the same as the Governor.

SEC. 18. The Secretary of State shall keep a fair record of the official acts of the legislative and executive departments of the government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law.

SEC. 19. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General shall each, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected, which compensation is hereby fixed for the following officers for the two terms next ensuing the adoption of this Constitution, as follows: Governor, six thousand dollars per annum; Lieutenant-Governor, the same per diem as may be provided by law for the Speaker of the Assembly; the Secretary of State, Controller, and Treasurer, three thousand dollars each per annum, said compensation to be in full for all services by them respectively rendered in any official capacity or employment whatsoever during their respective terms of office; *provided, however*, that the Legislature, after the expiration of the terms hereinbefore mentioned, may by law diminish the compensation of any or all of said officers, but in no case shall have the power to increase the same above the sums hereby fixed by this Constitution. The Legislature shall, by law, fix the compensation of the Attorney-General and the Surveyor-General, and may, in its discretion, abolish the office of Surveyor-General; and none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty.

MR. CAMPBELL. I move that the report and draft be ordered printed and be made the special order for Monday, November fourth.

Carried.

NEW PROPOSITIONS.

THE PRESIDENT. Resolutions and propositions relative to the Constitution are now in order.

SUPPORT OF COMMON SCHOOLS.

MR. HUESTIS introduced the following proposed amendment to the Constitution, providing for the support of the common schools of this State:

Resolved, That the following provisions be adopted in that article of the Constitution which relates to education:

SECTION —. The Legislature shall provide for a system of common schools, by an ad valorem tax on all of the taxable property of this State, by which a school shall be kept open and supported in each school district at least six months in every year.

SEC. —. It shall be the duty of the Legislature to preserve inviolate, for the support of the common schools, the funds already accrued and to accrue from the proceeds of sales of the sixteenth and thirty-sixth sections of land donated by Congress for common school purposes in this State.

Referred to Committee on Education.

IRRIGATION.

MR. HOWARD introduced the following proposed amendment to the Constitution, in relation to irrigation:

ARTICLE —.

SECTION 1. The Legislature shall have power to pass laws to provide for an equitable distribution of water for irrigation, preserving vested rights.

SEC. 2. The Legislature may provide for the condemnation of rights of way for irrigating canals, compensation to be first made, and for the condemnation of existing water rights, compensation being first made.

Referred to Committee on Water and Water Rights.

LABOR AND CAPITAL.

MR. HOWARD introduced the following proposed amendment to the Constitution, to secure coöperative societies between labor and capital:

ARTICLE —.

SECTION 1. The Legislature shall have power to pass laws to facilitate coöperative societies where the capitalist furnishes all the capital and the laborer all the labor, and secure an equitable division of property.

SEC. 2. To faciliate corporations by which the laborer furnishes both the labor and the capital.

SEC. 3. To faciliate associations in which the capitalist pays current wages, and, in addition, a certain share of the profits, after deducting interest and a sufficient sum for the renewal of machinery.

SEC. 4. To facilitate coöperative stores.

SEC. 5. To organize Courts of Arbitration by which all contests between the employer and the employé may be settled.

Referred to Committee on Labor and Capital.

STREET ASSESSMENTS.

MR. REYNOLDS introduced the following proposed amendment to the Constitution, in relation to street assessments:

SECTION —. No municipal corporation shall have the power to levy or collect an assessment upon any property, or upon its owner, for the opening or improvement of any street, or to defray the expense of any street work, which assessment shall be greater in amount than the additional value given to such property by the opening or improvement of such street, or the doing of such street work.

Referred to Committee on City, County, and Township Organizations.

REGISTRATION OF VOTERS.

MR. ANDREWS introduced the following proposed amendment to the Constitution, concerning the registration of voters:

SECTION —. The Legislature may, by law, provide for the registration of voters, and may make such law applicable to such subdivisions of the State as may be proper.

Referred to Committee on Right of Suffrage.

TAXATION.

MR. NOEL introduced the following proposed amendment to the Constitution in relation to taxation:

SECTION —. All property in this State shall be assessed, for purposes of taxation, at its actual cash value.

SEC. —. All persons in this State shall pay taxes on what they are actually worth, and no more.

Referred to Committee on Revenue and Taxation.

SECRET TRIBUNALS.

MR. O'SULLIVAN introduced the following proposed amendment to the Constitution, entitled "illegality of secret tribunals declared—punishment of participants in them to be provided for:"

SECTION —. Secret organizations and tribunals of an extra-judicial character, which assume to impose penalties upon persons, without sanction of law, are prohibited; and the Legislature is directed to provide, by the full force of law, for the suppression of such tribunals, and the punishment of all persons participating in their proceedings.

Referred to Committee on Legislative Department.

LABOR AND CAPITAL.

MR. HARVEY introduced the following proposed amendment to the Constitution, relative to labor and capital:

ARTICLE —.

SECTION 1. The interests of labor and capital being identical, and any legislation tending to promote the interests of the one necessarily and in the same proportion advances the prosperity of the other, therefore no arbitrary restrictions shall be imposed by law tending to deprive or curtail the natural rights of either labor or capital in this State, and all legislation in relation thereto shall be such as may be best calculated to advance the interests of the rich and poor alike; and to that end the Legislature of this State may, by law, provide for the establishment of a Bureau of Industrial Resources, to be under the management of a Commissioner, who shall be elected by the people at the times and places prescribed by law, and in the same manner as other State officers, and whose term of office shall be the same.

SEC. 2. The duties of such officer shall be defined by law, and he shall receive such compensation for the performance thereof as may be fixed by the Legislature; *provided, however*, that such compensation, and all the expenses of said Bureau, shall not in any case exceed the sum of —— dollars per annum.

Referred to Committee on Labor and Capital.

MOTIONS AND RESOLUTIONS.

MR. REYNOLDS. I move that resolution number eighteen be taken from the table and referred to the Committee on Legislative Department.

Carried.

The resolution was as follows:

Resolved, That the Committee on —— be and are hereby instructed to inquire into and report as to the expediency of so amending the Constitution as to limit the future acquisition of land by any one person, or association of persons, or corporation.

MR. STEDMAN. According to notice given yesterday, by Mr. Wellin, he not being here, I wish to offer the following resolution:

Resolved, That Rule One be amended so as to read as follows.

RULE ONE—HOUR OF MEETING.

The Convention shall meet each day at nine o'clock A. M., unless it shall adjourn to some other hour.

And be it further resolved, That—

RULE TWO—RECESS.

The Convention shall take a recess each day from twelve o'clock M. to one and a half o'clock P. M.

MR. STEDMAN. I presume that there will be no necessity for debating this question at all. I think the Convention will unanimously agree to adopt that rule. We would be saved an hour and a half session each day, and it would expedite our business, therefore I will say no more in regard to it, but simply move its adoption.

MR. CASSERLY. Mr. President: I hope the resolution will not be adopted. Nothing will be gained by longer sessions, and I think more

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time should be taken to consider these propositions out of the Convention, if the work is to be done properly, and so as to be a benefit to the State. The recess now granted is not a minute too much. For my own part, with all the diligence I can use, I am hardly able to get back here in time.

MR. GRACE. I move that the resolution be laid on the table.

The motion prevailed, on a division, by a vote of 64 ayes to 41 noes.

MR. TINNIN offered the following resolution:

Resolved, That the State Controller is hereby requested to furnish this Convention with the cost of maintaining the militia of this State, commencing with the year eighteen hundred and fifty-six—said report can be made either in gross amounts or in detail.

Adopted.

MR. CASSERLY offered the following resolution:

Resolved, That the Superintendent of Streets of the City and County of San Francisco be and he is requested to transmit to this Convention the following information:

First—The amount of money paid by private owners for street assessments in the said city and county within the past twelve years.

Second—The amount of money paid by said city and county for street work of every description for the same period.

Third—Any other information within his control bearing on the subject of this resolution.

Adopted.

MR. CONDON offered the following resolution:

Resolved, That this Convention shall not recognize the claims for pay of any person or persons who is now or who may be hereafter working in or about this Capitol, and who has not been duly elected or appointed by said Convention.

Adopted.

MR. FILCHER. Mr. President: I desire now to make my motion, in accordance with notice previously given in reference to amending rule sixty-four.

THE SECRETARY read:

"No leave of absence shall be granted until the reasons therefor shall have been fully stated and approved by an affirmative vote of the Convention."

MR. FILCHER. Mr. President: I would ask to amend the proposition by striking out "an affirmative vote of the" so that it will read: "No leave of absence shall be granted until the reasons therefore shall have been fully stated and approved by this Convention." It seems to me that the very least that this Convention can ask of those desiring leave of absence is that the reasons therefor shall be given. The custom under which we have been acting I know is one of long-established precedent, but I think it is a bad one. It seems to me when members enter into a contest for positions of this kind they should consider the character and nature of the responsibility they are assuming. They have no right to accept such positions unless they can discharge the duties, and they ought to resign their seats unless they can give at least half of the time to the duties they were elected to perform. The precedent is a bad one, and the privilege is to a certain extent abused here. We are entitled to the attendance of the members on this floor. We have here to-day an example—a forcible illustration—of the abuse of this privilege. Though we have not the reasons for the absence of one half the members, yet it is undoubtedly a fact that many of them are absent on trivial causes, and could as well be here as not. I know that leaves of absence have been asked for members for the most trivial causes. I, for one, would like to know, when a man asks for leave of absence, what are his reasons, and if they are not sufficient, I shall stand here to protest.

MR. STEDMAN. I second the motion.

MR. LARKIN. I think there will be no necessity for that resolution to be passed at this time, for this reason: if we avoid making special orders a week in advance it will compel members of this Convention to remain here and we will have no necessity for that rule. We have now two or three propositions that have been made special orders. Had they not been made special orders our Convention would have been full this morning. I think if this Convention would determine to have no more special orders it would be all right.

MR. HUESTIS. I think this is a question we can dispose of very quickly. I move to lay the resolution on the table.

The motion prevailed, on a division, by a vote of 72 ayes—noes not taken.

MR. LARKIN. I desire to give notice that on Monday I will move to amend Rule Fifty-two by striking out all after the word "to" and inserting "the Committee of the Whole," so that propositions and resolutions introduced hereafter shall be referred to the Committee of the Whole instead of the various committees. I want that this Convention shall do its work in Committee of the Whole.

MR. OVERTON. The Committee on State Institutions and Public Buildings find it necessary before making their report to visit some of the State institutions. We have received a number of communications from different institutions requesting us to come and visit them, and we want to make some investigation in relation to the State Prison. In order to do this it is necessary to have a leave of absence for a few days. I move that the Committee on State Institutions and Public Buildings be granted four days' leave of absence.

Carried.

MR. SWING offered the following:

Resolved, That the Adjutant-General be requested to give the number of killed, wounded, and missing of the militia since the organization of the National Guard of this State.

[Laughter.]

THE PRESIDENT put the question and announced: "The ayes have it unanimously."

MR. HILBORN. I rise to call the attention of the house to the resolution which they have adopted to permit some committee to travel around and visit the public institutions of the State. Are they aware that the adoption of that resolution involves the payment of the mileage? Is that the intent? I would like to have that resolution read again. If it is the deliberate intention of this body to allow this committee to visit the public buildings of this State and pay their expenses while they are gone, I want the house to adopt the resolution with a knowledge of that fact.

MR. BROWN. I merely rise to inquire, did the gentleman move a reconsideration? I was under the impression that we could not reconsider on the same day.

THE PRESIDENT. The gentleman can only give notice of his intention to move a reconsideration, if he desires.

MR. CONDON. As a member of that committee and a resident of San Francisco——

THE PRESIDENT. It is not before the Convention at all. It is disposed of.

MR. HILBORN. I give notice of a motion to reconsider.

MR. MCCALLUM. I move to suspend the rule in order to make that motion now.

The motion prevailed, on a division, by a vote of 88 ayes; noes not taken.

MR. HILBORN. I move to reconsider the vote by which the Committee on State Institutions and Public Buildings were given leave of absence to visit the public buildings of the State. I cannot see what good purpose could be subserved by this roving commission. Each Legislature appoints committees of this kind to visit these institutions, for the purpose of ascertaining what appropriations should be made, but what object there is in a committee from this body paying such a visit is beyond my comprehension. It will entail upon the Convention the expense of paying their mileage, because it is the law of all parliamentary bodies of this kind, that where we authorize committees to go away we impliedly promise to pay their expenses, and so far as I know the expenses are always paid.

MR. CONDON. There is no necessity of the motion made by the gentleman from Solano, Mr. Hilborn. It is not the intention of the committee to exact from this body any mileage. The members of the sub-committee are residents of San Francisco, and at the earnest request of the Secretary of the State Prison Commission, they intend to visit that institution; and I believe the Chairman of the committee well understands that it was the acknowledged intention of that body not to exact any mileage whatever. If I am in order I would move that the committee have leave of absence, provided, however, that no mileage be granted.

THE PRESIDENT. It is not in order at present. The first question is on the motion to reconsider the vote by which leave was granted the Committee on State Institutions and Public Buildings.

The motion prevailed.

MR. OVERTON. The committee did not anticipate any pay, and do not expect to charge this Convention a cent. It was to accommodate the State Prison Commission as much as anything else. They wanted us to meet them there in San Francisco, and let them know at what time they could meet us. We have received communications from the State Prison Commission in San Francisco, wanting to know when we would come, and we did not expect to charge this Convention a cent. We have agreed that we would invite them to meet us, and we would go down there for the purpose of conferring with them. We simply want the leave of absence.

MR. CONDON. We have already notified that Commission as to the time and place in which the sub-committee will meet them, next Monday.

MR. HAGER. Mr. President: I do not see any propriety in passing a resolution so general as to include all the public buildings of the State. Almost every Legislature sends out its committees to make reports in regard to the public institutions, and these reports can be found on file for the information of every member. There is some propriety in sending the committee to the State Prison [laughter] so far as our labors are concerned here.

MR. BARNES. I rise to a point of order, and ask that the words of the gentleman be taken down. He talks of sending a committee of this body to the State Prison.

MR. HAGER. I am glad to see that my friend is so ready to come to the rescue of members here in his military capacity. I think there is some propriety in sending the committee to that institution [laughter], because there is a proposition pending here in regard to the management of that institution in the future. It has been in the charge of the Lieutenant-Governor; and it has always been a question before the Legislature whether the Lieutenant-Governor properly should be charged with these duties. It has always been a question whether we should not have a Warden or some Commission to control and govern that institution; and therefore it may be desirous for us to have some information so far as it refers to that institution. In regard to all the other public institutions of the State, I think we have sufficient information. I would propose to limit the action of the committee to that one institution.

MR. ROLFE. Mr. President: I cannot see the propriety of sending any of this Convention to the State Prison, unless they go at the expense of the State. If there are persons who desire to confer with this committee, here is the place to confer with them. As to the other institutions of the State, why, we have a member in one other institution, and are liable, if we stay here long over the one hundred days, to get into some of the other institutions or asylums—orphan asylums, for instance. [Laughter.] I must say, that if this is for the purpose of accommodating any of the State officials, it is their place to come here and confer with this body, so that we can go on with the business of the session. There are more of us absent already than there ought to be. There is a special order for next Tuesday, and these members ought to be here.

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MR. BARNES. Mr. President: While we are discussing this subject, I desire to express my thanks to my colleague from San Francisco for his compliment to me as Chairman of the Military Committee, and, in return, I do now move that he be sent as a committee of one to the lunatic asylum.

MR. BROWN. Mr. President: It appears to me from what has been said that the Legislature, at different sessions, has received information concerning the State Prison and other matters that may concern this body. That it is necessary for this body to have a special committee to attend to it and see what is necessary to be done, I do not see the point. I think there is nothing of the kind. I am convinced that there is nothing that would convince the minds of these members upon the question of the State Prison but that they can have access to without going to San Francisco and investigating the subject any farther than the records show, and the information that may be attainable here in this city. I therefore see no reason whatever for sending that committee.

MR. LARKIN. I move the previous question.

MR. CAMPBELL. If the gentleman will allow me, I desire to make a suggestion. I suggest that the committee have two days leave of absence, commencing on next Saturday. That would enable them to return on Monday afternoon and enable them to do what they desire.

MR. LARKIN. I withdraw my motion.

MR. TINNIN. Mr. President: I desire to call attention to the fact that a majority of the Commission of the State Prison reside in Sacramento, that is, the Governor and Secretary of State. They can have their meeting in Sacramento without going to the State Prison.

MR. CAPLES. I move to amend by providing that the committee, after its arrival at San Quentin, be made "trusties."

THE PRESIDENT. The amendment is out of order.

MR. HUESTIS. The resolution is now before the house. I move to lay it on the table.

MR. TULLY. Mr. President: I would like to inquire, is there any rule that prohibits or prevents that committee from going to the penitentiary if they want to—provided they be guilty?

MR. HUESTIS' motion prevailed, and the whole subject-matter was laid on the table.

MR. STEDMAN offered the following resolution:

Resolved, That the Secretary of State be requested to place on the desk of each member of this Convention a copy of report of Senate committee of the session of eighteen hundred and seventy-seven and eighteen hundred and seventy-eight on Chinese.

MR. STEDMAN. Mr. President: We will soon consider the report of the Committee on Chinese, and I think if this report is placed in the hands of each member it will be a very valuable aid to them. I understand that there are some thousand copies in the Secretary of State's office at present, useless, and that is the reason why I offer the resolution.

MR. HILBORN. Mr. President: I move to amend by adding to the resolution, "provided they are on hand in the Secretary of State's office." Don't let us start in printing them.

MR. STEDMAN. I accept the amendment.

The resolution as amended was adopted.

MR. WATERS. Mr. President: It seems there is very little business before the Convention, and in view of the fact that there is yet a great deal of committee work undone I now move that this Convention adjourn.

MR. SHAFTER. We have some business before the Convention, and that is the report of the Committee on Pardoning Power.

The motion to adjourn was lost.

PARDONING POWER.

MR. SHAFTER. Mr. President: If it is in order I wish to call up the report of the Committee on Pardoning Power. I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Pardoning Power.

Carried.

IN COMMITTEE OF THE WHOLE.

The Secretary read the draft of the proposed section reported by the committee, as follows:

AMENDMENT NUMBER FOUR HUNDRED AND FORTY-FIVE—ARTICLE FIVE.

SEC. 13. The Governor shall have the power to grant reprieves, and the Governor and the Chief Justice of the Supreme Court shall have power to grant pardons and commutations of sentence, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as they may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature, at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, and its date, the date of the pardon and reprieve, and the reasons for granting the same. Neither the Governor and Chief Justice nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been previously thrice convicted of felony.

MR. SHAFTER. Mr. Chairman: In the draft which the Committee on the Pardoning Power have submitted, there are four or five alterations of the old Constitution, only two of which are at all material. The Governor retains the power of reprieve in all cases, while the power to grant pardons and commutations of sentence is vested in the Governor and Chief Justice of the Supreme Court. It was not thought advisable to trouble the Chief Justice with simple questions of delay of execution, and we thought it right that the Governor should have the power to grant reprieves until the testimony is produced, without consulting the Chief Justice. In cases of impeachment, the power remains the same as before. Now, in the fourteenth line we have made what we deem to be an important amendment, by the addition of the words, "and the reasons for granting the same." That has never been required before, and we think it ought to be stated in addition to the date of the offense and pardon. We, therefore, inserted these words so that the Governor should report to the Legislature the reasons for granting the pardons or commutations of sentence. The chief amendment is made at the bottom. "Neither the Governor and Chief Justice, nor the Legislature, shall have power to grant pardons or commutations of sentence in any case where the convict has been previously thrice convicted of felony." I am told, sir, that there are in the State Prison men who are serving their sixth term, and some who are serving their tenth term. Men sentenced three and four times are exceedingly common there. This is probably owing, in a great degree, to the manner in which they are treated there, which was well described by my friend from Alameda, Judge Campbell, the other day. They look upon it, in some respects, as the happy Valley of Rasselas, where they are free from care. I hope that we shall make the third or fourth sentence more pregnant of evil consequences to the convict than they have been heretofore. For myself, I would almost allow a jury to sentence them to death, on the ground that, being past reformation, their lives were worthless; but that is rather contrary to the opinions of the public, and I simply want to suggest that they should not be put in the category of mercy. There is no use of turning them out, as all experience shows.

The principal amendment is on the power of commutation and pardon which has been vested in the Governor and Chief Justice. It is exceedingly difficult to state the grounds that ought to govern the executive clemency. It has been left undetermined. No rules have been laid down in the Constitution, none have been attempted to be stated in the laws, because it is exceedingly difficult for any one to state the grounds on which alone executive clemency should be granted. The Governors themselves have never attempted to reduce it to any rule. There are cases where simple sentiment, simple emotion, or outside influence has operated upon the Executive and induced him to grant pardons. While they cannot fully agree with the arguments presented to them, they still have respect for those making the application and must entertain their plea, and, while not fully justifying their own course, silently acquiesce, even when their judgment cannot render any good reason for it. Such has been the system and the law. Such has been the idea of the Constitution by leaving it in the discretion of the Executive. But there have been great abuses in this State and elsewhere, as everybody understands. Men have been pardoned when there was no reason for it—at least an outsider can see no reason for it.

Now, it was thought that by associating the Chief Justice with the Executive, the latter would receive potential and important aid. In many cases of convictions for felony the reasons for and against granting a pardon or commutation of sentence would be more fully understood by the Chief Justice than by the Governor. It was suggested to place the pardoning power in the hands of a Board of Wardens of the State Prison. We were disinclined to grant it to them because they are political officers to some extent and certainly business officers. The men in command of the prisons know how to purchase beef, buy wood, make contracts, and conduct the business of the institution, but they are not men selected for the qualifications necessary to discriminate as to who ought to be pardoned. In Vermont, my native State, they have Wardens, but the power of pardon is confined to the Executive. I have taken occasion to look over various Constitutions upon this subject. Massachusetts, Maine, and New Hampshire, leave it to the Governor and a Council. This system has worked well there because the men appointed in the Council have been men of age and experience who have retired from the active affairs of life, and who are entirely removed from the political world and its atmosphere. Take the case of Dr. Webster, who murdered Parkman, and the appeal made to the Governor and Council of Massachusetts. They hung him notwithstanding all of the applications that were made to them. But I submit, without any disparagement to this State, that we should not be very likely, if the experiment were tried, to get that kind of a Council. In Maryland it is referred to the Governor and Justices of the Court of Appeals. In about four or five States it is referred to the Governor and Senate. But in seven eighths of the States—something like twenty-five or thirty—it is left to the Governor alone, just as it is in California now. If we were sure of getting the right material in the office of Governor, for one I should be in favor of retaining it there. It seems to me that in referring it to a Board one man may affect the whole of them. If, however, a Board should be attempted, it should require unanimous action on the part of the whole Board, so as to see that there should not be a loss of justice.

These were the general ideas that seemed to impress themselves on the committee. It is recommended as a sort of compromise between those who favored leaving the power in the hands of the Governor and placing it in a Board. We think that probably it ought to be referred to the Governor and Chief Justice of the Supreme Court, but we are not very obstinate in this matter. I therefore move its adoption.

MR. CAMPBELL. Mr. Chairman: I move to amend by striking out "Chief Justice of the Supreme Court" and inserting in lieu thereof "Attorney-General." The reasons given by the Chairman of the Committee on Pardoning Power are certainly excellent, but there is one difficulty in the way, and that is that it is absolutely impossible for the Chief Justice of the Supreme Court to attend to the business. He will have as much as he can do to attend to the duties of his Court, and it will be absolutely impossible for him to discharge the duties which it is

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proposed to place upon his shoulders. I therefore suggest that the Attorney-General be substituted in his place. So far as all these cases that go to the Supreme Court are concerned, the Attorney-General will have had occasion to examine the records. He is an officer entirely independent of the Governor, elected by the people, possessing that class of qualifications which ought to enable him to determine questions of this kind, and in all respects, I think, a very suitable person to be selected to associate with the Governor in this duty. While there has been a great deal of comment upon the exercise of the pardoning power, it has chiefly arisen from a few isolated cases where, undoubtedly, gross errors have been committed in the exercise of that power. But there is a very general mistake as to the number of pardons which have really been granted by the Governor during the period that he has exercised that power. I am informed by a gentleman at my left who was in the last Legislature, that upon inquiry of the proper authorities it was ascertained that the whole number of pardons since the organization of the State, is only seven hundred and three up to the first of January last. I had myself supposed it was much larger. But these are the official figures. Still, I think it would be better that two persons should concur in the exercise of this power, and I know none in official life better qualified than the Governor and Attorney-General. I therefore offer this amendment.

MR. HOWARD. Mr. Chairman: I move to amend the amendment so as to add the Attorney-General and the Chief Justice of the Supreme Court; so that the two may act.

MR. TINNIN. I move to amend by adding, "and the Judge before whom he was convicted, if living in this State."

MR. CAMPBELL. I hope not. I think there is danger in calling in the Judge who tried the case. The Judge in trying a case necessarily forms very strong impressions in regard to the party, and of course he is unacquainted with his subsequent conduct and various other matters. I had an idea myself, when the matter was to a certain extent before the Committee on Executive Department, that it would be better to have the recommendation of the Judge who tried the case or the Court where it was tried. But the objection occurred to me that the Judge might possibly have his mind strongly biased in the case, and for that reason I offered the amendment in the shape I have offered it.

MR. TINNIN. Mr. Chairman: I think that it is urgently necessary that the people should be represented in a case of pardon, and I offer this amendment for that purpose. The Judge who resides usually in the vicinity where the crime is committed, and who is conversant with all the facts and circumstances, is certainly more competent to judge of the crime than strangers who know nothing about it. I maintain that he is the source from whom the pardon should come. He represents the people of the place where the crime is committed. We all know how Governors are worked upon by sympathy. I hope that in the discharge of this duty the Convention will hold that it is necessary for the people to be represented, and they can only be represented by the Judge or person before whom the person was convicted.

MR. TOWNSEND. Mr. Chairman: I hope the amendment will prevail. I hope that the people of the State will be represented in the matter of pardons, for it is evident that pardons have been obtained entirely too easy. I myself have seen many instances where the most hardened criminals, men who had led long lives of crime, have been pardoned in a very short time. It has been ably argued by gentlemen upon this floor that the law had very little terror for criminals, and it is undoubtedly true. Men who commit crime are sentenced to the State Prison, which is certainly a very little punishment. But if it is distasteful to them, if they do not like the place, they get some one who has political influence, or some one who can work on the sympathies of the Governor, and in a very short time they are pardoned out. I know a circumstance that occurred in my county, where a part of the crime was committed in my county, and the party was convicted in an adjoining county. He was a man who had led a criminal life for many years. He was convicted and sent to the State Prison for thirty years, and the Governor was about pardoning him out a short time ago upon information that was not correct, because he did not get his information from the county or place where he was convicted. I myself conversed with him, and told him something of the man's history, referred him to parties that had known the man years before, and I think, after getting the information that he has, the man will not be pardoned. I think that the Governor is often misled, and in this way criminals are pardoned and turned loose on the community to commit fresh depredations and crimes. After the people of the county have been put to all the expense and trouble of convicting them, it amounts to nothing. I hope the amendment offered by the gentleman from Trinity, Mr. Tinnin, will be adopted.

MR. CROSS. Mr. Chairman: It seems to me that there are two reasons why this amendment should not prevail. One class of cases in which the pardoning power is frequently used is that where a person has been convicted under the influence of some local prejudice or feeling against him. These things sometimes reach the Judge and the men who are to compose this Board of Pardons should, as far as possible, be separated from the local influence which caused the conviction. Now, if this Board of Pardons is to consist of three, the three should meet and confer together, which will involve great inconvenience. Take the case of Judge Fawcett, of Santa Barbara County, who occupies a seat here. He would either have to come from a great distance to confer with the Attorney-General and the Governor, or the Attorney-General and the Governor would have to go to his district. Now this would be a matter of great inconvenience, and it would frequently result either that he could not participate in any way in the matter, or else he would have to leave important duties to attend to it. It seems to me that it would be very improper to make the District Judge, the man who has tried the case, the man to determine whether a man is worthy of being pardoned.

MR. LARKIN. Mr. Chairman: I shall oppose both the amendments and the substitute offered by the gentleman from Trinity, Mr. Tinnin, and for this reason: I believe that the true principle is to place it in the hands of a Commission, and that the majority of that Commission should be elected with a view to the duties and have control of the penal institutions of the State. I believe that two Commissioners could be elected who, in connection with the Governor, could discharge the duty with better satisfaction to the people of the State, both in connection with the pardoning power and with the conduct and control of these institutions. For these reasons I shall vote against both of these propositions, the one offered by the gentleman from Alameda, and the one offered by the gentleman from Trinity. I do not believe that either would work well. I believe there should be elected a Board of Commissioners who should take charge of the State Prisons and remove the Lieutenant-Governor from that place, and under its management seek to make it self-sustaining. I believe, too, that these Commissioners, residing there, knowing the men and knowing the circumstances, would know better who should be pardoned than any one else from outside reports. I shall oppose these propositions and go for the election of two Commissioners to act in connection with the Governor in the matter of pardons.

MR. SMITH, of Kern. Mr. Chairman: I hope that neither of the amendments will be adopted. It is generally conceded that the pardoning power should be taken from politics as much as possible. The office of Governor is purely a political one, and so is the office of Attorney-General. The office of Chief Justice is supposed to be non-political, or that position is intended to be left out of politics as much as possible. Now, in the committee it was thought best to unite the Chief Justice with the Governor for the purpose of putting some check upon the political influence generally brought to bear upon the Governor. If you unite the Attorney-General with him you unite still more political influence. I am opposed also to uniting the Judge of the District Court who tried the case, because I think the general tendency is that Judges in such positions grow to be prejudiced. And then again, as has been mentioned here, if they are far removed from the Capital here, it would be somewhat impracticable for the Judge of a District Court to meet with the Governor or other Commissioners for the purpose of looking into the matter of granting pardons. I do not think, either, that the proposition of my friend on the right, Mr. Larkin, is practicable, and for the same reason: these parties will not be together.

Now it has been mentioned by the gentleman from Alameda, Mr. Campbell—and that is the objection he raises to the Chief Justice acting on this Commission—that he will not have the time to attend to the duties, and yet that gentleman has stated that there has been only seven hundred and three pardons granted since the organization of the State. Now it will not take much time if that is the case.

MR. CAMPBELL. That is not the number applied for. The number applied for is probably five times that.

MR. SMITH, of Kern. I presume there will be more applications when there is more hope of pardon, and their hope would increase when there was a Board that could be reached by political influence. Of course the Governor should have something to do with this, but it seems to me that the safest check upon political influence would be that of the Chief Justice, lifted high as he is in dignity and importance.

MR. WHITE. Mr. Chairman: If there is anything in the experience of the past, this thing of giving the Chief Justice the duty of assisting the Governor in this matter seems to me entirely out of place. Each of the Governors, as I read their messages, say that their time is constantly taken up with applications for pardon; that there is hardly a day that the friends of convicts do not come to them and beg of them to liberate some one. More time is occupied by the Governor on this one matter than any other matter that belongs to his duties. Each Governor, and the present Governor, in his message, requests that this thing should be taken out of his hands. Now, sir, I think we need a change in the whole government of the State Prison, including the pardoning power. I want to move a substitute which will provide for the election of three Commissioners, who shall govern both State Prisons, the insane asylums, and all the institutions under the control of the State government, and that the Governor shall pardon when unanimously recommended by these Commissioners, and under no other circumstances whatever. I would like to have my substitute read and have a word to say upon it.

THE CHAIRMAN. It is not in order at present. The question is on the amendment offered by the gentleman from Trinity.

MR. SHAFTER. Mr. Chairman: I hope that the amendment will not obtain. Under the present system the County Judges send a large class to the State Prison. The amendment is put upon the ground that the people ought to have something to say. I prefer that the thing should be settled by the law, which is the collective expression of the people upon this subject. It is true that the people in the vicinity where a crime is committed are very often the very persons that render it necessary to change the venue in order to get rid of prejudice. Whether they are right or wrong they are not fit to sit in judgment on the question. Their minds are made up, and when it comes to judging upon the proper weight to be given to the evidence they do not judge at all. The opinion of the Judge may be in accordance with the verdict of the jury or otherwise. It is very often the case that Judges, within twenty-four hours after the jury have rendered a verdict, petition the Governor for reprieves or pardons. I do not think that the slightest attention should be paid to them. They ought to hold on a week at least. The Judge now has a right to file his opinion. He will file an opinion and get up with the evidence before the Governor and state his views upon the condition of the witnesses, their appearance on the stand, their fairness, and all that has been gone into. I do not think the Judge below is the proper person hardly to trust this power to. He

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has tried the case. A man's feelings sometimes affect him when he does not realize it. To say that a Judge who has tried the case can take up the question of a pardon *ab initio* is rather contrary to my observation. I know that gentlemen here go upon their own experience and observation, and they are equally positive whether that experience has been large or small. But I call attention to the fact that it is difficult to get up a system of law to work correctly in all cases. Therefore I put the greatest confidence in and give the greatest weight to the opinions of the Chairman of the Committee on Executive Department, Judge Campbell. His opinions on this subject are entitled to more weight—and I am not paying unmeaning compliments—than, I think, those of almost any other man in the State of California, for he has had a larger sphere of observation. These considerations between the Chief Justice and the Attorney-General were before the committee. The question of the Judges was likewise. But the Attorney-General, we thought, was a political officer. In many cases he has to try questions in the Supreme Court; it is true, only in questions of law.

MR. CAMPBELL. It is very rarely indeed that the evidence in the case gets into the hands of the Attorney-General—merely sufficient to illustrate points of law to be argued in the Supreme Court.

MR. SHAFTER. I am not so tenacious as to who shall form the Board as I am that the judgment shall be a unit; that no majority shall have control. In regard to the Prison Commissioners having an opportunity of observation, I will say that in capital cases there is no observation on the part of the Directors of the State Prison. Convicts in capital cases do not go to the State Prison. They go from the county jails to the gallows, or are pardoned; so that the Commissioners of the State Prison will have no opportunity for observation. And in cases of felons sent to the State Prison, they may not be there a week before the application is made. The observation of these Wardens is of no importance at all, and if it was they cannot furnish it to the Executive. You cannot make it by law their duty, as it would be undoubtedly, to call upon the officers in these cases and consult them as to the bearing of the prisoners there. Persons who commit crimes have every reason for being shrewd and guarding every action, and these Wardens who have this narrow field of observation, would find very ordinary criminal cases utterly above their ability to cope with. It is only those in the State Prison that they can see. I have known Wardens for the last fifteen years. I have found them a very fair class of men, but I never knew that a man who could make a good contract and buy supplies to the best advantage, was necessarily a good judge of punishments. That is the quality of man that should be put there, so as to make good trades, take care of the interests of the State, look after the prisoners and see that the business is conducted properly, and all that sort of thing; but that quality of man is just as far removed from the power to judge correctly about how mercy and justice should be measured out as light is from darkness. I should greatly prefer that the Governor should have power to appoint the Commissioner. He would appoint a good man, and if they both agreed, then they could grant the commutation or pardon. Though I am not engaged in the practice of trying criminals, I have had some of it, and my observation is that this power of pardon should be lodged in the highest and purest hands—in men that have the least to do with every-day life. I agree with my friend, Judge Campbell, that it ought to be confined to two or three; but it ought also to be confined to this class of persons, and the judgment should be unanimous. I greatly prefer the Chief Justice; but if that is impossible, why then if we are to add any one to the Governor, perhaps the Attorney-General would be as good as anybody. I do not know that the committee would seriously resist taking that in preference to any other. I think I should prefer that the Governor should appoint the Commissioner. He would be likely to give us a first-class man.

MR. JOHNSON. Mr. Chairman: I agree with the distinguished gentleman from Marin, and wish to add one or two additional reasons. The Governor of the State is at the head of the Executive Department. As one of the committee, I thought it was eminently proper that he should be on the Board of Commissioners of Pardons. The fact is, I believe that in all of the States of the Union he has more or less to do with this subject. In this draft he is associated with another head of a great department—the Judicial Department—and this matter of pardon is further hedged around by the provision that these two heads of the Judicial and Executive Departments shall concur in their action. The one is supposed to have executive qualities, the other is supposed to have judicial qualities; and these two are blended when they pass upon this important question. Now it seems to me, Mr. Chairman, that no better system could be devised. The Chief Justice is removed from popular clamor, and from any influence that might be exercised by his high position and the tenure of his office—the Governor by his responsibility to the people of the State—and it seems to me that when these two heads of these great departments concur in action, that it is entitled to the respectful consideration of the people of this State. I do not know where we could lodge it more securely, or where we could lodge it better. There is no head to the Legislative Department, or we might add him to these other two; but it is no place for the legislator at all. The law is supposed to have been administered, and it is only the Executive Department and the Judicial Department whose action is required in this matter. On account of the preëminent ability of the heads of these different departments, and their comparative removal from any outside pressure, it seems to me that the suggestion of the committee is entitled to respectful consideration. Another idea: there is no compensation attached to this matter at all. It is supposed to be a part of the duty of these gentlemen. We do not constitute any particular Board, who shall receive a compensation, but say that it shall be a part of the duties of these officers. I do not think that the objection that the Chief Justice will not have time, is a good one. Let the calendar be so assigned that the Chief Justice can spare a portion of his time. It can be done by the Justices of the Supreme Court in the allotment of the calendar. It is also suggested that the reasons shall be stated, if they do anything—the reasons which induced these two gentlemen to act in this matter shall be stated, and that report has to be submitted to the Legislature. That report goes into the hands of the people, and they can see the reasons upon which these two gentlemen have predicated their action in this matter. Now it does occur to me that the suggestion of the committee ought to be adopted. The Executive Department moves in its independent orb; the Judicial Department moves in its independent orb; but in this arrangement we have these two men, the heads of these two departments, to concur in their action, and then report the reasons which induced them to act as they did to the Legislature.

MR. HALL. Mr. Chairman: In order that my vote upon the proposition now occupying the attention of the committee may not be misunderstood, it is proper that I should say a few words to enable the committee to understand my position. I am a member of the Committee on Pardoning Power. I concur with the committee in so much of the amendment which they report as prohibits the Executive and Chief Justice from pardoning a man who has been thrice convicted; also that portion which requires these officers to report to the Legislature the reasons of their action; but to that portion of the proposed article which unites the Chief Justice with the Executive in the exercise of this power I dissent. I dissented then and I dissent now, Mr. Chairman. I do not intend to occupy the time of the committee in any lengthy statement of my opinions, yet perhaps at some future day I will have an opportunity to do so. At present I hope that the committee will allow me to say, in brief, that I object to this union of the Chief Justice with the Executive, not only for the reason which has already been assigned by some of the gentlemen, referring to the mass of business which devolves upon that high judicial officer, but for a greater reason than that. I think it was one of the most admirable features of our form of government that the three great departments of government are separate and distinct. The spirit of the Constitution now and which we shall propose, aims at the complete separation of the three essential and leading powers or branches of government, the legislative, executive, and judicial. As was very ably said the other day in the report made by a minority of the committee, on the subject of the case of the honorable delegates from Santa Barbara, there should be no junction, or overlapping, or blending, of these separate powers. For that reason, Mr. Chairman, I object to the uniting of the Chief Justice with the Executive.

This power has always been, in time of peace and in other countries, vested in the Crown. It seems to me that the Executive of the State is the proper successor, if I may use the language, of the king, or the highest officer of State. For that reason, it seems to me that the Executive is the proper custodian of this power. He has exercised it in the past without detriment to the public, and certainly with benefit to the public. But there is this reason in addition—I have stated the reason why I object to the report of the committee, but I will add this—that the Chief Justice has very frequently passed upon cases where the ground of the appeal was, that the evidence upon the trial below justified the proposition that a reasonable doubt existed as to the guilt of the parties. When it comes before him, sitting in a judicial capacity, he passes upon that question. When it comes before him—if it is to be permitted to come before him—again, sir, in the form of an appeal taking on the shape of an application for a pardon—it is referring the matter to him a second time.

I object to the proposal to unite the Attorney-General with the Executive in the discharge of this duty, because he is the prosecuting officer of the State. He has been an active prosecutor; he has had the management of the case on the part of the people; he represents the people; and it seems to me that it would be unfair to the claimant himself that either of these officers should, with the bias that their minds have received, be called upon to review this whole case and determine again whether he is or is not guilty, or whether there be or be not reasonable grounds for a pardon or commutation of sentence. With much more force does this apply to the Judge of the Court who tried the case. For these reasons I must oppose them all.

MR. HUESTIS. Mr. Chairman: I move that the committee do now rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have directed me to report that they have had under consideration the article on the pardoning power, report progress, and ask leave to sit again.

The hour having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and a quorum present.

MR. HUESTIS. I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the article on the pardoning power.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Trinity, Mr. Tinnin.

MR. McFARLAND. Mr. Chairman: I do not desire to occupy any time in the discussion of this subject. I have listened to this discussion with great interest, and when it commenced my mind was somewhat undecided as to what we ought to do; but I am satisfied from the discussion that the best thing we can do is to leave it where it is, with, perhaps, the exception of the amendment to the effect that a person being thrice convicted shall not be pardoned. It seems to me that there

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are great objections to the pardoning power being given to the Chief Justice. The business of the Chief Justice is to determine in the case of a criminal whether he has been legally convicted; whether he has had his rights. I do not think his mind should be abstracted from that duty to determine whether, notwithstanding he has been legally convicted, he ought to be free. In this State are many varied questions which crowd our Supreme Court all the time, and the Chief Justice should not be compelled to devote one half of his time to duties like this.

It seems to me that the Attorney-General would be a more inappropriate officer to discharge that duty. It is the part of the Attorney-General to argue the case for the State in all cases. We all know that when the Attorney-General makes up his mind that a conviction ought to stand he enters into it with his whole energy, and undoubtedly, insensibly to himself, he is in a frame of mind when he gets through that would render it very hazardous to put it into his hands to say whether a man should be pardoned or not.

The objections to the Judges below are numerous. It seems to me that the safest way is to allow this power to remain where it is. The greatest objection is that there is too much pressure upon the Governor. Well, sir, if we had another man there would simply be double the pressure. If we take any other officer except those named we might put it into the power of some inferior person to have coequal say with the Governor. We have been fortunate enough in this State to have men of very fair reputation and character elected by the people to the office of Governor, and it seems to me that we will make bad work by uniting with him some other person. I propose, when in order, to offer a substitute so as to leave the matter just where it is, with the exception of the provision that a man convicted thrice shall not be pardoned. I cannot come to any other conclusion.

MR. BARNES. Mr. Chairman: I see no reason why the pardoning power should not be lodged where it is. What the people object to is that when a man has once been tried and convicted and sentenced, the Governor shall interfere and pardon him. It is not the power nor the lodgment of it in the person of the Governor that is objected to, but it is the exercise of it in cases in which it has occurred. It seems to me that it would be useful if there was in the Constitution some restriction thrown around the pardoning power—not only useful but necessary, and I am sure it would be a very popular measure.

It never was intended, Mr. Chairman, that the Governor of the State should play the role of a sentimental philanthropist; that he should undertake to forget what is due to those who suffer by the commission of crimes, and what is due to the State in his sympathy for those who commit them. I do not think it was expected when the power was given to him that he should yield to every importunity, and even if it has been so, that is no reason for making a change in the Constitution. It is said that the friends of criminals are permitted to beseige the doors of his office and lie in wait for him and wear out his patience, until at last he yields out of tenderness for himself—out of sympathy and tenderness for himself. I can hardly think it possible, that a Governor of this State would undertake to exercise the pardoning power upon any such miserable and cowardly ground as that. I prefer to think that no Governor ever did or ever will make that the basis for the exercise of the pardoning power. Now, I say, that it was not expected that the Governor should yield to every importunity, nor do I think that the Governor should sit as a kind of ex parte Court to review the decisions of the Courts, to pass upon questions of law, and to undertake to make himself a kind of Court of Appeal in criminal cases, which has sometimes occurred. Nor do I think it was intended by this constitutional power to give him the right to sit down as a sort of thirteenth juror to try the case, after twelve others have decided it, to pass upon it, and render a different verdict. I think the only object was that he might be able to relieve the innocent from the consequences of a judgment of conviction; for we must bear in mind that the pardoning power involves not merely a relief from the punishment and effects of the commission of the crime. It blots out the offense. It declares, so far as the law is concerned, that the prisoner or convicted man is guilty. It has an analogy to the sort of pardon, that is supposed to be extended by Divine grace. It not only relieves him from punishment, but blots out the offense altogether, and leaves him pure and white and spotless. You apply that principle to the pardoning power on the cases that have occurred in this State; criminals pardoned for political considerations and political considerations solely; criminals pardoned because of the importunities of those who suffered by reason of their incarceration, and to whom the criminals should have been a protection and support. These have been the reasons for pardons, and almost the only ones, except perhaps the consideration of great good conduct upon some occasion of great emergency in the prison, in the case of a great conflagration or something like that, where a man has merited something and deserves restoration to citizenship.

Therefore I see no reason why the power should be destributed or scattered. I agree with the gentleman from Sacramento, Mr. McFarland, that the more Commissioners you have, the more pardons there will be; the more men there will be to be approached. While we may have great confidence in the head of the Chief Justice and in the adamantine character of his heart, yet where there are two or three associated in a matter of this kind, it becomes a question of trade and barter. You pardon my man and I will pardon yours; and so they deal out pardons between themselves for every sort of object except the right one. I think a restriction should be made in the pardoning power. It should be contained in the Constitution, and be an inhibition upon the Governor, except for certain specified causes, as, for instance, except it should be made to appear that the person who had been convicted was unjustly convicted by reason of perjured testimony; or by reason of the discovery of material facts subsequent to the conviction, establishing the fact of his innocence of the crime; where there is proof of his insanity; or for some other good and substantial reason. This power ought not, in my judgment at least, to be exercised indiscriminately, without accountability. At the proper time I shall move that this subject of the pardoning power be referred to the Committee on Pardoning Power, with instructions to report to the Convention whether or not there can be some clause added to the section which is now here sought to be amended, under which the pardoning power may be reasonably and wisely exercised.

MR. MCCALLUM. Mr. Chairman: I ask to hear the amendment of the gentleman from Trinity, Mr. Tinnin, read.

THE SECRETARY read:

Amend by striking out "the Chief Justice of the Supreme Court" and inserting in lieu thereof "the Attorney-General, and the Judge before whom he was convicted, if living in this State."

MR. MCCALLUM. Mr. Chairman: There is one objection to the last amendment, which I understand is the amendment upon which we will vote first. There is no provision there, except that the Judge, if living in this State, has this pardoning power. By the terms of the article it must be unanimous. If that Judge were living in this State and incompetent for any of the many causes which render Judges incompetent, by disease or otherwise, of course in such a case there could be no pardon at all, and that would shut the doors of mercy on mankind. Now, sir, I, of course, shall vote against that. As it now reads it certainly would not meet the approbation of the Convention, but with a view of what may come up subsequently I propose to vote also against the other pending propositions. I am perfectly satisfied that after a gentleman has had the very extensive practice of Judge Campbell, and I suppose almost uniformly upon the side of the defendant; that if he is satisfied with the Attorney-General as being one of the Commission, that the remainder of the Convention may say that it is a very good argument in its favor. I believe that there should be three officers—the Governor, the Attorney-General, and the Chief Justice. I have looked over the Constitutions of the different States, and it is proper, perhaps, to say, if my examination is correct, that not a single instance can be found where this pardoning power is taken from the Executive. It is in the Executive of the nation, as to national criminal laws. In certain States there are Commissions—as, for instance, by the Governor and Council in Maine, by the Governor and Council in Massachusetts, by the Governor and Senate in Rhode Island; and also a similar provision in Vermont, by the Governor and certain State officers, which now comes nearly to my idea, admitting, as I do, that there is no system which can be suggested to which plausible objections cannot be made. I say that this meets my idea when it comes to the Governor and State officers. I suppose if it were any new Commission they would be paid officers, and that would unnecessarily increase the salaried officers of the State. If they be not paid they will be likely to discharge their duties, as such officers do, without much attention to them. It would be a serious duty to impose upon persons who receive no compensation.

In our sister State here, of Nevada, there is an idea which I think is better than that which is now pending, or either idea now before the Committee. The provision is this: "The Governor, Justices of the Supreme Court, and Attorney General, or a major part of them, of whom the Governor shall be one, may, upon such conditions and with such limitations as they may think proper, remit fines and forfeitures, commute punishments and grant pardons after convictions in all cases, except treason and impeachment, subject to such regulations as may be provided by law relative to the manner of applying for pardons." Now, sir, by adopting the provision that there shall be the Attorney General, Chief Justice of the Supreme Court, and the Governor, will get very nearly the provision in the Nevada Constitution, and I think have it best. I do not see any good reason for the objection to a majority. In all Commissions which generally involve the idea of more than two, the majority act, and why not in this case?

But if that provision is not acceptable here is a provision in the Indiana Constitution which I submit is better than the one now pending: "*Provided, however*, that the General Assembly may, by law, constitute a Council, to be composed of officers of State, without whose advice and consent the Governor shall not have power to grant pardons in any case, except such as may by law be left to his sole power." Now I submit that if these amendments are voted down that the provisions in the Constitutions of either Nevada or Indiana are preferable. I propose, if these amendments are voted down, to offer an amendment that will vest the power in the Governor, Chief Justice, and Attorney-General, or a majority of them, of which the Governor shall be one.

MR. GREGG. Mr. Chairman: I suppose there is no reason really why the pardoning power should be taken from the Governor. But the manner in which pardons have been granted is something I could never understand. A man who is sentenced from one to two years comes back to the people and is not restored to citizenship, and a man who is sentenced to serve fifteen or eighteen years is simply pardoned by the Governor and restored to citizenship. I think the matter should be referred back to the committee, so that there could be remissions of sentence instead of pardons. This thing of a man being pardoned by reason of ill health, and coming back into the community and being restored to health, I cannot understand. I really think that a remission should be given, rather than a pardon, and I say in that whatever power is here vested should be for a remission of penalties rather than the power of pardon. I think that this branch of the proposition ought to be referred back to the committee and be considered by them, and some limitation placed upon the power of pardon.

MR. WICKES. Mr. Chairman: The past history of executive interference shows conclusively that the pardoning power has been stretched to its utmost limits. I believe that this pardoning power should be vested in the highest tribunal in the State—the Supreme Court. It

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should be lodged in the hands of men who are made invulnerable by their position; who, by their habits of thought and their veneration for law and justice, are best fitted to exercise this high and important function. I am opposed to vesting this power in the hands of Commissioners elected by the people, because I do not believe in multiplying or creating offices. There is no reason why this power should not be vested in the highest tribunal in the State.

MR. BARRY. Mr. Chairman: As a member of the Committee on Pardoning Power, I wish to say but a few words on this question. The matter has involved considerable discussion, and I believe there would be no gentleman in this body but who would agree with me in saying that there is a great necessity for a change in the pardoning power. There ought to be no man but who is aware of the abuse of the power that has existed in the hands of the Governor. We all know the pressure that is brought to bear upon him. We all know the efforts that are made by friends to secure pardons; the lengthy petitions that are gotten up and signed, not by the friends of the prisoner alone, but by everybody that they can procure to assist in making the petitions as formidable and lengthy as possible to induce the Governor to pardon the criminals. There are many who will sign petitions simply as a matter of personal friendship. Not that they believe that the prisoner should be pardoned, but as a matter of kindness and consideration to those who present the petitions. It is often the case that the ladies, in their mercy and sympathetic feelings, will intercede with the Governor in behalf of criminals. There are but few gentlemen who can stand the persuasive eloquence of the ladies, and in a case like this, where the ladies appeal to the sympathies of the Governor, we have but a few instances, a few isolated cases, where they have withstood arguments or appeals which are presented with so much strength and power.

Now, sir, I hold that there have been a great many cases where pardons have been granted where they should not have been; that the interests of justice require that he who is convicted of a crime should suffer the whole penalty of the law. If a man deserves to be hung, unless the best of reasons shall be found to exist which could not be produced at the time of the trial, unless they are produced, then that man should suffer the penalty fixed by the offended law. The good order, safety, and peace of society requires the swift and certain punishment of criminals. The Governor will not resist the influence that is brought to bear upon him because he oftentimes is in doubt, and sooner than allow the law to take its course, and the prisoner to be returned to the State Prison, there to remain for the years for which he was sentenced, he will err on the side of mercy. I do not say but what all men should do this, but I do say that if we have a Pardoning Board, the chances would not be so great as they now are with the Governor alone.

I am opposed to associating the District Judge, on the ground that it is impracticable, and for the reasons stated by the gentleman from Nevada, Mr. Cross. The District Judges could not come here to consult with the Governor in a matter of this kind. As regards being written to, that would take too much time in a matter of such importance. The whole matter would be virtually defeated by delays. Then again, the Judge who tried the culprit would not be the proper person, because he is surounded by the influence that was brought to bear either in favor or against the prisoner. He lives in close proximity to the friends of the prisoner, who leave nothing undone at the time of the trial, and will leave nothing undone to secure his pardon. There is always a high state of excitement at the time of the trial of a person upon a charge of murder or any other case of felony, and it is necessary that we should fix the pardoning Board in such a way that they would only be inclined to do simple justice, to grant pardons only where necessary in the interest of justice—public justice, not simply personal justice. I do not think the District Judge should be selected, and as to the Attorney-General I believe that he would be a proper person associated with the Chief Justice. I do not see any particular objection to him, and I believe that he is likely to be a man of that character and sense of dignity that no political influence would prevent him discharging his duty in a matter of this kind. As regards the technical objection made by the gentleman from San Joaquin, Mr. Hall, to associating the Chief Justice with the Governor, that it would combine the judicial and executive departments, I do not see any good reason in that. It would simply be ex officio. I believe that it would have been best to associate the Supreme Court with the Governor and Attorney-General. Many members of the committee argued that it would make the Board too unwieldy, that they could not get together, and there would be a chance for too much difference of opinion. While some believed that might be best, there were others, with whom I was willing to agree, thought it might be best to leave it with the Chief Justice and the Governor. But I insist upon it that the power should be taken from the Governor alone and invested in two or more officers.

MR. CAPLES. Mr. Chairman: There is one fatal objection to every proposition pending before the committee in regard to the exercise of the pardoning power, and I think that that objection will strike every gentleman at once upon the first view of the case. It is simply this: the wide margin of discretionary power that is vested in the Governor, or the Commission, or whoever may exercise this power. We have been told of the pressure that is often brought to bear and will be brought to bear—a pressure that is cruel to the functionary exercising this power, or the Commission, I care not whether it be one man, three men, or five men. It is a cruel duty to impose upon any man to make him the victim, if I may use the term, of that pressure that is brought to bear and will be brought to bear in every case. Therefore I hope that the propositions will all be voted down, and that, as suggested by Colonel Barnes, the whole matter will be referred back to the committee, with instructions to propose a mode that will limit or narrow that discretionary power and fix restrictions and limitations upon the exercise of the pardoning power. I do sincerely hope, Mr. Chairman, that the propositions will all be voted down, and that the suggestion made by Colonel Barnes will be carried out.

MR. TULLY. Mr. Chairman: Let us see what would be the effect of the adoption of this amendment. Let us suppose that a man is indicted and tried in a District Court. The Attorney-General, perhaps, goes down and assists in the prosecution; the man is convicted; he makes a motion for a new trial, and it is argued and denied; he goes to the Supreme Court; there the judgment is affirmed; he petitions for a rehearing; the case is re-argued, and again the judgment is affirmed; and after all that they turn the man over, who wants to be pardoned, to the District Judge and the Attorney-General and the Chief Justice of the Supreme Court—men who have listened to the trial of the case, and who have worked themselves up, either justly or unjustly, to the conviction that the man is a felon! It strikes me that the tribunal to pass upon the question as to whether a man should be pardoned or not should be unbiased and unprejudiced—without any preconceived notions as to his guilt or innocence. For these reasons I hope that the amendment will be voted down, and that the pardoning power will be left where it is—in the hands of the Governor. In regard to the idea of selecting from various parts of the State, I think, myself, that that would prove to be a trading machine. Each Commissioner would have his friend in his own district, and he would be very apt to say, "If you pardon my friend I will pardon yours." It would result in dividing the responsibility, and I do not think that any good would come from any such proceeding.

Now, it is asserted by some gentlemen that the pardoning power has been abused. I deny it. I have not seen, read, or heard of any statement that warrants that conclusion. I assert it, without fear of successful contradiction, that the statistics of this State do not warrant the assertion. Gentlemen seem to complain, and the people seem to complain, that criminals escape. If such is the case, it is their own fault. But I deny that proposition. Criminals are tried by juries that come fresh from the people, and it is their fault if criminals do escape. I am in favor of leaving this question where it now is, with the Governor. I am opposed to driving the Chief Justice into this net of criminals, or that he should be traveling around the country, neglecting his duty, and ascertaining whether a man is to be pardoned or not after he is sentenced to the penitentiary.

[MR. TINNIN in the chair.]

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Trinity.

The amendment was lost.

THE CHAIRMAN. The question now recurs on the amendment offered by the gentleman from Alameda, Mr. Campbell.

MR. FILCHER. Mr. Chairman: I move to amend to this effect, that "the Governor, Attorney-General, and another to be appointed by them, shall form a Board, which shall have power, by unanimous vote, to grant pardons," etc. It is an old idea of mine that the pardoning power should be vested in a Board or Commission, and it occurs to me that a Board consisting of three such persons would be better than any other. It has been proposed that since we do not propose to pay these Commissioners anything for this particular duty that we should designate three State officers, but while the Governor and Attorney-General will always be suitable persons the third officer might not. For instance, while one Controller might be a good man for this duty the next one elected might not. Hence I propose in this amendment to have the Governor and Attorney-General designate the third member.

MR. CASSERLY. Mr. Chairman: In this case, in my humble judgment, as in many others, the existing Constitution is better than any of the amendments. I think, sir, that what we want in our government is concentrated responsibility in the Executive, not a divided or watered responsibility. With a concentrated responsibility you are sure to have your work well done as far as it is in human nature to do it. Without it you have something which is neither one thing nor the other. Therefore I am in favor of the present clause in the existing Constitution in preference to any of the amendments I have heard.

Mr. Filcher's amendment was lost.

MR. MCFARLAND. Mr. Chairman: I desire to offer an amendment reading in this way: Amend by striking out all after the word "reprieves," in the first line, down to and including the word "grant," in the third line; strike out the word "they," in the fifth line, and insert "he;" strike out the words "and Chief Justice" in the fifteenth line. That amendment will leave the section just as it is in the present Constitution, except the addition of the provision that a criminal shall not be pardoned who has been thrice convicted. It leaves the pardoning power in the hands of the Governor, except in cases of treason and impeachment, as in the old Constitution.

MR. HALL. I would like to inquire whether it retains the provision requiring the Governor to report his reasons to the Legislature.

THE CHAIRMAN. There is so much confusion that it is impossible to hear what is said.

MR. MCFARLAND. Mr. Chairman: I do not know whether the committee understands the proposition. I desire that it should understand it. My amendment simply returns to the original Constitution. It gives the pardoning power to the Governor, except that it has the provision reported by the committee that a party convicted thrice shall not be pardoned.

The amendment was lost.

MR. SHAFTER. Mr. Chairman: I desire to have a clerical error corrected, which by some oversight has crept into the printed amendment. I see that there is a misprint in the fourteenth line. It reads "pardon and reprieve;" it should read "pardon or reprieve."

THE CHAIRMAN. The correction will be made.

MR. WICKES. Mr. Chairman: I wish to offer the following amendment:

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"The power of pardon and reprieve is vested in the Supreme Court. It is legal only upon the unanimous motion of the members thereof. Their decision, with the facts or conditions upon which it is granted, shall then be forwarded to the chief executive, and it is made mandatory on him to issue his pardon over his signature and under the great seal of the State."

The amendment was lost.

MR. LARKIN offered the following amendment:

"The Legislature shall provide by law for the election of three State Wardens, to be elected by districts of equal population as near as may be practicable, but no county shall be divided in forming such districts. These State Wardens shall hold their office for four years, and shall have charge and management of the two State Prisons, and the two Insane Asylums, Asylum of the Deaf and Dumb, and all other charitable and penal institutions conducted and supported by the State, under such regulations and provisions as the Legislature shall prescribe by law.

"The first election for State Wardens shall be at the first general election held under this Constitution, and they shall be inaugurated on the same day thereafter as the Governor and other State officers are to be inaugurated.

"The Board of State Wardens shall constitute a Board of Pardons, and the Governor of the State shall never pardon any person convicted of crime, except at the unanimous request of the Board of Pardons.

"The Legislature shall give effect to a judicious system of credits for good behavior, to convicts in the State Prison, to be carried out by the State Wardens.

"The State Wardens shall receive an annual salary for their services of two thousand four hundred dollars a year, and such clerical assistance as the Legislature shall deem necessary; but no clerk in their employment shall ever receive a higher compensation than eighteen hundred dollars per annum."

MR. LARKIN. Mr. Chairman: The object of this amendment is to provide a complete system which will take in all the charitable and penal institutions of the State, and more especially to select men from different portions of the State who will be selected for those qualities which will fit them to discharge the duties of this important trust, instead of having them selected or appointed by the Governor. It will be a permanent institution of the State. In the past the management of our prisons has been subject to constant change. The class of men who would be elected to take these positions from their known qualities and acquaintance with the management of criminals, would be the proper men to recommend to the Governor the pardon of these men. The Legislature could regulate this matter so that there could be uniform punishment for the same crime. I believe that the power should be vested there. I believe that it is for the best interests of the State that it should be taken out of politics and placed in the hands of men who shall be selected exclusively for that high trust.

MR. WHITE. Mr. Chairman: I desire to draw the attention of the committee to one point. This provision says that the pardon shall only be granted on the recommendation of the Board of Wardens. It does not say that the Governor shall pardon on their recommendation, but that the Governor shall not pardon without the unanimous recommendation of the Wardens. It still leaves the Governor the power to refuse a pardon if he sees proper. In that way the power is concentrated.

MR. BARNES. Mr. Chairman: I rise to a point of order. The substitute suggested is not in order, because it is not germane to the subject under consideration.

MR. WHITE. It provides for a Board of Pardons.

MR. BARNES. It does refer to the subject of pardons, but it also proposes to appoint Commissioners to take charge of all the public institutions of the State, the City and County of San Francisco, and everybody else.

MR. WHITE. It does not.

THE CHAIRMAN. The Chair will rule that the point of order is well taken, as the proposed substitute includes provisions relative to the Insane Asylums, Asylum for the Deaf, Dumb, and Blind, and other matters not germane to the subject of pardons.

MR. WHITE. I appeal from the decision of the Chair.

MR. LARKIN. I second the appeal.

MR. WYATT. I do, too.

MR. BARTON. I second the appeal.

MR. WHITE. I say that it is impossible to discuss this matter of the principle of pardons correctly, except as connected with the position in which these other institutions are placed, and that therefore it is right that this discussion should be allowed to take the whole thing into consideration at the same time.

MR. ANDERSON. Mr. Chairman: The question is on the appeal, I believe. I think that if the gentleman will stop and consider for one moment, he will see that this amendment is not in order. If this amendment is in order, then by way of amendment to any other proposition we might get the whole Constitution in on a single proposition. I hope the decision of the Chair will be sustained by the committee.

THE CHAIRMAN. The Chair rules that the amendment is not in order, because it refers to matters connected with the Insane Asylums, the Asylum for the Deaf, Dumb, and Blind, and is not germane to the subject under consideration. The question is, Shall the decision of the Chair stand as the judgment of the committee?

MR. NOEL. I move to lay the appeal on the table.

Carried.

MR. BLACKMER. Mr. Chairman: I desire to offer an amendment, with the permission of the Chair. It is this:

Strike out all after the word "impeachment," in the fourth line, down to and including the word "pardon," in the seventh line, and insert the following: "And such power shall be exercised only in case where new evidence is discovered after judgment establishing the innocence of the convicted party or the injustice of the sentence."

I believe that the great trouble with the pardoning power is that it is not restricted. I believe that justice should be meted out to prisoners whenever the sentence has been passed justly. I do not believe there should be any escape from the sentence. But I believe whenever there has been discovered new evidence to prove the innocence of the party convicted, or to prove the injustice of the sentence, if the innocence is not proved, there should be some power to grant a pardon or reprieve. My amendment will cover that case. It will restrict the power of pardon and reprieve to those few cases where there is evidence to prove that the power ought to be exercised; for that reason I offer this as an amendment.

MR. HUESTIS. Mr. Chairman: It seems to me perfectly evident that this committee, with barely a majority present, is not in a proper condition of mind to discuss so important a question as this at this time. In addition, the Chairman of the committee, whom we rely upon principally to protect the report of the committee, is absent necessarily, and I submit in all candor that it would be only providential to dispense with the further consideration of the subject for to-day. I, therefore, move that the committee do now rise, report progress, and ask leave to sit again.

MR. FILCHER. I ask the unanimous consent of the committee before it rises to offer a resolution, simply to test the sense of the committee on this proposition. I offer it because I believe such a test will greatly facilitate our business afterwards. [Cries of "I object."]

Mr. Huestis' motion prevailed on a division, by a vote of 48 ayes to 33 noes.

IN CONVENTION.

THE CHAIR. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Pardoning Power, report progress, and ask leave to sit again.

MR. TULLY. [At three o'clock P. M.] I move we adjourn.

Lost.

NOTICE.

MR. HUESTIS gave the following notice:

I hereby give notice that at the next regular session of the Convention I will move to strike out, in the Standing Rules, Rule Seventy-one, and insert the following:

RULE SEVENTY-ONE.

In all cases where propositions or resolutions embodying matters proposed to be introduced into the Constitution are printed, it must be by a majority vote of the Convention; but reports of standing committees shall be printed without any vote being had.

PROPOSED TEST.

MR. FILCHER offered the following:

Resolved, That it is the sense of this Convention that the Governor should be divested of the exclusive power of pardoning criminals.

MR. FILCHER. Mr. President: I offer this simply to test the Convention. If the feeling in favor of leaving the power where it is predominates let us know it and then we will know what we are doing.

MR. HUESTIS. Mr. President: I submit that it would be no test when there are fifty of the members absent.

ADJOURNMENT.

MR. MCFARLAND. Mr. President: I move that this Convention do now adjourn until two o'clock Monday. We are going to adjourn now because there are so few members here. It is evident that these absent members will not be here on Monday morning, and what would it amount to if we meet at that time. We might just as well adjourn until these gentlemen come back.

MR. GRACE. Haven't we got a quorum here now? We ain't responsible for the gentlemen who are not here.

MR. BIGGS. I move to amend by making it eleven o'clock on Monday.

MR. MCCALLUM. I suggest that these conditions be left out. The point I make is that a motion to adjourn cannot be coupled with conditions. This thing keeps coming up every day, and I make that point.

MR. MCFARLAND. Undoubtedly a motion to adjourn to a stated time is in order. Now, if gentlemen are opposed to adjourning until two o'clock, or until eleven o'clock, they will vote it down.

MR. MCCALLUM. Undoubtedly the motion is not in order. I submit that it is done as a matter of practice, because no objection is made. The very point was raised here on the rules, that a motion to adjourn should not be coupled with conditions, and everybody said that a motion to adjourn cannot be coupled with conditions. Therefore, I suggest that the time be first fixed, and in future let us confine ourselves to the question of adjournment without conditions.

MR. GRACE. I move that when the Convention adjourns, it adjourn until ten o'clock on Monday.

MR. HUESTIS. I raise the point of order that there are two motions on the subject of adjournment, and that the gentleman's last motion is not in order.

THE CHAIR. The Chair rules that the question is subject to two amendments. The first motion was to adjourn until two o'clock on Monday, the next to adjourn until eleven o'clock, and the last to adjourn until ten o'clock.

MR. WATERS. I move we adjourn.

Carried.

And at three o'clock and five minutes P. M., the Convention stood adjourned until Monday at ten A. M.

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THIRTY-EIGHTH DAY.

SACRAMENTO, Monday, November 4th, 1878.

The Convention met in regular session at ten o'clock A. M., President pro tem. Belcher in the chair.

The roll was called and members found in attendance as follows:

PRESENT.

Andrews,	Holmes,	Pulliam,
Barbour,	Howard,	Reddy,
Barry,	Huestis,	Reed,
Barton,	Hughey,	Reynolds,
Belcher,	Hunter,	Rhodes,
Blackmer,	Inman,	Ringgold,
Boggs,	Johnson,	Rolfe,
Boucher,	Jones,	Schell,
Brown,	Joyce,	Schomp,
Burt,	Kelley,	Shoemaker,
Caples,	Keyes,	Shurtleff,
Charles,	Kleine,	Smith, of Santa Clara,
Cowden,	Laine,	Smith, of 4th District,
Cross,	Lampson,	Smith, of San Francisco,
Crouch,	Larkin,	Soule,
Davis,	Larue,	Stedman,
Dean,	Lavigne,	Steele,
Dowling,	Lewis,	Strong,
Doyle,	Lindow,	Stuart,
Dudley, of San Joaquin,	Mansfield,	Sweasey,
Dudley, of Solano,	Martin, of Santa Cruz,	Swenson,
Eagon,	McCallum,	Swing,
Edgerton,	McComas,	Terry,
Estee,	McConnell,	Tinnin,
Evey,	McCoy,	Townsend,
Fawcett,	McFarland,	Tully,
Filcher,	McNutt,	Turner,
Finney,	Miller,	Vacquerel,
Freeman,	Mills,	Van Dyke,
Freud,	Moffat,	Van Voorhies,
Garvey,	Moreland,	Walker, of Tuolumne,
Grace,	Morse,	Waters,
Gregg,	Nason,	Webster,
Hale,	Noel,	Weller,
Harrison,	O'Donnell,	West,
Harvey,	Ohleyer,	White,
Herrington,	O'Sullivan,	Wilson, of Tehama,
Hilborn,	Porter,	Wickes,
Hitchcock,	Prouty,	Wyatt.

ABSENT.

Ayers,	Farrell,	Nelson,
Barnes,	Glascock,	Neunaber,
Beerstecher,	Gorman,	Overton,
Bell,	Graves,	Shafter,
Berry,	Hager,	Stevenson,
Biggs,	Hall,	Thompson,
Campbell,	Heiskell,	Tuttle,
Casserly,	Herold,	Walker, of Marin,
Chapman,	Kenny,	Wellin,
Condon,	Lindow,	Wilson, of 1st District,
Dunlap,	Martin, of Alameda,	Winans,
Estey,	Murphy,	Mr. President.

LEAVE OF ABSENCE.

One day's leave of absence was granted Messrs. Glascock, Herrington, McComas, Weller, Stevenson, Moreland, McNutt, Tuttle, Hager, Dunlap, O'Sullivan, Hitchcock, Schomp, Condon, and Keyes.

Indefinite leave of absence was granted Mr. Biggs on account of sickness.

THE JOURNAL.

MR. BLACKMER. I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

COMMUNICATION.

THE PRESIDENT pro tem. The Chair has received a communication from the Controller of State, in response to a resolution adopted by this Convention on October thirtieth, in regard to the State indebtedness. What is the pleasure of the Convention?

MR. GREGG. At the request of Mr. Casserly, the Chairman of the Committee on State Indebtedness, I move that the report be printed forthwith out of its order.

The motion prevailed.

The following is the report:

OFFICE OF CONTROLLER, October 31st, 1878.

The Honorable President and members of the Constitutional Convention:

GENTLEMEN: In compliance with your resolution of yesterday's date, I have the honor to transmit herewith a report as follows:

First—Of the State debt, etc.

Second—Of the receipts and expenditures of the State government since its organization, together with the taxable property and the State tax rate for each of said years.

Third—Of the county debts and taxable property for the years eighteen hundred and seventy-five-six and eighteen hundred and seventy-six-seven, together with the State and county tax rates for each of said years.

Fourth—Of the taxable property in the City and County of San Francisco for the current fiscal year (*i. e.* eighteen hundred and seventy-eight-nine), together with the tax rate for said year.

I have no data in this office from which to give the debts of the several cities of the State.

In order that you may understand fully for what the State makes her large annual expenditures, I give the items in detail, which make up the sum of three million seven hundred and ninety-seven thousand eight hundred and sixty-four dollars and sixty-eight cents expended for the twenty-ninth fiscal year, ending June thirtieth, eighteen hundred and seventy-eight.

Yours respectfully,

W. B. C. BROWN, Controller.

STATE DEBT.

First—The total funded debt of the State at the present date (October thirty-first, eighteen hundred and seventy-eight) is:

SERIES.	Rate.	Amount.
Civil Bonds of 1873	6 per cent	$2,801,000 00
State Capitol Bonds of 1870	7 per cent	250,000 00
State Capitol Bonds of 1872	7 per cent	250,000 00
Soldiers' Relief Bonds	7 per cent	95,500 00
Civil Bonds of 1857	7 per cent	5,000 00
Civil Bonds of 1860	7 per cent	1,500 00
Total		$3,403,000 00

As all the bonds of the issues of eighteen hundred and fifty-seven and eighteen hundred and sixty have been called in, and the interest ceased on the thirty-first day of July, eighteen hundred and seventy-five, the entire funded debt bearing interest at this date will only amount to three million three hundred and ninety-six thousand five hundred dollars. The annual interest on this sum amounts to two hundred and nine thousand seven hundred and forty-five dollars; but as the State has guaranteed interest to the amount of one hundred and five thousand dollars per annum on Pacific Railroad Bonds (see Act of April 4th, 1864, Statutes 1863–4, page 344, entitled "An Act to aid the construction of the Central Pacific Railroad," etc.), the annual amount of the interest to be raised is, therefore, three hundred and fourteen thousand seven hundred and forty-five dollars.

The following table shows the disposition of the funded debt of the State on the thirty-first day of October, eighteen hundred and seventy-eight:

KIND OF DEBT.	Amount.
Bonds held in private hands	$738,000 00
Bonds held in trust by State Treasurer—School Fund	1,737,500 00
Bonds held in trust by State Treasurer—University Fund	927,500 00
Total	$3,403,000 00

The interest-bearing debt of the State on the thirty-first day of October, eighteen hundred and seventy-eight, is as follows:

KIND OF DEBT.	Amount.
Bonds held in private hands	$731,500 00
Bonds held in trust by State Treasurer—School Fund	1,737,500 00
Bonds held in trust by State Treasurer—University Fund	927,500 00
Total	$3,396,500 00

The bonds held in private hands and bearing interest at this date consist of:

SERIES.	Rate.	Amount.
State Capitol Bonds of 1870	7 per cent	$14,000 00
Soldiers' Relief Bonds	7 per cent	95,500 00
Civil Bonds of 1873	6 per cent	622,000 00
Total		$731,500 00

The interest on these bonds amounts to forty-four thousand nine hundred and eighty-five dollars ($44,985) per annum.

There is at the present time in the Interest and Sinking Fund the sum of eighty-nine thousand dollars applicable to the redemption of bonds, which, if the bonds could be called in, would reduce the State debt to three million three hundred and fourteen thousand dollars.

Second—Showing the valuation of real and personal property, the rate of taxation on each one hundred dollars, the receipts, expenditures, and bonded and floating debt, from first to twenty-ninth fiscal year, inclusive, "as shown by the Controller's reports:"

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Year.	Assessed value of property.	Tax for State purposes.	Receipts.	Expenditures.	Bonded and Floating Debt.
1849-50			$303,156 27	$348,165 26	$353,505 42
1850-51	$57,670,689 00	$0 50	330,796 45	585,702 83	602,703 56
1851-52	49,231,052 00	65	366,825 07	925,694 56	1,171,774 46
1852-53	64,579,375 00	65	454,185 85	1,269,149 13	2,291,682 19
1853-54	95,335,646 00	60	1,022,647 32	1,204,757 96	2,520,204 80
1854-55	111,191,630 00	60	1,155,537 10	1,337,496 64	3,365,270 46
1855-56	103,887,193 55	60	723,289 83	1,368,684 81	3,702,196 77
1856-57	95,007,440 97	70	799,795 90	719,103 50	3,228,000 00
1857-58	126,059,461 82	70	1,215,128 61	992,553 35	4,068,828 06
1858-59	123,955,877 00	60	1,184,221 79	1,109,143 20	3,900,000 00
1859-60	131,060,279 49	60	1,198,581 81	1,165,717 95	3,824,000 00
1860-61	148,193,540 02	60	1,292,718 63	1,462,690 81	3,925,000 00
1861-62	147,811,617 16	60	1,031,529 08	1,146,744 65	3,926,000 00
1862-63	160,369,071 81	77	1,626,278 58	2,097,268 29	3,926,000 00
1863-64	174,104,955 07	92	2,096,437 83	2,093,228 18	4,441,156 38
1864-65	180,484,949 85	1 25	2,594,365 29	2,603,065 08	4,734,130 91
1865-66	183,509,161 00	1 15	2,970,736 48	3,136,770 03	5,117,876 75
1866-67	200,764,135 50	1 13	3,595,232 06	2,954,233 79	5,131,892 63
1867-68	212,205,339 01	1 13	2,801,920 25	2,977,456 43	4,916,825 56
1868-69	237,483,175 07	1 00	2,918,211 09	3,180,725 76	4,296,749 39
1869-70	260,563,886 08	97	3,508,163 91	3,814,037 22	4,277,051 62
1870-71	277,538,134 97	86½	3,329,984 99	2,915,458 60	3,658,921 81
1871-72	267,868,126 76	86½	3,107,816 17	3,062,119 34	3,717,507 73
1872-73	637,232,823 31	50	3,792,615 99	3,524,093 24	4,063,168 92
1873-74	528,747,043 00	50	4,093,774 93	3,777,042 99	3,594,890 51
1874-75	611,495,197 00	64 9-10	4,812,926 20	4,769,816 83	3,654,500 00
1875-76	618,083,315 00	60½	3,651,895 39	3,961,964 18	3,429,500 00
1876-77	595,073,177 00	73½	4,549,258 30	3,785,111 35	3,411,000 00
1877-78	586,972,445 00	63	3,913,494 45	3,797,864 68	3,403,000 00
30th fiscal year, 1878-79	584,583,651 00	55	Tax not	yet collected.	Year incomplete.

Third—Statement showing the county debts, and taxable property for the year eighteen hundred and seventy-five-six, together with the State and county rates of taxation for said year:

Counties.	Funded Debt.	Floating Debt.	Rates of Interest.	Total Value of Taxable Property.	Rate of Taxation on each $100. State.	County.	Total.
Alameda	$247,944 00	$112,743 64	7 per cent.	$38,841,725 00	$0 60½	$0 44½ 69½	$1 05 1 30
Alpine		22,311 13	6, 7, 10 per cent.	501,870 00	60½	2 34½	2 95
Amador		110,505 18	7, 10 per cent.	2,568,943 00	60½	1 99½	2 60
Butte	189,079 49	24,012 97	10 per cent.	10,085,476 00	60½	1 19½	1 80
Calaveras	115,325 00	70,232 59		1,717,897 00	60½	2 49½	3 10
Colusa		53,270 64	7, 10 per cent.	10,257,749 00	60½	99½	1 60
Contra Costa		58,929 00	7 per cent.	7,368,312 00	60½	1 11½	1 72
Del Norte		7,500 00	7 per cent.	689,090 00	60½	1 39½	2 00
El Dorado	170,500 00	1,655 98	7, 10 per cent.	2,551,526 00	60½	1 05	1 65½
Fresno	53,500 00	13,607 00	7, 10 per cent.	7,613,549 00	60½	74½	1 35
Humboldt		68,242 26	7, 9 per cent.	4,894,310 00	60½		
Inyo		92,212 06	10 per cent.	1,525,030 00	60½	2 39½	3 00
Kern		90,102 00	7 per cent.	4,972,175 00	60½	1 65½	2 26
Lake	41,000 00	20,368 63	7, 8, 12 per cent.	2,151,421 00	60½	1 49½	2 10
Lassen	14,281 88		10 per cent.	1,186,689 00	60½	1 89½	2 50
Los Angeles		688,417 25	7, 10 per cent.	14,890,765 00	60½	1 37½	1 98
Marin	140,000 00	17,168 89	7, 8, 10 per cent.	7,674,518 00	60½	79½	1 40
Mariposa		62,099 70	7 per cent.	1,446,991 00	60½	2 24½	2 85
Mendocino	123,263 64	34,139 96	7, 8, 9, 10 per cent.	6,163,455 00	60½	1 24½	1 85
Merced	75,000 00	46,066 14	7, 10 per cent.	6,531,573 00	60½	1 07½	1 68
Modoc	13,618 51	2,700 16	7, 10 per cent.	1,082,222 00	60½	1 39½	2 00
Mono		1,561 40	7 per cent.	608,097 00	60½	1 49½	2 10
Monterey		31,000 00	7 per cent.	9,411,852 00	60½	64½	1 25
Napa	228,000 00	117,501 32	7, 10 per cent.	8,008,964 00	60½	1 39½	2 00
Nevada		50,473 73	7 per cent.	7,893,547 00	60½	1 09½	1 70
Placer	7,000 00		8 per cent.	6,896,129 00	60½	69½	1 30
Plumas	35,000 00	37,117 78	7, 10 per cent.	1,735,981 00	60½	2 19½	2 80
Sacramento	705,200 00	1,110 70	6, 8 per cent.	19,514,660 00	60½	69½	1 30
San Benito	11,000 00	10,093 62	7 per cent.	4,640,150 00	60½	54½	1 15
San Bernardino	4,711 20		7 per cent.	2,251,922 00	60½	1 79½	2 40
San Diego	112,846 82	51,903 04	7, 10 per cent.	3,079,969 00	60½	2 00	2 60½
San Francisco	3,630,500 00	83,844 00	6, 7 per cent.	269,078,606 00	60½	1 00	1 60½
San Joaquin	237,902 00		8, 10 per cent.	20,696,296 00	60½	64½	1 25
San Luis Obispo	55,000 00		10 per cent.	5,361,582 00	60½	89½	1 50
San Mateo	90,000 00		10 per cent.	6,167,596 00	60½	1 14½	1 75
Santa Barbara	58,000 00	15,600 00	7 per cent.	6,756,877 00	60½	1 07½	1 68
Santa Clara	376,000 00	160,136 56	7, 8 per cent.	29,362,646 00	60½	69½	1 30
Santa Cruz	108,000 00	7,660 00	7 per cent.	7,488,319 00	60½	84½	1 45
Shasta		75,619 37	7 per cent.	1,933,296 00	60½	1 69½	2 30
Sierra	21,100 00	12,031 66	10 per cent.	2,234,675 00	60½	1 75½	2 36
Siskiyou	55,600 00		10 per cent.	3,222,894 00	60½	1 14½	1 75
Solano	156,224 00	156,050 23	7, 10 per cent.	9,754,085 00	60½	1 44½	2 05
Sonoma	374,700 00		8 per cent.	16,609,418 00	60½	89½	1 50
Stanislaus	42,000 00	8,324 22	7, 9 per cent.	7,436,470 00	60½	79½	1 40
Sutter	25,000 00	39,224 21	7, 10 per cent.	4,493,133 00	60½	91½	1 52
Tehama	62,853 61	28,410 34	7, 10 per cent.	3,870,303 00	60½	1 34½	1 95
Trinity		60,797 64	7, 10 per cent.	941,633 00	60½	2 09½	2 70
Tulare	3,000 00	49,994 48	7 per cent.	5,118,322 00	60½	1 05½	1 66
Tuolumne		52,769 74	7 per cent.	1,383,864 00	60½	1 89½	2 50
Ventura	20,000 00	2,229 05	10 per cent.	3,165,694 00	60½	1 09½	1 70
Yolo		133,151 34	7 per cent.	9,328,099 00	60½	99½	1 60
Yuba	224,000 00	7,934 84	7, 8 per cent.	4,922,950 00	60½	1 69½ 1 99½	2 30 2 60
Totals	$7,827,150 15	$2,799,824 81		$618,083,315 00			

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Statement showing the county debts and taxable property for the year eighteen hundred and seventy-six-seven, together with State and county rates of taxation, for said years:

COUNTIES.	Funded Debt.	Floating Debt.	Rates of Interest.	Total Value of Taxable Property.	Rate of Taxation on each $100.		
					State.	County.	Total.
Alameda	$246,944 00	$119,827 39	7, 8, 10 per cent.	$36,389,961 00	73½	{$0 57½ / 0 82½}	{$1 31 / 1 56}
Alpine		20,030 00	6, 7, 10 per cent.	453,111 00	73½	2 14½	2 88
Amador		99,089 40	7, 10 per cent.	2,576,408 00	73½	1 96½	2 70
Butte	167,310 00	10,102 88	10 per cent.	9,914,057 00	73½	1 26½	2 00
Calaveras	108,350 00	69,800 00	7 per cent.	1,908,216 00	73½	2 36½	3 10
Colusa		44,312 00	7, 10 per cent.	9,897,941 00	73½	1 06½	1 80
Contra Costa		70,175 13	7 per cent.	7,227,920 00	73½	1 10½	1 84
Del Norte		4,070 00	7 per cent.	651,876 00	73½	1 76½	2 50
El Dorado		180,362 40	7, 10 per cent.	2,337.663 00	73½	1 60	2 33½
Fresno	47,000 00		7, 10 per cent.	8,025,381 00	73½	96½	1 70
Humboldt				4,961,657 00	73½	1 56½	2 30
Inyo	34,000 00	63,499 07	7, 10 per cent.	2,093,625 00	73½	2 26½	3 00
Kern	65,000 00	29,854 01	7, 10 per cent.	6,270,323 00	73½	1 67½	2 41
Lake		61,400 00	7, 8, 12 per cent.	2,146,832 00	73½	2 11½	2.85
Lassen	24,821 82		10 per cent.	1,109,009 00	73½	2 01½	2 75
Los Angeles		659,414 90	7, 10 per cent.	14,880,922 00	73½	{1 01½ / 1 16½}	{1 75 / 1 90}
Marin	300,000 00	24,351 89	7, 8, 12 per cent.	7,790,297 00	73½	96½	1 70
Mariposa		39,906 00	7 per cent.	1,465,423 00	73½	2 37½	3 11
Mendocino	138,263 64	22,306 43	7, 8, 9, 12 per cent.	5,898,813 00	73½	1 39½	2 13
Merced	75,000 00	53,700 05	7, 10 per cent.	6,140,279 00	73½	1 03½	1 77
Modoc	14,980 36	1,431 91	7, 10 per cent.	1,983,929 00	73½	1 51½	2 25
Mono		2,303 31	7 per cent.	[illegible]19 00	73½	1 51½	2 25
Monterey		29,547 92	7 per cent.	8,7[illegible],937 00	73½	76½	1 50
Napa	228,000 00	99,284 96	7, 10 per cent.	8,115,376 00	73½	1 26½	2 00
Nevada		59,081 84	7 per cent.	6,996,846 00	73½	1 16½	1 90
Placer	4,000 00		8 per cent.	5,762,570 00	73½	76½	1 50
Plumas	58,850 00	33,738 59	7, 10 per cent.	1,980,877 00	73½	1 81½	2 55
Sacramento	695,200 00		6, 8 per cent.	17,918,292 00	73½	91½	1 65
San Benito	11,000 00	11,727 48		4,353,640 00	73½	76½	1 50
San Bernardino	2,361 42	26,278 53		2,728,480 00	73½	1 76½	2 50
San Diego	102,846 82	57,414 57	7, 10 per cent.	3,256,632 00	73½	1 75	2 48½
San Francisco	4,322,500 00		6, 7 per cent.	260,576,978 00	73½	1 39	2 12½
San Joaquin		230,300 00	8, 10 per cent.	17,879,127 00	73½	76½	1 50
San Luis Obispo	117,000 00	28,791 53	8, 10 per cent.	5,330,339 00	73½	1 01½	1 75
San Mateo	146,000 00		7, 10 per cent.	6,414,160 00	73½	1 26½	2 00
Santa Barbara	5,500 00	70,000 00	10 per cent.	6,088,518 00	73½	1 11½	1 85
Santa Clara	376,000 00	218,963 07	7, 8 per cent.	28,175,269 00	73½	91½	1 65
Santa Cruz	208,300 00	44,140 00	8, 10 per cent.	6,646,875 00	73½	1 36½	2 10
Shasta		77,813 22	7 per cent.	1,865,616 00	73½	1 76½	2 50
Sierra	29,000 00	10,642 50		1,791,744 00	73½	1 96½	2 70
Siskiyou	55,600 00		10 per cent.	2,619,891 00	73½	1 06½	1 80
Solano	149,912 00	139,916 77	7 per cent.	9,494,804 00	73½	1 56½	2 30
Sonoma	374,700 00		7, 8 per cent.	15,243,398 00	73½	91½	1 65
Stanislaus	41,925 00	35,000 00	7, 9 per cent.	5,991,605 00	73½	91½	1 65
Sutter	25,000 00	41,928 52	7, 10 per cent.	4,050,587 00	73½	1 16½	1 90
Tehama	67,000 00	64,069 33	7, 8, 10 per cent.	3,661,896 00	73½	1 46½	2 20
Trinity		56,634 96	7, 10 per cent.	830,733 00	73½	2 06½	2 80
Tulare	21,600 00	76,606 88	7, 10 per cent.	4,757,541 00	73½	1 56½	2 30
Tuolumne		47,484 70	7 per cent.	1,778,905 00	73½	1 66½	2 40
Ventura	20,000 00	1,388 58	7, 10 per cent.	3,491,859 00	73½	1 11½	1 85
Yolo		75,651 76	7 per cent.	10,243,075 00	73½	1 78	2 51½
Yuba	197,700 00	12,768 07	8 per cent.	4,442,245 00	73½	{1 76½ / 2 06½}	{2 50 / 2 80}
Total	$8,481,665 06	$3,125,110 55		$595,073,177 00			

NOTE.—Alameda, Los Angeles, and Yuba Counties have two tax rates each—in one portion of the county one rate, and in the other part another rate.

Fourth. The total value of taxable property in the City and County of San Francisco, for the fiscal year eighteen hundred and seventy-eight and nine, is two hundred and forty-four million six hundred and twenty-six thousand and seven hundred and sixty dollars. Amount of tax levy thereon is one dollar and sixty-nine cents upon each one hundred dollars valuation of property, for city and county purposes, and is exclusive of State tax levy. This office does not furnish the items which make up the said tax rate of one dollar and sixty-nine cents on the one hundred dollars valuation given above. The same can be readily obtained by application to the County Auditor of the City and County of San Francisco.

ITEMIZED ACCOUNT EXPENDITURES TWENTY-NINTH FISCAL YEAR.

Appropriations.		
Per diem—mileage of Lieutenant-Governor and Senators	$50,659 30	
Per diem—mileage of Assemblymen	99,282 00	
Pay of officers and Clerks of Senate	11,320 00	
Pay of officers and Clerks of Assembly	12,048 00	
Contingent expenses of Senate	27,500 00	
Contingent expenses of Assembly	25,114 12	
Total for Legislative Department		$225,923 42
Salaries of Justices of Supreme Court	$30,000 00	
Amounts carried forward	$30,000 00	$225,923 42
Amounts brought forward	$30,000 00	$225,923 42
Salaries of District Judges	117,152 78	
Salary of Clerk of Supreme Court	4,000 00	
Salary of Deputy Clerk of Supreme Court	1,800 00	
Salary of Reporter of Supreme Court	6,000 00	
Salary of Phonographic Reporter of Supreme Court	3,000 00	
Salary of Secretary to Justices of Supreme Court	3,000 00	
Salary of Bailiff and Porter of Supreme Court	1,179 99	
Pay of Porter for office of Clerk of Supreme Court	200 00	
Postage and contingent expenses of Supreme Court	250 00	
Postage and contingent expenses of Clerk of Supreme Court	150 00	
Total for Judicial Department		166,732 77
Salary of Governor	$7,000 00	
Salary of Private Secretary	2,400 00	
Salary of Executive Clerk	2,400 00	
Amounts carried forward	$11,800 00	$392,656 19

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Amounts brought forward	$11,800 00	$392,656 19
Pay of Porter	600 00	
Special contingents (secret service fund)	1,514 65	
Postage, expressage, telegraphing, etc.	449 64	
Total for Governor's office		14,364 29
Salary of Secretary of State	$4,000 00	
Salary of Deputy	2,400 00	
Salaries of Clerks	9,600 00	
Pay of Porter	150 00	
Postage and expressage	1,770 72	
Contingent expenses	100 00	
Total for Secretary of State's office		18,020 72
Salary of Controller	$4,000 00	
Salary of Deputy	3,000 00	
Salaries of Clerks	7,200 00	
Salary of Bookkeeper	2,400 00	
Pay of Porter	300 00	
Contingent expenses	61 05	
Postage and expressage	152 50	
Total for Controller's office		17,113 55
Salary of Treasurer	$4,000 00	
Salaries of Clerks	4,200 00	
Salaries of Watchmen	2,400 00	
Pay of Porter	150 00	
Postage and expressage	150 00	
Total for Treasurer's office		10,900 00
Salary of Attorney-General	$4,000 00	
Salary of Clerk	1,800 00	
Pay of Porter	100 00	
Postage and expressage	100 00	
Costs and expenses of suits where State is party in interest	3,493 40	
Total for Attorney-General's office		9,493 40
Salary of Surveyor-General	$2,000 00	
Salary of Deputy	2,400 00	
Salaries of Clerks	3,300 00	
Pay of Porter	300 00	
Postage and expressage	125 00	
Purchase of maps		
Copying of maps	300 00	
Total for Surveyor-General's office		8,425 00
Salary of Register of Land Office	$2,000 00	
Salaries of Clerks	3,600 00	
Postage and expressage	125 00	
Total for State Land Office		5,725 00
Salary of Superintendent of Public Instruction	$3,000 00	
Salary of Deputy	1,800 00	
Salary of Clerk	1,500 00	
Pay of Porter	200 00	
Contingent expenses	34 17	
Postage and expressage	1,000 34	
Traveling expenses	1,151 00	
Total for Superintendent of Public Instruction's office		8,685 51
Salary of Secretary of State Board of Health	$2,500 00	
Mileage and contingent expenses	851 15	
Total for State Board of Health		3,351 15
Salaries of members of State Board of Examiners	$3,500 00	
Salary of Clerk	1,200 00	
Total for State Board of Examiners		4,700 00
Salary of State Librarian	$3,000 00	
Salaries of Deputies	3,600 00	
Pay of Porter	600 00	
Postage and expressage	166 30	
Total for State Library		7,366 30
Salary of Adjutant-General	$3,000 00	
Salary of Assistant Adjutant-General	2,000 00	
Pay of Porter	300 00	
Amounts carried forward	$5,300 00	$500,801 11

Amounts brought forward	$5,300 00	$500,801 11
Postage and expressage	100 60	
Cleaning and transportation of arms	645 30	
Expenses of National Guard—Act, April 3d, 1876	29,163 00	
Expenses of National Guard—Act, March 30th, 1874	405 00	
Expenses of National Guard—Act, March 30th, 1876	3,159 00	
Payment of Guard and military duty in San Francisco in November, 1877, and January, 1878—Act, March 29th, 1878	5,202 00	
Relief of the Oakland Guard—Act, April 1st, 1878	1,250 00	
Total for military purposes		45,224 90
Salary of Superintendent of State Printing Office	$2,400 00	
Support of State Printing Office	62,809 74	
Total for State Printing Office		65,209 74
Salary of Insurance Commissioner	$3,000 00	
Salary of Clerk	1,800 00	
Rent, printing, and contingent expenses	2,782 00	
Total for Insurance Commissioner		7,582 00
Services of State Board of Examination	$700 00	
Traveling expenses of State Board of Education	99 00	
Total for Educational Boards		799 00
Salaries of Transportation Commissioners	$7,674 99	
Salary of Secretary	1,800 00	
Contingent expenses	549 30	
Total for Transportation Commissioners		10,024 29
Support of Insane Asylum, Stockton	$200,202 25	
Support of Insane Asylum, Napa	110,000 00	
Transportation of insane	19,219 70	
Support of Insane Asylum, Napa, to pay twenty-seventh fiscal year, Act March 30th, 1879	13,420 00	
Completion Insane Asylum, Napa, Act April 1st, 1876	46,751 40	
Total for insane		389,593 35
Support of State Prison	$218,275 00	
Transportation of prisoners	24,319 57	
Construction of workshops, etc., Act March 31st, 1876	45,000 00	
Total for State Prison		287,594 57
Miscellaneous.		
Pay of employés State Capitol building and grounds	$14,400 00	
Education and care deaf, dumb, and blind	30,000 00	
Support of State Normal School	24,477 15	
Support of orphans	106,659 61	
Arresting criminals without the limits of the State	1,775 25	
Official advertisements	2,487 75	
Payment of rewards offered by the Governor	2,300 00	
Restoration and preservation of fish	5,000 00	
Stationery, fuel, lights, etc.	24,170 25	
Purchase of books for State Normal School	640 75	
Traveling expenses of Attorney and Surveyor-Generals	1,285 00	
Rewards for arrest of highway robbers	9,600 00	
Purchase of Supreme Court Reports		
Services of Registers and Receivers United States Land Office	118 00	
Salaries and expenses State Land Commission	70 00	
Salaries of Bank Commissioners	941 65	
Salary of Bank Commissioners' Clerk	150 00	
Construction of building for deaf, dumb, and blind	110,000 00	
Permanent improvement State Capitol grounds	10,882 72	
Painting State Capitol	6,331 06	
Repairing and painting roof State Capitol	3,106 35	
Amounts carried forward	$354,404 53	$1,306,828 96

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Amounts brought forward	$354,404 53	$1,306,828 96
Construction of Mechanical Arts College building	12,332 45	
Redemption of unused and uncanceled State stamps	898 70	
Translating into Spanish laws of twenty-first session	125 36	
Relief of Edward Christy	390 00	
Relief of James W. Marshall	1,000 00	
Relief of sufferers by the floods	5,000 00	
Relief of Frederick Kuhnle	300 00	
Payment of canceled coupons	1,155 00	
Payment of claim of Hiram Clock	120 00	
Payment of claim of P. K. Stockton	285 00	
Printing paper and official advertisements, twenty-seventh fiscal year	33 75	
Payment of claims of Sacramento County	3,653 67	
Payment of claim of Mary M. Springer	7,000 00	
Relief of Julius Blume	300 00	
Per diem and mileage of Presidential Electors of 1876	212 70	
Payment of claims of J. W. C. Coleman	426 90	
Payment of claims of John Sutherland	300 00	
Repair and furniture of State Capitol	8,274 52	
Aid to charitable institutions	27,500 00	
Traveling expenses United States Surveyor-General, etc., twenty-seventh fiscal year	95 00	
Payment of claims of C. H. Krebs	3,427 90	
Repair and furniture for State Normal School, twenty-eighth fiscal year	29 09	
Erection and maintenance of Folsom Branch State Prison, Act February 21st, 1878	300 00	
Expenses of system of irrigation and navigation Sacramento and San Joaquin Rivers	2,997 16	
Payment of claims of Harrison Roberts, Luis Raggio, and C. S. Colvig	2,199 42	
Payment of claim of John C. Boggs	600 00	
Relief of Richard Dudding and William Johnston	154 00	
Relief of John Q. Hendricks, Chas. Carroll, and R. D. Hubbard	300 00	
Total miscellaneous		433,806 16
Total amount drawn from General Fund		$1,740,635 12
For support common schools—School Fund	$1,571,485 89	
For payment interest on bonds, etc.—Interest and Sinking Fund	322,997 73	
For purchase of bonds for School Fund—State School Land Fund	80,515 42	
For repairs, etc., Capitol building—Capitol Fund	342 35	
For State University—University Fund	50,617 27	
For State University—University Endowment Fund	627 20	
For purchase of books, etc.—State Library Fund	5,287 63	
For purchase of books—Supreme Court, Library Fund	2,274 10	
For payment to heirs, etc.—Estate Deceased Persons' Fund	185 02	
For payment of interest—Interest and Sinking Fund, Levee District No. Five	6,300 00	
For improvement wharves and docks, San Francisco—San Francisco Harbor Improvement Fund	170,712 80	
For payment claim J. A. Odell—Folsom Branch State Prison Fund	1,300 00	
Total from other funds	$2,212,645 41	
Deduct the interest on bonds of the State held in trust by the Treasurer for School and University Funds, as it is included in those Funds, and also in the Interest and Sinking Fund—amount	157,800 00	
Net amount of expenditures from other Funds		2,054,845 41
Swamp land warrants, issued in sixteenth and seventeenth fiscal years, paid		2,384 15
Total expenditures for twenty-ninth fiscal year, ending June 30th, 1878		$3,797,864 68

ADJOURNMENT.

MR. CROSS. Mr. President: Owing to the exceedingly slim attendance here this morning, and the probability that the members will not be here until about two o'clock this afternoon, I move that the Convention do now adjourn until two P. M.

MR. BROWN. Mr. President: I do think it is wrong for this entire body to adjourn in consequence of the absence of a few men in different committees. I am under the impression that there is business that can be done, without adjourning to satisfy the convenience of these gentlemen.

The question was put, and, on a division, the vote stood thirty-six ayes to thirty-three noes—no quorum voting.

MR. GREGG. Mr. President: An adjournment until two o'clock would not accommodate those who are coming up on the train, and I therefore move to amend by substituting three o'clock.

MR. LARKIN. I demand the ayes and noes on that motion.

THE PRESIDENT pro tem. The ayes and noes have been demanded upon this motion. Those in favor of taking a recess until three P. M. will, when their names are called, say "aye," those opposed, "no." The Secretary will call the roll.

The roll was called, and the Convention refused to take a recess, by the following vote:

AYES.

Andrews,	Huestis,	Pulliam,
Barry,	Hughey,	Reynolds,
Belcher,	Johnson,	Rolfe,
Boggs,	Jones,	Shurtleff,
Charles,	Kleine,	Smith, of 4th District,
Cowden,	Lavigne,	Smith, of San Francisco,
Cross,	Lewis,	Steele,
Dowling,	Mansfield,	Stuart,
Doyle,	Martin, of Santa Cruz,	Sweasey,
Edgerton,	McConnell,	Swenson,
Garvey,	McCoy,	Swing,
Gregg,	McFarland,	Terry,
Harrison,	Moffat,	Vacquerel,
Harvey,	Porter,	Van Voorhies—43.
Holmes,		

NOES.

Barton,	Joyce,	Schell,
Blackmer,	Kelley,	Smith, of Santa Clara,
Brown,	Laine,	Stedman,
Burt,	Lampson,	Tinnin,
Caples,	Larkin,	Townsend,
Davis,	Larue,	Tully,
Dean,	McCallum,	Turner,
Evey,	Mills,	Walker, of Tuolumne,
Filcher,	Morse,	Waters,
Finney,	Nason,	Webster,
Freud,	O'Donnell,	West,
Grace,	Ohleyer,	White,
Howard,	Prouty,	Wilson, of Tehama,
Hunter,	Rhodes,	Wyatt—44.
Inman,	Ringgold,	

CHANGE OF RULE.

MR. LARKIN. I ask leave to introduce out of order an amendment that I gave notice of Saturday. It is as follows:

Amend Rule Fifty-two, third line, by striking out all after the word "to" and inserting "the Committee of the Whole."

The object is that all propositions shall be referred to the Committee of the Whole instead of to standing committees. The rule now reads: "Propositions and resolutions mentioned in the last foregoing rule shall embrace but one subject; they shall be read by title when introduced, and then referred, without debate, to an appropriate committee." I want to strike out all after the word "to" and insert "the Committee of the Whole," so that matters will come directly to this Convention instead of being tied up in the hands of committees. At this late day of the session it is useless to send more matters to the committees.

MR. McFARLAND. Mr. President: I do not think it would be wise to make that innovation at this time. Then every proposition, no matter of what character, must be referred to the Committee of the Whole and be debated here. It seems to me that it would be much better to let the propositions take their usual course. There will undoubtedly not be a great many more, but if there are they should take their regular course instead of all being sent to the Committee of the Whole.

MR. LARKIN. Mr. President: There will be amendments desired to be offered as substitutes to the propositions already submitted. I desire that all propositions come directly before the Convention, rather than be referred to some committee that may retain them for two weeks. The propositions that are hereafter to come before us should be presented to this Convention and not delayed in any committee room for the next two weeks. I think that they ought to be referred to the Committee of the Whole at once.

MR. SMITH, of Kern. Mr. President: I cannot see that the proposition offered by Mr. Larkin will facilitate business here at all. On the contrary it would result in much confusion and delay. I do not see what has called forth such a resolution. The committees have certainly done their work with dispatch, and the reports before us are more numerous now than we are able to attend to. The experience of this body in the debate on the jury system and the question of the pardoning power, it seems to me, is enough to show that the body cannot transact the business before it without its being referred to the committees; that even after a matter has been referred to a committee and reported back we have hours of discussion upon minor propositions. I

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for one, for the purpose of getting through here as rapidly as possible, would be in favor of referring to the committees more than we have done, and doing less in Convention. I think the adoption of this amendment would be very unwise. If we should undertake anything of that kind we will soon have to change it. I certainly am opposed to the proposition.

MR. BROWN. Mr. President: I am in favor of the dispatch of business. I agree with the gentleman from Kern that it is necessary to dispatch business very rapidly, but the grand object of this change of Rule Fifty-two is for the purpose of dispatching business. Now, matters that have been before the committees have caused just as much discussion as if they had come here first. The house can judge and frequently put a final question upon a proposition that does not stand any chance of ever getting into the Constitution. I believe it is with a view to this, and to the dispatch of business, and to getting at matters of special importance, which will interest this body, that the amendment is offered. It is so that measures can come before this body direct and be dispatched. Many things will be frivolous and yet will take up a great deal of time, and unless we start right in and work hereafter, we will not be able to get through with the business that is before this body.

MR. BARTON. Mr. President: I favor the adoption of the amendment, for reasons which I believe are well understood by this body. First, as a matter of economy in two or three directions. The printing of surplus matters, or matter in addition to what we have already printed, is a useless waste of money. We have before us now enough to make fourteen Constitutions, and when this matter comes before the committees under the present plan or system, it accumulates a worthless mass of material that the committees, to a certain extent, ignore and disregard. I believe that when a proposition is presented to the Committee of the Whole, if there is any merit in it, that it can be presented by the introducer, or the author of the proposition, with sufficient force to bring the attention of this Convention directly upon the proposition and its merits. Therefore, for several reasons, I hope that the amendment offered by the gentleman from El Dorado, Mr. Larkin, will be adopted.

MR. STEDMAN. Mr. President: I would like to vote in favor of the amendment offered by the gentleman from El Dorado, Mr. Larkin, provided that he would make it apply only to committees that have already reported. There are several committees that have already reported, and propositions relating to subjects covered by their reports might as well be referred to the Committee of the Whole. I would like to have an amendment inserted to that effect. The committees that have not reported will still hold sessions, and any proposition relating to matters before them ought to be referred to them for their consideration.

MR. CROSS. Mr. President: My experience in reference to this matter leads me to believe that this amendment proposed by the gentleman from El Dorado is, at this time, a little premature. I will cite a case in the Committee on Revenue and Taxation: A matter of importance with regard to revenue and taxation was brought before the committee only two or three days ago, by Judge Fawcett. The proposition offered by him was found to be an important and feasible one. The committee have consumed considerable time upon it and have put it in such shape that I am satisfied it will be accepted by the Convention.

MR. LARKIN. I will accept the amendment of the gentleman from San Francisco, Mr. Stedman, that it shall apply only to committees that have made their reports.

MR. CROSS. This proposition which was brought before the committee was favorably acted upon. I insist that experience has shown that the work is dispatched much more rapidly in the several committees than in the Committee of the Whole. The committees have nearly completed their work, and this flow of propositions will soon be cut off, while if they are referred to the Committee of the Whole they will still continue to come in, and will take up much more time than they would in the several committees. Under the present system we will accomplish much more work in a given space of time. It seems to me that the rule has worked well as it stands, and as we have nearly two thirds of the work of the Convention left on our hands I think we should advance our work further before this change of the rule is adopted.

MR. GREGG. Mr. President: The purpose and object of referring matters to the committees was to get a basis upon which the Committee of the Whole could work. There is a committee upon nearly every subject in the Constitution. They have reported during the sitting of the body. Every proposition made in Committee of the Whole should be made as an amendment to the report of the committee. Now then, if this rule is abrogated, the result is that we have the proposition introduced and referred to the Committee of the Whole. It may be called up and discussed separately, without any connection with the report of the committee on the same subject. Then when the report comes up it may be offered as an amendment to the report, and that will simply confuse and confound business. If gentlemen wish to amend propositions introduced by committees they can do so, as they have been doing, in Committee of the Whole. Such propositions as they have can be offered by way of amendments. If they simply introduce them, and have them referred to the Committee of the Whole, we take them up as independent propositions. There is nothing to prevent any person who has an amendment presenting it by way of amendment to the report of the committee on that subject; but to send it in as an independent proposition, it confuses and confounds the whole business. We now have the report of the committee, and have the matter printed, and we cannot take it up until it comes back here. But we might say that all matters referred to the Committee of the Whole must be considered as amendments to the matters reported to that committee.

MR. MARTIN, of Santa Cruz. Mr. President: I move to lay the matter on the table.

Carried.

NEW PROPOSITIONS.

THE PRESIDENT pro tem. The next order of business will be the introduction of resolutions and propositions relating to the Constitution.

LIFE INSURANCE.

MR. SMITH, of Santa Clara, introduced the following proposed amendment to the Constitution, providing that husbands may insure their lives for the benefit of their heirs, and the same be exempt from their debts:

"The husband may insure his own life for the sole use and benefit of his wife and children, and in case of the death of the husband, the amount thus insured shall be paid over to the wife and children, or the guardian, if under age, for her or their own use, free from all the claims of the representatives of the husband or any of his creditors."

Referred to Committee on Legislative Department.

ALIENS NOT TO BEAR ARMS.

MR. O'DONNELL introduced the following proposed amendment to the Constitution, relative to aliens bearing arms:

SECTION —. No alien who cannot become a citizen of the United States shall be allowed to bear arms.

Referred to Committee on Chinese.

COUNTY AND TOWNSHIP GOVERNMENTS.

MR. MILLS introduced the following proposed amendment to the Constitution, relative to county and township governments:

AMENDMENT TO ARTICLE ELEVEN, SECTION FOUR, OF THE EXISTING CONSTITUTION.

SECTION —. The Legislature, at the first session after the adoption of this Constitution, shall establish a system of county and township governments which shall be as nearly uniform as practicable, and such system shall provide that whenever a majority of the legal voters of any county, voting at any general election, shall so determine, such township organization shall be in force therein; and whenever any county shall adopt township organization, so much of this Constitution as conflicts with such organization, as hereinafter specified, may be dispensed with; and in any county which shall have adopted township organization, the question of continuing the same may be submitted to a vote of the electors of such county, at a general election, in the manner that now is or may be provided by law, and if a majority of all the votes cast upon that question shall be against township organization, then such organization shall cease in said county, and all laws in force in relation to counties not having township organization shall immediately take effect and be in force in such county. No two townships shall have the same name, and the day of holding township elections shall be uniform throughout the State. Each county that shall have elected to adopt township organization shall be divided into so many compactly located townships as may be deemed necessary, not less than three; *provided*, that after three have been formed no additional townships shall be made containing less than thirty square miles. Each township shall be known as the Township of ——, of the County of ——, and may sue and be sued by such title. In each township there shall be elected, or appointed, as provided by law, one Supervisor, one Township Clerk, three Selectmen, who shall act as a Board of Directors and Trustees, one Overseer of Highways, one Overseer of the Poor, one Assessor, and not less than two Justices of the Peace, and two Constables, and such other officers as may be prescribed by law; all such officers shall be elected for such periods, perform such duties, and receive such compensation as may be prescribed by law. Each township shall maintain free schools sufficient for the education of all its inhabitants, and provide for the support of the paupers resident therein, and for the building and maintenance of necessary bridges and highways, and all taxes paid for these purposes shall be expended therein. The several townships, when organized under this Constitution and the laws to be made as herein provided for, shall be entitled to make and enforce all such police regulations in such townships, in the manner to be prescribed by law, as shall not conflict with the provisions of this Constitution, or of any general law made thereunder, and all fines or forfeitures imposed or collected in pursuance thereof shall belong to such township.

Referred to the Committee on City, County, and Township Organizations.

CHANGE OF VENUE.

MR. MILLS introduced the following proposed amendment to the Constitution, relative to change of venue in criminal cases:

PROPOSED AMENDMENT TO ARTICLE FOUR OF THE PRESENT CONSTITUTION.

Add to article four the following as section ——:

SECTION —. The Legislature shall not change the venue in any criminal or penal proceeding, but shall provide for the same by general laws.

Referred to Committee on Legislative Department.

SPEEDY TRIAL.

MR. MILLS introduced the following proposed amendment to the Constitution, in relation to speedy trials:

PROPOSED AMENDMENT TO ARTICLE ONE OF THE PRESENT CONSTITUTION.

Add the following as section —— to article one:

SECTION —. In all prosecutions by indictment or information the accused shall be entitled to a speedy public trial, by an impartial jury of the county in which the offense was committed, unless the venue be changed.

Referred to Committee on Preamble and Bill of Rights.

MORE THAN ONE OFFICE.

MR. FREUD introduced the following proposed amendment to the Constitution, to be placed among the miscellaneous provisions:

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SECTION —. No person shall hold or exercise at the same time more than one office of trust or profit.

Referred to Committee on Miscellaneous Subjects.

CHANGE OF RULE.

MR. HUESTIS. Mr. President: I believe it would be in order now to introduce the amendment to the rule of which I gave notice at the last session of the Convention. I move to strike out of the standing rules Rule Seventy-one, and insert the following:

RULE SEVENTY-ONE.

In all cases where propositions or resolutions embodying matters proposed to be introduced into the Constitution are printed, it must be by a majority vote of the Convention; but reports of standing committees shall be printed without any vote being had.

I think it is unnecessary to argue this proposition. It seems to me that we have printed enough of this matter. I move the adoption of the amendment.

MR. WYATT. Mr. President: Since we allow propositions to be introduced for the consideration of this Convention, I hope the resolution will not be adopted. I do not see how one member can speak to another member except through the printing press. It might as well be thrown in the waste basket at once as to be sent to the Clerk's desk and read by title, and smothered either at the Clerk's desk or referred to a committee. The only way that each member has to get acquainted with every other member and let him know what his propositions are, is through the printing press, because half of the time you cannot hear anything in this body. While many of the propositions are possibly foolish, and while most of them will not be adopted, it is the only way to get the ideas before this Convention so that they can be intelligently dealt with. Whilst ideas enough have probably been submitted to this Convention to form half a dozen or a dozen most excellent Constitutions, it is possible and even probable that some of the best ideas that will be introduced into this Constitution have not yet been presented to this body. Our printing bill, I submit, is not extravagant. It has not been abused. The printing bill of the Convention does not amount to one thousand five hundred dollars. I am in favor of each member standing on the same footing. It is the right of each member to have his propositions printed. It is what he is entitled to have in order that he may not only show the Convention what he wants, but that he may show his constituents what he tried to impress upon the Convention. It is the only manner that we have got to show this Convention, and to show the State, what we desire should be incorporated in the Constitution. I therefore hope that while you allow the privileges of propositions being submitted for the purpose of being incorporated into the Constitution, that you will also couple with it the privilege of having it printed and laid on the desks of the members. It is the only way by which you can make a proposition effective.

MR. CAPLES. Mr. President: I rise to a point of order. The subject under discussion is a notice to amend a rule and is not debatable.

MR. WYATT. I submit that it is no such thing.

THE PRESIDENT pro tem. The question is on the adoption of the resolution.

MR. CAPLES. I was mistaken.

MR. WYATT. Yes. I therefore hope, gentlemen, that the resolution offered by the gentleman from Humboldt, Mr. Huestis, will not be adopted. I hope that the privilege of printing will be continued as long as we permit propositions to be introduced for the purpose of being incorporated into the Constitution.

MR. REYNOLDS. Mr. President: I do not see any necessity for adopting this rule at the present time. There is very little to say on the subject, except what the gentleman who just sat down has said, except, perhaps, this: we find now that there are but three, or four, or half a dozen propositions come in here on any day at the calling of that order of business. Sometimes not that many. Sometimes the order passes without more than one or two propositions coming in here. It does seem to me to be one of that class of propositions that are already coming in here that look to an early close of the business of this Convention. It is too early, Mr. President, for that. There is plenty of time left yet to bring in propositions to amend the Constitution—better than any that have yet been proposed—and it is the right of members to have their propositions printed as long as they are permitted to bring them in. There is no way to reach the Committee of the Whole without printing the propositions. If we spend time every time a single proposition is brought in here to read it over and then let the Convention consider whether they will print it or not, and go to the necessity of a motion to print, we will waste more time than it will cost to do all the printing from this on to the end of the Convention. I hope the amendment will not be adopted.

MR. JOHNSON. Mr. President: I think the resolution offered by the gentleman from Humboldt, Mr. Huestis, has merit in it. It occurs to me that we have already been afflicted with quite an avalanche of propositions, a great many of them without merit. Under the rule as it now stands, all of these propositions have to be printed at the expense of the State. If gentlemen still have propositions to introduce, they can introduce them by way of amendment. There is no occasion for the printing of these propositions when they can be introduced by way of amendment when the reports of the committees are considered in Committee of the Whole. It seems to me that it will expedite matters. A great many will not introduce propositions if this amendment is adopted. Therefore I am decidedly in favor of the resolution.

MR. WATERS. I move to lay the resolution on the table.

MR. CROSS. I would like to hear it read. I do not know now what is before the house.

The Secretary read the proposed amendment.

Mr. Waters' motion prevailed.

ELECTION OF UNITED STATES SENATOR.

MR. TULLY introduced the following proposed amendment to the Constitution, relative to election of United States Senator:

SECTION —. The Legislature shall not have the power to elect the Governor, or any member of the Supreme Court of this State, to a seat in the United States Senate during the term of office for which they may have been elected.

MR. TULLY. I would like to have it read.

THE PRESIDENT pro tem. The Secretary will read, if there are no objections.

Cries of "I object."

THE PRESIDENT pro tem. There are objections, and it cannot be read.

MR. WATERS. I move that the rule be suspended, to allow the proposition to be read.

Carried.

THE SECRETARY read the proposition, and it was referred to the Committee on Legislative Department.

PARDONING POWER.

MR. STEDMAN. Mr. President: I believe we have some unfinished business, the resolution offered by Mr. Filcher last Saturday. We were considering it when the Convention adjourned. It was a resolution in regard to the pardoning power.

THE PRESIDENT pro tem. I understand it was before the Committee of the Whole.

MR. STEDMAN. It was before the Convention, Mr. President.

THE SECRETARY read:

***Resolved*, That it is the sense of this Convention that the Governor should be divested of the exclusive power to pardon criminals.**

MR. ROLFE. Mr. President: I believe that resolution was deferred the other day mainly upon the ground that we had such a slim attendance here that a vote upon the resolution would not test the sense of the Convention. I believe we have a much smaller attendance here now, and it certainly seems to me that it would be inadvisable to take it up now, when there are so many absent, for the purpose of testing the sense of the Convention upon the subject. I think it would be advisable to put it off until this afternoon, and there being no further business before the Convention, I move that we now take a recess until two P. M.

MR. MCCALLUM. I understand that we have business, by going into Committee of the Whole.

THE PRESIDENT pro tem. There is a special order. The special order is the report of the Committee on Executive Department.

MR. MCCALLUM. Why not take it up?

MR. SCHELL. I move to amend the motion to take a recess, by making it three o'clock.

MR. TULLY. I second the motion for three o'clock.

Lost.

On the motion to take a recess until two P. M., the ayes and noes were demanded by Messrs. Larkin and Stedman, and the motion prevailed by a vote of 58 ayes to 31 noes.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President pro tem. Belcher in the chair.

Roll called and quorum present (eighty-six members).

THE PRESIDENT pro tem. The special order is now in order, the report of the Committee on Executive Department. The Secretary will read the report.

THE SECRETARY read the report as follows:

ARTICLE V.

EXECUTIVE DEPARTMENT.

SECTION 1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the Governor of the State of California.

SEC. 2. The Governor shall be elected by the qualified electors, at the time and places of voting for members of the Assembly, and shall hold his office four years from and after the Monday after the first Tuesday in January subsequent to his election, and until his successor is elected and qualified.

SEC. 3. No person shall be eligible to the office of Governor who has not been a citizen of the United States and a resident of this State five years next preceding the election, and attained the age of thirty years at the time of said election.

SEC. 4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Assembly, who shall, during the first week of the session, open and publish them in the presence of both houses of the Legislature. The person having the highest number of votes shall be Governor; but in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint vote of both houses, choose one of said persons so having an equal and the highest number of votes for Governor.

SEC. 5. The Governor shall be Commander-in Chief of the militia, the army and navy of this State.

SEC. 6. He shall transact all executive business with the officers of government, civil and military, and may require information, in writing, from the officers of the executive department, upon any subject relating to the duties of their respective offices.

SEC. 7. He shall see that the laws are faithfully executed.

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

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SEC. 9. He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto.

SEC. 10. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

SEC. 11. In case of a disagreement between the two houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

SEC. 12. No person shall, while holding any office under the United States or this State, exercise the office of Governor, except as hereinafter expressly provided.

SEC. 13. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of California."

SEC. 14. All grants and commissions shall be in the name and by the authority of the people of the State of California, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

SEC. 15. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner, as the Governor; and his term of office and his qualifications of eligibility shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President pro tem. of the Senate shall act as Governor until the vacancy be filled or the disability shall cease. The Lieutenant-Governor shall be disqualified from holding any other office, except as specially provided in this Constitution, during the term for which he shall have been elected.

SEC. 16. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

SEC. 17. A Secretary of State, a Controller, a Treasurer, an Attorney-General, and a Surveyor-General shall be elected at the same time and places, and in the same manner, as the Governor and Lieutenant-Governor, and whose term of office shall be the same as the Governor.

SEC. 18. The Secretary of State shall keep a fair record of the official acts of the Legislative and Executive Departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law.

SEC. 19. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General shall each, at stated terms during their continuance in office, receive for their services a compensation, which shall not be increased or diminished during the term for which they shall have been elected; which compensation is hereby fixed for the following offices, for the two terms next ensuing the adoption of this Constitution, as follows: Governor, six thousand dollars per annum; Lieutenant-Governor, the same per diem as may be provided by law for the Speaker of the Assembly; the Secretary of State, Controller, and Treasurer, three thousand dollars each per annum; said compensation to be in full for all services by them respectively rendered in any official capacity or employment whatsoever during their respective terms of office; *provided, however*, that the Legislature, after the expiration of the terms hereinbefore mentioned, may by law diminish the compensation of any or all of said officers, but in no case shall have the power to increase the same above the sums hereby fixed by this Constitution. The Legislature shall by law fix the compensation of the Attorney-General and the Surveyor-General, and may, in its discretion, abolish the office of Surveyor-General. And none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty.

MR. TINNIN. I move that the Convention now resolve itself into Committee of the Whole, for the purpose of considering the special order of the day.

Carried.

IN COMMITTEE OF THE WHOLE.

THE PRESIDENT pro tem. The Secretary will read the first section of the article on Executive Department.

THE SECRETARY read:

SECTION 1. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled the Governor of the State of California.

MR. TINNIN. Mr. Chairman: I meant the pardoning power. I move that the committee rise and ask leave to sit again.

MR. JOHNSON. The Chairman of the committee is not here.

MR. TINNIN. I withdraw the motion.

THE PRESIDENT pro tem. There being no amendments, the Secretary will read section two.

THE SECRETARY read:

SEC. 2. The Governor shall be elected by the qualified electors, at the time and places of voting for members of the Assembly, and shall hold his office four years from and after the Monday after the first Tuesday in January subsequent to his election, and until his successor is elected and qualified.

MR. DUDLEY, of San Joaquin. Mr. Chairman: As the Chairman of the Committee on Executive Department is not in his seat, I think it would be as well to pass the special order; and I move that the special order be postponed until to-morrow morning, at ten o'clock.

MR. NOEL. Mr. Chairman: The thing has just been placed on the desks of the members in printed form, and they don't understand it.

THE CHAIRMAN. The motion cannot be entertained by the Committee of the Whole.

MR. DUDLEY, of San Joaquin. I move that the committee now rise and ask leave to sit again.

Division being called for, the motion was lost—ayes, 30; noes, 35.

THE CHAIRMAN. There being no amendments to the section, the Secretary will read section three.

THE SECRETARY read:

SEC. 3. No person shall be eligible to the office of Governor who has not been a citizen of the United States and a resident of this State five years next preceding the election, and attained the age of thirty years at the time of said election.

MR. SHURTLEFF. I move that the word "thirty" be stricken out and "twenty-five" inserted, so as to leave it as it is in the old Constitution.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from Napa, Mr. Shurtleff.

MR. SHURTLEFF. I will state, Mr. Chairman, in support of this motion, that if we look into the history of the State for a quarter of a century, ever since its organization, there does not seem to be found anything to make such a change as this necessary. Eight of the States of this Union have no limitation as to the age of the incumbent. Ohio, one of the oldest States in the Union, has no limitation whatever. The State of Wisconsin, the State of West Virginia, Louisiana, Florida, Virginia, Rhode Island, and Massachusetts, have no limitation of this kind, and I say that there is no tendency on the part of the people to abuse this power. The youngest Governor the State of Massachusetts ever had was George Boutwell, who was only thirty-three years of age when he went into that office, and he was acknowledged to be one of the best Governor's that State ever had. I will say here that if there was any danger of an abuse of this kind it would have been likely to have occurred early in the history of the State when most of the miners were young men, and might have banded themselves together to elect one of their own number. I think that old Californians here on this floor will bear me out when I say that two thirds of the electors at least who framed the present Constitution were men under thirty years of age. Now we may see whether this power has been abused by the young men of the country by tracing the history of the State from its organization down to the present time. Peter H. Burnett was forty-two years of age; Governor Bigler forty-four at his first election, and on reëlection forty-six; J. Neeley Johnson was about thirty; I am not able to give his exact age; Weller was forty-six; Latham was within a few months of thirty-three; Stanford, thirty-eight; F. F. Low, thirty-six; H. H. Haight, forty-three; Newton Booth, forty-six; and the present incumbent, Wm. Irwin, forty-nine. Now, by looking over that list, when the line of restriction was placed at twenty-five, you can see no tendency on the part of the people of this State to take young and inexperienced men to fill the first office in the gift of the people. Therefore I think it would be unwise to put such a bar as that in the Constitution. And if I am allowed to transgress upon the time of the Convention, I will say that this is not the only instance on record. You may take the other States of the Union, take the office of President, where he has to attain the age of thirty-five, and as you will see, there is no disposition to monopolize these positions on the part of young men. There have been but two men chosen President who were under fifty; one was General Grant, who was a few weeks under forty-seven, and the other was Mr. Pierce, who was forty-nine. So there does not seem to be any abuse in that direction.

Now, sir, I believe these restrictions are unnecessary, and I would, if we were starting to make a first Constitution, be in favor of inserting nothing at all. I am opposed to making any change in the present Constitution, unless there seems to be a real necessity, and this is one of the cases where, in my humble opinion, no necessity exists. This matter of restriction is sometimes upon the other end of a man's life. In some of the States this restriction is placed on judicial officers, and the Supreme Judges are required to be not over sixty years of age. I believe if there is any necessity for restriction at all, it is more needed in cases of the old and infirm than in the young. It cannot be denied that some of the officials, some of the Supreme Judges of the United States, are verging on imbecility, and are unable to perform the services that younger men could. It is a well known fact that Lewis Cass, when seventy-eight years old, as Secretary of State during Buchanan's administration, was infirm and unable to perform the duties required of him, and sometimes would sit in the Cabinet meetings and sleep for hours, during the most important discussions had before that body. But still I would be opposed to making any restrictions whatever. I believe the people are the proper judges of that. I see no difficulty about it whatever, and we can find nothing in our past history which renders such a clause in the Constitution necessary.

We know that many of the most eminent men of this country, gentlemen of remarkable capacity, have filled positions when young. Henry Clay was United States Senator before he was eligible to take the place. Newton was twenty-five years of age when he discovered the laws of gravitation, and Howe, when he placed the world in possession of the sewing machine was barely past his majority. Therefore I think this Convention ought not to make this change from twenty-five to thirty, because there is no necessity for it. There has been no tendency on the part of the people to thrust young and inexperienced men into the executive chair.

[MR. TINNIN in the chair.]

MR. WHITE. Mr. Chairman: I merely rise to add my voice in favor

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of this change back to twenty-five years, and in fact I would be willing to make it twenty-one, for the very reason that the people are the best judges of who they will elect Governor, and I think it highly necessary that the young men of the country should take part in the affairs of government as well as the older ones. But I would neither make a distinction as to age, either young or old; let the people judge for themselves. This idea that reason and wisdom are confined to age is all wrong. I could name several instances, but I will not detain the Convention, because I think it is well understood. Francis the First of France, at twenty-five, fought the greatest battle he ever fought in his life, and changed the whole current of affairs, and he was the greatest monarch of his time. So, Mr. President, I hope and trust the amendment will prevail.

MR. HALE. Mr. Chairman: For myself, I am strongly inclined to view the matter in the same light. I would like very much to hear from the Chairman, or some member of the Convention who took part in their deliberations, the reasons which influenced them to make this change. For myself, I am strongly inclined to adhere to the letter of the present Constitution unless there is some strong reason given for a change, and unless otherwise advised I shall vote for this amendment. I would like to hear from some member of the committee the reasons that led them to make this change.

MR. O'DONNELL. Mr. President: I make a motion to strike out that last clause so as to have no limit to the age whatever. Give the young men a show. If the people want to elect a young man as Governor, they have a perfect right to do it, and I don't see why we should interfere.

MR. NOEL. Mr. Chairman: The motion was to strike out the last clause; I would like to know where it begins and where it ends.

THE CHAIRMAN. The amendment has not been read yet; we do not know where it begins or where it ends.

MR. CROSS. Mr. Chairman: While the gentleman is preparing his amendment I would like to say a word on this question. I propose to say a word as to how the young men feel. It is a kind of a two-sided question. One side claims that there should be no restriction as to the age of the occupant of the Governor's chair, and that by placing the limit at thirty, we will cut off a considerable portion of those who are fitted to fill that position. For my part, I believe that no Governor of a great State like this should be younger than thirty years. While it is true that one man was a great general at twenty-six, and another a great statesman at twenty-five, it is equally true that the one was a greater general and the other a greater statesman at thirty. The interests of our State, as I understand the matter, demand that the executive officer should be a man of ripe experience, and this he is not apt to be under the age of thirty years. I, for one, am opposed to going back to the old rule. It seems to me a mistake to have a man under that age. We want a man who is acquainted with the usual active duties of public life, and ten years experience is little enough for a man to enter the list of competitors for so high and responsible an office as Governor of a great State. I am opposed to the amendment which changes it back again from thirty to twenty-five years.

MR. WICKES. Mr. Chairman: I am opposed, also, to changing the restriction from thirty years back to twenty-five years, for this reason: I think that the man who is to be nominated by the people for this high office should go through some of the other offices in the gift of the people; through the legislative department, for instance.

MR. O'DONNELL. Mr. Chairman: I have my amendment now in writing.

THE SECRETARY read:

"No person shall be eligible to the office of Governor who has not been a citizen of the United States and a resident of this State five years next preceding the election, and attained twenty-one years of age at the time of such election."

MR. O'DONNELL. I hope that amendment will be adopted.

MR. WATERS. I would like to hear that read again. It seems to me that would allow a boy seventeen years old to vote, as I understand it.

THE CHAIRMAN. The question is on the amendment.

Lost.

MR. ANDREWS. Mr. President: Mr. Hale, I suppose, is aware that the Chairman of the Committee on Executive Department is absent. As one of that committee, I will state that the committee was at first about to fix this limit at thirty-five years, but upon further consideration we fixed it at thirty years. I don't know that I can give the reasons which actuated the committee in making this change from the old Constitution, as to the limitation. The gentleman will find by an examination of the section that there is no change made in the period of residence required. Now, the gentleman will certainly not question that it is wise to make that change. It might have been better to have made the limitation required instead of five years' residence, required ten. But the committee concluded upon five years; and they finally concluded that thirty years was the proper age. Certainly, Mr. Chairman, men who are thirty have more experience, as stated by Mr. Cross, have more experience and are better qualified for the position than men of twenty-five. We have limitations on the President and on United States Senators. The committee took all these things into consideration. They took into consideration the fact that it required the same maturity to be Governor that it did to be a United States Senator.

In relation to the objections made by Dr. Shurtleff, that at the time the present Constitution was adopted over two thirds of the men who framed it were under thirty years of age, or at any rate two thirds of the voters were under thirty years; therefore, at the time the present Constitution was adopted, why, almost a majority of the voters of the State of California were at that time not over twenty-five years of age. I am not disposed to look at it in the same light that the gentleman does. I think there is a greater necessity for such a restriction now than existed at that time.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from Napa, Mr. Shurtleff.

The amendment prevailed on a standing vote—ayes, 53; noes, 41.

MR. DUDLEY, of Solano. Mr. Chairman: I offer an amendment to the section.

THE SECRETARY read:

"Amend section three by adding at the bottom: "The Governor shall be disqualified from holding any other office during the term for which he shall have been elected."

THE CHAIRMAN. The question is on the amendment.

MR. DUDLEY, of Solano. Mr. Chairman: My object in offering that amendment is this: it is a well-known fact that the habit has gained ground in this State of the Governor using his office for his own advancement; and if the Governor is disqualified from holding any other office, he will not meddle in State politics for the purpose of making his office the stepping stone to the United States Senatorship.

MR. GREGG. Mr. Chairman: The State of California does not have the right to pass upon the qualifications of Senators and Representatives in Congress.

MR. O'SULLIVAN. Mr. President: While I am in favor of the proposition offered by Mr. Dudley, I think it should not be passed on now, but wait until we get through with the other sections. The Governor is the only person debarred in this report, and I shall propose a section debarring every State officer from holding any other office.

The amendment was rejected.

MR. WICKES. I have an amendment to section three.

THE SECRETARY read:

"Strike out the word 'five' before the word 'years,' and insert 'ten.'"

Lost.

THE CHAIRMAN. There being no further amendments to section three, the Secretary will read section four.

THE SECRETARY read:

SEC. 4. The returns of every election for Governor shall be sealed up and transmitted to the seat of government, directed to the Speaker of the Assembly, who shall, during the first week of the session, open and publish them in the presence of both houses of the Legislature. The person having the highest number of votes shall be Governor; but, in case any two or more have an equal and the highest number of votes, the Legislature shall, by joint vote of both houses, choose one of said persons so having an equal and the highest number of votes for Governor.

THE CHAIRMAN. There being no amendments to section four, the Secretary will read section five:

THE SECRETARY read:

SEC. 5. The Governor shall be Commander-in-Chief of the militia, the army and navy of this State.

THE CHAIRMAN. There being no amendments to section five, the Secretary will read section six.

THE SECRETARY read:

SEC. 6. He shall transact all executive business with the officers of government, civil and military, and may require information, in writing, from the officers of the executive department, upon any subject relating to the duties of their respective offices.

THE CHAIRMAN. There being no amendments to section six, the Secretary will read section seven.

THE SECRETARY read:

SEC. 7. He shall see that the laws are faithfully executed.

THE CHAIRMAN. There being no amendments, the Secretary will read the next section.

THE SECRETARY read:

SEC. 8. When any office shall, from any cause, become vacant, and no mode is provided by the Constitution and law for filling such vacancy, the Governor shall have power to fill such vacancy by granting a commission, which shall expire at the end of the next session of the Legislature, or at the next election by the people.

THE CHAIRMAN. There being no amendment, the Secretary will read section nine.

THE SECRETARY read:

SEC. 9. He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it, and when so convened it shall have no power to legislate on any subjects other than those specified in the proclamation, but may provide for the expenses of the session and other matters incidental thereto.

MR. DUDLEY, of Solano. Mr. Chairman: I move to amend the section by striking out all after the word "it," in the second line. The section will then read: "He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it." I believe the Legislature, when assembled, are as well qualified to judge as the Governor.

THE CHAIRMAN. The gentleman will send up his amendment in writing.

The amendment was sent up and read by the Secretary as follows: "Strike out all after the word 'it' in the second line of section nine."

MR. WHITE. Mr. President: I was only going to say that I hope it won't be adopted, as this is one of the very best sections brought in here.

MR. DUDLEY, of Solano. Mr. Chairman: I do not see any necessity for this. I see no necessity for the section as reported by the committee. If we are going to concede that one man knows more about the interests of the State than the Legislature, or has the interests of the State more at heart than the people themselves, then let us adopt the section as reported. I do not like the idea at all of acknowledging that the people are not qualified to govern themselves, and that the legislators are not qualified to judge of the interests of the people, and of the things that are necessary to be done to promote those interests.

MR. BROWN. Mr. Chairman: I do not intend to occupy the time

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of the Convention very long on this subject, but it does appear to me that it would be wrong to strike this out; decidedly so. We do not propose——

[Cries of "louder," "louder."]

MR. BROWN. If gentlemen will wash their necks and pick their ears they will be able to hear. [Laughter and applause.] Now all I have to say is this, that we do not suppose the Governor would call the Legislature together unless there be some prevailing public sentiment for a certain purpose; and consequently it would not be one man, as the gentleman has urged, but it would be the sentiment of the people expressed through the Governor. This would leave the matter in a very satisfactory position. I think the section is correct and should stand as it is.

The question being on the amendment proposed by the gentleman from Solano, Mr. Dudley, it was lost.

THE CHAIRMAN. There being no further amendment, the Secretary will read section ten.

THE SECRETARY read:

SEC. 10. He shall communicate by message to the Legislature, at every session, the condition of the State, and recommend such matters as he shall deem expedient.

THE CHAIRMAN. There being no amendments the Secretary will read section eleven.

THE SECRETARY read:

SEC. 11. In case of a disagreement between the two houses with respect to the time of adjournment, the Governor shall have power to adjourn the Legislature to such time as he may think proper; *provided*, it be not beyond the time fixed for the meeting of the next Legislature.

THE CHAIRMAN. Are there any amendments; if not the Secretary will read the next section.

THE SECRETARY read:

SEC. 12. No person shall, while holding any office under the United States or this State, exercise the office of Governor except as hereinafter expressly provided.

THE CHAIRMAN. If there are no amendments the Secretary will read the next section.

THE SECRETARY read:

SEC. 13. There shall be a seal of this State, which shall be kept by the Governor, and used by him officially, and shall be called "The Great Seal of the State of California."

THE CHAIRMAN. The Secretary will read section fourteen.

THE SECRETARY read:

SEC. 14. All grants and commissions shall be in the name and by the authority of the people of the State of California, sealed with the great seal of the State, signed by the Governor, and countersigned by the Secretary of State.

THE CHAIRMAN. There being no amendments the Secretary will read the next section.

THE SECRETARY read:

SEC. 15. A Lieutenant-Governor shall be elected at the same time and places, and in the same manner, as the Governor; and his term of office and his qualifications of eligibility shall also be the same. He shall be President of the Senate, but shall only have a casting vote therein. If, during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President pro tem. of the Senate shall act as Governor until the vacancy be filled or the disability shall cease. The Lieutenant-Governor shall be disqualified from holding any other office, except as specially provided in this Constitution, during the term for which he shall have been elected.

MR. O'SULLIVAN. I offer an amendment.

THE SECRETARY read:

Strike out all after the word "cease," in the eighth line of section fifteen.

THE CHAIRMAN. The question is on the amendment.

Lost.

THE CHAIRMAN. The Secretary will read section sixteen.

THE SECRERARY read:

SEC. 16. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

MR. BLACKMER. Mr. Chairman: I wish simply to inquire who is referred to in the last line of this section, when it says "he shall continue Commander-in-Chief." It is evidently intended to describe the duties of Lieutenant-Governor. "But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of any military force thereof, he shall continue Commander-in-Chief," etc. Does that apply to the Governor or to the Lieutenant-Governor?

MR. TERRY. Mr. Chairman: There is no question about that. It applies to the Governor. It says so in plain language: "When he shall be out of the State, he shall continue," etc. There is no reason why he should not continue to be the military commander of the State.

THE CHAIRMAN. Is there any amendment? If not, the Secretary will read section seventeen.

THE SECRETARY read:

SEC. 17. A Secretary of State, a Controller, a Treasurer, an Attorney-General, and a Surveyor-General, shall be elected at the same time and places, and in the same manner as the Governor and Lieutenant-Governor, and whose term of office shall be the same as the Governor.

THE CHAIRMAN. If there is no amendments to the section, the Secretary will read the next section.

THE SECRETARY read:

SEC. 18. The Secretary of State shall keep a fair record of the official acts of the Legislative and Executive Departments of the Government, and shall, when required, lay the same, and all matters relative thereto, before either branch of the Legislature, and shall perform such other duties as may be assigned him by law.

MR. HERRINGTON. I move to strike out the word "either," and insert the word "each," in line four, so as to read "each branch of the Legislature."

MR. WEBSTER. It occurs to me that it would be more proper to strike out the word "fair," in the first line, before the word "record," and insert the word "correct." I offer that as an amendment.

MR. ANDREWS. Mr. President: Gentlemen have been objecting as a general thing to altering the Constitution unless there is some urgent necessity for the change. If the gentleman will refer to section nineteen of the present Constitution he will find that is the exact language of the present Constitution, and also "either branch of the Legislature" is used.

MR. HERRINGTON. I withdraw the amendment.

MR. ROLFE. Mr. Chairman: I think it is very improper to make that change. It is understood that a record must be legible. It is not a record unless it is correct. If it is not correct, not a correct transcript of the laws passed by the Legislature, it is not a record. It has to be correct to be a record, and this merely requires it to be a plain, legible record.

MR. WEBSTER. I take it that the Constitution means just what it says, or it should mean what it says. "Correct" is the proper word in order to get the sense conveyed. A "fair" record may be a legible record without being a correct record. It cannot be correct without being legible. Not very well, it can't, because it cannot be understood. I think "correct" is the proper word, because it expresses the idea designed to be conveyed.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from Alameda, Mr. Webster.

Division being called for, the Convention divided, and the amendment was adopted—ayes, 48; noes, 43.

THE CHAIRMAN. If there is no further amendment, the Secretary will read section nineteen.

THE SECRETARY read:

SEC. 19. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General, shall each, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected, which compensation is hereby fixed for the following officers for the two terms next ensuing the adoption of this Constitution, as follows: Governor, six thousand dollars per annum; Lieutenant-Governor, the same per diem as may be provided by law for the Speaker of the Assembly; the Secretary of State, Controller, and Treasurer, three thousand dollars each per annum, said compensation to be in full for all services by them respectively rendered in any official capacity or employment whatsoever during their respective terms of office; *provided, however*, that the Legislature, after the expiration of the terms hereinbefore mentioned, may by law diminish the compensation of any or all of said officers, but in no case shall have the power to increase the same above the sums hereby fixed by this Constitution. The Legislature shall by law fix the compensation of the Attorney-General and the Surveyor-General, and may, in its discretion, abolish the office of Surveyor-General; and none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty.

MR. SMITH, of Santa Clara. Mr. Chairman: I have an amendment which I will send up.

THE SECRETARY read the amendment:

Strike out "six" in the seventh line, and insert "five," so as to read: "Governor, five thousand dollars per annum."

THE CHAIRMAN. The question is on this amendment.

MR. ESTEE. Mr. Chairman: As far as I am concerned, I am not here for the purpose of legislating with a view of meeting the popular demand for an unwise decrease of the compensation of any public officer. I think when a Governor, having his home and his business in some remote part of the State, comes here to serve the people for a period of four years, six thousand dollars a year is not too much. And I wish to say right here that I think the salary of the Treasurer as fixed—three thousand dollars—taking in view the amount of money he has charge of and the amount of his bonds, the salary is ridiculously small—speaking respectfully of the committee. You cannot get men who will assume the responsibility; who will meet the wishes of the people of this State; who has a reputation that will commend itself to the people of the whole State, who will come here and give the bonds which the State Treasurer is obliged to give, for three thousand dollars per annum. I believe, sir, these services should be paid for in just the proportion of like services in any other capacity; the same as for a like responsible duty which might be imposed on a citizen in the private walks of life. And I want to know where the Cashier of a bank in this State, or the President of a bank is, who handles as much money or gives as heavy bonds as the Treasurer of this State, that would take the position for three thousand dollars? I know, sir, there are a great many men in this State who would be glad to be Treasurer for nothing. There are a great many men who would be glad to be Governor of this State for nothing. I know there are a great many men who would be glad to be Governor of this State for five thousand dollars; but I think, sir, that six thousand dollars for the Governor and four thousand dollars for the Treasurer is a fair and just compensation, and I do not propose, as far as I am concerned, as a member on this floor, to deny to a responsible

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officer a fair and just compensation. I do not believe the people who pay the taxes, nor the people who do the voting in this State, expect us to make an unreasonable deduction in the compensation of the most responsible officers in this State—the most responsible and laborious offices within the gift of the people of California.

As far as the Controller and Secretary of State are concerned, I have nothing to say; but as far as the offices of the Chief Executive of this State and the Treasurer of the State are concerned, I think that they should be amply paid in the positions they occupy, and I hope the amendment proposed will not be adopted. I think six thousand dollars for the Governor is not too much. I would put in a clause here, if it be in order—and I understand it is in order—that the Legislature might, from time to time, change the salaries of these officers, but not during the term for which they are elected; and if, in the course of time, living should become so cheap and people become so anxious to hold public offices that they can afford to hold them for nothing, the Legislature can reduce the compensation afterwards. But at present I hope the salary of the Governor will not be reduced below six thousand dollars. And I shall move to fix the salary of the Treasurer at four thousand dollars a year, because I believe it is in the interest of good government, in the interest of the people, and not in the interest of these particular officers. I believe in fair dealing. I do not believe in putting these salaries so low that poor men cannot hold these positions. A man cannot go into one of these offices and go out any better off financially than when he came in, and be an honest man.

MR. ANDREWS. Mr. Chairman: As one of the committee, and as a member of this body, I have my doubts about the propriety of fixing salaries in the Constitution, and I gave my adhesion to the views of the committee in this matter. But this section of the report of the committee I feel in justice to Judge Campbell, and in justice to the committee, as this question will probably be discussed at considerable length, I think they should be present when that discussion is had. I, therefore, Mr. Chairman, move that the committee rise, report progress, and ask leave to sit again.

THE CHAIRMAN. The question is on the motion that the committee rise, report progress, and ask leave to sit again.

Lost.

MR. HALE. Mr. Chairman: I rise, sir, to answer the remarks of the gentleman from San Francisco, Mr. Estee. I, like him, am not unaware of the fact that there seems to be a popular demand, or more properly speaking, popular clamor for a reduction of salaries. Now, I wish to say exactly what I mean on this subject. The people, when they call a man to the office of Chief Executive of this State, impose one of the highest and most responsible duties that can be imposed upon the citizen. I think you will all admit that to be true. The people must at all times be able to command the services of the ablest and most worthy citizens to fill such offices of trust. Now, sir, I mean this, when I say popular clamor. You frequently hear men say, you can go out and get good workmen, and so you can, to work in some departments, for two dollars and fifty cents a day; in other departments for four dollars a day; others still for five dollars a day, and so on; and then they come to the conclusion, because these things may be so, and you fix the salaries of these officers at two or three thousand dollars, that that is an ample compensation. Such a conclusion is nonsensical. We, as wise men here, deliberating for the people of this State, must act with reference to the existing condition of things. It is desirable that the people shall always be able to command the services of the best and most worthy citizens for these positions. Can you expect, sir, to command the services of such men as the people may wish to select, unless you pay him a reasonable compensation.

Now, the people ask a man to become Governor of the State. He says, I am a poor man; I am dependent on my labor, on my efforts, on my skill, for my support. Perhaps it is not himself alone; it is more than likely that he has a family dependent upon him for support. They are dependent upon his skill, upon his enterprise, upon his exertions; and he will say to you that he cannot afford to leave his business; he cannot abandon his business in some distant part of the State to come to the Capital for four years and devote his time to the public services upon such conditions, that at the very utmost he can only be compensated for the actual expenses which he incurs.

I appeal to the gentlemen on this floor—and I see about me many gentlemen who have personal, practical knowledge upon the subject—is it not true, Mr. Chairman, that no Governor of this State has yet received one dollar in the way of compensation for performing the duties of the office beyond such expenses as he is compelled to incur during the period of his office? If any gentleman thinks I am mistaken in this assertion, let him rise and correct me.

Now, sir, I believe I am as much in favor of economy as any man on this floor. I will do as much in the interest of economy, but I truly believe that this is economizing in the wrong direction. I will say, by the way, that I know there are men who would be glad to be Governor at a salary of five thousand dollars a year, but they are not the kind of men the people want. I know there are men who would be glad to fill this office at a merely nominal salary. But what is their object? The practical effect of it is this, to limit that class—the very highest class—of services to those who are able to spend their time and their means without compensation; in other words, none but a rich man can afford to be Governor. This doctrine will not do for a free people. It will not do in a young State; it will not do in a community where we have so large a percentage of men who are dependent upon their exertions, and whose families are constantly dependent upon the affairs of the head.

Now, I hold it to be the fairest thing in the world, when you employ men in public positions of trust and honor, to provide that he shall be fairly and reasonably compensated, in view of the services, of the magnitude of the services, which he is called upon to perform. When you have done that, the next fair thing to do is to hold him to a strict accountability for the performance of that trust. Sir, I believe if we go down and hunt for the cause of popular complaint it will not be found to hang on this point. I believe that the people—the taxpayers—are willing to pay a fair and reasonable compensation for the services performed, considering the character of such services and the circumstances under which such services are rendered, and then they want to hold him to a strict accountability for the faithful performance of the duty imposed upon him. Can you point me to any young man, or to any old man either, in the State of California, who is dependent upon himself for his maintenance and support, and the support of those dependent upon him, who can take the office of Governor, come to this Capitol and fill that office faithfully and satisfactorily to the people, and be honest, for the sum of five thousand dollars a year? Is it reasonable, sir, that we should expect and demand such a thing? It is said that men will do it for the honor, and that you cannot buy honesty. Sir, I believe in the old familiar maxim, "Pay as you go, and pay honestly as you go." No man can live in these days as a private citizen, much less perform the functions of Governor, without paying out money every day of his life. He will use up all his salary, and if you fix it at six thousand dollars I think that is low enough. I would rather increase than lower it.

MR. MCFARLAND. Mr. Chairman: There is only one amendment pending, I believe, and I desire to offer a substitute for the section.

THE SECRETARY read:

SEC. 19. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General shall each, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected; but neither of these officers shall receive, for his own use, any fees for the performance of his official duties, and said compensation shall be in full for all services rendered in all official capacities during their respective terms of office.

THE CHAIRMAN. The question is on the amendment.

MR. MCFARLAND. Mr. Chairman: When we get into difficulty it is a good thing sometimes to go back to the old Constitution. The amendment which I offer is taken partly from the present Constitution, but the provision is added that the compensation is to be in full for all services. Now, it seems to me that the Constitution is not the right place to fix salaries of officers. A Constitution is intended to be a permanent, perpetual thing, not going to be changed perhaps in a hundred years, and it does seem to me that the Legislature is better qualified to determine what the salaries of officers should be than this Convention, when we have it to do for all time. If you put this in the Constitution it cannot be altered, no matter what the people may think, no matter what the Legislature itself may wish, it cannot be altered except by constitutional amendment.

Now, from the early organization of this State down to the present time, this matter has been left to the Legislature, with the simple qualification that salaries shall not be raised or lowered during the term of the incumbent, and I have added a clause which says that the salaries so fixed shall include all the services rendered by the officer; that is to say, no matter what duties may be imposed upon him, the stated salary shall cover everything. I do not believe that we should undertake to fix the salaries at all. The best way, it seems to me, would be to leave that matter to the Legislature. I think it is a very small business for a Constitutional Convention to engage in. It is a matter that belongs to the Legislature. If these salaries are fixed too low it will exclude from office all but two classes—the exceedingly wealthy and the exceedingly poor—leaving out the great middle class of the people. I hope this amendment will be adopted, because I want to see this matter left where it belongs—in the hands of the Legislature.

MR. BROWN. Mr. Chairman: I do not intend to take up three minutes of the time of this Convention. I am in favor of the amendment offered by the gentleman from Sacramento, Mr. McFarland. Some years money is worth a great deal more than it is in other years; some years provisions are high, and some years they are low. Consequently, for us to fix salaries for all time equal and just, is out of the question. There are various reasons urged, but I feel to favor the amendment proposed by Mr. McFarland, allowing this matter to rest with the Legislature. There is where it belongs, where the people, through their representatives, can have control of the matter at all times, to alter the salaries as the exigencies of the times demand.

MR. FILCHER. Mr. Chairman: I am very sorry that I cannot agree with my honored colleague, Judge Hale, in this matter. I do not know what may be the spirit and sentiment of this Convention. I do not know exactly what is the spirit of the entire people regarding this subject; but if I have not read public sentiment wrong, it is not only clamoring, but demanding, and that, too, repeatedly, time and time again, for a general reduction in the salaries of officers in this State. If that were not a fact, Mr. Chairman, I would ask why it is that political candidates, candidates for political preferment, have almost universally incorporated this sentiment in their stump speeches, that they were in favor of economy, pointing out as one of the elements, one of the points that I propose to strike, to wit: a general reduction of salaries in this State. Mr. Chairman, I claim that there was a demand among the people existing under this condition of affairs for this very consummation, and, sir, while I indorse every word uttered by the honorable gentleman from San Francisco, and by my honorable colleague from Placer, Judge Hale—while agreeing with them that we should pay fair salaries for fair services, yet, sir, it must be patent to every gentleman on this floor that there is a limit, and a reasonable limit, to all things; and if any man will stand up here and show to me some logical reasons why we should be paying, in our present changed, modified condition, salaries so outrageously unproportioned to all the other States, I certainly would like to hear him. It is claimed here that competency and honesty and

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integrity cannot be obtained for any less price. I would ask these gentlemen how it is that the great State of Ohio and the great State of New York can obtain the services of able and distinguished men for Governors for the sum of four thousand dollars a year—men fit, as has been proven, to become President of the United States? I tell you this argument will not hold. We find, with the exception of a few States—a few of those States in the southern portion of the Union, so fixed and controlled by a retinue of carpet-bag Governors—the average salaries of Governors is between two thousand dollars and four thousand dollars. In a few of the States the Governors receive five thousand dollars, while in a great many of the States the Governor receives four thousand dollars. One, three thousand five hundred dollars; a number three thousand dollars; and some four thousand dollars, five thousand dollars, and even six thousand dollars, including the great State of New Hampshire, the great State of Virginia, and the State of Michigan, where the Governor receives only one thousand dollars a year. And yet, has it ever been claimed that their Governors lacked competency or efficiency; and have they not in their service as great men as there are in other States? I say, sir, you cannot measure competency by the amount of salary you pay a man; and, sir, as to the fact asserted by my friend from San Francisco, and he stated it as a fact, that no Governor of this State ever has received any more than sufficient to pay his expenses, I find from my observation and experience that gentlemen of moderation and judgment usually govern their expenses according to their incomes; and certainly if the Governor of the State of California entered upon the duties of his office, and knew that his compensation was limited to five thousand dollars a year, I stand here ready to assert, as a matter of common sense, that he will not come out in debt. Mr. Chairman, if this sweeping demand in favor of reduction, in favor of a general reduction, in favor of a sweeping reduction, in favor of universal economy, for the establishing of this Government on a more economical basis—if that is clamorous, then, in the name of God, call me a clamorer. I tell you, it is not a clamor; it is an earnest, honest demand, straight from the heart and judgment of the people, who have arrived at that view, at that determination, after a long and sore experience; a judgment formed, I say, after competent deliberation, and after it has been educated into them by those who assume to be the leaders, who declared that they were in favor of reducing salaries. Again, it is said that we should not fix the salaries at all. It has been claimed that that matter should be left to the Legislature. I say, sir, we have been leaving it to the Legislature, and while everything else has been coming down to the old modified common sense standard, while we have been brought by railroad communication to go hand in hand with the Eastern States, while wages in all departments have fallen, while the prices of money have been coming down, and while we have appealed to the lawmakers to do this thing, to reduce these enormous salaries, we find, sir, that they have repeatedly failed. And now, sir, it is my candid judgment that it devolves upon this body here to be more conservative, and to show more capability, and more patriotism, and take this matter in hand, show our indifference to the past and our regard for the future by fixing these salaries, a duty which, among other things, the people sent us here to perform, if I am not greatly mistaken.

MR. EAGON. Mr. Chairman: The gentleman who has just taken his seat, has argued this question from false premises. The people of this State are not clamoring for any reduction of salaries. When was ever such a clamor raised, except by a few office seekers themselves on the stump before election? I'll tell you, Mr. Chairman, what the people are clamoring for: they are clamoring for an adjustment of taxation; they are demanding of us that we fix this Constitution so that they will be relieved from this great burden of taxation which is bearing them down. There are many other questions pending before this Convention, which are of far greater importance to the people of this State, than this matter of taking off a few dollars a year from State officers. The amount which is proposed here is not sufficient for a Governor who calculates to be honest, and to administer the affairs of his high office with justice. Six thousand dollars a year for the Governor of a great State like this, will never bankrupt the treasury, nor cause any clamoring on the part of the people. No, nor seven thousand dollars. The State officers are not now receiving any more than a just and liberal compensation for the services which they perform; not any more than the people of California are willing that they shall have in the future.

As far as this question of economy is concerned, any one who has given the subject any consideration whatever knows very well that no man can uphold the dignity of the office of Governor of a great State like this on the pitiful sum of five thousand dollars a year, or even six thousand. I for one do not wish to belittle and degrade this high and responsible office, and lower the dignity of a great State, by putting the salary down to a pitiful pittance, barely sufficient to pay the board of the incumbent. I say, sir, that the people of this State are not crying out against the compensation of her public officers. They are in favor of paying liberally as a rule. They are in favor of doing justice to all classes. But when you come to put down the salary of the Governor and other State officers to a mere pittance, you must necessarily put down the wages of laborers, because, by the very same rule that you invoke here the Chinaman will come in and say I will work for four bits a day, and because he is willing to do the work cheaper than the white man can possibly afford to do, you must take him. It follows as a logical sequence. You say that five thousand dollars is enough for Governor, and that there are plenty of men who would be glad to take the position. The same rule holds good. You must not give a white laborer one dollar a day because there are plenty of Chinamen who would be glad to have the work at four bits a day. I hope the salaries will stay where they are. The people of this State are satisfied. There is no cause for a change. There is no clamor. I hope there will be no reduction.

MR. EDGERTON. Mr. Chairman: Lest some one may be misled by the remarks made by the gentleman from Placer, Mr. Filcher, in regard to the salary of Governor in New York, I will say a few words. It is true, that the fixed salary of that office is four thousand dollars in that State, yet they allow the Governor a great many perquisites. He is allowed his house rent—a very fine mansion, and the actual receipts of that office, including these perquisites, amount to between twelve thousand to fifteen thousand dollars a year. The people do not complain very much of the action of the Legislature. This subject of salaries was thoroughly investigated by the Senate I think three years ago, and my impression now is, that it was found that the Governor of California receives a less sum for his services than any Governor of any of the larger States. I don't wish to occupy any time in illustrating the able arguments made by the gentleman from San Francisco, Mr. Estee, and the gentleman from Placer, Judge Hale. My main motive was to call the attention of the gentleman from Sacramento, Mr. McFarland, to the latter clause of his amendment, and ask if it is not redundant, and should not be left out of the section. I am in favor of the existing section as it stands.

MR. ESTEE. Will the gentleman allow me to ask him a question?

MR. EDGERTON. Certainly.

MR. ESTEE. I understand that the election for the adoption of this Constitution will be next May. Well, there will be an election for new officers under the Constitution, which will come off in September or October following. The result will be that the Governor will be elected and inaugurated before the Legislature meets to fix any salary.

MR. McFARLAND. I put that clause in my amendment simply because it was in the report of the committee, but perhaps it would be better out; I think myself it is redundant. I understand what the purpose of that clause was. It was put there because heretofore certain State officers who have had stated salaries were assigned additional duties—ex officio—and they drew extra compensation for performing those duties, and it is proposed to confine them to their salaries, which shall cover all the services performed. But I do not see how the clause can do any harm. The amendment which I propose is simply section twenty-one of the old Constitution, with this addition. If adopted it will simply express the same sentiment. It would have to be amended so as to provide for the first term of officers under the Constitution.

MR. WHITE. Mr. Chairman: I rise merely to state—as one of the gentlemen in this house said there is no popular clamor for these reductions. Now it so happens, during my election I traveled one thousand two hundred miles. I done so, and I spoke almost every night, for nearly six weeks, and I never was in a meeting that I didn't promise faithfully that these salaries should be reduced. Others can speak for themselves, but I am speaking for myself, and I do not want to leave this matter to the Legislature. When the people see the Governor receives nine thousand dollars, it is enormous, and they all speak of these things, and we have promised and pledged ourselves to them that these salaries shall be reduced and fixed in the Constitution at reasonable figures. Now, sir, as to the Governor not being able to live on five thousand dollars a year, I don't see why, because he is a Governor, that he should not live as well as any other man on five thousand dollars. It don't oblige him to do anything that a citizen should not do. I don't see why that is not a large salary. Certainly if a poor man gets it he would have a very good thing, and if a rich man gets it he does not need any more. I have promised my constituents that I will cut off these salaries, and I mean to do it if I can, and I hope the Convention will aid me.

MR. KLEINE. Mr. President: I am in favor of reducing salaries. I don't see why the Governor could not live on four thousand or five thousand dollars a year. I don't see why we should pay such high salaries. We are, Mr. President, sent here as reformers, and we have pledged ourselves that we will reduce the salaries not only of the Governor, but of every officer; that we will reduce the salaries of all officials, and then, Mr. President, I assure you there won't be so many of these place-hunters. Yes, reduce their salaries, and there won't be so great an inducement for these men to seek office, and spend two or three thousand dollars to get the offices, because they know they won't get recompensed. I don't see why in the name of common sense the Governor should get any more than any other human being under God's heavens. I don't see why a lawyer is more than any other man. [Laughter.] I don't see why we expect a poor man who works from morning till night, to work for a dollar a day and support his family, and leave him no redress against his oppressors, and yet we are striving to increase the wages of these officials. It is time for us to reform. If we leave it to the Legislature, we know what they have done in the past. We know that they will do nothing. You may wait for twenty-five years more and you will never see them do anything. Therefore I hope this six thousand dollar proposition will be voted down, and that when we come to the five thousand proposition we will cut it down to four thousand, and when we get it down to four thousand we will cut it down to three thousand, and then to two thousand. That's what I hope we will do. Twenty dollars a day is enough for any man to live on. Let this money go to the suffering people who are starving all over the country.

MR. STEDMAN. Mr. Chairman: I wish to produce a few figures and make a few comparisons in regard to salaries of Governors. Let us see what other States pay. Florida pays her Governor five thousand dollars a year; Kentucky pays four thousand five hundred dollars; Maryland, the same; Ohio, one thousand five hundred dollars; Texas, five thousand dollars; Virginia, five thousand dollars; West Virginia, two thousand dollars; Wisconsin, five thousand dollars. Now, I understand these salaries are in full for all services and for all the expenses attendant upon the performance of the duties; and they receive no fees. Now, Mr. Chairman, I cannot see why the Governor of the State of California cannot live on five thousand dollars a year—yes, on two hundred and fifty dollars a month—three thousand dollars a year. I think actually that would be enough for the Governor of this State.

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Their expenses are not any more than the expenses of any other man. Now, Mr. President, I know it to be a fact that you can board in this town, just as good as most of us want, at five dollars a week. That is what I pay, five dollars a week, and that is what a great many of us in this Convention pay. Now, then, I think that a man that is anyways economically inclined can live on five thousand dollars a year and save money. Five thousand dollars a year is a good deal of money. And as far as the public clamor for a reduction of salaries is concerned, Mr. Chairman, I will say that my constituents are not only clamoring, but they are demanding, that salaries shall be reduced all over California. If I return to them without having used my best endeavors to accomplish it, they will simply say that I have betrayed my trust.

I believe there is not a man in this Convention—I know many of my non-partisan friends were elected on a reform platform, pledged to economy; and this is one of the very reforms to which many of us were specially pledged, to reduce the salaries of all State officers by a clause in the Constitution. A great many gentlemen on this floor rise and say that this matter of salaries should be left to the Legislature. Mr. President, we can fix these salaries just as well as the Legislature can. I do not believe there is any danger of our getting them down too low; not a bit of it. Let us say in this Constitution what the salaries of these State officials shall be. Let us put them as low as we can and be just. I believe in being just; but I want to be just to the taxpayer as well as the official. Let us put these salaries at a figure upon which they can live. Let us not talk about economy, but let us practice it. Let us strike out six thousand dollars and insert five thousand dollars at least. That will be one step in the direction of reform.

MR. ESTEE. Mr. Chairman: I wish to say one word in reference to the economical idea prevailing here. Mr. Chairman, as I understand it, what the people of San Francisco do want is not so much a reduction of salaries, but they want to know exactly what salary the officers are to receive. The trouble is not in regard to the salaries which the officers receive according to law, but as to the compensation which they receive outside of the law. That is the proposition. There are too many commissions and too many perquisites that are not recognized by law. That is the objection raised everywhere throughout the State. I have heard no one in San Francisco say that the salary of the Mayor, as Mayor, is too much. I have never heard any one say that the salary of a member of the Board of Supervisors is too much; and I challenge my young friend from San Francisco, Mr. Stedman, to point to an instance where there has been any complaint from any respectable taxpayer. But it is this, uncertain amounts that come from commissions and other surreptitious methods whereby men get money for services not rendered. It is against these that the people rise up and cry out, and not against the regular, square, honest compensation of officers. As far as I am concerned, I am not prepared to say, sir, that this State—that this Convention—will be doing credit to itself to send its Governor to live at a hash-house, as my friend in front of me——

MR. STEDMAN. I rise to a point of order. I don't live at a hash-house.

THE CHAIRMAN. The Chair thinks the point of order is well taken. [Laughter.]

MR. STEDMAN. Some of the most respectable members of this Convention—some of the members I respect and honor—live where I board.

MR. ESTEE. Mr. Chairman: If it is not a "hash" house, the gentleman will accept my apology. But he stated that five dollars a week was ample to board a man, and I don't know—to put it mildly—I do not know the price of these houses. If I have made a mistake as to what was said, I am willing to leave it to the Convention, or to the reporter's notes.

Now, sir, I am one of those who sincerely believe that the Governor of this State should maintain the dignity of his position. I am one of those who believe that there are expenses connected with the executive department—with the executive office—that are not incident to a man in private life; and I wish to say here, also, that the figures of the gentleman show that the salaries in other States, in almost every instance (at least as far as I have been able to observe), are more; for this reason, that those States furnish the Governor with a mansion, where he is not obliged to pay an enormous rent. This State, under a former administration, partly built a mansion, and afterwards it was turned into a type-setting institution. So, when a Governor comes here he is obliged to rent a house, and obliged to pay high rent. Now, we have cut down the salary from eight thousand dollars to six thousand dollars, and we have cut off all perquisites. In nearly every State in the Union there is an office known as the State Auditor, and that officer performs those duties pertaining to that branch of the government which here our Governor is required to perform. The Governor also has a great deal of work to do in connection with the State Prison, as well as all the other public institutions of the State. I think the reduction at this time to six thousand dollars is an ample reduction. I am one who believes in paying a fair compensation for fair services, regardless of what views men who never paid a cent of taxes in their lives may have upon the subject. I believe the taxpayers of the country—those who pay into the treasury the money which goes to make up these salaries—are satisfied to pay their officers sufficient to enable them to live in the community respectably, decently, and honestly.

MR. REYNOLDS. Mr. Chairman: It seems to me this discussion has got down pretty low when it comes to be a question whether the gentleman from San Francisco takes his meals at a respectable hash-house; and also that other question, whether the gentleman from San Francisco regards one or another of the taxpayers of San Francisco as *respectable* taxpayers. I take it to be understood, Mr. Chairman, and I hold that opinion, that every man who is a citizen of California is a taxpayer. And one is just as much a taxpayer as another; and it makes no difference to the gentleman, and no difference to the revenue of the State, whether a man's possessions amount to a million, or whether he owns nothing but the clothes he wears, he is all the same a taxpayer, and I don't know but he is just about as *respectable*. So I think we have very little remaining of this discussion so far as the respectability of the taxpayers are concerned; and I think we had better eliminate the question of respectable boarding houses from the question also, and try and resolve it upon something like the distinctive merits of the case. We have heard altogether too much about *respectability* in this Convention; let us look at this subject upon its merits.

MR. INMAN. I raise the point of order that he is not discussing the question before the house.

THE CHAIRMAN. The point of order is well taken; the gentleman will confine himself to the subject under discussion.

MR. REYNOLDS. I am sorry for the gentleman who raises this objection. I was only alluding to some of the arguments on the other side. Let us look at the subject. Mr. Chairman, it is a well known fact, we all recognize it, whether we admit it or not, but we recognize the fact that the State of California has been going on stilts about forty feet high, and it is just as well to admit it, and come down from these forty-foot stilts and commence walking once more on solid ground. And as good a place to begin as any is here and now, and fix the salaries of State officers in this revised Constitution. There is no question, Mr. Chairman, about that proposition, that extravagant fees and extravagant salaries lead to extravagant living. There is no disputing the other fact, that extravagant living among the officers of the State, and among officials all over the country, at the county seats, in your cities, at Sacramento, at Washington, and everywhere, reacts upon the people. Extravagance on the part of the Government reacts upon the people, and causes them to indulge in the same practice. Why, sir, there is no use in denying it, the outragous extravagance and corruption of the last two national administrations have so corrupted the people of the United States, that it has been one means of calling this Convention into existence. It is one of the causes of the hard times we hear so much about. Had the two last administrations been stern, honest, and upright, we would not have witnessed the corruption and extravagance among the people all over the country, which has become so prevalent, spending their substance as fast as they earn it.

These are a few of the reasons why we should put a firm hand on the brakes, and deal with this matter of salaries. Let us determine what is the fair thing to do and do it. I have made up my mind that about five thousand dollars is a good fair compensation for the Governor. That is a good fair salary. I think it is just about enough, and I would not vote to reduce it below that figure. I would not increase it beyond that figure. It seems to me about the average salary of the average States like California. Mention has been made of the State of Oregon. I was present, not as a member, but sitting at the reporters' desk, when that Constitution was framed. Their salaries were put at a very mean, pitiful figure, about one thousand five hundred dollars a year. It does not work well. It is a mean business. I think we should adopt the amendment offered by the gentleman on the other side of the house, and strike out six thousand dollars and insert five thousand dollars. That will strike the average citizen as about fair. It will satisfy the people of the country, and meet the views of those who are seeking office as well. There is nothing extravagant about it, nothing mean about it; is is more than the average lawyer will earn, more than the average citizen earns, two or three times over, and it is enough.

MR. BARNES. Mr. Chairman: I do not think there is any reason for increasing the salary of the Governor, nor have I heard any sound argument advanced to show why it should be decreased. I recognize the fact stated by the gentleman from Santa Cruz, Mr. White, that he and others are pledged to an economical administration of the government, whenever they succeed in getting hold of it. So are we all. But I take it that no gentleman who sought to be a delegate to this Convention was under bonds to reduce the salaries of public officers of this State below the limit which should be deemed by the average sense of this Convention to be just and reasonable. Now, sir, if an officer was elected or appointed to his station for life, he could remove permanently to Sacramento to attend to the affairs of State, abandon his previous business or occupation, and turn his back upon all the pursuits of his life. He could well undertake, as a permanent engagement, to serve the State for an annual salary of eight thousand dollars, six thousand dollars, or even five thousand dollars. It would be amply sufficient. But that is not so. He comes here for a limited period of time, possibly from some distant part of the State, where he has doubtless exhibited the qualities of frugality, honesty, and integrity which have been so much lauded upon the floor of this Convention; he has abandoned his occupation or business, and his home and prosperity, for I take it the time will never come when a man who is competent to become Governor of this State will be selected because he has been a spendthrift, or because he is not anchored to property in the State, and does not possess the very qualities of honesty, integrity, and economy which are themselves a sure guarantee that he has a home, an occupation, business, and some visible means of support. Yet your Governor must turn his back upon all these. If he has a business he must provide for its continuance. He must supply the wants created by his devotion to public interests. He must leave his home. During four years he must maintain his local standing and influence. He must also maintain an establishment here. I take it that though my friend Mr. Stedman, of San Francisco, has been obliged to make unusually economical arrangements for subsistence in Sacramento—more so than I have been able to make—he will admit that the Governor of California would not be reasonably expected to subsist as modestly as he is apparently proud to do—and which is commendable and desirable in the private citizen. Such a mode of living is not expected or desired of the Governor. He should live as becomes the head of a great people. Make the poorest man in the State of California its Governor, and the people who come here from abroad must see him and be entertained by him. He has duties of

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hospitality to discharge which are not incumbent upon men leading a domestic and private life; and this is an item to be considered, and no small item, either. This high position should not be made possible only to the wealthy man. Nor should its emoluments be so reduced that it should seem desirable only to the poorest class of citizens, to whose struggles to maintain an existence gentlemen have so feelingly alluded. It is too much to say that the good citizen, who leaves his home and his own domestic establishment, who abandons or intrusts to strange hands his business or profession, and comes to the Capital of the State to remain during his term of office, should live upon the moderate income which would decently maintain the same citizen and his family at home. Besides, the Governor must travel about the State. He must know the condition of public institutions. He must visit the prisons, the asylums, and hospitals of the State. He must attend at public ceremonies and at public meetings involving public interests, and discharge duties that from custom, if not from law, properly belong to his high station. He also deals with another class of customary duties, which may be classed under the head of gubernatorial chair. Every man who has ever occupied public position knows how extensive and perpetual the claims of charity are upon him, simply because he is a public man. Demands of this sort upon one occupying a public position are much greater than they are upon mere private individuals. More is expected of him. He is compelled to accede to the calls of charity, however little he can afford to yield to them.

The salary of our Governor should be put at such a figure as would sufficiently compensate a man of average industry, average intelligence, and average ability for the discharge of the duties of his high office. So large that when he retires from office he shall have discharged all its duties with honor to himself and credit to the State, without impairing his private fortune, if he have one. The poorest man on the floor of this Convention, if he were unfortunate enough to be elected Governor, will find much is expected of him the moment he takes office, as if he were the wealthiest and most liberal citizen in the State. He will have all I have mentioned and a great deal more to do. How will he do it? I believe there never has been a Governor in this State, or the Mayor of any city, and hardly the Trustee of any township, who has not been compelled to give back to the people in one form or another at least half the money he receives from the people. I know from acquaintances of mine who have occupied public positions that such is the fact; and there is no man who has ever held a public position that does not know this to be the case.

Sir, it is not what we pay in actual salaries fixed by law that makes the State bleed in taxation at every pore. It is not what is bestowed by honest laws. It is stealing. [Applause.] It is the legalized brigandage of legislation that builds the burden of intolerable taxation. It is not what men have and pay taxes on that angers the people. It is what they hold and do not pay taxes on that makes the honest taxpayer suffer and sweat blood. [Applause.] The vice is in our unjust, unfair, and unequal system of taxation. Give me a system of taxation—and when we reach that point I hope we shall all unite to devise a system of thorough taxation that will meet the question—give me a system of taxation that when the citizen farmer or farmer emigrant, seeking a home where he may sustain himself and his family, shall ask the price of land, he shall not be told that its selling price is fifty dollars or one hundred dollars an acre, while if he goes to the Assessor's books, he will find it assessed at six bits or a dollar an acre! Let us stop this minimum of assessment—this maximum of sale. Here is the trouble; here is the mischief; here is where the stealing from the State is done. [Applause.] We want to make these acre-lords and Assessors' paupers pay their honest share of the taxes. We want honest Assessors, or a Board of State Equalization that will make them honest. Regulate these matters, and the people will never complain of generous salaries for honest Governors. Let us waste no more time in needless discussion on these salaries for State officers. Let us employ these fast-waning hours in discussing and devising a system of revenue that will secure and compel taxation on all property alike. I do not care then if the Governor gets twenty thousand dollars a year, but I think his present salary is small enough if he fairly and honestly and with requisite ability does execute the laws of the Commonwealth.

Mr. WICKES. Mr. Chairman: I am under no pledge, but I believe we should begin to work back to a basis of economy. I believe we should get back to the times of Thomas Jefferson, that great statesman who could go to and from the Capitol without calling a carriage. Our whole nation is becoming too extravagant. But while I believe in retrenchment in these matters I do not believe in running the thing into the ground.

Mr. NOEL. Mr. Chairman: I move that the committee now rise, and report to the Convention, and ask leave to sit again.

The motion was put.

Carried by an affirmative vote of 77.

IN CONVENTION.

The PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Executive Department, have made progress, and ask leave to sit again.

RESIGNATION.

Mr. SHOEMAKER. Mr. President: I wish to resign from the Committee on Water and Water Rights. The sessions of the committee are held at night and I am unable to attend, and I move that Mr. McCoy of my county be put on in my place.

The PRESIDENT. If there is no objection the resignation will be accepted and Mr. McCoy put on in his place.

ADJOURNMENT.

At four o'clock and twenty minutes P. M., on motion of Mr. Cross, the Convention adjourned until ten o'clock A. M. to-morrow.

THIRTY-NINTH DAY.

SACRAMENTO, Tuesday, November 5th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Herold,	Porter,
Ayers,	Herrington,	Prouty,
Barbour,	Hilborn,	Pulliam,
Barnes,	Hitchcock,	Reddy,
Barry,	Holmes,	Reed,
Barton,	Howard,	Reynolds,
Beerstecher,	Huestis,	Rhodes,
Belcher,	Hughey,	Ringgold,
Bell,	Hunter,	Rolfe,
Blackmer,	Inman,	Schell,
Boggs,	Johnson,	Schomp,
Boucher,	Jones,	Shafter,
Brown,	Joyce,	Shoemaker,
Burt,	Kelley,	Shurtleff,
Campbell,	Keyes,	Smith, of Santa Clara,
Caples,	Kleine,	Smith, of 4th District,
Charles,	Laine,	Smith, of San Francisco,
Cross,	Lampson,	Soule,
Crouch,	Larkin,	Stedman,
Davis,	Larue,	Steele,
Dean,	Lavigne,	Strong,
Dowling,	Lewis,	Stuart,
Doyle,	Lindow,	Sweasey,
Dudley, of San Joaquin,	Mansfield,	Swenson,
Dudley, of Solano,	Martin, of Alameda,	Swing,
Dunlap,	Martin, of Santa Cruz,	Terry,
Eagon,	McCallum,	Tinnin,
Edgerton,	McComas,	Townsend,
Estee,	McConnell,	Tully,
Estey,	McCoy,	Turner,
Evey,	McFarland,	Tuttle,
Farrell,	McNutt,	Vacquerel,
Fawcett,	Miller,	Van Dyke,
Filcher,	Mills,	Van Voorhies,
Finney,	Moffat,	Walker, of Tuolumne,
Freeman,	Moreland,	Waters,
Freud,	Morse,	Webster,
Garvey,	Murphy,	Weller,
Gorman,	Nason,	West,
Grace,	Nelson,	Wickes,
Gregg,	Neunaber,	White,
Hager,	Noel,	Wilson, of Tehama,
Hale,	O'Donnell,	Wilson, of 1st District,
Hall,	Ohleyer,	Winans,
Harrison,	O'Sullivan,	Wyatt,
Harvey,	Overton,	Mr. President.
Heiskell,		

ABSENT.

Berry,	Cowden,	Stevenson,
Biggs,	Glascock,	Thompson,
Casserly,	Graves,	Walker, of Marin,
Chapman,	Kenny,	Wellin.
Condon,		

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Belcher and Hager. Indefinite leave of absence was granted Mr. Kenny, on account of sickness.

Mr. HUESTIS. I move that the reading of the Journal be dispensed with.

Carried.

THE SPECIAL ORDER—CORPORATIONS.

The PRESIDENT. The special order for this hour is the report of the Committee on Corporations other than Municipal.

Mr. ESTEE. Mr. President: I move that the Convention resolve itself into Committee of the Whole, for the purpose of considering the report of the Committee on Corporations other than Municipal.

Mr. VAN DYKE. Mr. President: I hope the gentleman will let us get through with the report of the Committee on Preamble and Bill of Rights before that motion is made.

Mr. ESTEE. With that in view, and for no other purpose, I will withdraw the motion to allow the gentleman to move to go into Committee of the Whole to consider the four remaining sections of the Bill of Rights. I do so with the understanding that the report of the Committee on Corporations other than Municipal shall keep its regular place as a special order.

BILLS.

Mr. EDGERTON. Mr. President: I desire to send up a resolution in regard to a couple of bills, to be referred to the Committee on Mileage and Contingent Expenses.

The PRESIDENT. If there are no objections the Secretary will read the resolution.

The SECRETARY read:

Resolved, That the sum of thirty-eight dollars and thirty cents be and the same is hereby allowed to pay the bill of Pacific Ice Company and bill of Sacramento Post Office, the same to be paid out of the appropriation for expenses of the Convention, and drawn in favor of the Sergeant-at-Arms.

Referred to the Committee on Mileage and Contingent Expenses.

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NEW PROPOSITIONS.

MR. GRACE. Mr. President: I have here a proposition that I wish to have submitted to the Committee of the Whole. I wish to have it read, printed, and submitted to the Committee of the Whole in connection with the report of the Committee on Pardoning Power.

PARDONING POWER.

MR. GRACE then, by leave, introduced the following proposed amendment to the Constitution, in relation to the pardoning power:

ARTICLE V.

SEC. 13. The Governor shall have the power to grant reprieves, but nothing herein contained shall be construed to authorize the granting of pardons or commutations of sentence, after conviction, but if it shall appear to the Governor that in the case of any person undergoing sentence, additional testimony, mitigating or other circumstances, have been developed which bring into question the justice of such sentence, the Governor shall have the power to remand such person to the custody of the Court in which such sentence was passed for a new trial.

Referred to Committee on Pardoning Power.

PREAMBLE AND BILL OF RIGHTS.

MR. VAN DYKE. Mr. President: I now move that the Convention resolve itself into Committee of the Whole, the President in the chair, to further consider the report of the Committee on Preamble and Bill of Rights.

Carried.

IN COMMITTEE OF THF WHOLE.

MR. VAN DYKE. I suppose, Mr. President, it would be in order to take it up by sections.

TRIAL BY JURY.

THE CHAIRMAN. The Secretary will read the amendment to section seven offered by the Committee on Judiciary and Judicial Department.

THE SECRETARY read:

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions, and in cases of misdemeanor where the punishment does not exceed six months imprisonment or a fine of five hundred dollars, or both, three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, in open Court expressed, and in civil cases by the consent of the parties, signified in such manner as may be prescribed by law. In civil cases, and cases of misdemeanor, the jury may consist of any number, less than twelve, that the parties may agree upon in open Court.

MR. HALE. Mr. President: I move to amend by striking out the words, "cases of misdemeanor where the punishment does not exceed six months' imprisonment, or a fine of five hundred dollars, or both," and insert "all criminal cases not punishable by death or imprisonment for life." When this question was formerly under discussion in Committee of the Whole I had occasion to discuss in part the question covered by the pending amendment. If I correctly understood or interpreted the sense of the Convention as then shown by the vote taken, it was to the effect that the Convention, or the Committee of the Whole, would not go to the extent of allowing a less number than all the members of a jury to render a verdict in all cases whatever, nor would the committee allow the amendment to go to the extent of allowing a less number than twelve jurors to be selected by the concurrence of both parties in all cases, nor a jury to be waived in all cases. Such a proposition was voted down.

Another proposition was presented to allow a verdict to be rendered by the concurrence of less than the jury in cases, first, other than felony, and second, in all criminal cases other than those punishable by death or imprisonment for life. The amendment that is now sent up is intended to take the sense of the committee upon this last proposition. It does seem to me, Mr. Chairman, that if there be reason for us to allow a jury to return a verdict without the concurrence of all the members in any case, the reason is equally potent to extend it to all cases according to the terms of the amendment proposed, which is, that this shall be allowed in all cases, except felonies punishable by death or imprisonment for life. I do not really, in my own judgment, concur in the distinction that is made, but evidently the committee is not prepared to go further, and I offer this amendment in deference to that assumed position. I submit that it will greatly aid and facilitate the prompt and certain administration of justice to allow this change to be made in these cases, and I am not able to see that any danger to the public service or to the rights of defendants will accrue. We all know, at least many lawyers having seats upon this floor know, that those cases in which disagreements of juries are most likely, have been cases not of the ordinary type. They are just those cases which have from some cause or other excited unusual public interest. No doubt as an average statement it may be said this is founded upon the serious consequences that may follow conviction to the defendant; doubtless also in many cases by reason of the real or supposed outrage of public justice whenever any crime itself becomes an element of popular interest.

Now I see no reason why, upon the principles upon which the jury system is made to rest, we should not in these cases accept the average judgment of a jury composed as provided by law as the basis of a legal and proper judgment. That it will greatly facilitate the administration of justice and secure it with promptness and certainty, I think will be conceded by all. The only question, I apprehend, that can be made against the proposition, is that there may be, in certain cases, danger of doing some real or supposed injustice to defendants on trial. Some gentlemen, on the former discussion, referred to what sometimes happens, that is, an undue excitement in the public mind while the trial progresses, and urge this condition of facts as a reason why the verdict of a jury should be unanimous to be the basis of a judgment. I submit that if there be such a state of feeling where the Court sits, as to influence or to endanger influencing the mind of the jury contrary to the established rules of law and justice, the cause should be transferred to other forum where such conditions do not exist; for certainly it is undeniable, both upon the letter of the law and in the spirit of common sense, just that every man who is on trial should have a fair and impartial trial. If he cannot have it by reason of such elements of distraction as affect a partial or unanimous verdict of a jury, it furnishes equal reason why he cannot have it by any jury trial there. Therefore it furnishes a reason for transferring the cases to other forums where such fair trial can be had.

I believe, sir, that this will be found to be the average judgment of the gentlemen on this floor. While there has been much popular dissatisfaction regarding the administration, particularly of criminal justice, that the most important factor of that dissatisfaction has grown out of what is deemed, first, the undue delay in bringing cases to trial, and second, the result of delays and defeat of justice which has resulted from it. I think I may appeal to the gentlemen of the bar, who are honored with seats on this floor, for the verification of the statement that the larger proportion of mistrials occur in those criminal cases where men are on trial for high crimes. Now, of course, if there can be any satisfactory reason given why we might not safely accept a three-fourths, or five-sixths, vote of a jury as a basis of judgment, of course that is a good reason why a man should not be put on trial on such conditions. But if that position be correct, it is equally potent to carry us to the other conclusion, that we should never allow a verdict so to be rendered. Why, sir, many cases, not involving life, or imprisonment for life, nor even felony, involve the rights of the citizen, the liberty of the citizen, all that is dear and sacred to him, almost equally with those cases I have enumerated. If, then, you may not have a fair and impartial trial without the concurrence of all the jurors in these excepted cases, it seems to me that the reason is equally potent to carry us to the conclusion that this ought not to be permitted in any case whatever. Yet I believe it is true that if you should take the sense of the bench and bar upon the question, it would be found that there would be a majority, especially of those who have had the largest experience and field of observation, that would agree in saying that there is need of change in this respect; that we must in some way accept the average judgment of the jury in these cases.

The amendment proposes to modify the present system to this extent, and allow a jury by a three-fourths vote to render an effective verdict in all civil cases; second, in all criminal cases, except where the punishment may be death or imprisonment for life. In all other cases a jury may be waived by parties in the manner prescribed by law. It seems to me that this will make a safe, simple, and complete rule, and that it will greatly facilitate the administration of justice in point of time, and will not debar any man from securing justice. I do therefore hope that the amendment may be adopted.

MR. ANDREWS. Mr. Chairman: I desire to offer a substitute for the section, which I will send up.

THE SECRETARY read:

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law.

MR. ANDREWS. Mr. Chairman: I desire to test the sense of the committee in relation to that amendment, and suppose it will be necessary to inform the committee that it is the Constitution as it now stands. I will say that our jury system has worked well, and I would prefer that it should remain as it is.

MR. REYNOLDS. Mr. Chairman: This is another of the methods that are getting too common here, where there is an admitted improvement upon the present Constitution, of wearing out the report of the committee by amendments and debate, until the committee is tired of the debate and tired of spending time, and then moving the old Constitution. Mr. Chairman, if that practice is going to be kept up, we might as well adopt the old Constitution, and adjourn and go home. Now, sir, if we are going to do anything, let us stick to the work in hand and attempt to perfect it. Here we have spent a day in the discussion of this section and referring it to a committee. We have now got the report. It is again coppered by amendments, further discussion ensues, and then we move the old section in order to close the thing up.

I am opposed to that amendment. If that motion is insisted upon, I hope it will be voted down. There is no question in my mind but that this committee can evolve an improvement upon the old section. This very discussion proves that; the various amendments prove that; and examples we have of half a dozen of the latest Constitutions prove that. I hope that the motion will be voted down, and that we will stick to the report of the committee until we have agreed upon it.

At the proper time, Mr. Chairman, I will endeavor to move an amendment to the report of the committee in a very trifling respect; and I believe, from the discussion that we have had and from the various amendments proposed, that with this trifling amendment which I shall offer to section seven, that it will pass almost unanimously. There is no opportunity now for me to do so, but as soon as the opportunity does come I want to move that amendment.

I hope this last resort to defeat any action in this Convention—moving the old Constitution—will be voted down, and that we will keep on voting it down to the end of the Convention.

MR. ANDREWS. Mr. Chairman: I am sorry to have aroused the ire of the gentleman from San Francisco, but as yet I do not think there has been any test of the committee as to whether they want the old Constitution in relation to juries or not. There has been no vote upon that question. I think that the gentleman himself proposes to amend the report of the Judiciary Committee in relation to this ques-

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tion. I prefer the Constitution as it is to the report of the Judiciary Committee. I prefer it to any section which has been suggested. As I said before I do not see but that our jury system has worked well and I am in hopes that this Convention will adhere to that.

MR. REYNOLDS. Mr. Chairman: By leave I will make one statement. The evident intent of this Convention is to attempt to improve upon the present jury system so as to devise a three-fourths verdict in certain cases, instead of the unanimous verdict now required; and in another respect, to provide, where the parties can agree, that the parties in criminal cases may waive a jury. These are the two points on which this committee are now trying to agree. They are direct improvements upon the old jury system. They have been adopted by many States and found to work well, and now we are attempting to agree upon these two improvements and their provisions. Let us try and see if we cannot do it.

MR. CROSS. Mr. Chairman: I wish to say but one word, and I will try and make it as brief as I can. When we assembled here in this Convention to amend the Constitution as it has been, we came only to make such changes as experience showed were needed. The test of the changes needed would perhaps be derived from this: whether the people in voting for the candidates that they have elected here from the different localities placed us upon platforms requiring any change in the jury system. There may have been counties in this State where the people demanded a change in the jury system, but I do not remember of any such case; nor do I remember that the people of this State have found that they needed a change in the present jury system, or that that change was so generally needed, as that any Convention which declared its principles declared in favor of any change in the jury system. Now while our present jury system has some faults we are not sure that this change will be an improvement. But unless the people have expressed some dissatisfaction with the present system I do not see the need of any change.

MR. SMITH, of Kern. Mr. Chairman: I think the people of the State of California have already expressed themselves upon this subject, in our sister State of Nevada. It is well known that that State has been populated mostly by Californians, and in that State the propositions embodied in the report of the Judiciary Committee here have been adopted. Now it seems to me that the public sentiment in this State has demanded a change in the jury system. Why, in every Court in this State there has been trials and retrials on account of the disagreement of the jury, by one or two men hanging the jury. It has entailed an enormous amount of cost, not only upon the State but upon individuals who have rights regulated in Court.

It seems to me that there has a prejudice grown up in this Convention, and I think unfounded, too, against the Committee on Judiciary, and I believe that that prejudice is directed against this report. Now there are men upon that committee who are known to be able jurists. This is a question in which it seems to me there can be no ground for such a feeling, and I think that it is beneath the dignity of any member of this body to vote against a proposition out of feeling. It is purely a question of jurisprudence, and I cannot see why there should be any prejudice whatever. We come here to reform the organic law, to improve the organic structure of the State, and I say we should rise above prejudice and feeling in doing this kind of business.

Now there was some disagreement between members on that committee in arriving to a conclusion about this matter. Of course, the propositions are somewhat new. Some of the same differences of opinion existed there that exist in this Convention, and, with some difficulty, they were harmonized and the system agreed upon. Let that be done in its consideration by this Convention.

I presume that those who are not lawyers here will not undertake to say as much about this question as the lawyers do. I do not see how they can, in formulating this matter. Of course, as citizens, they can see how the jury system works. They can see that there has been trouble all over this State by jurymen hanging juries. In all other matters the majority rules. On the Supreme bench a majority rules, and in every matter upon which we wish to get at the right, except in a jury, the majority rules. In every case where the majority rules, it is satisfactory. Why should we stick to the old form of common law in this respect, when in every other respect we have yielded to the influence of greater civilization. There is yet too much superstition in regard to the old common law, and this is one of the evidences of it. Let us do as the Californians have done in Nevada, and where it has proved a success.

I think that the report of the committee is a good one, and I do not think that the prejudice now existing in this Convention should have anything to do in overturning it.

MR. VAN DYKE. Mr. Chairman: I hope that this committee will not adopt the amendment offered by the gentleman from Shasta, Mr. Andrews. If there is anything which is required of this Convention, in my opinion, it is to reform the jury system. It is recognized all over the State as an intolerable burden upon the citizens. The report of the Committee on Judiciary is certainly a vast improvement over the present section of the Constitution, and I would be in favor of going still farther in civil cases, and leaving it more to the Legislature, so that it would be somewhat flexible, and that the Legislature might reform the abuses. I am willing in criminal cases amounting to felony, to prescribe the old common law jury. In lower cases I do not see why the defendant should not waive a jury if he see proper. In civil cases I would be in favor of leaving it entirely to the judgment of the Legislature. I am aware that in this I may be radical, but I cannot see the danger of leaving the matter of trial by jury in civil cases—purely civil cases—to the wisdom and judgment of the Legislature as experience might inform them. Now what is the danger? If we provide in the Constitution—if we throw around guards and checks to protect the citizen in his life and his liberty—what danger is there in leaving to the Legislature the pure matter of practice in civil cases in the Courts?

Now, sir, we all know — lawyers know — that notwithstanding this declaration in all the bills of rights, that the trial by jury shall be inviolate forever, that it is not had in equity cases. In the case of a suit on a promissory note, or for money had or labor done amounting to three hundred dollars, the party who wishes to embarrass litigation and delay or obstruct justice, can demand a trial by jury, and the result is that twelve, or perhaps fifteen or twenty business men of the community are compelled to drop their vocations and dance attendance upon him in the Courts to determine a matter whether John Smith owes John Brown three hundred dollars on an ordinary contract. But if the question involves the settlement of a partnership amounting to half a million of dollars, John Smith has no right to demand that the citizens shall drop their business and flock to the Court House to sit upon the question and determine his rights; but he is informed that he has not, in this case, the right to a trial by jury because this is an equity case. And so you may go through the whole course of litigation. Notwithstanding we have abolished the forms between law and equity, notwithstanding all this distinction has been in a great measure wiped out, still, because the common law jury was not known in cases of equity, we prescribe this distinction without any reason whatever. I cannot see why one man, simply from pure stubbornness, should compel these twelve or twenty men to drop their business and dance attendance upon him at the Courts to decide a question on a promissory note, any more than in an action in equity. As I remarked, it is an intolerable hardship, and there is a wail coming up from citizens of every part of the State to relieve them from jury duty. Men get themselves upon the rolls of military companies, and fire companies, and resort to every expedient to avoid this tax upon them in reference to the jury trial. I am in favor of any process that will reduce this burden upon the citizen in civil cases, and I am in favor of a three-fourths verdict, because they will not then demand juries in a majority of cases. They do so now simply from the hope of getting one stubborn man out of the twelve to hang the jury. That is the reason of the demand; not because the Judge cannot administer justice just as well as the twelve men; not because three men cannot decide between John Smith and John Jones just as well as twelve men; but simply because this right of trial by jury is in the Constitution, and this stubborn man, who wishes to block the wheels of justice, says, "I demand a jury; I demand my constitutional right;" and the result is that the Court is compelled to grant that demand.

I am in favor of right here and now remedying this evil. I am in favor, as I say, of preserving the old common law jury in all cases of felony; in cases of misdemeanor to allow the defendant to waive a jury; and in all civil cases leaving it to the Legislature. I do not think, Mr. Chairman, that we have the right in this Convention to claim the wisdom of ages. Not at all. Sir, you have got to leave to future legislation some discretion or you might as well abrogate republican government at once. We must leave some of these matters flexible. I am in favor of leaving the question of trial by jury, in purely civil cases, to the Legislature. I hope that the motion to substitute the old section, which has outlived its usefulness, will be voted down, and that we will amend this section according to the spirit of the times.

MR. BARNES. Mr. Chairman: I understood the gentleman from Kern, Mr. Smith, to say that the people had already expressed their desires by the action taken in the Constitutional Convention of the State of Nevada, in which they adopted such a provision as is here submitted by the Committee on Judiciary and Judicial Department. I do not understand that to be the constitutional provision in Nevada. It is very brief, and I will read it so that gentlemen can see what further encroachments we are now proposing to make upon an ancient and time-honored institution, and which, I respectfully suggest, without good cause, ought not to be tampered with. The Nevada Constitution provides:

"The trial by jury shall be secured to all and remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law, and in civil cases if three fourths of the jurors agree upon a verdict it shall stand and have the same force and effect as a verdict by the whole jury; provided the Legislature, by a two-thirds vote of all the members elected to each branch thereof, may require a unanimous verdict, notwithstanding this position."

Therefore I say that the people of the State of Nevada, while they were willing to enter upon the experiment, were not willing to make it a fixed and final thing in their Constitution. It was an experiment they were about to try, and it was but an experiment. How does that resemble a provision like this that is reported by the Committee on Judiciary:

"SEC. 7. The right of trial by jury shall be secured to all and remain inviolate; but in civil actions and in cases of misdemeanor, where the punishment does not exceed six months' imprisonment or a fine of five hundred dollars, or both, three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony by the consent of both parties, in open Court expressed, and in civil cases by the consent of the parties signified in such manner as may be prescribed by law. In civil cases and in cases of misdemeanor the jury may consist of any number less than twelve that the parties may agree upon in open Court."

Mr. Chairman, I think all this discussion or suggestion in relation to the one obstinate man who hangs a jury is not well founded. How often it may have happened in the practice of the gentleman from Alameda that eleven jurors have been against him and one juror for him, or vice versa, I do not know, but to my mind the infallibility of the verdict of a jury rests upon its being unanimous. It is the unanimous conclusion of twelve good citizens that brands a man as a criminal. But why has not the man who is liable to be fined five hundred dollars or sent to the jail for six months, the same right to a trial by jury as the man who is to be sent to San Quentin. I do not see the distinction. It is a distinction without a difference, Mr. Chairman. "A trial by jury

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may be waived in all criminal cases not amounting to a felony," etc. I object to that because men are often overborne. We know that to be the case in San Francisco. It happens all the time, in the criminal Courts especially. They are sometimes run by the police and men are accused of crime, dragged into the cells, cajoled and tampered with until they do not know what to do, and they take the advice of a policeman or some shyster lawyer, and before they know it they have been convicted and gone to be a burden upon the county for six months. I see no reason why the old system which has stood so long should not be allowed to stand. I hope that the amendment offered by the gentleman from Shasta, Mr. Andrews, will prevail.

MR. ROLFE. Mr. Chairman: I agree with the gentleman from Alameda that the jury system in this State has got to be an intolerable burden. As he said, two men may get into a dispute about a promissory note for three hundred dollars, and they will demand that twelve men be brought from their business to determine the question between them, whereas there may be several of these very jurymen who are damaged by reason of attendance upon the case, more than twice the amount in dispute. I have seen that myself. I do not suppose there is a lawyer in this house—or a gentleman in this house, be he lawyer or layman, but what has seen the same thing. I do not see that any of these amendments propose to remedy this evil as they should. While I am opposed to tinkering with the old Constitution any more than can possibly be helped, I think there can be a slight amendment made to it that would be an improvement. I go further, we should determine to take the old Constitution as the standard. I think it is a good Constitution, and I do not think it needs tinkering with but very little, and unless I can see a clearly defined improvement to be made in any particular instance, I will not vote for it. I would rather go back home without making any change in the Constitution at all, than to make a lot of changes that will make a worse Constitution or will set us at sea upon a system of experiment we know nothing about.

But, Mr. Chairman, it seems to me that none of the evils as to the intolerable burdens of the jury system upon the citizens at large, has been reached by any of the amendments. Now if we would take the old section as moved by the gentleman from Shasta, Mr. Andrews, and add to it—and if it is in order I will offer the amendment now—but I believe it would not be in order—if it was in order I should offer an amendment to that old section, something to the effect that in civil cases, and in cases of misdemeanor, a jury might consist of any number less than twelve that the parties might agree upon in open Court, or that the Legislature might by law prescribe.

I am opposed to making this unyielding change of allowing a majority or three fourths of a jury to render a verdict in any case. I am opposed to trying that experiment in the Constitution. I would not object to another amendment allowing the Legislature to prescribe that a three-fourths majority of the jury may render a verdict. I would not be opposed to that because it is an experiment, and while I would not object to the Legislature trying that experiment, I am opposed to trying it in the Constitution. The legislative enactment, if found to work badly, could easily be changed, while the Constitution cannot be so easily altered. But I am in favor of the old Constitution with the amendment I have suggested, and I wish that the gentleman from Shasta would add that to his proposition, that in cases of misdemeanor and in all civil cases a jury may consist of any number less than twelve that the parties agree upon in open Court or that the Legislature may prescribe. That will relieve this burden of jury duty to a great extent. For instance, in all cases where the amount in dispute is less than one thousand dollars, the Legislature can provide that the jury shall consist of only six persons. I do think that in all cases where the amount involved is not very large, that parties should be compelled, if they will demand citizens to be drawn from their workshops and other places of business to settle their disputes, to leave their questions to a less number than twelve. Six, I say, is enough. I do not know but six would be enough in all cases of dispute in civil matters. But I say that unless the amount is very large, six men are just as competent to determine as twelve, and therefore I would leave it in the discretion of the Legislature to prescribe a jury of a less number than twelve.

It is well known to all lawyers that when we say "jury" in the Constitution, it means the old common law jury—the apostolic number of twelve. A jury of twelve men, that is what a jury is, and a jury prescribed by a Constitution, using no other explanation, means a jury of twelve men. I would like to have the Legislature have the discretionary power to fix the number at a less number, and if I have an opportunity —if these other amendments are voted down—I shall offer such an amendment to this proposition.

MR. CAPLES. Mr. Chairman: The gentleman from Alameda, Mr. Van Dyke, has aptly denominated the present jury system as an intolerable burden. I concur most heartily, but I must say, at the same time, he has put it very mildly. It is more than an intolerable burden. It is a monument of superstition and folly. It is the sum of all villainies. It is very easy, Mr. Chairman, for my friend from San Francisco, living on an income of one hundred and thirty thousand dollars, to say that it is all right and has worked well, but if he was in the position of the poor farmers of Sacramento County, struggling to feed and clothe the little ones around him, and should be dragged off to serve on juries for weeks and weeks without compensation, he might change his opinion. We read of a hundred jurors being called for to attend our Courts here in Sacramento. A hundred men! Who are they? They are not so fortunate as my friend Colonel Barnes. They are poor men, dragged away from their business and labors, upon which depend the support of their little ones. They are forced to come here and sit for weeks on a pay of two dollars a day, and pay their own board. Their time is a total loss to them, and their families are in want and suffering. And I say again, that the gentleman from Alameda has put it very mildly when he says it is an intolerable burden.

In regard to the effects of this system. Don't every gentleman know that it obstructs justice? Here, now, for instance, under that beautiful system as perfected by modern civilization, if a man has formed or expressed an opinion he is disqualified, and must stand aside. Right here is the worst of the whole business. I have seen the Sheriff in the State of Nevada start out under instructions to summon every taxpayer in the county, without reserve, in a criminal case. Could anything be more monstrous, absurd, and outrageous than to summon every taxpayer in the county to serve on one jury? It was the second trial, after everybody had read the newspapers. The Court was well aware that under this system he would require all the people in the county. That case bankrupted the county! Is there any justice, is there any wisdom, in that? Where is the likeness of a policy that is so monstrous?—a policy that is in the interest of crime. I denounce it. I denounce the whole system of the common-law Grand Jury as in the interest of crime, and as being an obstruction to the administration of criminal justice.

Now, Mr. Chairman, are we here to frame an organic law in the interest of crime, or are we here to promote the interests of honest men—those who are the pillars of society; those who maintain the government; those who secure to us the blessings of law and order? I assert that this is our mission, and that we are not here to protect and defend the criminal or provide further obstructions in the way of the administration of criminal law that we have enacted.

MR. HOWARD. Mr. Chairman: If I were called to select a topic upon which there has been more unmeaning declarations bestowed than any other, I should designate the trial by jury. This trial has been vigorously attacked in England by many great jurists. If there are questions of law and fact, every lawyer knows that it is not an intelligent tribunal; and with questions of law and fact there is scarcely one jury in ten that is competent for the trial. Again, sir, not only is it deficient in intelligence, but I maintain that the modern practice shows that it is even deficient in integrity; that there are five hundred corrupt jurors where there is one corrupt Judge.

I had occasion the other day to witness a case which illustrates this thing very fully. A widow lady sued a railroad company for killing her husband, by the negligence of an employé of the railroad company. The case was very fully tried and went to the jury; the jury went out, and they stood from the beginning eleven for the plaintiff and one for the defendant. Of course the jury was discharged, and the next day that one juryman appeared upon the streets with about the finest turnout in town.

I am in favor of taking from the jury the power it has, by ignorance or corruption, to defeat the administration of justice. When I resided South I used frequently to attend the Courts in New Orleans. There the party had a right to demand a jury, but whenever he did demand it, it was an understood thing that he had to pay costs. The result was that when he counted the cost he was incurring he generally submitted his cause to the intelligence and integrity of the Judge. Now I do not deny that occasionally it might be, where there is prejudice, a good thing. Occasionally it might be necessary for a party to protect himself from the prejudice of a Judge by calling a jury; but in ninety-nine cases out of a hundred a man that has a good case, a man that is accused of crime and is innocent, would prefer to be tried by one intelligent man, and he would be safer to take the judgment of one intelligent man than he would be to leave it to twelve men. It is not difficult among twelve men to find some of them who can be approached with improper motives and inducements. I read the other day in an English publication what seemed to be a clear definition of the jury trial, which said that the jury trial was a proceeding where one man was tried by the prejudice of twelve others, and that everybody knows is often the case. Therefore I say that the amendment proposed by the Committee on Judiciary is a sound one. It is one in the interest of justice. It is in the interest of the poor who are seeking justice, and who must encounter the rich antagonist upon the other side.

Again, in relation to the majority rule in cases of misdemeanor, I confess I have my doubts, because liberty appears as sweet to a man who has committed a misdemeanor as it is to a man who commits a higher offense. But there is this trouble: they are the large majority of cases; there are more hung juries, and then the State and county is put to the expense of a retrial, and perhaps two or three retrials. So it seems to me, that even allowing that there might be some evil arise in allowing three fourths of a jury to find a verdict, the evil would be less than the evils arising from bringing it down to a unanimous verdict of twelve.

Now, sir, the question is often raised here, what we should do in the way of amendment to the Constitution. I think we should do all that is necessary, and no more. Wherever and whenever it is ascertained that an institution has been abused, or does not answer the purpose for which it has been instituted, I say that we should correct the abuse and make it so that it will accomplish the purpose for which it is designed. This is precisely one of those cases. In civil cases a verdict of three fourths of the jury does tend to a perfect administration of justice, and I hold that it is shown by the experience of men, both in England and in this country, that it is a necessary improvement.

MR. BARRY. Mr. Chairman: While I am opposed to changes in our present Constitution, unless it would subserve some useful purpose and be productive of some good, yet at the same time we know that there are many changes necessary; changes demanded by the people; changes in reference to taxation and corporations. I believe that if there is one thing more than another that the people of this State desire, it is a change in the jury system. I know that as regards the people of Sierra, where I have resided so long, that they demand it. I have talked with a large number of the most intelligent men of that county, and I can say with safety that if it was put to a vote of the people of Sierra County there would be more than three fourths say that the jury system should

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be changed; that the concurrence of three fourths in civil cases ought to be sufficient to render a verdict. As regards the people of Nevada County, I do not know exactly how they feel in this matter; but I believe that they would approve the change. But in this matter we all represent the people of the State of California. While it is true that we are sent here from different localities, yet we are laboring, I trust, for the common good. And, sir, it seems to me, that it is an undeniable fact, and one that ought not to be disputed by any attorney upon this floor, that gross injustice has been done by the non-concurrence of juries. It is often the case in civil cases, that men come fifty, or sixty, or a hundred miles and more, sometimes two hundred, to the county seat, to attend a civil case. The result is that the jury disagrees, and a new trial is had. The people are put to extra expense in that matter. The litigants are put to extra expense in having a new trial, and it is one of the means by which justice is defeated. I say that it is a wrong to the people. It is unjust that such a system should prevail in this State longer.

There is no one has a greater love for the old common law and the institutions of our fathers than I have, yet I think it would be a wise departure if we take a departure in this case. As a member of the Judiciary Committee, I believe that this amendment was necessary, and when I proposed it the committee agreed with me. I believed then and I believe now that this amendment was necessary. In the most trivial cause in the Courts and where it is tried before a Justice of the Peace, defendants, through their attorneys will, as a matter of course, ask for a jury of twelve—a constitutional jury, as it is termed—because they know their chances are better to hang the jury, and get one man at least to ride with them, and in the end it results in the acquittal of the defendant.

Now, sir, all will agree with me in saying that a change in the jury system is needed in that respect. I believe in the old law maxim, that it is better that ninety-nine guilty men should escape than one innocent man should suffer. I believe in throwing all the safeguards that can be thrown around cases involving life or liberty, but would do the same in civil cases as gentlemen have intimated. I say that all desire the full protection of the law; that the man who is charged with the simplest crime should have the full benefit of the law, but a conviction in capital cases is the most serious one. When a man's life is in question on his imprisonment for life then it is a serious question to deal with, and while it is true—and there is not an attorney upon this floor but will agree with me when I say that one juror in a capital case has often hung an entire jury to the detriment of justice—hung it on some quibble, or a feeling of sympathy, a feeling of prejudice towards the prosecution, or some fault of the prosecuting witnesses, or some matter that juries ought not to be governed by, something entirely foreign to the case, something entirely outside of his oath and his duty as a juror—this is often done to the detriment of justice; but while this has been done and may be done again, and while the guilty may escape, as I said before, I would not offer this provision to have a three-fourths verdict in a capital case—in cases involving imprisonment for life, or death.

But, sir, thousands of dollars could be saved to the people of the State in civil cases, as well as in cases of misdemeanor, if the law was changed in this respect—was to allow three fourths of a jury to find a verdict. And I say that the spirit of the times now demands a change. I say that when the people demand this change, and it can be made without sacrificing the interests of justice, it should be done. I think every member upon this floor should concur in a matter of this kind. What we desire is economy in the right direction, and I hold that this is the right direction. If instead of the system as it now stands, we had a provision that three fourths of a jury may render a verdict in all civil cases and in cases of misdemeanor, where the punishment does not exceed six months imprisonment, or a fine of five hundred dollars, or both, I am satisfied that it would be to the better interest of the people and to the interest of justice, and therefore I insist that the proposed change recommended by the Judiciary Committee should be adopted.

MR. MCCALLUM. Mr. Chairman: I understand that the immediate question is on the proposition to restore section seven of the Constitution as it is.

THE CHAIRMAN. The first proposition is the amendment offered by the gentleman from Placer, Judge Hale, to strike out the words, "cases of misdemeanor, where the punishment does not exceed six months' imprisonment or a fine of five hundred dollars, or both," and insert, "all criminal cases not punishable by death or imprisonment for life."

MR. MCCALLUM. Mr. Chairman: That will not, then, be the first question. I regret that, because in all these cases it does seem to me that we can arrive at a more speedy and intelligent conclusion if some one who offers a provision of the Constitution as it stands would offer it as an amendment to the proposed proposition, so that if a majority of the Convention are opposed to change, and should so vote, that would be the end of the whole matter. All the various propositions as to the best way to change would then be out of the question.

I believe, Mr. President, at the same time, that while that is the proper way of proceeding, that this is one of the few questions of magnitude where an enlightened public sentiment demands a radical change in the Constitution. I believe that if the whole bar and bench of this State were to testify as to their experience; if all who have been so unfortunate as to be parties litigant, certainly in civil cases, and if the taxpayers were called upon to testify upon this point, that nine tenths of the people of this State would demand a change. The gentleman from Los Angeles—I understood him to refer to some person who demanded a jury in a bad case. Perhaps it is no more than proper to say that it is almost a universal rule that where parties want a jury their cases are bad. There is no doubt but that it is better in a bad case to have a jury. A man demands a jury of twelve—and that is the only legal definition of a jury at common law—and must have the whole community summoned to draw from.

Again, it is an oppression upon the poor and the middle classes. It is an oppression upon all, but often it works as a special oppression in cases where suits are brought by the poor, who are worried out by the expense of litigation. So oppressive, indeed, is this, that it is a common thing for men to abandon their rights on account of the expense of maintaining them. Why, sir, I undertake to say that, if the intent is to arrive at the facts and a just conclusion, it is the judgment of bench and bar generally that this can be better accomplished before a Court than before a jury. Look at the manner in which jurors are selected. The plan is well known to you all. Well, you take jurors who have never served as jurors before. They listen to the case and hear the contradictory statements of the attorneys. Then comes a long complicated charge from the Court, and the jury are wholly unable to understand all these different questions of fact which are involved in an intricate case. I remember a case where the Court gave a charge to the jury something to this effect: "If the jury find this fact to be so and so, then, gentlemen of the jury, you will find a verdict for the plaintiff; or, if this other fact is so and so, you will find for the plaintiff; but notwithstanding that if this other fact should be in favor of the defendant, why, then, gentlemen, you will have to find out for yourselves what your verdict ought to be, for the Court don't know." I remember, too, a story told by a very distinguished gentleman, who said it came within his own knowledge. A jury had failed to agree, and one of them said that they stood six for the plaintiff and five for the defendant. They had all heard the testimony, and six of them insisted that the plaintiff ought to have a verdict, and five of them insisted the defendant ought to have a verdict. He was asked who was the twelfth juror, and he said: "Well, I was the twelfth juror." "Which party did you belong to?" "Well, I could not decide at all." The proposition here is to change to this extent, that in civil cases three fourths of the jury may render a verdict. Why should not that be so? Justice entitles one party or the other to a verdict. If three fourths, or a majority, decide everything else in our republican form of government, why should not a verdict rendered by three fourths of a jury be a fair verdict, especially with the Court to see whether there has been any wrong application of the law, and to grant a new trial, if necessary? The other system causes cases to be tried over and over again, until the party who has a just cause is worn out with litigation.

The object of this proposition is this: The jury system, which was in the first place the bulwark of liberty—some one has said—the reason for it, however, does not apply in this country. It was a bulwark against the oppressions of the Crown, and there are many ideas—and the Grand Jury is one of them—which we have got in this country that were of the utmost consequence to the English people from whom we got our laws.

Now, it is said, however, with reference to this criminal feature, as to criminal trials, that it is important that the jury should be unanimous in misdemeanors as in felony. That proposition is only plausible in one sense. In misdemeanors Courts do try cases without any jury at all, as in the Police Courts. You cannot try felonies that way. In capital cases and in felonies the defendant is entitled to more peremptory challenges than in misdemeanors. Throughout the whole system a difference in the degree of crime is recognized as reason for additional safeguards to the person. Besides, if in cases of misdemeanor a verdict was rendered by nine out of twelve, that fact undoubtedly would be taken into consideration by the Court in determining the measure of punishment. And really in most of these cases of misdemeanor it is the measure of punishment, and not the fact of the verdict, which is the essential thing to the defendant, for all misdemeanors are exceptions from that class of crimes which are known as felonies. The Court could remedy that in such a case.

But, while speaking upon this general question, I desire to say that I propose to support the amendment recommended by the Committee on Judiciary, with this exception. I shall take the first opportunity to present it. I will read it now simply as a part of my argument for a reason to vote against the other proposition. I think the proposition of the gentleman from Placer entirely too narrow. I understand it makes the exception of capital cases and cases of punishment by imprisonment for life in the State Prison. I shall, at the proper time, move to strike out all after the words "Section 7," in line one, to and including the word "verdict," in line four, and insert as follows: "The right of trial by jury shall be secured to all and remain inviolate; but in civil cases and in cases of misdemeanor three fourths of a jury may render a verdict." Then the section would read from the word "verdict" on as reported by the Committee on Judiciary. It would all read in this way:

"SEC. 7. The right of trial by jury shall be secured to all and remain inviolate; but in civil cases and in cases of misdemeanor three fourths of a jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to a felony, by the consent of both parties, in open Court expressed, and in civil cases by the consent of the parties, signified in such manner as may be prescribed by law. In civil cases, and cases of misdemeanor, the jury may consist of any number less than twelve that the parties may agree upon in open Court."

It will be seen that my amendment is only to a single point, in striking out the exception where the fine cannot exceed five hundred dollars, or the imprisonment six months, and making it apply to all misdemeanors.

MR. WINANS. Mr. Chairman: The member from Sacramento, Mr. Caples, and the member from Los Angeles, Mr. Howard, have presented arguments against the entire system; the one objecting that it is inconvenient, and the other that it is corrupt. Now, I would suggest to the gentleman from Sacramento that, although it may be a disadvantage to him and to his children to discharge these duties, yet, when we entered into the social compact, we bound ourselves to sacrifice our private wishes

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and predilections in all cases where it was necessary for the public good.

To the gentleman from Los Angeles I would say that the system which he denounces has been sanctioned by the experience and wisdom of all ages, from its institution until now. Now, sir, it is proposed that we should mutilate this system; that we should require but three fourths of a jury to render a verdict. You, in that course of action, destroy the character of the system; you deprive it of uniformity, and take from it a portion of its very essence. The human body may retain its vitality if robbed or deprived of a limb, but it loses its beauty and its harmony forever. So this system may survive under mutilation, but it has lost its character, and you enter upon an experiment entirely new. I say that when gentlemen declare that Judges are more reliable than juries, they are talking about an untried experiment, the results of which are uncertain. Throw the whole work of these trials upon the bench, and you will find in some cases prejudice, in some cases sympathy, and in some cases ignorance of the law; and you might get less justice than from twelve men who concur in a verdict, for when wrong the Judge will be radically wrong, and the wrong is incurable.

But, apart from the merits of the system, I find that there is the utmost diversity of sentiment in reference to this new departure. There is an underlying feeling in this Convention, I believe, in favor of the Constitution as it is, with such changes only as are indisputably compelled by the condition of the times and the welfare of the people. Beyond that, sir, if you advance a single step, you go in the wrong direction. It is far better, unless experience compels the change, to tread in the ancient paths. I honor the sentiment of this Convention, which I believe is fully indicated, of standing by the old Constitution so far as possible. I believe that those gentlemen who are desirous of removing every fragment of its now existence, of destroying its every plank, are going too far in the principle of reform—far beyond what the conservative spirit of the age demands; far beyond what the wisdom of our land would determine; far beyond what the exigencies of the times require. There are propositions in that old Constitution which are now attacked, which have at least the merit of having endured through long centuries, through generations of men. And now a change is proposed, the results of which are uncertain, the chances of which are imminently hazardous. But which is the change proposed? One favors the amendment of the committee, with a difference, and then favors the amendment of the committee, with another difference, and a third with a difference still other than the other two. Each man has his plan, and in the confusion and the multiplicity of amendments we have absolutely lost all idea of the right and true result. Now, sir, while every man should stand upon the platform of the Constitution in this regard, as consistent and conservative, they are utterly divided in their sentiments. Twenty propositions have been made, and others are yet to come. No two men agree, hardly. All want a change, one thinking the change should be in this point, and another in that one.

I say, sir, that unless the circumstances of the case demand a change let us stand by the Constitution as it is, and in this instance no change is needed by the people. I say that notwithstanding the invectives hurled against the jury system by the gentleman from Los Angeles and Sacramento, and by those who have been disappointed, it stands as a monument of human wisdom. As regards corruption, I do not know how placing this duty upon six or eight men, instead of twelve, will mend that. Gentlemen familiar with juries have frequently found, too, that the one juror, in cases of a disagreement, has been right, and has furthered the ends of justice, whether it involved the loss of a fortune or the sacrifice of a life.

Mr. Chairman, I prefer to stand where my fathers stood before me. I prefer to have my children stand where I stand. I prefer to stand by this system which has been our safeguard, and in all matters to remain as we are, except in needful cases.

MR. O'DONNELL. Mr. Chairman: I do not want to make a spread-eagle speech here, or occupy but a little time, but I would like to say a few words in regard to this section. "The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties, in all civil cases, in the manner to be prescribed by law." That section is in every Constitution, in every State in this Union, and has been there for one hundred years, and it should be inviolate forever. I have seen the benefit of that section in San Francisco, and it was this: There was a party arrested in that city for rioting, where there was no man that was arrested that was any more of a rioter than any one of you present in this hall. A jury was summoned to try these rioters. What was the result? That jury was all men who were lumber merchants, door, window, and sash makers, from the very part of the city where there had been a fire that destroyed a good deal of property. The jury was picked from that quarter, and the result was that every man but one were in favor of convicting these men of rioting. That one man in twelve saved these men from going to the county jail for six months. For that reason, as one, I am in favor of standing by the old Constitution, and that section. Many lawyers who are present now, from the City and County of San Francisco, particularly, were, no doubt, sent here for the express purpose of making the change in that section. No doubt they will make the change, too. There are seventy-five lawyers in this body—a majority of this Convention. They have told us already they possessed the brains of this Convention. Here is a section that was referred to the Committee on Bill of Rights, and the Judiciary Committee has taken that power from them, and have taken it among themselves to change that clause. Now I shall praise the bridge that has carried me over safe, and I hope that section will be retained and will be inviolate forever; and I hope every reasonable and sensible delegate on this floor will do the same. I thank you kindly for your attention.

MR. BROWN. Mr. Chairman: I am inclined to think that certain gentlemen upon this floor are mistaken about the people not wishing any changes in the Constitution as it now stands, and with regard to their wishing no change in the Constitution as regards the jury system in this State. Now, it does seem passingly strange that it should be taken for granted here upon this floor that it is almost an outrage to propose any change in the Constitution of this State as it stands, especially when we notice and read the law under which this Convention is acting. We know that the Convention to a great extent was to revise, change, and make a new Constitution. I am one of those that believe in being cautious in reaching forward to matters that are new, and I am opposed to laying violent hands upon the sacred principles that are found in the old Constitution. But when public sentiment is expressed, and when it is known that certain changes are demanded as a matter of necessity, then we should attend to the wishes of the people of this State. Now, in the part of the country that I came from, this subject was discussed; this whole jury question was discussed, and the people there were decidedly in favor of a change in the jury system; decidedly so. I am under the impression that the same sentiment prevails throughout the State to a great extent. Gentlemen will hear stated upon the floor that there is nothing of the kind desired. It is desired! It has been discussed, and the defects, as the people consider, of the jury system, have been pointed out. Now, I would simply say, without entering into legal questions upon the subject, that I am convinced that the report as made by the Committee on Judiciary in this case covers just about the ground that my constituents wish, and I think the great body of the people of this State demand.

MR. GREGG. Mr. Chairman: There is a feature about this section reported by the Committee on Judiciary that I do not like a great deal. It allows three fourths of a jury to return a verdict. I am opposed to this seven to eight business. Now and then it is very agreeable to have the eight, but there might come a time when our side won't be satisfied with the eight. I think that a verdict to have any dignity should be a full verdict of the jury. I do not think twelve men should be called to determine whether John Jones is guilty of striking John Brown over the nose. I think a less number should certainly be allowed to determine in that class of cases. But, sir, a verdict, to be a verdict, it seems to me, ought to be the unanimous decision of the jury. I am opposed to this eight to seven business. I would like to see a change made so that misdemeanors could be tried by less than twelve, or by some number agreed upon. It is the general opinion of the public that twelve men should not be dragged into Court upon these cases of misdemeanor or civil suits involving fifty or one hundred dollars. They recognize the fact that justice demands the attendance of citizens upon the Courts, but a less number than twelve is sufficient to decide on these cases of misdemeanor and minor cases. There is where the people have growled. They are always satisfied with a verdict that is rendered by a full jury. I think if we make a change in the old Constitution, so as to allow a less number than twelve to be called in cases of this kind, we will meet the demand of the people, but if we change it so that three fourths of a jury may find a verdict we will not really meet the approval of the people, because we know that the eight to seven business never can become satisfactory.

MR. BLACKMER. Mr. Chairman: I do not wish to occupy the time of the committee, but inasmuch as the question has arisen as to whether there is any demand for a change in the jury system, I think I should say a word in regard to the feeling in my own county. It seems to me that the fact that there are so many in this Convention who have already expressed themselves in favor of a change, coming as we have direct from the people, where these matters have been fully discussed, is pretty good evidence that the change is demanded, if not by the majority of the people, at least by a very large minority. I know in my own county the question was discussed quite freely, and I failed to find any who were not in favor of some change whereby justice could be arrived at more speedily and more correctly. It was the unanimous feeling in all parts of the county that the present jury system did not accomplish what it ought to, and that some change should be made in the direction of improvement. For that reason I am opposed to the amendment, as offered by the gentleman from Shasta, Mr. Andrews, and I am in favor of the amendment as proposed by the gentleman from Placer, Judge Hale, to except those cases where the punishment is death or imprisonment for life, and compel a unanimous verdict of twelve men, but in other cases allow the verdict of a jury to be determined by less than that number. I say this much because I want to speak the sentiment of the people that sent me here. I believe we shall not do what the people expect if we do not make change.

MR. SMITH, of Santa Clara. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration certain sections of the Declaration of Rights, report progress, and ask leave to sit again

The hour having arrived, the Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

REPORT FROM THE CONTROLLER OF STATE.

THE PRESIDENT. I have here a communication from the Controller of State in response to a resolution of the Convention, which the Secretary will read.

MR. TINNIN. Mr. President: I move that the report lie on the table and be printed.

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THE PRESIDENT. There being no objection, it is so ordered. Following is the report:

CONTROLLER'S OFFICE, November 4th, 1878.

The Honorable President and Members of the Constitutional Convention:

GENTLEMEN: I herewith transmit the information called for by your resolution of November second, in reference to the cost of the militia of the State.

Respectfully yours, etc.,

W. B. C. BROWN, Controller.

EXPENSE OF MAINTAINING STATE MILITIA,

Including Adjutant-General's Department, from July first, eighteen hundred and fifty-five, to June thirtieth, eighteen hundred and eighty, as shown by the Controllers' Reports.

YEARS	Amounts.
Year ending June 30th, 1856	$6,084 31
Year ending June 30th, 1857	4,690 92
Year ending June 30th, 1858	6,863 77
Year ending June 30th, 1859	4,723 50
Year ending June 30th, 1860	6,296 86
Year ending June 30th, 1861	4,558 65
Year ending June 30th, 1862	2,442 40
Year ending June 30th, 1863	*15,659 68
Year ending June 30th, 1864	†341,960 58
Year ending June 30th, 1865	63,362 76
Year ending June 30th, 1866	40,058 39
Year ending June 30th, 1867	100,464 81
Year ending June 30th, 1868	87,629 14
Year ending June 30th, 1869	52,449 55
Year ending June 30th, 1870	39,898 16
Year ending June 30th, 1871	37,327 24
Year ending June 30th, 1872	49,913 17
Year ending June 30th, 1873	72,106 65
Year ending June 30th, 1874	66,307 85
Year ending June 30th, 1875	38,464 80
Year ending June 30th, 1876	39,215 96
Year ending June 30th, 1877	‡98,143 53
Year ending June 30th, 1878	§38,772 90
Year ending June 30th, 1879	‖51,414 00
Year ending June 30th, 1880	‖51,414 00
Total	$1,320,223 78

* Includes deficiencies, $6,070 13, of 11th, 12th, 13th, and 14th fiscal years.

† For the equipment and expenses of organized militia

‡ Includes deficiency appropriations, $71,359 38, for the 25th, 26th, and 27th fiscal years.

§ Includes deficiency appropriation, $3,564.

‖ These two appropriations have not as yet been expended, as they are for the present and the coming fiscal years.

REPORT FROM THE ADJUTANT-GENERAL.

THE PRESIDENT. I have here a report from the Adjutant-General in response to a resolution of this Convention, which the Secretary will read.

THE SECRETARY read the report as follows:

GENERAL HEADQUARTERS, STATE OF CALIFORNIA,
ADJUTANT-GENERAL'S OFFICE, SACRAMENTO, November 4th, 1878.

To the President and members of the Constitutional Convention:

GENTLEMEN: Your Secretary having transmitted the following resolution passed by your honorable body on the second instant:

"That the Adjutant-General be requested to give the number of killed, wounded, and missing of the militia since the organization of the National Guard of this State."

I have the honor to state in reply, that as the militia includes all the male inhabitants between the ages of eighteen and forty five not exempted by law from military service, and as the time stated in the resolution embraces a period of twenty-eight years, the number is much larger than perhaps occurred to the gentleman that proposed the resolution.

The records of this office only show casualties in the organized portion of the militia

I have examined the rolls of the California Cavalry Battalion, consisting of four hundred officers and men, which left San Francisco on the twenty-first of March, eighteen hundred and sixty three, to join the army of the Potomac, and served until the close of the war, and find the following casualties:

Killed, died of wounds, and in prison	70
Wounded	55
Missing	13

As no trace of the latter have been found, it is fair to presume that they died soldiers' deaths, and lie "unknown" in battle trenches.

The following shows the casualties in the California Hundred:

Killed, died of wounds, and in prison	13
Wounded	5

The number discharged in the above commands for disability was thirty-five. Of the casualties mentioned, ten were commissioned officers, two of whom—Captain Charles Eigenbrodt and Captain J. Sewall Reed—were killed.

California also furnished eight infantry regiments, two cavalry regiments, one battalion of mountaineers, one battalion native cavalry, besides a large number who went East to serve in both armies, in all not less than twenty thousand men; and as it is conceded that Californians have done their duty in every emergency and every peril, from the fall of Baker at Ball's Bluff to the close of the war, the casualties among them must have been an average percentage of the half a million of men who fell on both sides.

In the ranks of the California National Guard at the present time are many of the survivors.

Colonel Smedberg, who commands the Second Infantry Regiment, Second Brigade, National Guard, lost a leg in battle. Major Peirce, of the same regiment, is now slowly recovering from an attack of sickness, the result of wounds received in battle.

The First Cavalry Battalion is commanded by a veteran soldier, Major Orton, as are several of the infantry companies.

Of the eleven members of the staff of the Second Brigade, six are soldiers of the war, one of whom, Major Kinne, was Assistant Adjutant-General of the regular Brigade of Cavalry, under General Sheridan.

Five out of nine of the Commanders of unattached companies have seen service, one of whom, the Commander of the Sacramento Light Artillery, served in the artillery under General Jubal Early, and since the war has served a term in the Fourth United States Artillery.

A similar proportion as above, will, I think, hold throughout the National Guard. I am not aware how many of them were wounded in the service, but if it is absolutely necessary for the Convention to know, I shall, to the best of my ability, endeavor to inform it, at as early an opportunity as possible, together with the casualties of the Indian wars.

I have the honor to remain, very respectfully, your obedient servant,

P. F. WALSH,
Adjutant-General.

MR. BARNES. I move that the report lie on the table and be printed.

MR. TINNIN. Mr. President: I hope that it will not be printed. It was evidently intended for a joke, and I hope that it will not be printed.

MR. BARNES. Mr. President: It is not intended as a jest. Perhaps the gentleman who introduced it intended it in some way to reflect upon the military, and I presume it was so, because other gentlemen this morning laid on my desk a wooden block entitled, "a list of the killed, wounded, and missing." I was sorry to find it here; sorry to see that any gentleman would part with his brains for my benefit. [Laughter.] I think the report should be printed in connection with the subject which is soon to come up for discussion. I make that motion in all seriousness as Chairman of the committee.

THE PRESIDENT. If there is no objection it will be printed. The Chair hears no objection.

NOTICE.

MR. NOEL. Mr. President: I desire to give notice that on to-morrow I will move to strike out rule seven.

REPORT.

MR. STEDMAN. Mr. President: I ask leave to present a supplementary report from the Committee on Military Affairs, signed by a majority of the committee, and ask that it be printed with the other report.

THE PRESIDENT. The Secretary will read the report.

THE SECRETARY read as follows:

MR. PRESIDENT: We, the undersigned, a majority of your Committee on Military Affairs, beg leave to report the following additional section for insertion in the article on militia, in the new Constitution:

SECTION —. Except in case of war or insurrection, the Legislature shall not authorize to be expended, or appropriated, more than twenty-five thousand dollars in any one year for organizing and disciplining the militia, which shall include all salaries, all rents, and disbursements of every character relating to the militia of the State, and care of the arms belonging to the State. Nor shall the number of uniformed militia in the State exceed ten companies of one hundred and twenty men rank and file each; *provided*, that at the expiration of ten years from the time of the adoption of this Constitution, the Legislature shall have the power, notwithstanding this section, to increase the allowance hereby made, and the number of uniformed militia hereby allowed.

JOHN C. STEDMAN,
E. V. SMITH,
J. C. BROWN,
WM. S. MOFFAT,
THOS. H. ESTEY,
HAMLET DAVIS.

THE PRESIDENT. If there is no objection the report will lie on the table and be printed. The Chair hears none and it is so ordered.

MR. VAN DYKE. Mr. President: I move that the Convention do now resolve itself into a Committee of the Whole, for the purpose of considering article one, the report of the Committee on Preamble and Bill of Rights.

So ordered.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is upon the amendment offered to section seven. The first question is upon the amendment offered by the gentleman from Placer, Mr. Hale, to strike out a portion of the section, and insert the proposed amendment of Mr. Hale:

"The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions and in all criminal cases not punishable by death or imprisonment for life, three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, in open Court expressed, and in civil cases by the consent of the parties, signified in such manner as may be prescribed by law. In civil cases, and in cases of misdemeanor, the jury may consist of any number less than twelve that the parties may agree upon in open Court."

MR. WILSON, of First District. Mr. President: Before a vote is taken I desire to say something in support of the report of the Committee on Judiciary and Judicial Department, as to the sections which they have reported. I am very much gratified to see the feeling manifested here by so large a number of the members to stand by the old landmarks, and only to depart from them in cases of urgent necessity. Upon the general proposition I heartily concur and intend to act. It seems to me, however, that this is one of the cases where there should be a departure to some extent, and I think to the extent that the committee have gone.

Section seven, as reported by the Judiciary Committee, presents several distinct propositions. They were put in that shape by the committee in order that gentlemen might vote for one and against another, according to their sentiments and convictions of right. Several distinct propositions are involved. The old Constitution reserves the entire right of trial by jury in all cases, civil and criminal, unless in civil cases the parties themselves waive it. Independent of any consent, the general right of trial by jury in all cases, civil or criminal, is preserved. That is, in all cases considered by the Courts in which that right exists at common law.

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The report of the committee preserves that right of trial by jury inviolate in all cases—all felony cases—and in all cases of misdemeanor, except a limited class of cases specified in section seven, and with this exception there is no alteration at all in the workings of the old Constitution. The change which is produced here is in the lower classes of crimes and civil cases, authorizing three fourths of the jury to render a verdict.

The proposition which I desire first to have considered by the Convention is whether it is advisable to change the old system, and instead of requiring in civil cases a unanimity of the jury, to allow three fourths of the jury to render a verdict. Now, in the old common law system of juries there were many things which have not existed for many years. We should not refuse to advance towards desirable reform simply because it makes a change, because our present jury system is a vast change from that derived from the common law. For instance, juries originally were summoned by the Sheriff. Now we have abandoned that system and have a different one, and every person admits that this was a desirable reform. Originally jurors were drawn from the immediate vicinity of the crime, and were therefore poorly qualified because they knew all about it. Now we draw them from the body of the county. It is considered a disadvantage that a juror comes from the vicinage. So, under the old system the jury rendered a verdict upon their private knowledge of the facts, independent of the evidence in the case. That is no longer admissible for a moment, and the juror who admits that he knows any of the facts is excluded from the jury; so there is a very wide departure. So, under the old system the jury were to be kept together without meat or drink, or fire, or anything of that kind. Here we have a very wide departure. Under the old common law system if a juror took a glass of water while the jury was out, the Court would set the verdict aside. We have made a very useful reform in that respect, and no such tomfoolery would be tolerated at the present day; and the jury are furnished with water, and in many instances with meat and drink, and it is the common custom to allow the jury to have all that nature demands. It was the custom in England, as everybody knows, that if the jury had not brought in their verdict at the time the Judges were ready to leave the town to visit another town to which their duties called them, the jury were not discharged, but were loaded up in a cart and carried along with the Judges to a neighboring town, and kept together there without meat and drink by the Court until they agreed upon a verdict. Nobody, of course, defends any such absurdity as that, and yet that is one of the glorious things of the common law jury system. All these things have gone away before the modern civilization.

The question is, is this an advisable reform; that instead of requiring a unanimity of the jury, we shall allow nine out of the twelve to make the verdict? I think it is, for several reasons, which I shall briefly present to the committee. I have very hastily examined the law on this subject during the recess, and I find Cooley, in his edition of Blackstone, proceeds to say that this system of requiring a unanimous verdict of twelve men was the quiet outgrowth of the dark ages, as obscure as any portion of the English law, and yet, because we have had it, must we continue to have it.

Now, in criminal cases we have not sought here to change that practice of unanimity of juries, because there are certain principles surrounding a criminal action in this particular that are not present in civil cases. Everything leans to the side of mercy in our system. Give the accused the benefit of every doubt; and if there is any rational doubt upon the mind of any one of the twelve jurors, the Court instructs him to give the benefit of that doubt to the prisoner. But when you come to civil cases, the rule is directly contrary, as every lawyer knows. There the cases are decided upon preponderance of evidence merely, upon a mere probability, a reasonable probability as to which side is right.

Now in that kind of cases—civil cases—why is it that this tribunal which we call a jury, should not conduct its business and be organized like other smaller functionaries? Why is it that in all arbitrations two out of three may decide? Why is it that in all cases submitted to commissioners, and everything of that kind, while all act, the majority decide and determine? Why is it that in Courts composed of several Judges, the majority always control and determine the judgment, and I think it is a very singular case—this over all the others—that some should insist that a jury of twelve men shall be unanimous, and it only arose and existed in the English system; it never was the law of juries in any other country but England, because juries have existed in other countries, but in England alone did this principle prevail.

Now, I say it is time for us to depart from this, as we have from many other principles affecting juries under the common law system. I say we should depart from it in this country for good reasons; because in civil cases the principle of unanimity has not worked well. It is time to depart from it. It has not worked well from the fact that, as every gentleman knows, one unreasonable man in a case can prevent a verdict from being rendered; one bad man in a case can prevent a verdict from being rendered; and I suppose it is hardly possible once in a thousand cases, that the one man would be right and all the others wrong. It has been my experience in a quarter of a century's practice in the State of California, in the trial of a long jury case, where I believed I was right, working diligently to obtain a verdict, to have a man whisper in my ear, "You will get no verdict." "Why?" "Because one of the men on that jury is a friend to one of the parties, and you will never get him to consent." How did he get there? No lawyer can tell every man who comes on the jury. No lawyer can tell what their relations are to the parties, especially in the large cities where the jurors are strangers to us in most instances; and if one of the parties can select on the jury a friend, that one man can hang the jury. And every man knows there are instances where men have hung around the Sheriff's office for the very purpose of being put on juries, and these are the very men that will prevent a verdict from being rendered when it is to their interest to do so.

Why not have nine men, so that when corrupt jurors, and partial jurors, get on the jury they will not be allowed to control the verdict? If men want to corrupt a jury, it is easier to corrupt one man than it is to corrupt three or four. If we allow nine men to render a verdict, then the man who seeks to corrupt the fountain of justice and destroy the purity of it, has got to bribe four men. Therefore, the weight of reasoning, I say, is in favor of the nine men, in civil cases and in the lower classes of misdemeanors. I know of no sound reasoning why twelve men should be required to agree. You might just as well say that a Court of five men shall be compelled to render a unanimous decision. We know that of the five Judges of the Supreme Court, three render decisions. Why not? Why not require them to be unanimous? They render decisions on great questions of law, sometimes great constitutional questions, sometimes involving whole classes of cases and millions of dollars. Why require a jury to be unanimous and not the Supreme Court? Why not allow nine men to render a verdict? Are not nine men, who have heard the evidence and deliberated upon it, capable of rendering a just and fair verdict?

If the jury does not agree, they are locked up and confined in a room. Now, is there anything rational in the idea of shutting men up to deliberate two or three hours to compel them to agree—to force them, or a portion of them, to surrender their convictions? If they do not agree, the Judge directs the Sheriff to lock them up in a room and let them remain there, and then it is a question, not of honest conviction, but it is a question of who can stand it the longest. The time for reasoning has passed, and the minority is to be coerced into an agreement by the majority. I say there is nothing rational in it. It is not worthy of a place in an enlightened system of jurisprudence. When we say that nine men may render a verdict, after they have deliberated upon the case, heard the evidence, and listened to the charge of the Judge, that is as far as we ought to go. We should not, in this class of cases, require a unanimous verdict. I think this system should be adopted in cases of misdemeanors.

In regard to the other portions of this section, I can see no reason why it should not be adopted; why a jury should not be waived in criminal cases not amounting to felony, in open Court expressed. I do not see why not. Of course, in all civil cases, the parties themselves should have the right to waive a jury, and that is all this section means. I, therefore, submit to this Convention that the old Constitution, while in all the main features is exceedingly good, there is no reason why it should not be reformed and altered in this respect. It is not a simple innovation, but a sound, rational reform.

MR. ANDREWS. I raise the point of order that the question is on the amendment to the amendment.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Placer, Mr. Hale.

MR. REDDY. Mr. Chairman: I wish to make a remark or two with reference to this proposed change. I will not detain the Convention long. Now, as to the reasons given in favor of this change. The reasoning of the gentleman from San Francisco, Mr. Wilson, is that because many changes have been made in the jury system in the past, therefore this change should be made now. That is about the reasoning, for everything must have a beginning, and when you have reached a state of perfection, satisfactory to the country, is there any reason why it should be changed any further? That is about the logic of the gentleman, that you must change a thing until you get it perfect, and then change it in order to spoil it. I say when you have got a law as perfect as you can get it, you had better let it alone, and not tamper with it.

Then another reason urged against the change is, that there may be one bad man on a jury, and he may affect the result. That he may alter—or rather that he may prevent any result. Now, the one bad man is to be found in every department of our government, and if that is a reason for change in the jury system it is also a reason for changing the entire government. The whole government is rotten if that one bad man is any reason for a change. President Hayes occupies his seat to-day by reason of the action of one bad man. We might defeat our republican form of government on the same grounds. Your Honor occupies the chair to-day—was it bad men that put you there? Is there any reason in this? What examples are these that we propose to set before the people? It is mere sophistry to say that because you can point out a single error in the system, that for that reason you must destroy it. There is nothing in such talk. If the gentleman can suggest another system to replace this, and give us any assurance that it will not be subject to the same criticisms, then it will be time enough to talk about change. Unless they can find a system free from errors—which I am sure theirs is not—I see no reason why the present system should be changed. It has worked well. It is not perfect, and I presume there is no gentleman here who presumes to attain perfection in anything. The book of experience is a very good thing for us to be guided by.

Now this one man, this one bad man, seems to be a terror in this jury system. He is the man who is going to make us abolish the system that has been indorsed by every State in this Union as the mainstay of liberty. Now, how is it that there is such a wonderful unanimity in all the Constitutions upon this subject if it is such a bad system? How is it that it has overridden all criticism from time immemorial down to the present, if it was such a bad system? They must have had some wonderfully poor legislators in England, and in the other States of this Union, if it has stood the test so long; and now that we can only point to one thing, and that is that you may get a bad man on the jury. We have tested this bad man business, and it is not a new question. May it not arise in the system which it is proposed to adopt just as readily as now, is a question for us to take into serious consideration.

If nine men out of twelve render a verdict, may not one man turn the scale as well as now. Surely, it seems to me that corruption can creep

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into the jury box under that proposed system just as easily as under the present one. Another thing; it is not for me at this late day to speak in praise of the system, because it has already been lauded as highly as it deserves, but it has always been the great balancing power between all classes. In England, the poor demand it; the middle classes demand it; it is a beneficent thing to them, and why? Because it protects them from the encroachments of the rich and powerful. So it is regarded in the United States, as a protection to the poorer classes in society against the encroachment of the rich and powerful. I believe it is yet the great protecting power in this land behind which the poor and the weak can shield themselves from oppression in all its forms. It may be, and at no very distant day, the protection of the rich, for I believe from the looks of political corruption that it will be the rich pretty soon who will be looking for protection instead of the poor, and the gentlemen who want to do away with this jury system may regret it at no very distant day.

I claim that the jury system has worked well in this State, and it is a very rare occurrence that the verdict of twelve men is wrong. It is true that it may prove that the provisions of the criminal law are too lenient, I judge they are, by the opinions expressed here by a number of gentlemen, but from what I can learn some of these gentlemen know very little about the business they are talking so glibly about. I should like to know what the medical profession know about this business? I should like to know what the farmer who occasionally goes into Court, knows about this business? He knows a great deal. I believe there are men who know something besides lawyers. I am not one of those. I know there are other men who know a great deal. When I speak about men of the medical profession I have no reference to the gentleman from Sacramento, Dr. Caples, because I never should take him to be a doctor in the world; I hadn't the remotest idea that he was a doctor; I made no personal reference to him, but mentioned that profession for the purpose of illustration. [Laughter.]

To go back to the question, I say the jury system has worked well. I do not support it because it is perfect, nor do I condemn it because now and then a criminal escapes, but I support it because it comes to us recommended by the ablest law writers in the world, and I prefer to act upon the judgment of those great authorities than to be guided by the bare assertion of any man or any set of men on this floor, however learned he may be, because if there is anything in practice, the weight of authority is in favor of leaving the jury system just as it is.

This matter of its being an inconvenience to allow the jury system to remain as it is, is a novel reason. Really a novel argument. Don't the gentleman know that he cannot live in civilized society without being loaded down at times with inconveniences? There is no way to get rid of these inconveniences but to leave and go way off by ourselves somewhere, and that we don't like to do. This thing of objecting to the system because the farmer may have to leave his plow and go and help settle a dispute between neighbors is no objection at all. It is his duty. These disputes must be settled in some way. I will not descend into details now, but will get through in a moment.

I say these are no reasons at all why the jury system should be changed. You cannot hope to make a system that will not carry with it these inconveniences. And if we change the system on account of these inconveniences will we get rid of them? Three farmers will be left out if we make the jury to consist of nine, they are left out of the verdict if they won't agree with the majority, but they are still there—still detained on the jury. Do you not by this proposed system, as well as by the old, drag twelve farmers from the plow to the Court House? There is nothing in that argument at all. You must have twelve men, and it will not relieve the farmer from the burden in any particular. The same number of men must come to the Court House, and the same time will be occupied in selecting a jury as under the old system.

Now this is the first grand assault upon the jury system. There will be another shortly, and very soon you will destroy it if this one step does not destroy it. I think this one attack, if it shall prove successful, will virtually destroy the system, so there will be nothing left of it worth attacking. If it is not destroyed by this movement probably other assaults will be made. It may be that this one will accomplish its ruin entirely. Perhaps that may be desirable in order that criminals—those accused of crime—may be more readily reached. We will get down to the one-man system, the one-man power, by and by, and leave the jury out altogether. How would that work? Then get your whipping-post established along with this system; then let the corporations come in and put a man on the bench that suits them, with their overshadowing power which has been talked about, and they can readily accomplish whatever they may desire. They can punish their enemies and reward their friends. Let them elect their Judges in every district in the State; let them establish their whipping-posts throughout the State, and then you will hear a howl all over the United States.

I say this jury system is a protection now to the poor, and if you destroy it—encroach upon it, you will in effect destroy it—and then you can easily see the result, if there is such a power in the State as some people claim there is. Better let it alone. Every tinker is not a tinsmith. But it is said the people demand this change. I deny it. I say that when a campaign is progressing we hear nothing but the promises of the demagogues for reform—men who have nothing to recommend them to the people but their promises of reform. That is what gentlemen hear. There is no cry on the part of the people for a change in the jury system; and if you do make an attack upon it—if you put in your whipping-post clause—you will find out when this Constitution is submitted to the people whether they want any such radical change or not.

MR. BEERSTECHER. Mr. Chairman: For my part I don't see any connection between the lash and whipping-post and the jury system, as we are considering it at this time.

MR. REDDY. Mr. Chairman: I will explain the connection. When you make a Constitution, we look at the whole system. This is part of a system. The whipping-post overshadows and invades the jury system, destroys it, and then this power which the gentlemen talk about can elect their Judges in the State, and if they can do that the whipping-post will come in very convenient.

MR. BEERSTECHER. Mr. Chairman: I don't understand, sir, that it is the intention to abolish the jury system. As I understand it, Mr. Chairman, the intention is to change the jury system, in order to answer the needs and demands of the present day. Now, Mr. Chairman, I don't consider that it is an argument in favor of this change that the present jury system is fraught with inconveniences, because, as the gentleman from Inyo, Mr. Reddy, properly says, if you have a jury of twelve men and you allow nine of them to render a verdict, you have the same inconveniences. The same number must sit on the jury during the progress of the trial; the same number must be summoned into Court; the same number of persons must sit in the jury box; the same number of persons must pass upon the question at issue; therefore, as far as the question of inconvenience of the system is concerned, the inconvenience remains just the same. It seems to me, as has been very aptly said on this floor, the time is at hand when three fourths of the jury should be allowed to render a verdict in civil cases, especially in the larger cities of the land. It is a well-known fact how easy it is for the wealthy upon one side, for the corporations, and for the monopolists, when pitted against a poor man, to demand a jury trial, and to manipulate the thing and make the expenses in such a degree that it is virtually a denial of justice to the poor man. How easy it is to purchase one man out of twelve. Every attorney practicing in the large municipalities of the country, not only in the State of California but all over the United States, knows very well how easy it is to place one man in the jury box who is susceptible of being purchased, and how often one man out of twelve is purchased, causing three or four, and in some cases eight or ten, trials of one case. These repetitions of trials work no hardship upon the wealthy of the country. It is no hardship upon the monopolies of the country; it is no hardship upon the corporation power of the country; but it is a hardship upon the poor men of the country, who are obliged to pay their hard-earned money for the purpose of bringing their cases before the juries.

Mr. Chairman, I hope this Convention will extend this boon to the people of this State, because I know as a positive fact that the people of the State of California do request this Convention, in civil actions, to allow three fourths of the jury to render a verdict. I say, Mr. Chairman, in all truth and candor, I say, knowing the facts to be as I state them to be, that the people demand that in civil cases three fourths of the jury be allowed to render a verdict.

It may not have been so in the olden days. It may not have been so when this jury system was first called into operation; but we must take times as they are. Take the condition of things as they exist, and the times as they are, and the condition of things as it exists—is that one man can be purchased, or two men can be purchased; and oftentimes, I might say a majority of cases, where a man has a good case and the jury disagrees, it is not a disagreement of a majority of those who sit on the jury, but it is that one man, or it is two men. And it does seem to indicate that when one man stands out against eleven men, or two men against ten men, that it is occasioned by something else other than the mere facts in the case.

Now, Mr. Chairman, briefly, as I understand the jury, they are the judges of the facts. The Court lays down the law in civil cases and the jury are the judges of the facts. If five Judges sit on the Supreme bench, any three of them may render a verdict, which is absolute in its effect throughout the length and breadth of the State. Then why cannot nine jurymen out of twelve render a verdict which shall have a binding force and effect. In the case of arbiters, where there are three men chosen, two of them always render a verdict.

I am opposed to abolishing the rule in criminal cases, but in civil cases I hope this Convention will consider it as the wish of the people that three fourths of the jury be allowed to render a verdict, because that is the desire of the people. They desire to have this Convention frame a provision in the Constitution allowing three fourths of the jury to render a verdict, as a matter of right and justice.

MR. JOHNSON. Mr. Chairman: The gentleman who last spoke comes pretty nearly expressing the views I entertain on this subject. Now, as a matter of course, if we insert a provision in this Constitution, that provision becomes the law, and is not susceptible of change, except in the way provided in the Constitution itself, and therefore in dealing with the jury system, which is a conservative system, we should lay our hands upon it very lightly, unless we find some other system which suggests itself to the minds of the people in some degree preferable to the one we have.

Now, this jury system is an old one to start with, as has been already said. It has stood the tests of hundreds of years, and has formed a part of the great common law which we brought with us from England. It was thought at one time to be a great privilege to be tried by one's peers, brought from the vicinage. We have incorporated into our law only such provisions as are adapted to the circumstances of our people. We have not incorporated the whole common law of England. We have American common law, a common law adapted to our system of government, and it is that system of common law which we have imported into this country. A part of that system is the trial by a jury of twelve men; and another part of it is that they shall be unanimous in their verdict. Thus far we have imported the common law system into this country. Now, let us see what some eminent men think of this divided jury system. Blackstone, in his Commentaries, says:

"If Sparta, Carthage, and Rome lost their liberties, it must be recollected that Sparta, Carthage, and Rome had not the jury system."

That is what he says about it. The gentleman from Sacramento is very severe in his censure of the jury system. I do not believe in any of these extreme views. But, sir, inasmuch as this jury system has

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commended itself to the minds of statesmen and scholars for centuries; inasmuch as it has been imported into the country to form a part of our common law, I do say this, that we should touch it very lightly, and we should not change it unless we can change it for the better.

There are some things that can be changed, but they do not interfere with its conservative force. They do not interfere with any of the rich legacies that we have received. If you fix the salaries of your officers, that does not interfere with any great cardinal principle. But attack the jury system, and you are attacking a system which forms a part of our common law. And so in framing the Constitution of the United States it seems that they, as far as your Federal Courts are concerned, have adopted a provision that even for a sum as low as twenty dollars, the jury shall be preserved.

Now, sir, there are some things, as a matter of course, that cannot be submitted to a jury, and why? Because it requires a nice distinction—there are nice distinctions to be drawn, and it is not adapted to a jury trial; but when it comes to matters of fact, I think it should be different. If you put twelve men on a panel to investigate as to certain facts, I think they will be more apt to get at the facts of the case than one man who has made the law a specialty. These twelve men, drawn from different vocations, following different professions, if they agree they will pretty generally agree upon the facts, provided, of course, that their verdict is not a corrupt one. And, although the jury system has been animadverted upon, yet it is not the fault of the system itself, but from frauds upon the system.

The question comes up whether these proposed amendments are any better than the present jury system. As I understand this amendment it is that in small cases—cases of misdemeanor—three fourths of the jury may render a verdict. Then the Court will instruct the jury to that effect, that nine of them, if they believe the man to be innocent, they can find a verdict to that effect. While three men may believe him guilty, yet, under this system, nine men administer the criminal law and find him innocent. This is criminal law and civil law mixed up together.

All civil cases depend upon the weight of probabilities. Is it more probable that that man knows more than the others. It is a question of probabilities. In criminal cases it is not so. You must believe a man to be guilty beyond a reasonable doubt. Now the same law is to be applied to both civil and criminal cases of the grade of misdemeanor. It is the principle for which we are contending. Why make this change? So far as the weight of probabilities is concerned, it is very true that nine men would be more apt to be right than three. I can see some sense in that argument so far as the weight of probabilities is concerned.

Now I think the provision in the Nevada Constitution a very good one.

"The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law; and in civil cases if three fourths of the jurors agree upon a verdict, it shall stand and have the same force and effect as a verdict by the whole jury; *provided*, the Legislature, by a law passed by a two-thirds vote of all the members elected to each branch thereof, may require a unanimous verdict, notwithstanding this provision."

That provides that in civil cases three fourths of a jury may render a verdict. I think we might try it, but it should be left somewhat elastic, so that if it should be found not to work well the Legislature would have the power, by a majority of all the members elected, to repeal it and restore the old order of things. But, as I said before, if we place an iron-bound provision in the Constitution, we can only get rid of it through amendment in the manner provided for in the Constitution itself, and we are adopting this Constitution not only for the present generation but for posterity, and it seems to me that we should be conservative in this respect; and so far as these heirlooms are concerned which form a part of the common law, in which great principles are at stake, we should touch them with reverent hands, and only change them when we are perfectly sure that the change will be for the better.

Now, Mr. Chairman, it seems to me that it would be entirely proper to adopt a provision something like that in the Nevada Constitution, giving the Legislature the right to change, by a majority vote of all the members elected, the new law, and restoring the old.

MR. BARBOUR. Mr. Chairman: I should have preferred that a vote would have been taken without debate on the proposition of the gentleman from Placer, Mr. Hale, to strike out and insert "in all cases except where the punishment is death or imprisonment for life," because I think the whole debate was unnecessary and consumed the time. But since gentlemen have gone on and expressed their views on the main proposition, I feel it incumbent on me to give my views.

We are establishing now a Bill of Rights, or, as some gentlemen have wrongfully called it, a "declaration of rights." I like the old form the best, as I like the old jury system the best. It was one of those rights that entered into and became one of the fundamental rights obtained at the time the charter was granted. Now we should meddle with this jury system with extreme caution and extreme care. If we are going to tamper with this we should go ahead and change the complexion of the whole Bill of Rights. It is one of those things dear to the people. I know it. I believe it.

It is true that gentlemen have argued from the doctrine of convenience and expediency. But they do not argue from the doctrine of the light of experience as they ought to do. We know that amidst all the changes and amidst all the innovations of centuries, the jury system has stood firmly rooted in the hearts of the American people, and it should be tampered with, as I said before, only with extreme caution, and after very careful and mature consideration.

Now, I am willing, as I said the other day, that a line of demarkation shall be drawn clearly between civil cases and criminal cases. I hold to the very same proposition, that a little innovation, properly guarded, may be made with safety in the jury system in regard to civil cases. As far as criminal cases go I shall vote against any interference whatever. I shall contend for the system as it now stands in reference to criminal cases. Now, the gentlemen have argued a proposition here which is an absurdity, and which will throw this country into inextricable confusion in the proper construction of these various laws. There is an old provision carried along which is cognate to this jury right, that no citizen shall be deprived of life, liberty, or property without due process of law. That thing has been construed over and over again, that due process of law means by a jury—the common law jury—due process of law to deprive them at least of their liberty. Gentlemen have attempted to draw a line here between certain grades of crimes, applying one system of jury trials to one grade of offenses, and another system to another grade. The committee have drawn this line in their report, or attempted to—felonies and misdemeanors in the one case, and in the other cases specifying the amount of punishment as the line of demarkation. Gentlemen should remember, and the committee should have remembered, that this thing of felony, and this thing of misdemeanor, are matters entirely within legislative control. They can make the lesser out of the greater if they see fit. If a crime is now a misdemeanor, the Legislature can make it a felony. We know they have done so, and they may do it again.

The last Legislature enacted a law, page one hundred and seventeen of the amendments to the Code, by which they provided as follows:

"Any person who, in the presence or hearing of twenty-five or more persons, shall utter any language with intent either to incite a riot at the present or in the future, or any act or acts of criminal violence against person or property, or who shall suggest, or advise, or encourage any act or acts of criminal violence against any person, or persons, or property, or shall advise or encourage forcible resistance to any of the laws of this State, shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by imprisonment in the State Prison, or in a county jail, not exceeding two years, or by fine not exceeding five thousand dollars, or by both."

By this they provide that to incite a riot is a felony, while a riot itself is only a misdemeanor. Now, they might preserve the right of trial by a full jury for the lesser offense, and take away the right for the greater. Now, if there is any innovation of this kind to be made, I submit that it never should be left to the Legislature to prescribe which class of cases shall be denominated misdemeanors and which felonies; but let it be made definite and harmonious, so that the object of the Convention shall not be defeated by a subsequent action of the Legislature.

Now, as regards the provision in relation to civil cases and cases of misdemeanor, where the punishment does not exceed six months imprisonment, three fourths of the jury may render a verdict. That is clear enough. The Legislature has no discretion then. They cannot say that a misdemeanor shall be a felony and a felony a misdemeanor.

The next provision, that a trial by jury may be waived in all criminal cases not amounting to felony, with the consent of both parties, in open Court expressed. Now you take, for instance, a misdemeanor prosecuted by indictment, as it is said. Take the case of libel, and the punishment fixed by law is one year in prison or a fine of five thousand dollars, in the discretion of the Court, or both. The fine, I believe, in rebate of imprisonment in jail, can be worked out at the rate of two dollars a day. So they can put you in the county jail for two thousand five hundred days if you are not able to pay the fine, making eight years imprisonment for a misdemeanor, and from that class of cases you take away the jury. There is no limit to the power of the Legislature in fixing fines, as I understand it.

Now, the proper line of demarcation to draw, it seems to me, by the committee, would have been in Courts of record and Courts not of record. Now these Courts not of record sometimes proceed to try misdemeanors, etc.—proceed to try them without a jury, and have been sustained upon the theory that an appeal is allowed to a Court of record where there is a jury. The common law jury, I presume, is meant to be a jury in a Court of record. With a Constitution to define what are Courts of record and what are Courts not of record, this plan would work well and would not confuse the Courts. That line of demarkation should have been drawn, and that is the only one that can be drawn which would not be productive of inextricable confusion.

Then again, "In civil cases and cases of misdemeanor, the jury may consist of any number less than twelve, that the parties may agree upon in open Court."

There again they use the word misdemeanor, leaving it, as a matter of course, to the Legislature to prescribe what a misdemeanor is. Now, Mr. Chairman, gentlemen have misconceived the scope and functions of the office of a juror under our system. They seem to proceed upon the theory that a unanimous verdict of the jury is required in civil cases. That is true in fact, and a false impression exists. In a great majority of cases submitted to a jury a unanimous verdict is not required or insisted upon. Where the trial is to fix the amount of damages, there are not, probably, two men on the jury who actually agree. Now, where is the unanimous verdict? These gentlemen talk the matter over together, each giving his estimate; they make concessions on both sides, and finally converge to some point where they are all willing to agree, and hand in their verdict. Where is the disadvantage in the system which is sufficient to authorize the cutting off of three men whose figures may have some weight in modifying the figures of the other nine? Why do you propose to cut them off? It is not right. It is not insisted upon that there shall be a unanimous verdict; it is only insisted that these men shall consult together and try to agree. You might have just as much trouble in getting a verdict under this system as you have now. Men do not try cases for the purpose of hanging juries. You might have to try cases over again, just the same as now. In most all cases the jurors compromise to a certain extent; compromises sometimes disgraceful to themselves; and I believe you will be more likely to have

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that kind of verdicts under this plan than in the other case, because then you have less men to bring over than in the other case; cases where, perhaps, they are willing to state the point and play a game of seven up to see how to arrive at a verdict.

Some gentlemen seem to imply that the jury should be abolished, because their judgments are not intelligent verdicts—not intelligent judgments. I can tolerate a thing of that sort in the gentleman from Sacramento, Mr. Caples, because he has arrived at that age when he is somewhat privileged. But, perhaps, a good deal of this kind of talk about the ignorance of juries is buncombe. My experience and observation is, that in the ordinary business transactions between man and man, ninety-nine out of one hundred of the verdicts of juries are right. They are right. They are better than the judgments of a Judge sitting upon the bench. They are better, because they are the united judgments of twelve fair-minded men. The Judge is supposed to be removed away from these earthly affairs, and to only think in straight lines, and according to precedents; but these gentlemen decide upon matters that they themselves, perhaps, have been called upon from day to day to investigate in their regular vocations.

Now, as stated by the gentleman from Sonoma, Mr. Johnson, I am willing to consent to the innovation, and take the step which the State of Nevada did take, with the privilege of receding if the experiment is found not to work well. I have no doubt that many of the Conventions which have met recently, considered this question as this Convention is considering it—in the light of inconvenience, and they have, after full deliberation, concluded not to meddle or tamper with this ancient custom. So I shall vote against the proposition of the gentleman from Placer, and I shall vote against the proposition reported by the Judiciary Committee, and I would be willing to vote for the proposition similar to that in the Nevada Constitution, or to take the old Constitution as it stands. But I am not willing to vote for any such proposition as will allow the Legislature to defeat the object of the provisions by merely reversing the terms misdemeanors and felony. It would throw the country into confusion, and I shall never vote for any such thing.

MR. WELLER. Mr. Chairman: I cannot see this matter come to a vote without expressing some ideas which I have on the subject. The right of trial by jury has been discussed and set forth before in this Convention. As long as the world has existed there have been differences between man and man, and there always will be probably. Notwithstanding the right of trial by jury is a great luxury, considered so, at the same time it is an expensive luxury which must be kept up by the people. And under these circumstances I am not satisfied with the reading of the sections reported by the Judiciary Committee, from the very fact that in my opinion it will entail a greater expense upon the people of this State, to keep up the expenditures of our Justices' Courts, in the punishment of smaller offenses; that there will be under this clause a great many more jury trials than we ever have had before. These jury trials are expensive trials. It is right and proper, and the old Constitution guarantees it, that every individual should have the right of trial by jury. Now the question is, if that right is not demanded by the party accused, why should it not be waived? Why should he be compelled to exercise that right if he does not desire to? Under this clause, the right of trial by jury may be waived in all criminal cases not amounting to felony, by the consent of the parties. The Court has no control. Now, I would like to put in place of that, in regard to its being waived by the consent of the parties, the words, "unless demanded by the parties." I thin kit would look better, and would give them the privilege, but not to bring all these little cases before a jury unless it is demanded by the party. It will make our inferior Courts very expensive. The way this clause is worded it certainly will bring out more jury trials than would have been had in the lower Courts under the old system. I would be in favor of referring it back to the Judiciary Committee, to give it a more careful wording. I cannot vote for it as it is.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Placer, Mr. Hale; is the Convention ready for the question?

[Cries of "question," "question."]

The question being upon Mr. Hale's amendment, it was rejected.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Shasta, Mr. Andrews; is the Convention ready for the question?

MR. EDGERTON. Mr. Chairman: I send up an amendment, by way of a substitute for the whole subject-matter.

THE CHAIRMAN. The gentleman from Sacramento, Mr. Edgerton, offers an amendment, which the Secretary will read.

THE SECRETARY read as follows:

"Strike out and insert: The right of trial by jury shall be secured to all, and remain inviolate forever, but a jury trial may be waived by the parties, with the consent of the Court, in all civil cases, in the manner to be provided by law; and in civil cases if three fourths of the jurors agree upon a verdict it shall stand and have the same force and effect as a verdict by the whole jury; *provided*, the Legislature, by a law passed by a two-thirds vote of all the members elected to each branch thereof, may require a unanimous verdict notwithstanding this provision."

MR. EDGERTON. Mr. Chairman: I do not desire to make at this time any extended remarks upon the jury system; the ground has already been gone over. I only wish to call the attention of the Convention to the precise character of this amendment. It is copied verbatim from the Constitution of Nevada, where the experiment has been tried for fourteen years, and I am informed, to the entire satisfaction of the people of that State. I leaves the jury system as it now prevails here except in this particular, that three fourths of the jury may render a verdict, and then it provides that if hereafter the amendment should be found not to work well, the Legislature, by a two-thirds vote, may restore the old system. I would like to take the sense of the committee upon that amendment. It leaves the criminal law as it is now.

MR. VAN DYKE. The way I heard it read before differs from the section as read by the gentleman from Sacramento. The word "prescribed" is used.

THE SECRETARY read the amendment again.

MR. EDGERTON. The gentleman from Alameda is right in that particular. The word "prescribed" is used in the Nevada Constitution. "A jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law." I substituted the word "provided," which suggested itself to me as a better word.

MR. VAN DYKE. I do not object to that. It may be waived "with the consent of the Court." That is not in the Nevada Constitution.

MR. EDGERTON. That is put in there for this reason. Often it might occur that the Court would be unwilling to try a case without a jury. It has happened in my experience where both parties were willing to try a case before the Court without a jury, but the case involved matters of such grave importance and magnitude that the Court declined to take the responsibility, and directed a jury to be called, and I think that privilege ought to be reserved to the Court.

MR. VAN DYKE. I object to that amendment, because I think the Judge should take the responsibility, and not throw it off on to the jury.

MR. BARTON. Mr. Chairman: I object to the last amendment, because in my opinion it is not so comprehensive as the section reported by the Judiciary Committee. There has been, Mr. Chairman, a great deal said upon this proposition, and among the many propositions and arguments made upon this question, I claim, sir, that the argument of the gentleman from San Francisco, Mr. Wilson, is unanswerable. It meets the demands of the people; it meets the urgent demands of the times. I am not myself in favor of departing from the old Constitution, as far as it relates to criminal actions; but in civil cases I am decidedly in favor of the report of the Committee on Judiciary. We have here to-day presented to us a spectacle which, I am sorry to say, has clogged the wheels and progress of this Convention. We have about seventy-five lawyers, who universally disagree upon every proposition; and it brings to my mind the proposition presented by the gentleman from Marin, Mr. Shafter, the other day, in relation to having a certain number of lawyers, but not too many, in legislative bodies. In this case we have an unlimited number of disagreeing lawyers. Here is a proposition which involves the great interests of the people, and the people are clamoring for a redress of their grievances; and one of them is, that in all civil cases the matter shall be left to the decision of the parties as to whether they will or will not have a jury trial. Now, I do not see how any rational man can disagree on that proposition. Yet the lawyers on the floor of this Convention disagree, and we are all in chaos. I hope this Convention will settle the point in a rational, straightforward, and businesslike manner, as sensible men, with the best interests of the people at heart.

MR. JOHNSON. Mr. Chairman: I suggest to the gentleman from Sacramento, "a majority of the Legislature," instead of, "by a two-thirds vote," if the gentleman will accept the amendment.

THE CHAIRMAN. Does the gentleman from Sacramento accept the amendment?

MR. EDGERTON. I accept the amendment.

THE CHAIRMAN. The question is on the amendment of the gentleman from Sacramento, which the Secretary will read as modified.

THE SECRETARY read:

"The right of trial by jury shall be secured to all, and remain inviolate forever; but a jury trial may be waived by the parties, with the consent of the Court, in all civil cases, in the manner to be provided by law; and in civil cases, if three fourths of the jurors agree upon a verdict, it shall stand, and have the same force and effect as a verdict by the whole jury; *provided*, the Legislature, by a law passed by a majority vote of all the members elected to each branch thereof, may require a unanimous verdict, notwithstanding this provision."

MR. EDGERTON. I want gentlemen to understand that as this section is now amended, a majority of the Legislature may at any time pass a law, the same as any other law is passed, restoring the old Constitution in this particular.

MR. SHAFTER. I move to strike out that part of it. I am glad that my following is increasing in regard to my opinion about lawyers. I am obliged to point out to the gentleman from Sacramento that there is only one way to pass a law by the Legislature, and that is by a majority vote of both houses. You cannot pass it any other way, and I move to strike it out.

MR. MCCALLUM. Mr. Chairman: The word "majority" has a special signification. It is a majority of all the members of the Legislature. I shall vote against it, because I think that makes the mode of changing the Constitution too easy. Two thirds even is objectionable.

THE CHAIRMAN. The question is on the amendment. Are you ready for the question?

The question was put, and the amendment lost.

MR. JONES. Mr. Chairman: I beg leave to offer an amendment, in the nature of a substitute, which I will send up to be read.

MR. MURPHY. What has become of the Andrews proposition?

THE CHAIRMAN. The gentleman from Shasta, Mr. Andrews, moved to substitute section three of the present Constitution for section seven of this report. The next question is on that amendment. Is the committee ready for the question?

MR. ANDREWS. Mr. Chairman: I don't desire to trespass upon the time of the committee, and I have but a few words to say. Now, if gentlemen will look at the recommendation of the committee, they will see in that a recommendation that the jury system shall be held inviolate. I say if you adopt this amendment proposed by them, that

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word is out of place, for you say in the first place that it is inviolate, and in the very next sentence proceed to violate it. Why do you do that? I say the word "inviolate" would be out of place, because you are trying to render it inviolate. For that reason I say, if we are to have such a provision as is recommended, strike out that word "inviolate." [Cries of "Question, question."]

Mr. Chairman, I have the right to close the debate on this proposition. The report of the Judiciary Committee provides, in cases of misdemeanors, that two thirds of the jury may find a verdict. Now, the gentleman has submitted the Nevada Constitution. For my part I don't believe in trying any experiments. I don't believe any gentleman here would wish to try such an experiment at this time, as that in the Nevada Constitution. Even over there they tried it with fear, and provided at the same time that the Legislature might restore the old system and require a unanimous verdict. I think we had better bear the ills we have rather than fly to others we know not of. I hope the Convention will leave the old Constitution as it is.

MR. HERRINGTON. Mr. Chairman: Would it be in order to offer a substitute?

THE CHAIRMAN. You cannot offer it at this time. The question is on the amendment proposed by the gentleman from Shasta, Mr. Andrews.

Division being called for, the amendment was lost—ayes 35.

MR. JONES. Mr. Chairman: I call for the reading of my amendment, which is already on the Secretary's desk.

MR. HERRINGTON. Mr. Chairman: I believe I had the floor before the last vote was taken, and I now wish to offer an amendment, by way of a substitute. I send it up to the desk.

THE CHAIRMAN. The Secretary will read the substitute offered by the gentleman from Santa Clara, Mr. Herrington.

THE SECRETARY read:

"The right of trial by jury shall be preserved to all and remain inviolate forever, but a jury trial may be waived by the parties by express waiver in civil actions, and the parties may agree upon a number of jurors, not less than six, to constitute the jury in civil cases. In criminal cases, amounting only to misdemeanor, the defendants shall have the right of a trial by jury, or by the Court, as they may elect."

THE CHAIRMAN. The question is on the substitute.

The substitute was rejected.

THE CHAIRMAN. The Secretary will read the amendment offered by the gentleman from Merced, Mr. Jones.

THE SECRETARY read:

"The right of trial by jury shall be secured to all, and remain inviolate, but in all civil cases the Legislature may prescribe by law the number necessary to constitute a jury, and three fourths of the jurors may render the verdict of the jury, and a jury may be waived by the parties. In all civil cases, by the consent of both parties expressed in open Court, the jury may consist of any number less than twelve, or less than the number prescribed by law."

MR. REYNOLDS. Mr. Chairman: I demand a division of the question.

MR. JONES. Mr. Chairman: I offer this amendment in the hope that I may be able to hit upon some middle ground upon which this Convention may be able to agree. I will occupy the attention of the Convention but a very few moments, simply to explain the effect of the amendment which I have proposed. It does not go so far as the provision of the Judiciary Committee. It goes farther than some of those which have been voted down here, but not so far as the amendment offered by the gentleman from Placer, Mr. Hale. It provides that the right of trial by jury shall be secured to all, and remain inviolate, as a general proposition, with this exception, that in all civil cases the Legislature may prescribe by law the number necessary to constitute a jury, and three fourths of the jury may render a verdict, and that the jury may be waived by the parties. There is this addition also, which is worthy of consideration, that in all cases, by the consent of both parties expressed in open Court, the jury may consist of any number less than twelve, or less than the number prescribed by law. In criminal cases the number would remain at twelve, but in such cases, by agreement of the parties expressed in open Court, a less number may be accepted.

In civil cases, according to this proposition, the number fixed by the Legislature for a legal jury may be seven, or nine, or any other number, and still, by consent of the parties, any number whatever may constitute a jury. I will simply say, in explanation of this matter of allowing in all cases the parties, by express consent, in open Court, to determine the number of jurors, that in my judgment, that is one source of expense and trouble and discontent among the people. We, as lawyers, know something about these matters by experience. Oftentimes it is the case that where a jury of eleven, or even nine, or ten, has been impaneled, there would be no objection on the part of the prosecution or of the defense to trying the case with that number if it could be done legally. They would be perfectly willing to go on and try the case, but under the law, as it now stands, of course they cannot do it, and I think the Bill of Rights designed primarily to take away that right from the citizen. I think a party in Court should always have the right to consent to having his case tried by eleven jurors, or even a less number, instead oftentimes of having to get another venire and exhausting the county, which has already been searched for fifteen miles around, and no qualified jurors to be found. Then, I say, this proposition, if accepted by the Convention, will provide that in all civil cases the Legislature may prescribe the number necessary to constitute a legal jury, and that three fourths of that number shall be able to render a verdict. And farther, that the parties may agree upon any number less than the full jury in any case.

THE CHAIRMAN. The question is on the amendment.

The amendment was rejected.

MR. BEERSTECHER. Mr. Chairman: I wish to offer an amendment.

THE CHAIRMAN. The Secretary will read.

THE SECRETARY read:

"The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions three fourths of the jury may render the verdict, and in such cases the jury may consist of any number less than twelve that the parties may agree upon in open Court. The Legislature, by a law passed by a two-thirds vote of all the members elected to each branch thereof, may require a unanimous verdict, notwithstanding this provision."

The amendment was rejected.

MR. DOWLING. Mr. Chairman: I have an amendment to offer.

THE CHAIRMAN. The Secretary will read the amendment.

THE SECRETARY read:

"The right of trial by jury shall be secured to all, and remain inviolate forever; but in criminal cases the concurrence of twelve jurors is necessary to render a verdict in all cases of felony. In civil cases, or in cases of misdemeanor, the Legislature shall provide the number of jurors necessary to find a verdict; but in no civil case, or a case of misdemeanor, shall less than three fourths of the jury be competent to render a verdict. A trial by jury may be waived in civil cases and cases of misdemeanor, by the consent of the parties."

MR. DOWLING. Mr. Chairman, and gentlemen of the Convention: I presume it will be out of place for me to call your attention to the fact that this is the twenty-sixth day in which we have assembled here. I have waited very patiently for the legal gentlemen who have preceded me on this floor—amongst whom I see those shining lights of the bar of California—and it appears to me from their arguments that they want a change in the jury system of California, but they can't tell exactly what they want, or the reason why they want it changed. Now that the lawyers have all aired their eloquence on this subject, now that the doctors have spoken, I presume it will not be out of place for me to say a few words. I am not a lawyer, nor do I want to be one, because, if I were, I would be one of those that my friend Colonel Barnes of San Francisco calls shyster lawyers, and God knows we have enough of them—more than can make a respectable living. I am one of those, sir, who believe in the old and established maxims, and I don't want to alter them, or tamper with them, except for grave or tangent cause. If my memory is correct, this grand old jury system is contemporaneous with liberty itself. It has been the playmate of American progress and civilization, and to tamper with it now, or to change it, is a very dangerous precedent, in my opinion. I am opposed to innovations, on general principles, and in the matter of remodeling or altering the jury system, I object to very little change in these troublous times. I do not believe in condemning a man and consigning him to State Prison for life without giving him a fair and impartial trial before an impartial Judge and jury of his peers, and before twelve jurors; and, sir, I shall never sanction anything to the contrary. Regarding, as my friend Smith remarked to-day, the Constitution of Nevada. Well, sir, no matter what is in the Constitution of Nevada, no matter how good the Constitution is there, I tell you there is where fraud is rampant and crime goes unpunished. I do not believe in following the prestige of the State of Nevada.

Now, is it possible that with the seventy lawyers in this house we shall wrangle here for two days and not be able to settle the jury question? Can no man go to work and write a few lines that will suit the subject and not lead us into danger? It is admitted, sir, that a man never sinks below the zero of honesty and integrity until he unfortunately gets elected to the Legislature. A man may steal a horse, or a cow, or anything, and his friends will stick to him like a brick, but as soon as he gets elected to the Legislature, they drop him like a hot stove—his manhood gone, his self-respect gone.

Now, sir, for my part, I don't believe it is right for this Convention to go and change the jury system. I believe in leaving some power to the Legislature, and I believe in leaving the power to the Legislature of naming the number of jurors that shall render a verdict in civil cases, because, sir, I will tell you the reason why. In civil cases it is almost a matter of dollars and cents, and the man who has got the biggest purse will always win the day. That is the way I have found it. But in criminal cases I want it to be imperative that it will require twelve jurors to render a verdict.

Now, sir, I offer this amendment, believing it will meet the approbation of all honest men in the State of California, whether it meets the views of this Convention or not.

The amendment was rejected.

MR. HITCHCOCK. Mr. Chairman: I offer a substitute.

THE SECRETARY read:

"Any member of this Convention who speaks more than five minutes on any one proposition before the Convention, or the Committee of the Whole, shall forever be ineligible to any office of profit or trust in this State, or ever be elected to any future Convention."

THE CHAIRMAN. It is not in order.

MR. NOEL. Mr. Chairman: I have a substitute to offer.

THE CHAIRMAN. The Secretary will read it.

THE SECRETARY read:

"The right of trial by jury shall remain inviolate; but in all cases, except felony, the Legislature may provide by law the number necessary to constitute the jury; and in all civil cases the number necessary to render a verdict; and in all civil cases and criminal cases not amounting to felony, a jury may be waived in the manner prescribed by law."

Lost.

MR. HERRINGTON. Mr. Chairman: I move to strike from the section the words, "in cases of misdemeanor, where the punishment does not exceed six months imprisonment, or a fine of five hundred dollars, or both."

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THE CHAIRMAN. It is out of order; that precise amendment has already been voted down.

MR. HERRINGTON. I appeal from the decision of the Chair in that regard.

THE CHAIRMAN. The gentleman from Nevada, Mr. Wickes, has the floor, and offers the following amendment, which the Secretary will read.

THE SECRETARY read:

"The right of trial by jury shall be secured to all, and remain inviolate. The Legislature may prescribe, by law, the number necessary to constitute a jury, whose verdict shall have a binding effect when unanimous. In civil cases, and in cases of misdemeanor, the principals concerned may waive a jury trial with the consent of the Court."

THE CHAIRMAN. The question is on the amendment.

Lost.

MR. McCALLUM. Mr. Chairman: There is a misapprehension about the amendment offered by the gentleman from Santa Clara, Mr. Herrington. I have been waiting myself to offer a similar amendment. The Chair will find itself mistaken on that point—that is, the striking out of a portion of the report of the committee. That has not yet been voted upon.

THE CHAIRMAN. It is the precise amendment of the gentleman from Placer, Judge Hale, to strike out those very words.

MR. McCALLUM. The Chair is mistaken.

MR. VAN DYKE. It was to strike out certain words and substitute others.

THE CHAIRMAN. The Convention refused to strike out the words.

MR. McCALLUM. This is an entirely different case. This is in reference to an entirely different matter. That is to make misdemeanors apply to all misdemeanors, and not limit it to any particular class. The gentleman has offered the amendment, and the Convention has not had an opportunity of voting on it.

THE CHAIRMAN. Read the amendment.

THE SECRETARY read:

"Strike out the words, 'and in cases of misdemeanor, where the punishment does not exceed six months imprisonment, or a fine of five hundred dollars, or both.'"

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Santa Clara, Mr. Herrington.

MR. HERRINGTON. I call for the reading of the section as it would be if this amendment should be adopted.

THE SECRETARY read:

SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions, three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases not amounting to felony, by the consent of both parties, in open Court expressed, and in civil cases, by the consent of the parties, signified in such manner as may be prescribed by law. In civil cases and cases of misdemeanor, the jury may consist of any number, less than twelve, that the parties may agree upon in open Court.

The amendment was rejected.

MR. HALL. Mr. CHAIRMAN: I have an amendment to offer to section seven.

THE SECRETARY read:

"Strike out all after the word 'twelve' in the last line, and add these words: 'but not less than four.'"

THE CHAIRMAN. The question is on the amendment.

MR. HALL. Mr. Chairman: A single word. The section as amended will read as follows:

"SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions, and in cases of misdemeanor where the punishment does not exceed six months imprisonment or a fine of five hundred dollars, or both, three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases, not amounting to a felony, by the consent of both parties, in open Court expressed, and in civil cases, by the consent of the parties, signified in such manner as may be prescribed by law. In civil cases and cases of misdemeanor the jury may consist of any number, less than twelve, but not less than four."

As the matter now stands, it provides that a verdict may be rendered by three fourths of the jury in civil cases. Now, sir, if the parties agree upon three as the number, it will be impracticable to get three fourths of three; it would be impossible to get three fourths of two, or three fourths of one, if the parties should agree upon that number, which they may do under the provisions of this section. Now, under this state of facts there will be some confusion; in other words, it requires a unanimous verdict when the jury consists of three, or two, or one, respectively. In order to avoid that inconvenience and confusion which would result from a possible agreement of the parties, I propose this amendment, which provides that the number shall not be less than four. I like the section in other respects.

The amendment was rejected.

MR. HUESTIS. Mr. Chairman: I move that the committee do now rise, report progress, and ask leave to sit again.

No second.

THE CHAIRMAN. Is there any further amendment to the section?

MR. BARBOUR. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Strike out the words 'not amounting to felony' and insert the words 'where the punishment does not exceed six months imprisonment or a fine of five hundred dollars, or both,' and 'in cases of misdemeanor' and insert the words, 'and in criminal cases where the punishment does not exceed six months imprisonment or a fine of five hundred dollars, or both.'"

MR. BARBOUR. That will make the section read as follows:

"SEC. 7. The right of trial by jury shall be secured to all, and remain inviolate; but in civil actions, and in criminal cases where the punishment does not exceed six months imprisonment or a fine of five hundred dollars, or both, three fourths of the jury may render a verdict. A trial by jury may be waived in all criminal cases where the punishment does not exceed six months imprisonment or a fine of five hundred dollars, or both, by the consent of both parties, in open Court expressed, and in civil cases by the consent of the parties, signified in such manner as may be prescribed by law. In civil cases, and criminal cases where the punishment does not exceed six months imprisonment or a fine of five hundred dollars, or both, the jury may consist of any number, less than twelve, that the parties may agree upon in open Court."

MR. BARBOUR. I offer that amendment for the purpose of making the section harmonious. I don't see any reason for at one time providing the limit by the amount of punishment, and in another part of the section using the words "felony" and "misdemeanor," and leaving it to the Legislature to transpose the terms as they may do.

The amendment was rejected by a standing vote.

MR. CAPLES. Mr. Chairman: I offer an amendment.

THE CHAIRMAN. The Secretary will read it.

THE SECRETARY read:

"In criminal cases the right of trial by jury shall remain; in all cases, except felony, the Legislature may provide by law the number necessary to constitute a jury, and in all civil cases the number necessary to render a verdict."

Lost.

MR. NOEL. I have an amendment.

MR. O'DONNELL. I move that the committee do now rise, report progress, and ask leave to sit again.

Lost on a division vote.

MR. CAPLES. Mr. Chairman: I move to refer the whole matter back to the Committee on Preamble and Bill of Rights.

THE CHAIRMAN. The motion is out of order. Are there any further amendments to the section. If not, the Secretary will read section eight.

THE SECRETARY read:

SEC. 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by indictment or information, as may be prescribed by law; but a Grand Jury shall be drawn and summoned at least once a year in each county.

MR. VAN DYKE. Mr. Chairman: I offer the following amendment to section eight.

THE SECRETARY read:

"Strike out to the word 'shall,' and insert 'all crimes or public offenses.'"

MR. VAN DYKE. Why not say "all crimes and public offenses shall be prosecuted by indictment or information," etc.

MR. McFARLAND. Mr. Chairman: We have just got through with a very important subject, and we are proceeding to another very weighty subject, that of Grand Juries. Whatever discussion there will be to-night will be forgotten by morning, and I therefore move that the committee rise, report progress, and ask leave to sit again.

The motion prevailed.

IN CONVENTION.

THE PRESIDENT. Gentlemen, the Committee of the Whole have had under consideration the report of the Committee on Bill of Rights, have made progress, and direct me to ask leave to sit again. What is the pleasure of the Convention?

REPORT.

MR. BARNES. Mr. Chairman: I sent up this morning a report of the Committee on Military Affairs. I ask now that the report be received and laid on the table, and ordered printed.

THE PRESIDENT. If there is no objection it will be so ordered. The Secretary will read the report.

THE SECRETARY read the report as follows:

SACRAMENTO, November 5th, 1878.

MR. PRESIDENT: Your Committee on Military Affairs, to whom were referred proposed amendment number one hundred and nineteen, introduced by Mr. Harvey, amendment number one hundred and thirty-seven, introduced by Mr. Mills, amendment number two hundred and seventy-eight, introduced by Mr. Neunaber, amendment number three hundred and eleven, introduced by Mr. McConnell, amendment number three hundred and eighteen, introduced by Mr. Beerstecher, and amendment number four hundred and fifteen, introduced by Mr. Harvey, have had the same under consideration, and recommend that they be not adopted. In lieu thereof your committee herewith report a draft for article seven of the Constitution, relating to the militia, and recommend that the same be adopted.

Great diversity of opinion exists in the committee with reference to limitations and restrictions upon the power of the Legislature as to the number of companies essential to accomplish the purposes designed by article seven as proposed, as well as the amount of appropriations for the maintenance of the military organization of the State. Your committee make no recommendation upon this subject, preferring to leave the members of the committee at liberty to suggest such additions upon this subject, in the article proposed, as they may be advised.

W. H. L. BARNES, Chairman.

ARTICLE VII.

MILITIA.

SECTION 1. Organizing and disciplining the militia.
2. Officers, how elected and appointed.
3. Removal of general officers.
4. Governor to be Commander-in-Chief, and to call out the militia.
5. Exemptions.
6. Provision to be made for wounded and disabled members of militia.

SECTION 1. The Legislature shall provide by law for organizing and disciplining the militia, in such manner as they may deem expedient, not incompatible with the Constitution and laws of the United States.

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SEC. 2. Officers of the militia shall be elected or appointed in such manner as the Legislature shall from time to time direct, and shall be commissioned by the Governor.

SEC. 3. No general officer shall be removed from office except by the Senate, on the recommendation of the Governor, stating the grounds on which removal is recommended, or by a decision of a Court-martial in accordance with military custom. No officer of the militia shall ever be removed from office for political reasons.

SEC. 4. The Governor shall be Commander-in-Chief of the militia of the State. He shall have power to call them forth to execute the laws of the State, to suppress insurrections, and repel invasions.

SEC. 5. The officers, musicians, and members of the State militia, who comply with all military duties as provided by law, shall be entitled to the following privileges and exemptions, viz.: Exemption from payment of poll tax, road tax, and head tax of every description; exemption from jury duty and exemption from serving on any posse comitatus. All officers, non-commissioned officers, musicians, and privates, who have faithfully served in the military service of the State for seven consecutive years, and received the certificate of the Adjutant-General certifying the same, shall thereafter be exempted from further military or jury service, except in time of war.

SEC. 6. Every officer or member of the State militia, wounded or disabled in the service of the State, shall have reasonable expenses paid him; and the widows and children of members killed in the service of the State shall be provided for by the Legislature.

ADJOURNMENT.

MR. AYERS. Mr. President: I move that the Convention do now take a recess until seven o'clock and thirty minutes P. M.

MR. HUESTIS. I move that the Convention do now adjourn.

The motion to adjourn prevailed, and at four o'clock and thirty-five minutes P. M. the Convention stood adjourned.

FORTIETH DAY.

SACRAMENTO, Wednesday, November 6th, 1878.

The Convention met in regular session at ten A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Harvey,	Pulliam,
Ayers,	Heiskell,	Reddy,
Barbour,	Herold,	Reed,
Barnes,	Herrington,	Reynolds,
Barry,	Hilborn,	Rhodes,
Barton,	Hitchcock,	Ringgold,
Beerstecher,	Holmes,	Rolfe,
Bell,	Howard,	Schell,
Blackmer,	Huestis,	Schomp,
Boggs,	Hughey,	Shafter,
Boucher,	Hunter,	Shoemaker,
Brown,	Inman,	Shurtleff,
Burt,	Johnson,	Smith, of Santa Clara,
Campbell,	Jones,	Smith, of 4th District,
Caples,	Joyce,	Smith, of San Francisco,
Casserly,	Kelley,	Soule,
Charles,	Keyes,	Stedman,
Condon,	Kleine,	Steele,
Cowden,	Laine,	Stevenson,
Cross,	Lampson,	Strong,
Crouch,	Larkin,	Stuart,
Davis,	Lavigne,	Sweasey,
Dean,	Lewis,	Swenson,
Dowling,	Lindow,	Swing,
Doyle,	Mansfield,	Terry,
Dudley, of San Joaquin,	Martin, of Alameda,	Thompson,
Dudley, of Solano,	Martin, of Santa Cruz,	Tinnin,
Dunlap,	McCallum,	Townsend,
Eagon,	McComas,	Tully,
Edgerton,	McConnell,	Turner,
Estee,	McCoy,	Tuttle,
Estey,	McFarland,	Vacquerel,
Evey,	McNutt,	Van Dyke,
Farrell,	Miller,	Van Voorhies,
Fawcett,	Mills,	Walker, of Marin,
Filcher,	Moreland,	Walker, of Tuolumne,
Finney,	Morse,	Waters,
Freeman,	Murphy,	Webster,
Freud,	Nason,	Weller,
Garvey,	Nelson,	Wellin,
Glascock,	Neunaber,	West,
Gorman,	Noel,	Wickes,
Grace,	O'Donnell,	White,
Graves,	Ohleyer,	Wilson, of Tehama,
Gregg,	O'Sullivan,	Wilson, of 1st District,
Hager,	Overton,	Winans,
Hall,	Porter,	Wyatt,
Harrison,	Prouty,	Mr. President.

ABSENT.

Belcher,	Chapman,	Larue,
Berry,	Hale,	Moffat.
Biggs,	Kenny,	

LEAVE OF ABSENCE.

One day's leave of absence was granted Mr. Larue.

MR. TINNIN. Mr. President: I move that the reading of the Journal be dispensed with.

Carried.

PROTEST.

MR. BEERSTECHER. Mr. President: I have here a protest, which I desire to present, from the Independent German Congregation of San Francisco, against the exemption of church property from taxation, against the compulsory observation of the Sabbath day, and against the recognition of God in the Constitution.

The protest was as follows:

PROTEST AGAINST THE ESTABLISHMENT OF A STATE RELIGION.

To the Constitutional Convention at Sacramento:

WHEREAS, Propositions have been laid before your honorable body for adoption demanding the recognition of the Christian God, and his so-called revelation, as the source of all moral law as well as of all civil power, the exemption of church property from taxation, and the compulsory observance of the Christian Sabbath; and,

WHEREAS, These, and all similar propositions, are simply efforts to create and establish a State religion, and as such are hostile to the great principle of absolute religious liberty, as guaranteed by the Constitution of the United States, and solemnly affirmed by the declaration of our Government in the eleventh article of the treaty with Tripoli, of November fourth, seventeen hundred and ninety-six, George Washington, President, that "the Government of the United States is not in any sense founded on the Christian religion."

THEREFORE, The Independent German Congregation of San Francisco earnestly protests against all and every measure having a tendency to establish a State religion, and prays your honorable body to uphold, in its integrity, the principle of religious liberty, the separation of Church and State, by rejecting all propositions looking to all abridgment of the right of conscience.

The Independent German Congregation of San Francisco, by

WM. WESTERFELD,
President.
H. O. REINHARDT,
Secretary.

San Francisco, November 2d, 1878.

Referred to the Committee on Legislative Department.

PAY FOR SERVICES.

MR. ESTEE. Mr. President: I ask leave to introduce a resolution merely for the purpose of having it referred to the Committee on Contingent Expenses.

THE PRESIDENT. If there be no objection, the gentleman will have leave.

THE SECRETARY read:

Resolved, That the Controller of State be and is hereby directed to draw his warrant in favor of Hiram Clock for one hundred and eight dollars, for twenty-seven days' service as Porter, and the State Treasurer to pay the same out of the appropriation for the expenses of this Convention.

I hereby certify that Hiram Clock has been employed since the organization of the Convention in the capacity of Porter and Watchman, and that he has performed all the duties faithfully.

T. J. SHERWOOD,
Sergeant-at-Arms.

Referred to the Committee on Contingent Expenses.

PETITION.

MR. SWEASEY presented a petition from the California State Woman's Suffrage Educational Association:

OFFICE OF DAILY AND WEEKLY SAN JOSE MERCURY, Corner Santa Clara and Second Streets, San Jose, California, October 26th, 1878.

To the honorable the Constitutional Convention of the State of California:

The undersigned, the President and Board of Directors of the "California State Woman's Educational Association," a corporate body instituted "to procure for woman the elective franchise, embracing all the rights, privileges, and immunities of civil and political liberty, and to educate her to fully comprehend and appreciate the various measures, duties, and principles in the economy of a free government," respectfully and earnestly pray of your honorable body to so frame the Constitution you are to submit to the people, for their approval or rejection, as that it shall recognize no distinctions in citizenship on account of sex. And your petitioners will ever pray, most respectfully.

J. J. OWEN,
President California Woman's Educational Association.
MARIAN HILL,
President of Board.
OLIVE M. WASHBURN.
SARAH L. KNOX.
CLARA S. FOLTZ.
RACHEL T. OLMSTEAD.
MRS. DR. WHITE.

Referred to the Committee on Right of Suffrage.

REPORTS.

MR. WILSON, of San Francisco, presented the following report from the Committee on Judiciary and Judicial Department:

To the President of the Constitutional Convention:

Your Committee on the Judiciary and Judicial Department, to whom was referred Resolution number sixty-five, instructing this committee to inquire and report their opinion as to whether the provisions of the Constitution of the United States relating to trials by jury apply to State Courts and the administration of the laws of the State, beg leave to report that the same has been duly considered, and that in the opinion of the committee the provisions of the Constitution of the United States relating to trials by jury do not apply to the State Courts, nor to the administration of the laws of the State in those Courts.

Respectfully submitted.

S. M. WILSON, Chairman.

November 5th, 1878.

MR. WINANS presented the following report from the Committee on Education:

To the Honorable Joseph P. Hoge, President:

The Committee on Education respectfully report back to the Convention proposed Amendments number one hundred and sixteen, introduced by Mr. Harrison; number one hundred and seventeen, introduced by Mr. Harrison; number two hundred

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and thirty-four, introduced by Mr. Wickes; number three hundred and eighty-one, introduced by Mr. H. W. Smith; number four hundred and ten, introduced by Mr. Jones; and number four hundred and five, introduced by Mr. Lindow, with the recommendation that they be not adopted, because they embrace matters proper for legislative rather than constitutional enactment.

WINANS, Chairman.

LOCAL OPTION PETITION.

Mr. Prouty presented the following petition, signed by a number of citizens, asking for a provision for a local option law:

To the President and Members of the Constitutional Convention of the State of California:

The people of the State of California recognize the fact that it is the object and duty of the present Convention to promote the welfare of our people by the enactment of wise and just laws, and to advance their common interests by the encouragement of every legitimate, and the suppression of every pernicious traffic.

Your memorialists are of the opinion that a great portion of the more obstinate, painful, and moral disorders that afflict the human family are engendered by the use of spirituous and intoxicating liquors; that the common use of such intoxicating liquors is not only destructive to health and happiness, but also impairs the faculties of the mind, and thereby tends equally to dishonor our character as a nation as well as to lower us in the scale of civilization.

Your memorialists have no doubt but that the presence of the plague, or any other pestilential disorder which might sweep away thousands of our fellow citizens, would elicit the most strenuous and energetic efforts on the part of our government to subdue it, and to guard against its possible occurrence.

Your memorialists can discern no just reason why the more certain and distressing ravages of intoxicating liquors upon the lives and happiness of our citizens, and the well-being and quiet of our community, should not be guarded against with corresponding vigilance and anxiety by the present rulers of the United States, and more particularly by the present law-makers of our own fair State.

Your memorialists beg leave to add further that in their belief the use of spirituous and intoxicating liquors is in any case whatever wholly unnecessary—that they neither fortify the body against the influences of heat or cold, nor render labor more easy or more productive; and that there are many other articles of diet and drink which are not only perfectly safe and salutary, but in every way superior and preferable to intoxicating liquors for any of the purposes above mentioned.

Your memorialists also believe that it is a grave defect in our present Constitution in that it denies to the people of different counties, townships, and districts, the privilege of fairly determining, at the ballot-box, whether liquor saloons shall continue to exist in their midst, with their attendant trains of evil and vice, pollution, want, and woe.

We are fully convinced that the law passed in March, eighteen hundred and seventy-four, and known as the "Local Option Law," was a proper and just law, and one meeting with the general approbation of our people, as was evidenced by the fact that, out of over one hundred elections held under its provisions, the success of local option was in the ratio of two and a half to one. We therefore commend it to your consideration.

Your memorialists have beheld with regret the hitherto feeble and ineffectual endeavors put forth to stop or impede this giant evil, and the proportionally barren results which have resulted therefrom.

They center their hopes, therefore, of an effectual remedy, in the wisdom and power of your honorable body; and in behalf of our common humanity, entreat of you, by all your obligations, to protect the lives and comfort of our citizens, and by your regard for our national character and respect for our land in the scale of intelligent and civilized beings, to impose such heavy duties on intoxicating liquors, or adopt such other remedial and preventive measures as shall, in your sober judgment, tend most efficiently to subdue and eradicate these evils.

Therefore, with an honest belief in the justness of our demand, and with a firm reliance in the honor, wisdom, and sincerity of your honorable body, we humbly crave, at your hands, a prompt and impartial consideration of our request, and if possible, an ultimate exemption from this distressing evil.

Referred to the Committee on City, County, and Township Organizations.

INFORMATION REQUESTED.

Mr. HAGER. Mr. President: I ask leave to introduce a resolution, out of order, to obtain some information from the Surveyor-General.

The PRESIDENT. If there be no objection, the gentleman will send up his resolution.

The SECRETARY read:

Resolved, That the Surveyor-General be requested to inform this Convention, as near as he can approximate the same, of the number of square miles of territory contained in each of the counties of this State.

Adopted.

PROPOSED AMENDMENT.

Mr. DOYLE introduced the following proposed amendment to the Constitution, entitled, "Proposition to establish a Metropolitan Police Force for the City and County of San Francisco."

Section 1. A Board of Police Commissioners shall be established for the City and County of San Francisco, who shall, upon their election and qualification, supersede the Board now in power.

Sec. 2. Said Board shall consist of three Commissioners and one Chief of Police, who shall be elected by the people at the next regular municipal election for other city and county officers, and thereafter at each regular municipal election.

Sec. 3. The salary of such Commissioners and Chief of Police shall be two thousand dollars per annum, to be paid out of the treasury of the City and County of San Francisco; and the said Commissioners and Chief of Police shall not be eligible, while acting as such, to any other Federal, State, or municipal office.

Sec. 4. The term of office of said Commissioners and Chief of Police shall be the same as those of other municipal officers; to wit, two years.

Sec. 5. The said Commissioners shall have full and exclusive control of the said police force; the Chief of Police herein provided for being subject in like manner to their exclusive control.

Sec. 6. It shall be the duty of said Commissioners to appoint and organize the police force for the City and County of San Francisco, in numbers equal to the present force; to establish and maintain all necessary regulations for its discipline and government; and take full charge of all directions necessary to the enforcement of such municipal ordinances as may be now or hereafter established for the suppression, restriction, or punishment of crime, and maintenance of sanitary regulations.

Sec. 7. The salary of each officer shall be one hundred dollars per month, excepting those of higher grade, whose salaries shall be fixed by the Commissioners, but such salaries shall not exceed one hundred and fifty dollars per month; said salaries to be paid out of the treasury of the City and County of San Francisco; *provided*, the Board of Supervisors may decrease the salaries of police officers.

Sec. 8. The Commissioners and Chief of Police herein provided for, shall be liable to impeachment for any malfeasance in office, or willful neglect of the duties pertaining to said offices, any of the Superior Courts of the City and County of San Francisco being hereby authorized to sit as a Court of Impeachment for their trial; and it is hereby declared that the granting of any undue favoritism to the members of the force shall be deemed malfeasance, and a good ground for impeachment; the penalties in such Courts of Impeachment, in case of conviction, being restricted to removal from office. The verdict in such Court of Impeachment shall, however, in no manner be a bar to such further prosecution in the criminal Courts as the offenses may warrant.

Referred to Committee on Cities, Counties, etc.

ASSISTANT JOURNAL CLERK.

Mr. CROSS. Mr. President: By request of the Journal Clerk, I introduce a resolution, and ask that it be referred to the Committee on Contingent Expenses.

The SECRETARY read:

Resolved, That the President be and he is hereby authorized to appoint an Assistant Journal Clerk, at a salary of six dollars per day.

Referred to the Committee on Mileage and Contingent Expenses.

NEW PROPOSITIONS—COUNTY SEATS.

Mr. SMITH, of Santa Clara, introduced the following proposed amendmend to the Constitution, placing restrictions on removing county seats:

No county seat shall be removed until the point to which it is proposed to be removed shall be fixed in pursuance of law, and a majority of the voters of the county, to be ascertained in such manner as shall be provided by general law, shall have voted in favor of its removal to such point, and no person shall vote on such question who has not resided in the county six months and the election precinct ninety days next preceding such election.

Referred to Committee on City, County, and Township Organizations.

THE STATE CAPITAL.

Mr. O'DONNELL introduced the following proposed amendment to the Constitution, to locate permanently the Capital of the State of California:

Whereas, The Capital of the State of California was moved from San Jose by fraud and collusion, and its location at Sacramento is contrary to law, and against public policy and public interest, to wit: this building is located on an alluvial sand bank, and is liable to overflow and destruction by each winter's flow of the Sacramento River; and further, the lives of State officers, members, and attachés of the Legislature, the chosen and honored servants of the people, are in continued jeopardy from the extreme unhealthy climate of Sacramento; therefore, be it

Resolved, That the Committee on Miscellaneous Provisions be instructed to insert a clause in the Constitution leaving it to a vote of the people, at our next State election, where the future Capital of this State shall be located.

Referred to Committee on Miscellaneous Subjects.

LOCAL OPTION PETITION.

Mr. HAGER presented the following petition, signed by a large number of citizens of San Francisco, asking for the insertion of a provision in the Constitution for a local option law:

To the honorable the Constitutional Convention of the State of California:

We, the undersigned, respectfully petition your honorable body to insert in the new Constitution of this State, a clause similar to that now in force in the State of Texas, to wit:

Section —. The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, voting precinct, town, or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.

The following memorial accompanied the petition:

To the President and members of the Constitutional Convention:

On behalf of the petition accompanying this memorial, transmitted herewith, your memorialists would most respectfully represent that the proposition embodied in the prayer of your petitioners, to wit: "The Legislature shall at its first session enact a law whereby the qualified voters of any county, voting precinct, town, or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits," is identical with a clause presented by the Constitutional Convention of the State of Texas, and ratified by the people of that great commonwealth.

The proposition presented raises but a single issue before your honorable body, to wit: the expediency of the local prohibition of the traffic in intoxicating liquors. In this statement we assume that the inherent right of the people to regulate or to prohibit by law the said traffic will not be denied. The principle which commends the proposition brought before you by this petition is, that it refers the question of the expediency of prohibiting the traffic in intoxicating liquors to the people. This principle is in consonance with the very genius of republican institutions. The people of separate localities should have the right to determine for themselves, as to whether the sale of intoxicating drink is inimical to the best interests of their respective communities. This application of the principle of local sovereignty is not new, but extends already to other questions of local character. We assume that those citizens interested in the sale of intoxicating beverages cannot reasonably object to the adoption of this proposition. No good citizen will demand protection in the right to engage in a business which, in the judgment of a majority of his neighbors, is demoralizing to the neighborhood; and if the traffic in liquors is not destructive of the morals and good order of a community, these separate communities may safely be trusted with such determination of the question as the facts warrant. In the opinion of your memorialists, any opposition to the proposition on the part of those engaged in the traffic in liquors must be based upon the ground that should the proposition be incorporated into the Constitution, many communities would decide against the continuation of the traffic. This is in effect an admission that in all such communities the traffic is now carried on against the enlightened

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judgment and moral conscience of a majority of the people resident in such communities. The proposition herewith presented, if adopted, would relegate the whole question to the arbitration of the ballot box; and representing those who entertain the opinion that the traffic in intoxicating drinks is destructive of the best and highest interests of the commonwealth, we cheerfully submit the grave question involved to this high arbitrament. To deny the prayer of this petition will, in the opinion of your petitioners, be in effect a denial of a sacred right. The right to determine what is necessary and appropriate to accomplish the ends of government, establish order, and promote the general welfare of society, resides in the people, and all we ask is, that this right shall be recognized in the determination of the issues arising out of contending opinions concerning the character and moral tendencies of the unrestricted traffic in intoxicating liquors. The nature of the proposition herewith presented is such as to absolve us from the necessity of presenting any considerations or arguments tending to establish the expediency of prohibiting the liquor traffic. We have no data upon which to found the assumption that in practice the proposition presented would result in such prohibition; the result would be dependent upon the will of the majority of the voters in the local subdivisions named. But it is obvious that the perpetuity or prohibition of the traffic will depend upon the verdict of the people, in whom resides the right to determine the necessity or reasonableness of all prohibitory laws.

And as in duty bound, your petitioners will ever pray.

Referred to Committee on City, County, and Township Organizations.

CONVENTION EXPENSES.

MR. WILSON, of San Francisco. Mr. President: Some time ago a resolution was introduced in the Convention asking the opinion of the Committee on Judiciary and Judicial Department as to what fund the expenses for stationery and printing should come out of; whether it was to be paid by the State, or whether it was to be paid out of the appropriation for the expenses of the Convention. The Committee on Judiciary and Judicial Department reported upon that subject. That report was laid upon the table, and has never yet been acted upon by the Convention. I understand that the Controller recently, and since that report was made, has been drawing warrants against the Convention Fund for these expenses. I now move that the report of the committee be taken from the table for the action of the Convention.

MR. AYERS. I second the motion.

The motion prevailed.

THE PRESIDENT. The Secretary will read the report of the committee.

THE SECRETARY read:

MR. PRESIDENT: Your Committee on Judiciary, to whom was referred the question as to the meaning and construction of the Act of the State Legislature calling this Convention, in regard to the fund or funds chargeable with the cost of printing, stationery, etc., necessary for said Convention, respectfully report that we had the same under consideration, and that it is the opinion of the committee that under the Act it is the duty of the Secretary of State to furnish the members of the Convention with stationery, and that the same is chargeable to the twenty five thousand dollars appropriated "for stationery, fuel, lights, etc., for the Legislature and State officers, etc."

This conclusion is arrived at by construing the Act making the general appropriations with the Act calling the Convention. (See Stats. 1877–8, p. 1007, third item from bottom of page; same Stats., p. 1008, Sec. 2, and p. 763, Sec. 5.) Reading these sections and provisions together lead us to the opinion above expressed.

Second—As to the printing, it is our opinion that it is chargeable to the one hundred thousand dollars appropriated for support of the State Printing Office. (See Stats. 1877–8, p. 1007, Sec. 1, twelfth item from top of page) See also same Stats., p. 765, Sec. 10, by which the printing is directed to be done at the State Printing Office, and the Convention is not given control of it nor required to audit the accounts therefor, but that power is confined to the pay of members, employés, etc

This view is strengthened by the fact that the Controller's estimate for the State Printing Office for the two years ending June thirtieth, eighteen hundred and eighty, was the sum of seventy-five thousand dollars (see last report of the Controller, p 131), while the appropriation was one hundred thousand dollars (see Stats. 1877–8, p. 1007, before cited). This large appropriation leads us to the conclusion that the printing for the Convention was included; and this is strengthened by the fact that there was only one hundred and fifty thousand dollars specially appropriated for the expenses of the Convention, and their pay was fixed at ten dollars per day, and the number fixed at one hundred and fifty-two members, while one hundred days are allowed them to sit, when it must have been apparent to the Legislature that one hundred and fifty thousand dollars would have been greatly inadequate to pay all the expenses of the Convention for a much shorter time than one hundred days.

Third—All other expenses of the Convention must, in our judgment, be paid out of the special appropriation of one hundred and fifty thousand dollars made in the Act calling the Convention.

All of which is respectfully submitted.

S. M. WILSON, Chairman Judiciary Committee.

October 23d, 1878.

Resolved, That under the law of the State calling this Convention, the stationery furnished members by the Secretary of State is chargeable to the appropriation of twenty-five thousand dollars made "for stationery, fuel, lights, etc.," and not to the special appropriation of one hundred and fifty thousand dollars made in said Act calling the Convention; and that the printing is chargeable to the appropriation of one hundred thousand dollars for the support of "State printing," and not against the one hundred and fifty thousand dollars appropriation aforesaid; and be it further

Resolved, That the President of the Convention be instructed to take such steps as he may deem necessary to be taken in the premises to carry into practical effect the foregoing resolution.

The resolutions were adopted.

MR. AYERS. Mr. President: The mere adoption of these resolutions without more further action on the part of this Convention, I conceive, will not stop the payment out of that appropriation. It seems to me that if the Controller is drawing warrants upon that fund for the purpose of paying for printing, stationery, etc., that this Convention should take some action by which these resolutions would be enforced and made operative.

THE PRESIDENT. The resolutions instruct the President to take such steps as he may deem necessary to be taken in the premises to carry into practical effect the resolutions. The first step will be to certify these resolutions to the Controller, as the appropriate officer, in the first instance.

MR. AYERS. I understand that bills have already been paid since the report was made. I do not know exactly how we are going to get at it, but it seems to me that the resolutions ought to be made operative some way by the Convention.

THE GRAND JURY SYSTEM.

MR. VAN DYKE. I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Preamble and Bill of Rights.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The eighth section, as reported by the Committee on Judiciary and Judicial Department, was under consideration when the committee rose.

MR. VAN DYKE. Mr. Chairman: I wish to withdraw the amendment I sent up to section eight.

THE CHAIRMAN. The Secretary will read the section as reported by the Committee on Judiciary and Judicial Department.

THE SECRETARY read:

SEC. 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by indictment or information, as may be prescribed by law, but a Grand Jury shall be drawn and summoned at least once a year in each county.

MR. SCHELL. Mr. Chairman: I offer an amendment to section eight.

THE SECRETARY read:

SEC. 8. No person shall be held to answer for a crime, or other public offense, punishable by death or imprisonment in the State Prison (except in cases of impeachment, and in cases of militia when in actual service, and in the land or naval forces in time of war, or which this State may keep with the consent of Congress in time of peace), unless on presentment or indictment by a Grand Jury. In all other cases, offenses shall be prosecuted by indictment, information, accusation, or complaint, as concurrent remedies as may be prescribed by law. A Grand Jury shall consist of not less than fifteen nor more than eighteen persons, two thirds of whom may find an indictment or true bill. The Legislature, by a two thirds vote of all the members elected to each house, may abolish and restore the Grand Jury system.

MR. SCHELL. Mr. Chairman: That section is precisely the same as reported by the Committee on Preamble and Bill of Rights. I believe it is better than the report of the Committee on Judiciary and Judicial Department. I desire to say that I am opposed to the innovations sought to be incorporated in the Constitution by section eight, as reported by the Committee on Judiciary. I believe it is dangerous to place into the hands of the District Attorney, or any single individual, to say whether a man shall be prosecuted for a felony without the finding of an indictment by a Grand Jury. It seems to me that it gives decidedly too much power to any citizen, to require a party charged with crime to put himself upon his defense in order to defend himself against a charge which any person may bring against him charging him with a felony. I do not believe we ought to do away with a system which has worked so well ever since the organization of our government. I say that when we introduce an innovation of this kind, we are going to sea without a compass and without a chart, and we do not know where we are going to bring up at. This section practically does away with the institution of the Grand Jury. I believe that there is no system so well calculated to protect the rights of innocent persons against the charge of felony as the institution of the Grand Jury, and I desire right here to place myself on record against the adoption of the section as reported by the Committee on Judiciary and Judicial Department.

MR. CAMPBELL. Mr. Chairman: I have sent up an amendment that I would like to have read. It is a mere verbal amendment.

THE SECRETARY read:

"Amend section eight by inserting after the word 'or,' in line two, the word 'by,' and after the word 'information' the words 'after commitment or examination by a magistrate,' so that the section will read: Section 8. Offenses heretofore required to be prosecuted by indictment shall be prosecuted by indictment or by information, after commitment on examination by a magistrate, as may be prescribed by law; but a Grand Jury shall be drawn and summoned at least once a year in each county."

The amendment was adopted.

MR. WATERS. Mr. Chairman: I wish to offer an amendment which I send up.

THE SECRETARY read:

Amend section eight so as to read as follows:

SEC. 8. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases arising in the militia when in actual service, and the land and naval forces in time of war, or which this State may keep, with the consent of Congress, in time of peace, and in cases of petit larceny, under the regulation of the Legislature), unless on presentment of a Grand Jury; and, in any trial in any Court whatever, the party accused shall be allowed to appear and defend, in person and with counsel, as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation being first made.

SPEECH OF MR. WATERS.

MR. WATERS. Mr. Chairman: That will be found to be essentially section eight of article one of the present Constitution. There are two changes, one of which is inserting the word "arising" in the second line, and the other is by adding the words, "being first made," at the end of the section, so as to remove any question of construction as to whether, when property is taken for public use, the preliminary taking is a taking in the sense of the law. The main difference between this and the plan suggested by the Committee on Judiciary is, as I shall contend, the

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report of the Committee on Judiciary abolishes the Grand Jury system in effect. Now, I shall say nothing in this Committee of the Whole in praise of the Grand Jury system. I think I have noticed that this Committee of the Whole has no reverence for the history of the Grand Jury system, consequently I shall devote my attention exclusively to the benefits and safeguards that this Grand Jury system throws around the citizen. I will leave the history and the reverence for the Grand Jury system to others, for I have noticed that this Convention, in its feeling of skepticism, seems to care very little about time-honored institutions. They would rather have something that is new—something that they know not what would be the effect of, or the result of, and consequently I direct your attention to what I consider the actual benefits and actual safeguards of the Grand Jury system now to the citizen in this State.

It is sought by the amendment proposed by the Committee on Judiciary to set up some accusing officer, some one man, to be elected for say two or four years, who in each county in this State shall be vested with the power to place upon trial the highest and the lowest citizen in that county. They propose to set up one individual in whom shall be vested this power. I care not whether you call that individual the District Attorney, or whether you call it a Board of Committing Magistrates, or a Judge of the Superior Court of the county. It is all one thing. Instead of this impersonal power, this Grand Jury, which is never composed of the same individuals, although one individual might be upon every Grand Jury in the county, yet it is impersonal. Never do you find the same identical individuals upon any two Grand Juries. You might look over the records of every County Court in this State, you might search every set of Grand Juries that have ever been impaneled, and you will not find a single instance in which the identical men who composed one Grand Jury have ever composed any preceding or succeeding one. Therefore, it is an impersonal body; a body that comes from the people. They are responsible for every Grand Jury that has ever met, or that ever will meet. If Grand Juries make mistakes, the people themselves are at fault. They can blame nobody. But with this personal accuser, which you propose to have in each county in the State, he is one who will have political enemies. Admit that he is immaculate, and is one even who can make no mistakes, he will have political enemies, and when he indicts a person, that person will be in the Court-room creating a spite and hatred and prejudice against this accusing officer, whoever he may be. This spite will enter into the trial jury, and will have its effect there. Even granting that the accusing officer makes no mistakes, and does his duty rightfully, it will create a prejudice against him which should not exist.

The system would be wrong entirely. There is nothing to commend it. They will urge here, perhaps, that because the Grand Jury system is somewhat expensive, that it should be abolished; that it is troublesome to citizens to come to the Court House and perform, say, two days' labor once a year. It is always a good excuse for a man to give, that he has served once before that year. Now, do you suppose that the people of this State are becoming so estranged from the duties of citizenship that they are not willing to give one or two days' time for service upon the Grand Jury? I do not think that the people have cut loose so entirely from public duty as that. I do not believe they have.

There are many things about the Grand Jury system that are overlooked. Whenever you hear of mobs rising in any part of the country, or of any kind of disorder, at the very next session of the Grand Jury you will hear the Judge charge them that it is their fault and the fault of the juries themselves if crime goes unpunished. But when you get this accusing officer, who will the burden be laid upon? All the blame will be placed upon his shoulders. The people will not feel this responsibility that they now feel. This very responsibility has restrained many a mob—has restrained the feeling to rise and mob in many an instance. But the moment you take the responsibility off the people and leave it in one individual, you destroy that respect, that sense of responsibility, that now rests upon the shoulders of each and every taxpayer in this State. It is not a safe thing to do.

It was not the issue, nor one of the issues, upon which this Convention was voted for by the people in the first place. If any false issues have been raised by candidates while they were running for the Convention, I say that does not make it an issue before the Convention. I say that this was not an issue at the time the people voted for the calling of the Convention. That is the vote upon which we should act, and not the little issues or platforms that each candidate may have set himself upon in order to ride a hobby into the position of delegate to this Convention. The right way is to go back to the vote which called this Convention; and I ask any gentleman upon this floor to show where any such issue was ever raised among the people during that election. This is not one of the issues that called this Convention.

Now, that being the case, and in view of the fact that this Constitution must all go in the same boat—it must all sink or swim together—we should not put a single extra pound of ballast in the ship. From the way it looks now, even if there was no cause for voting against any Constitution that may be adopted, there are enough against it on general principles. There are plenty of people that have made up their minds to vote against it, because they think there is some change to be made in the system of taxation. There is enough of them now; let us not make wreck certain by taking on too much cargo. I think, if you abolish the Grand Jury system you will get a very respectable vote against any Constitution this Convention may adopt, because, if this one thing is taken from the people, I do not believe that they will ever ratify any Constitution that has that plank in it.

[Cries of "Question!"]

Oh, yes, "Question" is a very nice thing to call on an occasion like this. I tell you that this is a thing that the people will not stand; and even if this Convention does abolish the Grand Jury system, the people, when they are called upon to ratify it, will, by their votes, shove it down our throats. The Convention can use its own judgment. I do not propose to trouble it much in the future; but I wish to express this one thing, that I have noticed here a disposition to weigh down the Constitution with things that the people do not want, and to take away rights from them that they never will surrender; which shows, to my mind, an intention to load this Constitution so that we cannot do any good, and to destroy what little good we may be able to do. For that reason, I have some feeling upon this question, and I hope the provision of the old Constitution will be adopted.

SPEECH OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: The gentleman from San Bernardino, Mr. Waters, in common, I see, with a good many other persons, and in common also with a respectable portion of the public press, has entirely misunderstood and mistaken the object and purpose of this amendment. It does not provide for the abolition of Grand Juries. It does not provide for the election or selection of any officer at whose beck or nod any citizen may be placed upon trial for any crime. It does not in any manner encroach upon the liberty of the citizen. Let me explain the proposition as it stands on this amendment. The amendment does not go as far as I, individually, would like to have it. That portion of it which requires that Grand Juries should be summoned in each county once a year, was adopted in deference to the judgment of some gentlemen who seemed to think that there was some use in the system, and that it formed a good check upon public officers, and therefore that we should retain the Grand Jury once a year at least.

Now, what this amendment provides for is this, that while heretofore we have had but one system of prosecution for the higher grade of crimes and misdemeanors, we should have two, and that the Legislature should arrange the detail and mode of process as it does now. For instance, in order to carry out the provision in a Constitution which declares that we shall have a Grand Jury, the Legislature goes in and regulates the times when it shall meet, the number of which it shall be composed, and all the various circumstances which are necessary to give the system effective operation. We propose to allow the Legislature to continue that system just as much as it pleases, to preserve, if it pleases, all the laws which now regulate it, but at the same time, we provide for another system of prosecution which may be found very convenient; not in any manner oppressive to any citizen, as I shall show, and free from the great mischiefs which exist under the Grand Jury system at present—a system which will expedite trials, which will save a very large expense to all the counties of this State. Now, the system of prosecution by information which we propose here is the one which has been adopted in Michigan. It exists in Wisconsin, where the institution of the Grand Jury has been abolished, and by a popular vote of upwards of two thirds of the people—as I am informed by a vote of forty-eight thousand to eighteen thousand. It introduces a system simple, inexpensive, free from the abuses which now attend the Grand Jury system, and which will enable justice to be administered far more speedily than it is now. Let me explain the system as it is regulated by statute in Michigan. In that State their Constitution is silent about the mode in which criminal offenses shall be prosecuted. It is left entirely to the discretion of the Legislature. Now, the Michigan Legislature has provided a complete Grand Jury system, just as we have, but it has annexed to it this proviso, that no Grand Jury shall ever be drawn or summoned in any Circuit Court—answering to our District Courts here—except upon the order of the Circuit Judge. It provides further for prosecution by information; that when a person is accused of crime he shall have a regular, open, public examination before a magistrate, where he shall be fully heard and have witnesses in his defense. Then if the magistrate, upon the evidence, thinks that there is sufficient to hold him to trial, he makes out a commitment. The papers are then forwarded to the District Attorney. The District Attorney is required then by law to examine these depositions and the circumstances of the case, and if upon that examination he is of opinion that there is not enough evidence to hold the party accused—not sufficient to place him upon trial—he then passes the papers to the Circuit Judge. The Circuit Judge examines them, and if in his opinion the party should be put on trial he is placed on trial; if not, he is discharged.

Now that, in brief, is the system. It creates no officer at whose mercy the citizen is thrown. The citizen has this safeguard. In the first instance there is a public examination, upon complaint, before a magistrate. In the next place, if the magistrate, after hearing all the testimony on both sides in an open public inquiry, thinks that he should be tried, the papers go to the District Attorney. If the District Attorney thinks he ought not to be tried the papers go to the District Judge, and if he agrees with the District Attorney the party, instead of being kept in jail for months to await a session of the Grand Jury, is discharged. If, on the other hand, the District Judge thinks that the man ought to be tried, if he agrees with the magistrate upon that subject, then the District Attorney is directed to file his information. That is immediately done and the party can have his fair, impartial trial before a petit jury. I see no oppression and no injustice, and no one-man power in this proceeding.

It has been in operation in the State of Michigan for more than twenty years. They have had, side by side, the two systems. The Grand Jury system and the system which we suggest, and which has been adopted there; they are both on the statute books, side by side. They have had the experience of the new system, and they have found that it is rarely necessary, in the judgment of any Court there, to summon a Grand Jury. One gentleman, a member of this Convention, Mr. Beerstecher, who resided in that State for ten years prior to his coming to California, informs me that in the county in which he resided there was but one Grand Jury during the period of ten years, because it was found that justice was amply done without the intervention of any Grand Jury.

Now, let us look at the Grand Jury system, and see whether it is a

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bulwark of our liberties at all. It is all very well to say that it comes to us surrounded by all the splendors of antiquity. That is perfectly true, and I recognize the soundness of the principle that where a system has been found to work well for a long time, we ought to be careful in making innovations upon it; but at the same time, the mere fact that a particular plan or system has existed for a great number of years, is no reason why it should necessarily exist forever—why changes of laws adapted to the changed condition of society should not be adopted. We all know that within the lifetime of many of the members of this Convention it was the recognized medical practice, in cases of fever, to shut the patient up in a close room; to exclude the fresh air and give him hot drinks when his tongue was parched, and all nature cried aloud for something to cool his burning throat. It is within our own memory how thousands were slaughtered by this kind of treatment, until one day a patient, laboring under a high fever and clamoring for something to cool his parched throat, seized a pitcher full of cold water, emptied it down his throat, and fell back upon his bed, burst out into a perspiration, went to sleep, and was cured. Then the idea dawned on the medical fraternity that it might, perhaps, be a good thing to satisfy the cravings of nature in that direction. So with regard to the old theory, that it was necessary to keep a man in a room where the light was not permitted to enter. All that has been exploded, with the most happy and fortunate results. So with the introduction of the Yankee plow into the fields where they had always plowed the ground with a branch of a tree, it would be an innovation most dangerous to society to allow this Yankee plow to be introduced.

Now let us look at this system of the Grand Jury and see what we would think of it if it was proposed to-day for the first time. Suppose there never had been any Grand Jury, and some gentleman, a member of this Convention, was to rise from his seat and say: "Gentlemen of the Convention, I have a panacea here; I have something to cure all public ills; I have something which will be an effectual safeguard to the public and to the citizen. I propose that in each county in the State, at every term of the Court, there shall be drawn at random from the body of the county, or from the taxpayers, or any other class, a certain number of men; and these men shall get together in secret conclave; their proceedings shall be entirely private; they shall be under oath not to communicate their secrets or their knowledge of what takes place among them to the outside world: but they shall sit as a private inquest upon the life and liberty of every citizen in the community. I suggest and propose it in the name of public liberty." Now let me ask you what would the answer to that suggestion be? It is needless to say what the answer would be. Such a proposition would be laughed out of this Convention.

Now, a few of the evils of it. In the first place, I think it is fair to say that the smallest expense to the counties of this State of the Grand Jury system, is from one hundred and fifty thousand dollars to two hundred thousand dollars a year. In the City of San Francisco, at one time during the present year, there were two hundred men in the County Jail of the City and County of San Francisco awaiting the action of the Grand Jury. Two hundred men supported at one time in the midst of crime and vice, in the worst school of crime possible, and there awaiting the action of the Grand Jury! In other counties it is the same. In Sacramento here, during all the time that this Convention has been in session, there has been a Grand Jury in session, if I am correctly informed. For months there have been cases accumulating before them. There have been persons committed for trial in all parts of the county; and then these Grand Juries are summoned, and the prisoners have to wait until that Grand Jury can meet before there is any chance to have a hearing. There is an immense expense entailed. There is an increase of crime and vice created by associating accused persons with others of depraved and bad character.

Then, again, what further do we find? You take it in a large city like San Francisco, and I say that it is notorious there, that so far from the Grand Jury system being a shield and a protection to the poor, that it is nothing else but a shield and protection to rich scoundrels. You take a man who will have a corporation interest to sustain him, a banking power or stock exchange power—any of those great powers which exist there—and it is absolutely impossible to indict him. I can call to mind an instance not very long ago, where three times the acts of a public officer was laid before the Grand Jury, where the proofs were clear and the acts notorious, but it had so happened that the interests of certain powerful corporations were in some manner around him as a protection, and that it was impossible to get any Grand Jury to indict him. To endeavor to cure that evil, the Legislature has undertaken at the last session to increase the number of Grand Jurors in order that there might be some hope that through this secret tribunal, whose proceedings are unknown to the public, there might be an indictment found against some rich manipulator. Now, sir, I say that so far from being a protection to anybody in that point of view, it is an institution which stands between the wealthy and powerful and a just administration of the law.

Take it in another point of view. A man desires to disgrace another against whom he has a grudge; there is an opportunity to go before a secret tribunal, and where the party accused knows nothing at all about it—where, if he had any knowledge of that accusation, he could refute it on the spot—still the party making it may steal up the back stairs into the Grand Jury room and there procure an indictment which will involve the disgrace of a man for life, without any redress or any remedy. In that city, and I believe it is the custom elsewhere, that except in very extreme or special cases, where there is a very important reason for it, the Grand Juries make it a rule that no man shall be heard before the Grand Jury unless he has first gone before a committing magistrate and given the other party an opportunity to show whether he is guilty or innocent.

Now, sir, what are the benefits of this system? Let us look. I inquired of the County Clerk of my county the other day; I went to see how many indictments were found in cases in which a committing magistrate had not first acted and committed the party. I found that between the first of January and the last of September there had been one hundred and thirty-six cases before the Grand Jury of that county. In one hundred and thirty-three of those cases the parties had been committed for trial previously by a committing magistrate. I think that will be found to be the case in almost every county, that the number of original indictments, as I call them—those indictments found without previous examination before a magistrate, is exceedingly trifling. I know that it is in San Francisco, in perhaps a greater proportion than it is in Alameda. I presume the experience of other gentlemen will bear me out in regard to their several counties. Now we give the defendant this advantage, instead of locking him up—because the vast majority of those who are committed for various offenses under felonies are persons who are unable to give bail—you give the defendant this advantage, that when the committing magistrate finds that there is a prima facie case against him, the papers are immediately transmitted to the District Attorney; the District Attorney examines them, looks at the circumstances of the case, and if he finds that really the evidence is wholly insufficient, he simply turns over the papers to the District Judge and makes a report to the Judge that the evidence is insufficient to put the man upon trial. The Judge looks over the evidence and the circumstances, and if he agrees with the District Attorney the defendant is discharged. I do not think you will find, as a proposition, once in ten times, that the Judge of the District and the prosecuting attorney will concur upon that subject, unless the man ought to be discharged, but if he ought he will be discharged.

Now, it is said that Grand Juries are useful because otherwise the District Attorney might act the oppressor. We all know as a matter of fact that Grand Juries are guided in reference to this matter of the propriety of finding indictments by the advice of the District Attorney. He is really, as a general proposition, the controlling officer there. Now, the system which I propose, and which I think should be adopted, would be perfectly free from these embarrassments which attend the Grand Jury system, and, on the other hand, would save the people of the State from an enormous expense annually. But if the system of prosecution by information did not work well, why there is the Grand Jury system still in operation. One may be summoned whenever you desire. But how is it now? We have got to consider the geography of this State and the extent of its territory. You take it in large counties with small populations. Perhaps two or three men are in the county jail. They have been committed by a committing magistrate for stealing a horse, or for burglary, or highway robbery, or something of that kind. Is there any earthly necessity that a jury should be drawn, that men should be taken from their homes hundreds of miles, for the purpose of going to the county seat and simply indorsing the act of the magistrate, or saying that the magistrate committed on insufficient evidence? Why not give the man, if innocent, a chance for a speedy trial? If the depositions are insufficient to warrant his trial it is not likely that the District Attorney will have him placed upon trial. They will discharge him as an innocent man, in their judgment, certainly, if the circumstances do not require that he should be placed upon his trial. If, however, he is to be placed upon trial, he has a speedy opportunity to vindicate his innocence before a jury of twelve men.

It is better far for innocent men; it is better for the country; it is better in every point of view. But if it should turn out that I am mistaken, then it is in the power of the Legislature and of the Courts to resort to the Grand Jury system. It leaves the discretion with the Legislature. It may fail to provide any process by which this trial by information may be had, or it may provide that Grand Juries shall be drawn at stated periods, or it may authorize the Courts to call them whenever in their judgment a Grand Jury is necessary. We do not, in this amendment, abolish the Grand Jury. For my own part there is a portion of the amendment which, as I before stated, was agreed to by myself as a matter of deference to the opinions of others, and that is that there should be a Grand Jury once a year.

I have heard but one argument which is worth an answer in favor of the Grand Jury system. It is claimed by some gentlemen that it exercises a wholesome supervision over county officers. Now, does it? It may, perhaps, occasionally. A county officer may be afraid that the Grand Jury will come around and examine his books and find something wrong in the conduct of his office. Now if you propose to examine into the affairs of a county officer, I do not know of any more unwieldly and useless body than a Grand Jury. When they do meet for such purposes they invariably employ experts to do the work—that is, to make examinations of the accounts of the public officers—which could be very easily done without any Grand Jury, by a simple order of the District Court or Board of Supervisors, without all this cumbrous machinery, this secret tribunal, the very nature of which is repugnant really to our ideas of right. It is a tribunal which can exclude evidence, for while it is true that the statute allows them to call in evidence for the defense if they think fit, yet if they do not think fit they do not do it. But take the nature of a trial before a Grand Jury and who can imagine anything worse than a sort of trial before a secret body where the prosecution is represented and the defense is not.

Now, take it and see what it does in point of fact. I am speaking now of the larger cities in the State; other gentlemen representing counties in the interior can speak of the matter for themselves. In San Francisco the Grand Jury gets together. It is charged by the Court and a whole mass of papers is sent before it. There will be probably a hundred men committed for trial whose cases it is to examine into. It is a body which remain in existence but for a brief period. It is selected without any consideration of the individual qualifications of its members. But it gets together, and under the management of the

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District Attorney, these cases are examined into. He governs the action of the body in relation to finding bills of indictment. In the next place, on some fine day, it starts out in carriages and takes a drive out to the county jail, walks through the city prison, goes out to the almshouse, from there to the Industrial School, and it finally comes back and makes a hasty report of what it has done; that it has visited all the public institutions; that the expenses of the county are much too great—which everybody knows; that the almshouse is a model institution—which is pretty generally believed; that the city prison of San Francisco is a perfect disgrace to civilization and the city—which it always has been and everybody knows it; and then they generally end by saying that they have been extremely diligent, and that though they are satisfied that there is something wrong in the condition of public affairs, they do not know exactly who is to blame, and it would be well to have some other Grand Jury examine into it; then with a splendid compliment to the District Attorney, the Grand Jury adjourns and vanishes into thin air. That is the regular history of a San Francisco Grand Jury, and it is the same in the larger counties of this State. In most of the counties, I am inclined to think it is a good deal in the same way, as the experience of gentlemen will tell you.

I do not desire to detain the Convention, but at the same time I think we ought to give the Legislature an opportunity to present before the people a system which will be free from these defects; which will enable men who are accused of crime, in the first place, to have an open and public examination, before no secret tribunal at all, and which will enable them to have a speedy and impartial trial if they are committed. I think we would be wrong in preventing the Legislature from adopting such a course as that.

And so far as this matter is concerned, of being spoken of before the people, I will say this, that prior to the election at which I was chosen a member, I had occasion on several instances to speak of the very evils of this Grand Jury system, and to express in public to the people my opinion that it should be abolished. I met with no dissenting answer among my constituents. On the contrary, I met with most urgent requests that if elected I should urge this matter before this body. I think if you could get the public opinion of the State to-day you would find that a large majority of the people would be in favor of doing away with a system which is useless in its results, which is incapable of good in the future, and substituting a system more simple, more efficacious, and more just to the citizen and to the people.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: There are, certainly, two sides to this question; and however much the abuse of the system may be regretted, this Convention would do well to pause and reflect as to the result of the abolition of the Grand Jury system. It has been asserted by the last speaker upon the floor that it was not intended to abolish the Grand Jury system by the provision reported by the Committee on Judiciary and Judicial Department. The section reported was as follows:

"SEC. 8. Offenses heretofore required to be prosecuted by indictment, shall be prosecuted by indictment or information, as may be prescribed by law; but a Grand Jury shall be drawn and summoned at least once a year in each county."

Which one of these systems will be prescribed by law? Which one will your Legislature drop upon when they come to provide for the punishment of your criminals? Will they say that it shall be done by indictment, or that it shall be done by information? Give it up? You may well give it up.

Now the financial question, as connected with this jury system, is the most feeble objection that has been urged upon this floor. We hardly ever propose, when in our sober senses, to weigh character against money, life against money, or the dearest interests of society against dollars and cents. It is not the habit of the correctly thinking mind. The consideration of dollars and cents to be weighed against the dearest interests of society and the protection of human liberty, is simply an absurdity. Upon this question, however, let me ask how many petit juries are saved, so far as expense is concerned, by the sitting of the Grand Jury? When men through passion or prejudice bring complaints against men, they are generally stopped in the Grand Jury; but if this new plan is adopted, crimes of the highest nature will be charged against your best citizens, and they will be dragged into your Police Courts. I do not stand here for the purpose of defending these persons, but so far as those who are unable to help themselves are concerned, I stand here for their defense.

Now, I say that this is a consideration, and this is an argument that is well worthy of consideration. The expense of one half dozen petit juries before your tribunals, is enough to pay for all your Grand Juries for a whole year in every county of the State. One half dozen bills ignored by your Grand Jury is sufficient to pay the whole expense of your Grand Jury in each of your counties. So much with reference to dollars and cents alone. This, however, is the smallest consideration in relation to the matter. It is the effect of permitting this voluntary intermeddling with private characters by private individuals, to gratify malice and malice alone. Whereas, if these higher offenses were prosecuted before a Grand Jury, these cases would be ignored by your Grand Jury, and the disgraceful scenes that are transpiring daily in your lower Courts would not be enacted before your highest tribunals. Does any one presume to say that such a result will not be brought about if this Grand Jury system were abolished?

I decline to enter into the history of the rise of this institution. It is well understood by those gentlemen who have been practicing law for the last twenty years. What was the origin of this Grand Jury system? It is not beyond reason to assert that the same reason which gave our origin to the Grand Jury system will occur again. It is not unreasonable to suppose, that even in this country power may be asserted, and does exist to-day, that may become an oppression to the people. There is a power that is growing and gaining strength in this land, that by its influence may oppress the poor, and the Grand Jury system will be the sole protection against it. I undertake to say, that we are not free even from the toils of the ambitious on this land.

I propose now to read one little, short sentence from "Proffatt on Jury Trials," not for the purpose of proving that the position I assume is absolutely true, but simply for an illustration of the position which I take:

'In the reign of James I, it was held by the Lord Chancellor, the two Justices, and the Chief Baron, that when an indicted party is found guilty, the jury shall not be questioned; but when a jury acquitted a felon, or traitor, against manifest proof, they may be charged before the Star Chamber 'for their partiality in finding a manifest offender not guilty.' This doctrine was extended to the case of fining a Grand Jury when they ignored a bill; and an instance of it occurred in sixteen hundred and sixty-seven, when Chief Justice Kelying fined a Grand Jury of the County of Somerset for refusing to find a true bill of murder against a man; but '*because they were gentlemen of repute in the county the Court spared the fine.*'"

Now, Mr. Chairman, that is an example or illustration of what I undertake to say is not beyond a probability in this land. When a gentleman of repute is brought before the tribunals for punishment he is spared the fine. Aye, and he is spared the prosecution. Why? Because the humblest citizen in the land is not permitted to approach the dignified Court that sits in state for the purpose of hearing his complaint, and he is spurned from its threshold simply because of his humble condition. The Grand Jury is supposed to come from the body of the people, and to hear complaints when they are brought, when this tribunal will turn a deaf ear. These things are occurring daily even now in the midst of our people, and the spirit is growing more and more through the land, and an aristocracy breeding here in this free America that is hardly willing even to tolerate the presence of the poor at the feet of Justice. Cut off from the people this poor boon and you have cut off from them the right to approach the judgment seat against the millionaire. Cut off from a man the right of entering before the Grand Jury, and you have awed him into silence in the presence of the magistrate. This is what the Grand Jury was instituted for the purpose of avoiding—even as a protection or bulwark against the crowned heads. It stands here to-day as a protection against an aristocracy in this free California. I undertake to say that it will be a sorry day for the poor people of this land when this system is given up or done away with. I say it matters not what may have been its origin. I take it as it is, and hold it to be the bulwark of the poor or oppressed in this land, and it is absurd for gentlemen to weigh in the scale against this system the paltry consideration of dollars and cents as an argument. I am opposed to the abolition of this jury system. I am opposed to it for the reasons which I have asserted, and for some others which I have not asserted; and I shall vote for the amendment as offered by the gentleman from San Bernardino, Mr. Waters.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I am in favor of the entire annihilation of the Grand Jury system, and in that assertion I believe I am speaking the sentiments of the electors of the City and County of San Francisco. The gentleman from San Bernardino, Mr. Waters, has said here that it was not an issue before the people. How it may have been with him I know not, sir, but with us it was an issue. There was hardly a meeting held under the auspices of the party which elected me at which the Grand Jury system was not denounced in unmeasured terms. The people understood that we were hostile to it, and they voted for us knowing that to be the fact. I indorse, sir, every single word stated by the gentleman from Alameda, Mr. Campbell, with regard to its entire uselessness any longer as an agent or functionary in the administration of criminal justice. The reasons for its establishment have long since fled, sir. Where in the beginning it was used as a means of protection to the citizen, it has now become converted into an instrument of despotism and an engine of oppression.

I speak more particularly of its operations in the City and County of San Francisco, because I have watched its operations more particularly there. I assert, sir, that it is contrary to the genius of our free institutions, and contrary to the genius of civilization itself. That one feature of secrecy alone is sufficient to condemn it, without one single other consideration. It has been maintained and adhered to because of the law and order loving spirit of the people, and because of the attachment of the American people to established institutions long after their judgment has condemned them. But it is not true that the enlightened people of the United States are longer adhering to it. All over, where modern Conventions have been held, it has been either entirely abolished or the means have been placed at the hands of the Legislature for its abolition.

I furthermore maintain that it is the necessary and logical sequence of the action of this Convention yesterday in regard to the petit jury system, that it should be followed up by the destruction of the Grand Jury system, because every lawyer knows that a trial by the common law jury was a necessary sequence to an indictment. If you abolish the petit jury you want no more indictments. Now, sir, I reiterate the statement of the gentleman from Alameda in regard to San Francisco, that the Grand Jury there present no indictments and make no accusations of their own volition, as understood and contemplated should be done by them. They have been drawn from the various sections of large counties where they are cognizant of things in their region, or the vicinity where they live, which they themselves could bring to the knowledge of their associates upon the Grand Jury, but that is never entered upon now, sir. They are all brought under the cognizance of the committing magistrates of the City and County of San Francisco, and must all come through the hands of the District Attorney. He wants a person or persons indicted, and that is all there is about it. The particular objection to the Grand Jury there has been that those

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who are backed by large means, or by rich and powerful associations, use the Grand Jury to escape the punishment of their crimes. They have all the time used it. Where the District Attorney, for his own purposes, or for their purposes, sees fit to do so he can make an engine of oppression out of that very institution. I myself was concerned, and these delegates elected from San Francisco, in a case that distinctly illustrates that proposition. Denis Kearney, Dr. O'Donnell, Wellock, and various parties, as is well known, were arrested in San Francisco upon numerous charges. Among other charges preferred against them was one that they had committed a riot, by holding a meeting on Nob Hill, within the sacred precincts of the magnates of the railroad corporation. They were taken before a committing magistrate. It was fully examined before the committing magistrate. I myself appeared as one of the associate counsel for the defense, and after a full and complete examination of the foundationless and groundless charge against these men he discharged them. Now he did not send it before the Grand Jury. That ought to have been the end of that charge. What happened? Hostility existed between that magistrate and the District Attorney. After the sitting of the next Grand Jury the District Attorney presents that very identical case, that very identical charge, in the shape of an indictment, before the very identical Court which had discharged them. They were compelled to undergo the expense of a trial all over again about the very identical matter, and which resulted in the fiasco, the history of which is well known.

It is called a Grand Jury. What there is grand about it I am unable to see. It is one of those relics of antiquity, of by-gone civilization, and I suppose that the word "grand" is brought in as a part of the splendor which used to surround that institution. And it is anything but grand, Mr. Chairman, especially in its character of a smelling committee. It goes around, after due and sufficient notice has been given that it will appear at a certain time before the public institutions, and they are very diligent in preparing for the reception. They wash out all the filth that is not too thick to be gotten out of the way, and by the use of chlorate of lime make it as clean as possible, and the Grand Jury goes smelling around there and perhaps gets something to drink. They do not go and talk to the prisoners; they do not go and talk to the paupers, and find out whether they are suffering. Not at all, sir. They go back and flatter and tickle one another. They put in a report lauding the fidelity and zeal of these officers. When they get through, the District Attorney rises in Court and praises the Grand Jury for the arduous services they have rendered, and the Grand Jury, in return, tickles the District Attorney with resolutions about his promptitude, and give him a lift for the next election. They have accomplished nothing; achieved nothing; done nothing that in any manner can be one particle of use in the administration of criminal justice. Therefore, I am in favor of its total abolition. The gentleman from Alameda, Mr. Campbell, has given the subject careful consideration, and I consider the reasons which he gave as being conclusive.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman and gentlemen of the committee: So far as I am concerned, individually, I recognize that I have some reverence for the institutions of the past. I recognize that there have people lived in the past who were as wise as we are. I believe, sir, that the institutions that have existed for hundreds of years and have met the necessities of the times and wants of the people are precedents by which we may be guided. I believe that this Convention cannot, if it tries, reform all the evils that are recognized throughout the world. I do not believe, sir, that the two last gentlemen—or rather the gentleman from Alameda, Mr. Campbell, and the gentleman from San Francisco, Mr. Barbour—have stated in their arguments any good reason for changing this great, and, what I believe to be, glorious system—the Grand Jury system. One or two reasons have been given, it is true. One is a purely financial one, namely, that it is expensive. The other is that the Grand Juries are corrupt. These are the only two reasons that have been submitted to this Convention for its consideration. As to its expense I have nothing to say. Liberty is expensive. Anything by which the rights of life, liberty, and property is secured is attended with expense and inconvenience to the people, and if you propose to measure these sacred rights by the amount of money it costs, then I will leave the further consideration of that question to the gentleman who first opened this debate. For one, I think that there are certain interests that are worth protection, even if they are expensive. But I deny that they would be more expensive.

We will suppose you have an honest District Attorney in a city like San Francisco. A charge is brought before him, and what is his position? It hardly matters how frivolous the charge. There is some responsible party says that a man is guilty of some offense, and he is almost placed in a position where he is bound to bring the man before a jury and have him tried.

MR. CAMPBELL. The proposition is merely this: that the District Attorney may file an information after the party has been examined and committed by a committing magistrate.

MR. ESTEE. I will come to that. This is the essence of the thing, because the committing magistrate merely says that a public offense has probably been committed, but the District Attorney passes upon it. He decides whether that man shall be tried or not. Take San Francisco, with its population of three hundred thousand—probably in ten years five hundred thousand—and let one man—I care not how pure he is, I care not how brilliant he may be in his profession, I care not how exalted his position—have the power to say that he will try you for felony, or me for felony, or this man for misdemeanor, or that man for misdemeanor, bring him before a jury of his peers and try him—see what a power he has got. See what a position it would place the District Attorney in. I claim that this is not the remedy for the evil, if there be one. I confess right here that I disagree entirely with the gentleman from Alameda and the gentleman from San Francisco, relative to the corruption of these Grand Juries. The gentleman from Alameda says that the Grand Jury system in San Francisco is a shield for rich scoundrels. I deny it. Standing here in this presence, responsible for every word I say, I say that the Grand Juries of San Francisco, for the last twelve or fifteen years, have generally been the purest men in the community. The petit jurors are the ones who let the most scoundrels free. The Grand Juries of San Francisco have always been the best class of our people, representing every interest, representing every impulse of the people, representing every emotion, if I may so speak, of the people. Coming together with no motive to oppress and every reason to see that punishment is awarded, if any crime has been committed. Sir, with some very rare exceptions, no case of a Grand Jury can be pointed out where they have let rich scoundrels out.

Look at all these rich scoundrels that the gentleman might refer to. Look at the Fair case. She was indicted by a Grand Jury. Look at all these cases that have become historical in San Francisco. Indictments have been found against the proper parties, and under the peculiar operations and machinations of counsel, by the circumstances of witnesses being got out of the way, and all this various modus operandi that is so familiar to gentlemen who defend criminals, they have gone clear. Criminals have been cleared by petit juries, not by Grand Juries. I am not here in this respect, however, to argue that Grand Juries have never done wrong. I am not here to say that there are not instances in San Francisco where they have done wrong, but I want to see the man, the public officer, or the institution that has never done any wrong. But if we are going to tear down the pillars of this institution that has come to us by so many years of experience, recommended by the wise men who lived before us, let us have some tangible reason for it. Let us find some abiding precedent for it. Let us find a reason that the people can see and understand and that we can point to and say, "there is a wrong that has been committed on the people and here is the remedy we are going to give the people in exchange." I disagree also with the gentleman from San Francisco, Mr. Barbour, about the recent action of Constitutional Conventions. I find, sir, so far as I have been able to observe, not in a single instance have they changed the Grand Jury system. The last Constitutional Convention was in Missouri, where they say:

"That no person shall for a felony be proceeded against criminally otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger," etc.

Again, in Pennsylvania they lay down the same doctrine in their Constitution of eighteen hundred and seventy-three. The Illinois Constitution I have not yet examined on this point, but I understand that it is the same.

MR. BARBOUR. I would like to call the gentleman's attention to the Constitution of Georgia in eighteen hundred and seventy-seven, where it is left out altogether; and to the Constitution of Colorado of eighteen hundred and seventy-six, where they provide that the general assembly may abolish it.

MR. ESTEE. I do not have them before me now. If the gentleman has found those cases he is entitled to that precedent. But let me say right here, that in the rural districts—that is, in a State like Wisconsin or Minnesota, or even Georgia, where there are no large cities—the reasons for Grand Juries are not so strong. I confess that in some of the counties of this State, where every man knows every other man in the county, where there are no large places, there is no necessity for a Grand Jury very frequently. I understand that perfectly. What I claim is, that it would be bad policy, that it would be contrary to the best experience of the wise men that have lived for one hundred years, to strike at this great institution, and say that from this on the Grand Jury system shall be abolished.

But they tell us, you may have a little of both. A little of both means not much of either. You may have a Grand Jury once a year. Better abolish it at once, for that amounts to nothing. Either take the whole thing, if it is right, Mr. Chairman, or abolish the Grand Jury system altogether, and adopt this system offered by the gentleman from Alameda. If it is wrong, let us abolish it. Let us not divide the responsibility between the Grand Jury and the District Attorney.

I believe that the Grand Jury system has worked well in the past, and for one, where I find in the old Constitution a provision which seems to have worked favorably for the whole people I do not propose calmly to consent to its abolition. For one, I recognize that men have lived before us whose experience may be worthy of our imitation, and whose advice and counsels we may safely follow. For one, I recognize that that old Constitution, or much of it, is among the best written organic laws adopted by any State in the Union, and I hope, sir, unless for the very gravest reasons, that this Convention will not feel it to be its duty to destroy whatever there is that is valuable and good in the old Constitution merely to make a change. Unless there is some marked evil, some great wrong to be perpetrated on the people, and some remedy enforced to remove it, I say that we owe it to ourselves, we owe it to the dignity and honor of the past, we owe it to the law, which it is the duty of every citizen to obey, that we should make no change merely for the sake of change. I hope if you are going to abolish the Grand Jury system you will take it as a whole. Instead of lopping off a part of it, let us abolish the whole of it. If it is wrong to keep it, let us take the whole of it, and let the people try the new system, pure and simple.

MR. HUESTIS. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report

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of the Committee on Preamble and Bill of Rights, report progress, and ask leave to sit again.

The hour having arrived, the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Quorum present.

PETITION.

MR. ESTEE. Mr. President: I ask leave to present a petition from a large number of citizens of San Francisco, asking that a certain day be set apart by this Convention as a day of rest, and ask to have it referred to the Committee on Miscellaneous Provisions.

THE PRESIDENT. If there is no objection it will be so referred, without reading.

THE GRAND JURY SYSTEM CONTINUED.

MR. VAN DYKE. Mr. President: I move that the Convention do now resolve itself into Committee of the Whole, for the purpose of resuming the consideration of the report of the Committee on Preamble and Bill of Rights.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section eight and amendments are now before the committee.

SPEECH OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I have three reasons for speaking upon this question. First—I differ with the gentleman from San Bernardino, Mr. Waters, who says this was not an issue in the recent campaign. It may not have been an issue in the gentleman's district, but as aptly stated by the gentleman from San Francisco, Mr. Barbour, it was a matter that was actively canvassed in San Francisco in the political meetings prior to the election of the nineteenth day of June last, and the almost unanimous verdict was that the Grand Jury system, if not abolished, should at leas tbe modified. Second—The gentleman from Alameda, Mr. Campbell, has referred to myself as having lived in a State where the Grand Jury has been abolished—namely, Michigan, and having personally seen the workings of the criminal code without the aid or assistance of the Grand Jury for over nine years, during the greater part of the time being actively engaged in the practice of law. Third—As a member of the Judiciary Committee who have made the report recommending the abolition of the Grand Jury system.

Mr. President, for these reasons, and because I consider the Grand Jury system as useless in the present age and condition of government. If a crime is committed and an arrest made, an examination results. The person accused is either held or discharged—gives bail or is sent to jail—sent to jail not to await his trial—not to be placed before a jury of his countrymen, but to have his case passed upon by a secret tribunal without the privilege of being heard in his defense. He lies in jail one, two, or three months. His case is at last brought before the Grand Jury, who, after a one-sided examination, determine whether he is to remain in jail and eventually be tried, or to be discharged. In this way men are confined in prisons for months without being tried by a jury of their countrymen. It has been stated that the Grand Jury is the bulwark of the liberties of the people, that unless the Grand Jury exists it will be impossible to convict criminals. Mr. President, I deny the assertion. In conversation with one of the eminent jurists who occupies a seat on this floor, some weeks ago, the gentleman expressed himself upon the Grand Jury system by stating that a client of his committed a crime, for which he was about to be proceeded against by the Grand Jury.

I here call particular attention, Mr. President, to the fact that a person whose case is about to be examined by a Grand Jury has a right to challenge the Grand Jury as an array or as individuals, if he is financially able to secure men of sufficient shrewdness to work upon the Grand Jury. He can stave off indictments for an indefinite period. Section one hundred and eighty-three of the Penal Code provides for challenges to Grand Jurors upon the ground, among others, "That the Grand Juror has formed or expressed an unqualified opinion or belief that the defendant is guilty or not guilty of the offense charged," and "that a state of mind exists on the part of the juror in reference to the case of either party, that satisfies the Court that he cannot act impartially without prejudice to the substantial rights of the party challenging." The gentleman to whom I referred, when he ascertained that his client was about to be indicted, used the means necessary to render a sufficient number of Grand Jurors incompetent to find a bill. When the time came to examine into the case of his client, the gentleman went before the Grand Jury and challenged the several men composing that Grand Jury until he reduced the number of Grand Jurors below twelve, the number necessary to find a verdict. The same method was used for two years, and the client went free.

Mr. President, I take up the San Francisco papers of to-day, and I find therein a list of the Grand Jurors summoned to set upon the jury just called. How easy a matter it is for a man of wealth to so use his means as to form a bias of opinion in the minds of the men whose names have been published to-day. The gentlemen of whom I have spoken made use of means of that character. It can easily be done. It is not necessary to influence the whole Grand Jury, it is only necessary to prejudice, and by representations, so to form a bias in their minds, that when the attorney for the person about to be indicted appears before the Grand Jury and questions them concerning their opinions of the man about to be indicted, they say they have formed opinions. In that way in San Francisco, numberless indictments that should have been, have not been found. Yea, the men against whom they should have been found, who should have been pounding stones at San Quentin for years and years, are to-day free in the streets of San Francisco.

I deny the fact that the Grand Jury is a protection to the poor man, to the laboring man. The Grand Jury to-day is useless, as only acts as a shield to the rich rascal. The gentleman from Santa Clara, Mr. Herrington, has advanced an argument—citing cases from the time of Henry IV of England, showing how Grand Jurors were brought before the Chancellor of England and fined because they had neglected their duty—failing to indict. Is not this an argument against Grand Juries—a conclusive argument? As far back as the time of Henry IV of England, Grand Juries have been subject to bribery and outward influence. This does not show to me that they are the grand bulwarks of liberty.

One objection, above all others, that I have to the Grand Jury system is this: the system removes individual responsibility—divides the responsibility among many. If the magistrate before whom a complaint is made is individually responsible to the public; if the Prosecuting Attorney, whose duty it is to prosecute, is individually responsible to the public, they will be more vigilant, more careful in the discharge of their duties, than when the responsibility is spread among so large a number as a Grand Jury.

The trouble with this government to-day is the shifting of individual responsibility from men who, occupying official stations, ought to be directly responsible to the people. What we must do to cleanse and purify the public service is to render every man individually responsible. The more individual responsibility the more security of life, liberty, and the rights of property. I revere the ancient, I believe in the antique, but in order to retain the ancient among the institutions of the living present, more should be urged in its behalf than age. Age is no argument. They must show that it is of practical living utility to-day. If age were an argument we might go back to the right of trial by battle, by ordeals. I have no doubt that the people once believed the right of trial by battle or ordeal as essential and necessary a guarantee of the liberties of old England as the gentleman from San Bernardino believes the Grand Jury system to be necessary to guarantee the liberties of the citizen of California to-day, but the people have discarded those antiquated beliefs, because having no other recommendation than age. Institutions with no other recommendation than age had better fall and be buried in the closets of the past. We can look upon them with reverence, looking down the vista of years, but they must not stand as a stumbling block in the pathway of the living present.

It has been urged that if the Grand Jury system be abolished it will inaugurate a one-man power. I deny the assertion, as was aptly said by my colleague from San Francisco, Mr. Barbour. His statement shows but one case, but, were it necessary, citations might be multiplied until thousands of cases might be shown. I am willing to let it stand upon the one case. Certain gentlemen in San Francisco were arrested for inciting riot, and brought before Judge Ferral for examination, who, after hearing the evidence, discharged them. Mr. Murphy, the prosecuting attorney, actuated by personal motives, brought the matter before the Grand Jury, and, by exercise of "one-man power," procured an indictment. He brought these gentlemen to trial before Judge Ferral's Court, where a petit jury acquitted them. The Grand Jury, in every case of doubt, rely wholly upon what the prosecuting attorney tells them as to finding or ignoring bills.

But gentlemen have said, this may all be so, but there yet remains a something, that if you wipe out the system there will be nothing to supply, and that is the power of visitation and examination into public departments. These visitations remind me of my schoolboy days. The Directors came visiting once in three months; the scholars all upon good behavior, drawn up in dress parade, for a week before drilled upon certain questions and their answers. The gentlemen came into the school room, the teacher handed them a printed document upon which were the questions which we were drilled to answer. Of course no honorable gentleman would go outside the printed questions. Everything went off smoothly, we were the best and wisest scholars in the blessed land of Pennsylvania. That is just the way with the Grand Jury visitations. All preparations are made to receive them. Everything is put upon a dress parade footing. It is just no visitation at all. But there are other methods of getting at this matter. There is no reason why the Board of Supervisors of every county should not resolve themselves into a Board of Visitations. That is the method in the State of Michigan. The Grand Jury system has never in my opinion been the bulwark of liberty. The petit jury has always stood between the encroachments of capital, the encroachment of the Crown, and the rights of the people. I challenge the gentleman who spoke so favorably for the retention of the Grand Jury system, to tell me why, if the Grand Jury has been such a bulwark of liberty, the petit jury was called into life. The Grand Juries were always willing to find indictments for the corrupt monarchs of England, but it was the petit jury that stood between the Crown and the people. In this State, having counties as large as many Eastern States, if a man enters a corral and steals a horse, being seen by a dozen men in the act, if caught the Sheriff must scour the country for hundreds of miles to secure a sufficient number of qualified persons to act upon a Grand Jury, to find an indictment allowing the law to proceed against the scoundrel. This does not seem to me justice or economy. The State should be allowed to try—to punish malefactors without the intervention of a Grand Jury. The people are loudly calling for redress.

Mr. President, I do not care for buncombe speeches about liberty, and how the people are going to rise up in anguish and denounce men who are trying to wipe out this vestige of antiquity. I do not believe it. The people of California are a people of progress, and demand that the Grand Jury system be wiped out. Taking into consideration the fact that an examination results in incarceration until the meeting of a

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Grand Jury. Then, after finding of a bill, there is a further incarceration until the meeting of a petit jury, the expense of the unnecessary keeping of prisoners, and of the Grand Jury—it costs the State of California hundreds of thousands of dollars yearly—uselessly thrown away on a system that has lost its usefulness. The system as practiced in the State of Michigan is simply this: If a party knows that a crime has been committed he proceeds to an examining magistrate. He states his case. If the magistrate believes a sufficient case exists, he reduces that statement to writing, and has the person making the statement subscribe it and swear to it, and upon that statement he predicates an order for arrest. The person believed to have committed the offense is sent for. The examining magistrate, with the aid and assistance of the Prosecuting Attorney, inquires into, first—whether an offense has been committed; second—whether there is reasonable cause to believe that the party under arrest has committed the offense. If he finds both of these things, in his opinion, he orders the person to be sent to jail or admitted to bail. Then, on the first day of the succeeding term of the Court, the prosecuting attorney files an information against the prisoner, to which information the prisoner pleads. If, however, the prosecuting attorney, upon reading over the evidence, should determine that there was not sufficient evidence to warrant the detention, he states to the Judge that, in his opinion, he does not believe the prisoner can be convicted upon the evidence. The Judge then makes an examination of the evidence—but he does not examine the evidence unless the prosecuting attorney makes the statement that he believes the testimony to be insufficient. The Judge examines the evidence, and if he holds with the prosecuting attorney the prisoner is discharged. If, on the other hand, the Judge believes there is sufficient evidence to warrant the detention of the prisoner, then the prisoner is detained and is tried. If a person is arrested and the examining magistrate discharges him, he is subject to rearrest. A discharge is no bar to a rearrest. This system has been in vogue in the State of Michigan for almost thirty years, as was stated by the gentleman from Alameda, Mr. Campbell, and as I have observed personally for nine years. The system has worked well; it has worked exceedingly well; it has saved millions of dollars to the State of Michigan, and they do not desire to return to the Grand Jury system. They are very well satisfied. They can punish their criminals without aid or assistance from this cumbersome, useless machine.

I am in favor of the resolution as presented by the Judiciary Committee—it allows a restoration of the system if found necessary by the Legislature. Seven States have virtually abolished the system and others are following in the wake and sweeping away the old cobwebs, allowing direct proceedings against criminals, making the prosecuting officers in each judicial district individually and directly responsible for the misuse or abuse of power, allowing no Grand Juries to intervene as a screen for the prosecuting attorney to creep behind and say, "It was not my fault—it was the fault of the Grand Jury." The voice of the people rings in my ears, calling upon us to modify or wipe out this useless system.

SPEECH OF MR. HUESTIS.

MR. HUESTIS. Mr. Chairman: After all that has been said upon the question now before the committee, I would be perfectly willing to let the matter come to a vote at once, were it not for the fact that I feel impelled from a sense of duty not to let the opportunity go by, now offered, to reflect public sentiment so far as I am able to judge, upon the question under consideration, and to raise my voice in favor of economy and reform in the administration of government. If I could have supported the report of the honorable Judiciary Committee before, I certainly cannot now, after hearing the able argument of the gentleman from Alameda, Judge Campbell; for to my mind, he has in a masterly manner refuted and demolished the recommendations of that report. The Judiciary Committee have reported in section eight, a provision that offenses shall be prosecuted by indictment or information, and each county shall have a Grand Jury at least once a year. But the argument of the gentleman demonstrates that the Grand Jury system is the most useless, expensive, absurd, dangerous and pestilent institution in our whole system of government. I agree with the gentleman to a great extent, and therefore I am in favor of the abolition of the system—at least, to the extent of placing the matter, where I think it properly belongs, under legislative control. And, sir, incidentally, I would just here give it as my opinion that when gentlemen on this floor assume that this proposed change is not in accord with public sentiment, and that the great expense of the present system should cut no figure in the consideration of the question, they are simply wrong in their premises.

Mr. Chairman, I respectfully submit that this is simply a question of public policy, or expediency, and as such, it is eminently proper that it should only be considered from a moral and practical standpoint. And, sir, I am in favor of the abolishment of the Grand Jury system, at least to the extent of placing the matter under legislative control, because it is a source of enormous expense to the people of this State, without corresponding benefit. And while I shall not detain the committee with a detailed statement of the expense of this system, I feel authorized in saying that it annually costs the people of California considerably over one hundred thousand dollars. And, sir, in response to the question which next presents itself to my mind, to wit, "What benefits, if any, accompany this enormous outlay?" I do not hesitate to answer, none, absolutely none, which cannot otherwise be fully attained, and at an expense of not more than one fourth of that which the present system entails.

Under the present system, in cases of the commission of crime, those of the people who are known to be cognizant of it are first compelled to appear before the committing magistrate as witnesses. They are again compelled to appear before the Grand Jury and in many cases having to travel a long distance to the county seat, where they will have to stay for several days, all at their own expense, and finally, when the case comes up for trial, they are again subjected to the same hardship. In other words, Mr. Chairman, large numbers of the people are compelled, at least four times a year, in the different counties of this State, to enter an appearance at the county seat, without subserving any useful purpose which could not be accomplished under any other system which did not impose this onerous and unnecessary burden. And, sir, I submit that to maintain that all this trouble and expense and loss of time are necessary in order to subserve the ends of justice, is simply tantamount to saying that the American people have lost all their inventive genius and power. To so maintain is to stultify ourselves, and, for one, I repudiate the idea as utterly unworthy of the serious consideration of this honorable body.

But, Mr. Chairman, in order to get a more distinct idea of this matter, let us for a moment briefly consider the functions and duties of Grand Juries; and, as I understand it, their main duty is to examine the record or witnesses, or both, and come to a conclusion as to whether persons accused of crime ought to be tried or not. This they do under the advice of the District Attorney. In many cases they are, in whole or in part, composed of persons ignorant of the law; and in a majority of cases, if the District Attorney tells them that the evidence is sufficient to convict they indict, and, on the contrary, if he tells them the evidence is not sufficient, they do not indict. They are, in the very nature of things, almost entirely under the control of the District Attorney, in all matters coming up in the Grand Jury room, and merely echo his opinions. The whole thing, then, practically viewed, merely amounts to a roundabout and very expensive method of getting the opinion of the District Attorney. And I submit that if this be necessary in order to insure the ends of justice, then, in the name of common sense, why not get the opinion of the District Attorney directly, and thus curtail the enormous expense attending the present system. This morning's Record-Union, in an editorial opposed to abolishing the Grand Jury system, after admitting that there is a strong current of opinion in favor of the abolishment, says: "But the first inquiry to be made, when it is proposed to abolish an institution, refers to the contemplated substitute."

Well, Mr. Chairman, in reply to this I have simply to say, that if it can be a question, whether any plan can be devised in lieu of the present system, which will not come in conflict with true governmental science, so far as the same is applicable to the subject under consideration? I hold that we can, with the utmost propriety and degree of safety, trust its solution to the legislative branch of the Government. I have no fears, sir, that the Legislature would sanction any system which would in the least disturb the rights or the liberties of the people. Nor can I for a moment doubt that the Legislature would, if intrusted with the power, call into existence in lieu of the present antiquated, burdensome, and expensive Grand Jury system, some less expensive system which would be more acceptable to the people, more conducive to the ends of justice and the peace and dignity of society, and more in accord with the spirit of the age.

Mr. Chairman, the question under consideration is one in which the people feel a great interest, and, as far as an expression of their views and wishes have come to the surface, it is evident enough that a very large majority of the taxpayers of California are of the opinion that the Grand Jury system has outlived its usefulness, and that it should no longer constitute a feature of the organic law of this State. A revision of the organic law, with the view of rendering the judiciary system less cumbersome, more expeditious in administering justice, and at a far less cost than under the present system, is a reasonable demand of the people which we, as their representatives, cannot in justice to them or to ourselves ignore. One of the principal obstructions in the way of these desirable ends is the Grand Jury system. Then, sir, why not place ourselves upon this question in full accord with public sentiment—at least to the extent of placing the matter under legislative control? In other States where the change has been made the results have been highly satisfactory. I grant that its origin can be traced far back into the dark ages of history, and that it was supposed to be, and possibly may have been at that time, and for centuries afterward, a protection of the people against kingly prerogative and power; and I also grant that its Star Chamber proceedings were supposed to be hidden even from the penetrating knowledge and power of royalty.

But, Mr. Chairman, suppose they were, how ought that affect us in this, the nineteenth century, with no worse despot to fear than ourselves? But, Mr. Chairman, almost every agency made use of by our forefathers has either been superseded by something better or wonderfully improved upon, but this one. That it is the antiquated, ponderous, and lumbering machinery of our ancestors I concede, but I also claim that to provide for its further continuance would be as unreasonable as it would be to provide for the resurrection and continuance of the whipsaw, the wooden plow, the sickle, or the hand printing press. That it is a greater power for evil than for good, I firmly believe. We all know the facilities it affords to a man's enemies to stab him in the dark, and the protection that it gives to the assassins of character. And, therefore, without further detaining the committee, I am prepared to vote for the abolishment of the Grand Jury system, or for any measure looking to that end.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I never have, at any time, I believe, taken up the time of this Convention for an hour or so, and I will only occupy your attention now for a few moments. I have been careful in that respect, for I know that time is precious. I am free to confess that this matter of Grand Juries has been before the people of this State for a long time. It has been before this Convention, and now it appears that we are in doubt about whether to retain the old system or to adopt a new one. I am under the impression that we have reason to doubt whether the Grand Jury system has served the grand purpose for which it was

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intended. The principles of justice have not been reached. Indictments have been found, expenses incurred, and yet the cases amount to nothing oftentimes when they come to be tried before the Court afterward.

Now I would say with regard to my portion of the State, which I more especially represent, the subject has been before them, and they have had a chance to investigate it; they have had experience in the matter, and that experience has brought them to give it more than passing consideration; and they are in favor of quite a radical change in the Grand Jury system. Now, as a matter of course, it should always be considered whether a thing is legal or not; and the next thing is, does the sentiment of the people back the proposition—is it sustained by the people? And if it is, I hold that it is our duty to try and answer their demands, and to suit them with such laws as they require.

We hear a great deal on this floor about certain principles of the Constitution being sacred, and that they must not be trampled upon; that sacrilegious hands should not reach forth to touch certain great principles; and the Grand Jury system is held out to be one of that kind. Now, Mr. Chairman, we understand that the great principles of carrying out the wishes of the people lie back of all this, and is the foundation of all this; and if we find it to be the sentiment of the people to change this portion of our Constitution, I hold that it is our duty to do so. I am, therefore, in favor of the report of the Judiciary Committee. I think it will about answer the purpose of the people I represent more immediately, and I think will be indorsed by the people of the State.

SPEECH OF MR. BARRY.

MR. BARRY. Mr. Chairman: So much has been said on this important question, and there are so many other important questions to come before this body, that time is precious. But this is as important a question as any that we will be called upon to consider, and it is right and proper that gentlemen should give the reasons for the faith which is in them. And, sir, while a great deal has been said on both sides of this matter; while a great deal has been said in support of the report of the Committee on Bill of Rights; while a great deal has been said in advocacy of it by eminent gentlemen who are able to give their reasons for the faith that is in them; while I agree with Mr. Campbell—as they are views I have entertained for years—believing that this jury system should be changed, not simply the trial jury system, but the Grand Jury system—I think this is one of the necessities of the times; one of the things that requires to be changed—it is for that reason I now ask to be heard for a few moments; and I trust this matter will not consume as much time as the others have.

I will say that personal experience has convinced me that some change is necessary in the system. Having filled the office of District Attorney for a considerable time, I am aware of the evils that exist in the Grand Jury system. I am aware that a man may, through spite, or personal feelings, work an injury on his fellows without any good cause, without legal reasons attempt to bring a matter before the Grand Jury which never should have been brought before it, and the case presented for trial, when, in fact, investigation shows that the charge was wholly unfounded. This is not an exceptional case, and I believe there is no gentleman who has had any experience as a prosecuting officer but knows that the Grand Jury system is greatly abused like the trial jury system, and always will be. I claim that it is public opinion which asks for this change, as much so as it does for a change in the trial jury system. Gentlemen may speak of the ancient and time-honored institutions of our fathers, which have been so long before the people, and been honored so much. I will say to them, as before intimated, that while I have all respect for the views and opinions that were worthy to be respected, this is an age of progress. We are moving forward to a higher sphere, learning more and more by experience, and that we should not be governed by the opinions and laws of our fathers when it is proven by experience that they were wrong. Times have changed. There was once such an institution in this country as slavery, and there were those who defended it upon the same ground that it was one of the institutions of our fathers, handed down to us; that it had been in existence so long it ought not to be touched. So with this, you must not lay violent hands upon it because it has been in existence so long. But, sir, unanswerable logic has determined that slavery was wrong. The people rose in their humanity and wiped that stain from the Constitution. It had existed long enough, and a freedom-loving people, those who believed in the Declaration of Independence, arose and said that it should exist no longer. Such a stain had existed long enough; and in the same manner they declare now that this Grand Jury system, this grand old humbug, shall be no longer tolerated.

This may strike the gentleman from San Bernardino as being very irreverent, as being very strong language, but, sir, I believe that three fourths of the people of this State will say I am right when I make that remark. I believe they demand this change. I believe they are unwilling to reverence our fathers to the extent of maintaining this system any longer.

Now, sir, I believe that the deliberate judgment of this body, in its assembled wisdom, believing that they were sent here to express the will of the people on this and other questions of great importance, whether on issues of the campaign or not, matters not. It is true that there are other important issues before the people — taxation and restricting our corporations, making taxation more equal and uniform, which is one of the great questions we will be called upon to consider. As the gentleman from San Francisco, Col. Barnes, said a few days ago, all other questions sink into insignificance beside it. This is a great question which the people demand shall be fully considered, and when he said he was with us on that question, I know that when he gave us that assurance he meant every word he said, for he is not a man to go back on what he says. I know that he knows that the people of this State desire these things to be done, and I believe I understand the people as well as he does, and that they also desire this Grand Jury system to be modified to the extent, at least, that the Committee on Bill of Rights have recommended.

Now, sir, the question before this body is this: would it be a wise departure, would it be beneficial to the people of this State, to remodel the Grand Jury system, as provided in this Bill of Rights, so that the complaints which are now made may be done away with, so that now a complaint may be made as now made, before a Justice of the Peace, as was suggested by other gentlemen, giving a mode of procedure for the examination of criminals. With this new system of bringing criminals to trial, there will be a prompt administration of justice; the guilty will be punished, as they now are, and a vast saving will be made to the State. When gentlemen speak of economy, I say this is a move in the right direction. I say that a vast expenditure made in the other case all over the State, will be saved, and furthermore, that the power that one or two men have now, and often used corruptly, will be abolished.

The gentleman from San Bernardino, Mr. Waters, has stated that it would be placing a dangerous power in the hands of one man; that he might allow his spite and spleen to find vent upon the defendant. Well, I say if there is any case where spite and spleen on the defendant can and has been used, it is under the present jury system, the star chamber proceedings, as it has very properly been termed, where a man is brought before them and charged with a certain offense, at least without the privilege of being heard, though the law says he may introduce witnesses before the Grand Jury if he so desires. But how seldom do they ever do that, and when they do there is no chance for any defense. He may be allowed to be heard, but how seldom do they allow even the defendant himself in the star chamber which serves to smirch and blacken the character of an individual. It is corrupt in its very nature, and to that extent is the product of ancient barbarism.

I say, sir, there is every reason why the Grand Jury system should be modified as recommended in the report of the committee. That it is necessary; that the public interests will be better subserved by it; that if a man is guilty I believe he would be punished under this system, and if he was innocent he would not be held by the District Attorney and Justice of the Peace, provided you elect men who are governed by a sense of duty, and it is presumed that in all cases the people will elect men who are capable and honest. True, there have been exceptions, and they are likely to arise again, but this very matter incorporated into the Constitution will cause the people to be more watchful, and men are presumed to be honest and conscientious in the discharge of their duties. It may be the case—it may possibly be in some instances—that the District Attorney will have used the power placed in his hands improperly. There may be exceptional cases, but I hold that where the abuse may arise in case this becomes a law, and this is inserted in the Constitution, that it will not be as great as it now is, and will continue to exist so long as the present Constitution of the State stands. I believe, sir, that, as was suggested, when the responsibility is left with one or two individuals, in the case of the Justice of the Peace, or District Attorney, or the Judges of the Superior Courts, which we will probably have, as recommended by the Judiciary Committee—that when this is done, that each one will recognize the power with which he is vested, and that each will strive to do his duty honestly and fearlessly. As to any abuse of power, I do not think it will be as likely to arise as under the present system. And believing that this is a necessity; that this change is needed; that it would promote the public interest; that criminals would be more likely to be convicted than now; that the ends of justice would be better subserved, I therefore give it my support, and I trust that in the spirit that the trial jury system was acted upon yesterday—that the same spirit will govern this body in incorporating this matter into the Constitution. This will not be a work of barbarism, it will be in accordance with the spirit of the age, this progressive age. It is what the people demand at this time, and there is no danger, as the gentleman from San Bernardino, Mr. Waters, seemed to intimate, that the Constitution would be swamped, or that it would be placed in jeopardy. I can safely say, that if these two provisions are incorporated into the Constitution, the people will gladly indorse them. I believe, sir, that the sense of this Convention is that this provision shall be incorporated into the Constitution. And I believe that this will be better for the interests of the people; the ends of justice will be better subserved if we adopt this proposed system.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from San Bernardino, Mr. Waters.

SPEECH OF MR. LAINE.

MR. LAINE. Mr. Chairman: There has been a great deal of discussion upon this question, but it is a question of no ordinary importance. The question before this Convention is this: Shall we stand by the strongest and oldest institutions of our country? It involves, so to speak, a change of the government, and before we act upon a proposition of this sort, we should be very sure that we are right. We should be governed by sober judgment and by solid reason. I know that men are often carried away by things of this sort. Now, I have not been able to agree with the Judiciary Committee, or with a majority of them, because this discussion must have developed the fact to this body that the Judiciary Committee were divided on the proposition. Of course, a majority of the committee were in favor of the proposition as reported back to the Convention. There were gentlemen on that committee, however, who did not agree in that report. It was not thought necessary to submit to the Convention a minority report, because, upon a question of this magnitude, of this importance, we all very well knew there would be discussion, and in that discussion the views of the various members of the committee would be brought out and the matter fully considered by the Convention.

Now, sir, I do not agree with any of the propositions now pending before this body. I am in favor of retaining the Grand Jury in all its

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strength and power. I am not in favor of impairing it in any way, or entering upon any experiments of this sort. I am desirous of standing by the letter and spirit of the old Constitution.

Now, Mr. Chairman, we should proceed with great circumspection and caution before we undertake to pull down the institutions of our ancestors. I shall attempt no eulogium upon the Grand Jury system; it needs none at my hands. Its great antiquity alone is a sufficient eulogium in its favor. We can trace it back, Mr. President, into the very remotest recesses of civilized government. It goes way back to the Anglo-Saxon period. It was instituted among a people that loved freedom then, and have loved freedom ever since. It is more than a thousand years old. It has been approved by the wise and liberty-loving people of antiquity. It has been approved by the wise and liberty-loving of our own time; and it remains for this Convention, its members, or some of them, to speak of it as a humbug, as something that ought to be swept away in a moment without a particle of consideration. Now, I feel tolerably safe to rest upon experience, even in periods of revolution. I feel very well satisfied to rest upon the experience of men of more modern times, and there must be some argument addressed to my reason that will convince my understanding that this is a bad institution before I propose to part company with it.

Now, this institution has survived conquests, survived revolutions, and commotions. It has survived the crumbling of thrones and the overthrow of empires, and has stood as a time-honored institution, respected by the liberty-loving of our own time and of times past; and it has been the shield of the weak as against the strong; the history of the world is full of it. Why, one of my young friends upon the floor of this Convention would make you believe that this has been the subservient tool of power and authority—of crowns, and monarchies, and realms. Why, you find standing out in bold relief all along the line of history, that it has stood against power. Why? Because it is the power of human yeomanry, not alone of individuals, but the yeomanry of the land—not political cliques, or political conventions, but it has been the power of the people, the protection of the people. And I am sorry to see upon the floor of this Convention those who claim to be non-partisan—elected here upon that theory—attacking and attempting to pull down the only non-partisan institution in all this broad land. Your Courts, your Judges, your officers, your District Attorneys, are brought into being and kept in power by party politics; and it is the nature of men in office to keep in power the party that placed them there. But the Grand Jury comes from the great body of yeomen of the land, and has no connection with any political faction or clique. It has been argued that under the present system the District Attorney has too much power, and may often prostitute his office for the purpose of smirching the characters of men. Why, sirs, if a District Attorney, held in check by twelve good, honest citizens, could override your rights, what may he not do when he has the same power, unhampered by a Grand Jury. I have in my mind now an instance of a very distinguished citizen of our county, who was District Attorney, indicted by the Grand Jury.

Now, are the yeomanry of America as strong against oppression as the yeomanry of England, when they rose in opposition to the Crown. I believe the American people will stand up as the English yeomanry stood. We are made of the same solid oak timber, and we have had the same experiences in the conflict for liberty. Hence, I say, that these slanders on the system are wrong and improper. We should weigh well these matters before we attempt to overthrow the system—a system which has been tried in all civilized countries.

Now, it is urged that Grand Jurors come short in their duty. Pray tell me what human institution does not? Why, you can load your Judges with reproaches. You have loaded your Legislatures with reproaches often and often upon this floor, since the convening of this Convention. You can bring to bear upon every human institution reproaches. These institutions are all the creatures of fallible minds—they are all human. But we must look at the principles and the purposes and operations of it. The Grand Jury is of the people; it is a part of the people; it springs direct and fresh from the people. When you tell me that Grand Juries are corrupt, unworthy, and subserve the demands of power, then you tell me that we have lost our liberties; then you tell me that monarchies are stronger than a republican form of government.

Then it is said that their inquiries are secret—that it is a secret tribunal. True, but you must remember that it is a tribunal for the purpose of inquiry—it is not a tribunal of punishment. Why have we so long stood to the secret ballot? Because it prevents oppression. It is the defense of the weak against the strong. The humblest citizen may exercise his will, without let or hindrance on the part of any human being. I tell you I would not like to be District Attorney in a criminal community where the one man has to stand up alone against crime and wickedness, though he might be clad in an armor of iron, still they would reach him and put him out of the way. They say here is the man who stands in our way, let us remove him from office. They would join in defeating him, either in one way or the other. Nominations would be made so that no honest man would receive the nomination. But when this Grand Jury—when you call to-morrow twelve honest men from the community, and twelve other men next week, the criminals cannot make any combination against him, because it is the will of the people expressed through their Grand Jury, and the District Attorney cannot back down. The analogy is this: suppose the District Attorney to be a man of the other stripe, how can you ever bring criminals to punishment? Only by riot, only by clamor and public indignation. That is the only way you can reach it to correct it.

It is said that fraud and corruption may creep up the back stairs into the Grand Jury room. If it can creep in among twelve honest citizens, selected from the community, how much more easily can it get into the office of one man when all that power is placed in his hands. The Grand Jury stands on a plane above political combination. It is culled from the best of all creeds, without regard to party. Right here let me call your attention to this fact: take any county in this State and you will find one or the other of the political parties in power. Then you will ask the physician to heal himself. The same one that holds the office will be the one to make complaint against brothers and political friends. Will they do it? No. But you call a Grand Jury from the body of the citizens for this especial purpose, without regard to political creeds, and who doubts but that they will perform the duty fearlessly and without favor. It is the only body which comes direct and fresh from the people.

Again, it regulates public affairs, and makes examinations, they say. It may be true that sometimes the affairs of public officers are investigated and inquired into, but they are not apt to do it unless there is good reason for it. It is true that a skillful officer may make a good showing, and so impose upon them, and they may flatter and praise him, but they will never flatter when they find anything wrong, because they have no reason to do so; they are not dependent upon him or his party for the office and high trust which they hold.

Another thing; it is a grand institution for the education of the people. Some of my young friends who have just been admitted to the bar, talk to these old gray-headed farmers about challenges. Why, sirs, most of them have served on the Grand Jury, and by that means have become familar with the administration of criminal justice. They have become familar with the institutions of their country by serving on the Grand Jury, and it is a grand school for the education of the men of this commonwealth. Twelve men serving to-day come in and examine the criminal statutes, and having the District Attorney explaining and turning them to the places, and you will find the twelve old farmers reading it and studying it; and the next time twelve other men are chosen, and thus the body of the people are made practically acquainted with the administration of the laws.

Again, it is said here that Grand Juries are costly things; that they cost the people a large sum of money. Talk to me not of the cost of liberty, sir. It is valuable above pearls, and all the diamonds of Golconda would not buy it of the people. They know its value. There is nothing worth having that does not cost money. It must cost money in the very nature of things. One of my opponents drew a fearful picture of a man stealing a horse, and forty men standing and looking at him, powerless to prevent him. Why, it occurred to me they might have shot the fellow. That is one way. Judge Lynch is a cheap dispenser of justice; take the man and execute him without calling on the Sheriff to arrest him or the Court to try him. That argument falls with its own weight. Of course it costs something for every institution we have. This is a body which moves in no set groove. You take any other office, and it moves on from year to year in the same groove; but the Grand Jury comes fresh from the people, and moves in no set grooves. It changes in accordance with the feelings and sentiments of the people. Their independence is a great feature in their behalf. They are independent of parties, independent of creeds, independent of all those influences which surround public station; it comes from the great body of the people, and they don't move in any fixed groove.

I love the institution that comes to one recommended by the experience of the world, of the civilized world; and I am in no hurry to part with an institution that has been the safeguard of freemen. But we are told that in Michigan and some other State they have done without it for twenty years. On the other hand, we have seen it in existence for a thousand years, for one thousand five hundred years; and the great State of Michigan has moved along smoothly and nicely without the Grand Jury, and the people are satisfied. This seems to me a very strange argument, that the twenty years' experience of the State of Michigan is to be set up against the experience of the civilized world for a thousand years and more.

MR. BEERSTECHER. And Wisconsin, Illinois, and Indiana.

MR. LAINE. You are mistaken, sir; you are going off half cocked. Ohio has attempted to do it. I don't know about Wisconsin. But if it is such a grand institution, it should have spread all over the United States by this time.

They say here that a man is brought before a committing magistrate and examined. Then what? Send him to the District Attorney, as he examines him; and he says in his wisdom, this man should not be prosecuted, therefore I shall not do it. If he makes that ruling, go to the Judge, to the fountain of justice. He reads the document, and whatever may be his decision, he stands there a prejudiced Judge. Suppose he says this man should not be tried, but the community demands that he should be. Or, suppose he has taken the other view, that the man should be prosecuted; he will not come to that conclusion without having some emotion of his own, because men are not made of steel. He will, then, sit upon the bench, having prejudged the man's guilt. I say such a system is wholly unworthy of a civilized people; wholly unworthy.

Again, our fathers brought this institution across the Atlantic more than two hundred years ago. They established it along the eastern seaboard; they carried it with them into the wilderness, into the pathless forests, and across the plains and deserts until it reached the Pacific, until it reached the western sea-board, and here none of our fathers ever complained of it because it cost money. Everything costs money, every department of our government costs money. The people to-day are not complaining because the Grand Jury system costs money. It puts me in mind of a hymn that religious people sing:

"Shall we be carried to the skies
On flowery beds of ease?"

So I say to this degenerate race, do they expect to live in peace, and happiness, and security without cost. Our ancestors have waded through seas of blood to maintain these institutions, and I am not in favor of marring or destroying any of these grand old institutions.

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Now, Mr. President, I have said as much as I intended to. I simply desired to place myself on record as solemnly protesting against the assault on the grand old system in any of its features, and I now say to this Convention, proceed with your work and let skillful executioners do it quickly, and do it effectually. Strike your daggers to the very heart of the system, and let it fall and die as an institution should die; but let us not dismember it like barbarians. Execute it quickly, but let us give it an honorable death; let it not die by inches and piecemeal. And after you have done this, go home to your people and tell them what you have done; that you have put out one of the brightest lights that ever burned upon the altar of freedom; that you have overthrown and destroyed all there was in the temple that was conservative; and if they do not turn on you with hissing and cursing, and tell you that you are tinkers and not statesmen, I am much mistaken.

REMARKS OF MR. O'DONNELL.

MR. O'DONNELL. Mr. Chairman: I would not undertake to say anything on this question, only I have been referred to, and I will occupy the attention of the Convention for a few moments. I intend to vote for that section:

"Offenses heretofore required to be prosecuted by indictment shall be prosecuted by indictment or information, as may be prescribed by law, but a Grand Jury shall be drawn and summoned at least once a year in each county."

And I shall give my reasons why. My friend from Santa Clara, Mr. Laine, advises to be sure we are right before we proceed. I am sure that I am right when I vote in favor of this section abolishing Grand Juries, and intend to go ahead. I will tell you why. A few months ago we were arrested in San Francisco for riot. We were tried before Judge Ferral in the City Criminal Court. That Judge was a jurist. The case was dismissed by a jury of twelve men. After that case was dismissed the Prosecuting Attorney came to the City of Sacramento; he went into the Senate chamber, and from there to the Assembly, and then to the Governor of the State, and he got a clause in the law to indict us. In the meantime the Grand Jury met. The Prosecuting Attorney had certain men selected for the purpose. [Laughter.] The head of that jury was General Coffee. I can't say whether he was a General in the horse marines—he was the General of the "Pickhandle Brigade" at that time. [Laughter.] The Grand Jury sat for two days, and indicted us for riot. I say the Grand Jury violated their oaths, because, when these indictments were brought before the Court the District Attorney said he could not support the indictments, and the cases were dismissed. For that reason the Grand Jury in that case had been selected as two thirds of the Grand Juries at that time were—principally from this "Pickhandle Brigade," and they even selected gentlemen from that brigade for the express purpose of indicting us for rioting, and I say the Grand Jurors, or most of them, violated their oaths when they sat there for that express purpose.

Grand Juries, as I understand them, will not hear testimony except on the side of the prosecution. They don't allow the defendant to bring counsel in, or to be represented at all. It is all one-sided. Therefore, I think they are an outrage upon human liberty. I, for one, shall vote against retaining this Grand Jury system, and I hope every member on this floor will do the same. I am satisfied that on this occasion, we have got the greater part of the lawyers on our side. I generally feel safe in taking the opposite side when the lawyers are in favor of a proposition [laughter], but on this occasion I shall vote for the section, and I hope every member of the Convention will do the same. I am tired of this Grand Jury system. It is a fraud. I know what I am talking about when I say it is a fraud. I thank you kindly for your attention, gentlemen.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: I think it may be regarded as somewhat complimentary to the report of the Judiciary Committee that those who have argued against it have not thought proper to argue upon the question as it is really presented in their report. Gentlemen have spoken of the question as though necessarily the action of the Convention in adopting this section would be the utter abolition of the Grand Jury system. That section proposes nothing of the kind. Upon the contrary, I personally have a sincere objection to the section because it does not go far enough and permit the abolition entirely of the Grand Jury system.

Whether this system be good or whether it be bad, it is a question which the people of the State, through their representatives in Senate and Assembly, have as much right to decide as you have here. Why, the gentleman talks about assaults upon the liberties of the people, when the very object of the opposition here is to prevent the people from exercising the liberty of their own judgment. Why should we put any provision in the Constitution upon this question? Is it not a safe question to submit to the Legislature? If there is any error creeps in, the Legislature may correct it as soon as discovered. Why, the proposition that the gentleman talks about, of invading the liberties of the people, and yet they themselves seek to retain in the Constitution a clause that, however obnoxious it may be to the people, they are tied up and powerless to rid themselves of it. Certainly this is a debatable question. Certainly, well informed men can doubt the propriety of the Grand Jury system, and I shall forever oppose the placing of any prohibition in this Constitution upon which reasonable men can have any doubt.

Why, it is said that we have had this institution for years, and it stands as the bulwark of our liberties. Well, sir, so far as the State of California is concerned, it has stood as a part of the law perhaps because we have never given the people any opportunity of expressing their judgment upon this subject in the Legislature of the State. Let it be vested where it belongs, and let us give the people a chance to decide the question.

I don't know that it is necessary that we should say here to-day in Constitutional Convention that the Grand Jury system is more of good or more of evil; but I think at least the question is a debatable one that we can leave to the Legislature to discuss, for them to have or not to have a Grand Jury, and let them prescribe, if they want a Grand Jury at all, what cases, and in what instances, cases should be considered by the Grand Jury.

We have heard to-day a great deal of argument in regard to the antiquity of this institution. It was the argument of the past; the same argument that compelled Galileo in regard to the revolution of the earth; the same argument which prevented the people for years from denying the divine right of kings; the same argument that has stood in the pathway of progress and reform from the very time that reforms began. We have been making improvements for a hundred years, and we shall continue to improve so long as the human mind is capable of advancement; and if the Grand Jury system has nothing in its favor save the fact that it always was; if it has nothing that will influence my judgment or compel the people of California to retain it, I shall not vote to make them retain it if they don't wish to.

Why, sir, if this constitutional provision which has been reported by the Judiciary Committee be adopted, the Grand Jury system will stand where it stands to-day. There will not be a single case that goes to the Grand Jury now that will not go to the Grand Jury then, unless the representatives in the Legislature choose to make an amendment that will change the present Grand Jury system. Now, haven't the people a right to change it if they want to? Why do you want to take away their rights in that respect? Why, in his peroration, the gentleman from Santa Clara, Mr. Laine, said: "Go home to your people and tell them that you have abolished the Grand Jury." For one, I propose to go home to the people and say to them, "I have given you the opportunity of deciding for yourselves whether or not you will retain this Grand Jury system, either in whole or in part. I have refused to tie your hands for another twenty-five years so that you cannot do it if you want to." It seems to me that no man should be ashamed to go home to his constituents upon such a record as that.

Another of the arguments in favor of this system is that it worked well at one time in England. Well, we are not living under that kind of a government. The existing power of conquest was intrenched there behind the divine right of kings, as this subject seems to be intrenched here. That condition of affairs has passed away, and there is nothing in the condition of this country, present or prospective, that could make the retaining of the Grand Jury necessary.

It is said, as another argument, that if the Grand Jury system were abolished, men, upon being arrested, would be at once incarcerated in prison. Not at all. Why, sir, the whole effect of a Grand Jury—the whole object of retaining the Grand Jury—is to save men from standing up before that other divine institution which we were considering yesterday, and saying whether their guilt or innocence would be established before a jury. Is it so serious a thing to be put on trial before a petit jury, which has been so highly eulogized on this floor as the very perfection of human justice and human wisdom? Does not the present system of affairs do the same thing? Why, sir, gentlemen talk of depriving men of their liberty because the Grand Jury is to be abolished. Does any one doubt that there are thousands of men to-day in the jails of California, confined and restrained of their liberty merely for the purpose of awaiting the action of the Grand Jury that is to come. Why, sir, this Grand Jury system might result in something like this: A man is arrested for an offense and is brought before a committing magistrate. The magistrate examines the charges, and if he deems the case a proper one, he determines that he shall be confined to await the meeting of the Grand Jury. If it was not for the Grand Jury system the complaint might at once be made out, and the man, if innocent, might go upon trial, prove his innocence, and regain his liberty at once. But by this liberty loving-institution, if he be poor and unable to give bail, he must go to jail, there to remain perhaps for months to await the meeting of the Grand Jury.

But I will return again to the question of age, and to the attack upon the liberties of the people, and the dangers we shall encounter if we allow the people to decide this matter for themselves. Why, sir, the Constitution of New Hampshire was adopted in seventeen hundred and ninety-two, one of the oldest Constitutions in the United States. That Constitution contained no provision in regard to the Grand Jury. But the simple provision was this:

"No subject shall be held to answer for any crime or offense until the same is fully and plainly, substantially and formally, described to him," etc.

And that is enough to enable a man to answer to a charge. The Constitution of New Hampshire has been in existence for almost ninety years. It has been but twice amended, once in eighteen hundred and fifty-two and once in eighteen hundred and seventy-seven. No amendment has ever been made to this section; and, sir, if this liberty-destroying constitutional provision has stood in that liberty-loving land, would they not in ninety years have discovered it and amended it?

The present Constitution of Connecticut was adopted in eighteen hundred and eighteen. It has this provision:

"And no person shall be holden to answer for any crime, the punishment of which may be death or imprisonment for life, unless on a presentment or an indictment of a Grand Jury," etc.

The matter was submitted as a separate section to the people of Wisconsin, in eighteen hundred and seventy, and was adopted by a vote, if I remember correctly, of thirteen to one. In Indiana the Legislature was allowed the privilege of either retaining or abolishing the Grand Jury. By the Constitution of Illinois, in eighteen hundred and seventy, they were allowed the same privilege. The Constitution of Louisiana, of eighteen hundred and sixty-eight, provided for indictment or information. In the Constitution of Nebraska, of eighteen hundred and seventy-five, the Legislature was empowered to change or abolish the Grand Jury

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system. By the Constitution of Georgia, of eighteen hundred and seventy-seven, the whole matter was left where it properly belongs—to the discretion of the Legislature. We can safely place this matter there. That it would curtail expenses, there can be no doubt. In the first place, there is the expense of the Grand Jury itself; in the next place, there is the expense of a large number of witnesses, who must be called from different parts of the country; in the next place, retaining thousands of persons in the jails of the State, awaiting the convening of the Grand Jury to act upon their cases.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I am perfectly well aware that the Convention is weary of this discussion, which has been somewhat protracted; and I am aware also that I could not say anything that will instruct the Convention in regard to this question if I should talk an hour. It is the proposition of the Judiciary Committee that this whole matter be delegated to the Legislature, after providing that at least one Grand Jury shall be drawn per annum. It leaves the power of prosecution by indictment or presentment—information it is called here—to the discretion of the Legislature. They can restore it as a whole and leave out the word "information," or they can follow out the plan indicated here, and prosecute by both indictment and information. They can direct the calling of as many Grand Juries as they see proper. The only limitation on the action of the Legislature is that at least one Grand Jury must be drawn once in each year, and the rest is all left to the Legislature. The gentleman from Santa Clara refers to the antiquity of the Grand Jury system. I acknowledge its antiquity, but I would remind the gentleman that this is a world of progress, and if its antiquity is its only merit it had better give way for something to correspond with the changed condition of society. It is said again that the Grand Jury is drawn from the people, from the yeomen of the land, and represents the intelligence and honesty of the community. They are drawn by lot out of a box. Sometimes a good man is drawn, and sometimes a bad man. That is the way Grand Juries are selected, and there is no such thing as appealing to the common sense of the community. They are selected by mere chance. If the people themselves could go to work and select a Grand Jury there might be some sense in saying that they came from the people. But they come by chance out of the body of men who pay taxes. So there is no such thing as appealing to the common sense of the people of the State.

I have a cousin in Michigan, who has lived there for thirty years. He is a Judge there, and I know from him that this new system works well there. He approves of it in the highest degree. Now, I have the greatest respect for the Mayflower men—I didn't come over with them myself—but still I have an admiration for their enterprise, but I do not necessarily indorse all the laws they brought with them; at least, I am not ready to admit that they are good laws for this age of progress. I remember the first thing they did was to enact the laws of God, and nowhere in those laws have I seen anything about Grand Juries. I say that the Grand Jury system has been weighed and found wanting. It no longer subserves the purposes of modern administration of justice. It is a secret tribunal, and almost any atrocity can be perpetrated in the Grand Jury. I would rather see the investigations of crime made openly and aboveboard. There is no more reason for secrecy in the primary investigations of crime than there is on the first trial in the Courts. Let the accused be brought before a magistrate; let him produce his witnesses there and then in his defense, and if he is not guilty of the offense charged, let him go free at once. Then there can be no possibility of fraud. If he is guilty, let him be held for trial. I trust this Convention will leave this matter where it belongs, where the people themselves, through their legislators, may have control of it.

MR. HUESTIS. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Offenses heretofore requiring to be prosecuted on indictment, shall be prosecuted on information or complaint, in such manner as shall be prescribed by law."

Lost.

MR. BARTON. Mr. Chairman: I offer the following amendment to section eight, in the nature of a substitute.

THE SECRETARY read:

"In all cases where offenses have been committed against the peace and dignity of this State, the party or parties so accused may be examined by a committing magistrate, and if the evidence adduced at such examination is, in his opinion, sufficient to warrant a conviction, he shall bind the party or parties over to be tried at the next term of the District Court. And a Grand Jury shall be called once a year, in each county of this State, whose duty it shall be to examine into all offenses which may have been committed, and for which the parties accused have not been placed on trial; and it shall also be the duty of the Grand Jury to inquire into the manner in which the various county officers have discharged the duties of their respective offices, and, when found derelict, to so report the same, when such officers shall be placed on trial in such District Court, and, if found guilty as charged, shall be punished under and by the provisions of law; and in no case shall the deliberations or sessions of the Grand Jury be secret."

THE CHAIRMAN. The question is on the amendment.

Lost.

MR. STEELE. Mr. Chairman: I offer an amendment to section eight.

THE SECRETARY read:

"Add, after the word 'county,' 'Provided, that the Grand Jury system may be abolished by a two-thirds vote of both houses of the Legislature.'"

Lost.

THE CHAIRMAN. The question is on the adoption of the section as amended.

Adopted.

MR. VAN DYKE. I move that the committee now rise, report progress, and ask leave to sit again. We cannot get through with this to-night any way.

Lost.

THE CHAIRMAN. The Secretary will read section nine.

THE SECRETARY read:

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

MR. AYERS. Mr. Chairman: I have an amendment to section nine.

THE SECRETARY read:

"Add to the section the following: 'Trial for libel against publishers of newspapers and periodicals shall be held in the county where the newspapers and periodicals are published, subject only to change of venue, as in other prosecutions.'"

Lost.

MR. MCFARLAND. Mr. Chairman: I offer the following amendment.

THE SECRETARY read:

"Strike out the words, 'and the jury shall have the right to determine the law and the fact.'"

THE CHAIRMAN. The question is on that amendment.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: The general law, or rule of American Constitutions, is that in all criminal prosecutions, as well as in civil cases, the Court shall declare the law, and the jury shall find the facts. Now, upon what grounds do they seek to make this change? Why should any special privileges or immunities be granted to any one class of crime? If you steal my property, you are tried in the criminal Courts of the land under the law, and the Court instructs the jury as to the law, leaving them to judge of the facts. But if you attack my reputation, through which alone I can acquire property, then you are tried without any law. Now, sir, is there any reason in it? Is there any justice in it? Is that standing equally before the law?

This amendment, sir, proposes to place every criminal on an equal footing before the law, and to allow no special immunities to any one class of criminals. That clause was inserted in the law at a time when there may have been some necessity for it, or some reason. It was at a time when the freedom of the press was strangled, when the Judges were the creatures of the government, and the Courts prevented even the ordinary just criticisms upon the acts of public officers. But that time has passed. That condition of things does not exist in this country at the present day. There is no reason for it now. Is there any danger to the freedom of the press in this country? Why, sir, the men who are members of that profession have not only the ordinary freedom which the balance of us have in the enjoyment of their property and in the pursuit of happiness, but they have freedom to attack the lives and characters of others, and they do it every day. They not only, as I understand it, have the freedom guaranteed by law—regulated by law—but even are allowed to indulge in licentiousness, and then when they come to trial they do not want to stand upon the common level of other criminals. I know there are many men connected with the press who have a due appreciation of the responsibilities of the position, and of the rights of others. But to talk about there being any danger to the freedom of the press is absurd. Why, sir, it is freedom in a wider, broader sense than ever used before by any people under God's heavens. As a general rule, it has been indulged to the utmost, and characters have been boldly attacked, both public and private. It has assaulted men, from the President of the United States, and the gentlemen who are selected as candidates for that position by the great parties who represent the people, down through every class, every walk in life, public or private, political or civil, down, sir, to the lone, defenseless, unprotected woman—over all, sir, they have thrown broadspread the undigested, sour contents of their own corrupt stomachs, without any compunctions; and yet, when brought to trial, you propose that the Judge shall not declare the law to the jury as it is done with every other class of crime, but you propose to allow them to be tried without any law, taking the chances on the jury, which, even if composed of intelligent men, do not understand the law—taking the chances, I say, of getting a jury who may be convinced by ingenious arguments that black is white, and what is law is not law.

I am perfectly willing to have the gentlemen who are connected with the press indulge in criticism on the acts of men, public and private. But when they assault the characters of men and women without warrant, and when they are brought to trial for the offense, I want them to be tried in the ordinary way that other criminals are tried. And why not? What reason can be produced for placing them on a different plane from other criminals? If you or I commit a crime, we must be tried in the ordinary way. Why should they not be tried in the ordinary way; according to the laws of the country, the laws by which other men are tried—other criminals are tried? Is it because character is worthless? If a thief robs you of your property, he has not done you an irreparable injury, for you can acquire more; but when he destroys your character, he destroys that by which you acquire property. I am not speaking of character in the sentimental sense. If he should assail your character, by which you earn your living, then he is in fact destroying your property. In that sense character is the dearest thing we have—the most valuable. Now, sir, the man who steals your property must be tried by the ordinary laws of the country, but the man who steals your character must stand above the law, spit in the face of the law, because he has a peculiar profession. Now, is that law?

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Is that justice? Is it right or fair? I would like to know what reason, at this day and generation, there is for maintaining such a law, allowing immunities or privileges to any person or any class of persons. Why should they have them? Nobody objects to fair and just criticism. But, sir, a newspaper writer has no more rights than you or I, and he should be tried before the law exactly as you or I would be tried; they have no right to stand above the law by reason of belonging to any particular profession.

Now, sir, it seems to me that this should be stricken out of the Constitution. And that character of men should stand on the same footing as other men. And if you are going to give the jury the right to determine the law in this case, you should make it apply to all cases. Why not? I ask any gentleman of the press why he should be allowed any special privileges. There is no reason in it, there is no necessity for it, there is no justice in the demand. There was a time, perhaps, when something of the kind may have been necessary, but certainly there is no necessity for it at this day.

THE COMMITTEE RISES.

MR. AYERS. Mr. Chairman: The gentleman has seen fit——

MR. VAN DYKE. It occurs to me that we cannot get through with this discussion to-night.

MR. AYERS. I shall not speak more than a minute or two.

MR. VAN DYKE. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

ADJOURNMENT.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Preamble and Bill of Rights, have made progress therein, and ask leave to sit again.

MR. VAN DYKE. I move that the Convention do now adjourn.

Carried.

And at four o'clock and forty-five minutes P. M. the Convention stood adjourned.

FORTY-FIRST DAY.

SACRAMENTO, Thursday, November 7th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Harrison,	Porter,
Ayers,	Harvey,	Prouty,
Barbour,	Heiskell,	Pulliam,
Barnes,	Herold,	Reed,
Barry,	Herrington,	Reynolds,
Barton,	Hilborn,	Rhodes,
Beerstecher,	Hitchcock,	Ringgold,
Belcher,	Holmes,	Rolfe,
Bell,	Howard,	Schell,
Blackmer,	Huestis,	Schomp,
Boggs,	Hughey,	Shafter,
Boucher,	Hunter,	Shoemaker,
Brown,	Inman,	Shurtleff,
Burt,	Johnson,	Smith, of Santa Clara,
Caples,	Jones,	Smith, of 4th District,
Casserly,	Joyce,	Smith, of San Francisco,
Chapman,	Kelley,	Soule,
Charles,	Keyes,	Stedman,
Condon,	Kleine,	Steele,
Cowden,	Laine,	Stevenson,
Cross,	Lampson,	Strong,
Crouch,	Larkin,	Stuart,
Davis,	Larue,	Sweasey,
Dean,	Lavigne,	Swenson,
Dowling,	Lewis,	Swing,
Doyle,	Lindow,	Terry,
Dudley, of San Joaquin,	Mansfield,	Thompson,
Dudley, of Solano,	Martin, of Alameda,	Tinnin,
Dunlap,	Martin, of Santa Cruz,	Townsend,
Eagon,	McCallum,	Tully,
Edgerton,	McComas,	Turner,
Estee,	McConnell,	Tuttle,
Estey,	McCoy,	Vacquerel,
Evey,	McFarland,	Van Dyke,
Farrell,	McNutt,	Van Voorhies,
Fawcett,	Miller,	Walker, of Marin,
Filcher,	Mills,	Walker, of Tuolumne,
Finney,	Moffat,	Waters,
Freeman,	Moreland,	Webster,
Freud,	Morse,	Weller,
Garvey,	Murphy,	Wellin,
Glascock,	Nason,	West,
Gorman,	Nelson,	Wickes,
Grace,	Neunaber,	White,
Graves,	Noel,	Wilson, of Tehama,
Gregg,	O'Donnell,	Wilson, of 1st District,
Hager,	Ohleyer,	Winans,
Hale,	O'Sullivan,	Wyatt,
Hall,	Overton,	Mr. President.

ABSENT.

Berry,	Campbell,	Reddy.
Biggs,	Kenny,	

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. Campbell for two days, on account of sickness.

MR. HUESTIS. I move that the reading of the Journal be dispensed with.

Carried.

PETITION.

MR. STUART presented the following petition, signed by a large number of citizens of California, advocating female suffrage:

To the Constitutional Convention in Sacramento, California, assembled:

The undersigned, citizens of California, respectfully petition your honorable body to so amend the Constitution that no citizen of the State shall be disfranchised on account of sex.

MR. STUART. I move that it be referred to the Committee on Right of Suffrage.

Carried.

COMMUNICATION FROM THE SURVEYOR-GENERAL.

THE PRESIDENT. Gentlemen, I have here a communication from the Surveyor-General of the State, in response to a resolution of this Convention, which the Secretary will read.

THE SECRETARY read:

STATE OF CALIFORNIA, OFFICE OF SURVEYOR-GENERAL, SACRAMENTO, November 6th, 1878.

Hon. J. P. Hoge, President of the Constitutional Convention:

SIR: In obedience to Resolution No. 80, I have the honor to submit herewith, for the information of your honorable body, a statement showing as nearly as possible, from the information in my possession, the number of square miles in each county in the State.

WM. MINIS, Surveyor-General.

	Square Miles.		*Square Miles.*
Alameda	800	Plumas	2,736
Alpine	850	Sacramento	1,026
Amador	700	San Bernardino	23,472
Butte	1,458	San Benito	1,000
Calaveras	936	San Diego	15,156
Colusa	2,376	San Francisco	40
Contra Costa	756	San Joaquin	1,350
Del Norte	1,440	San Luis Obispo	3,160
El Dorado	1,872	San Mateo	432
Fresno	8,750	Santa Barbara	3,540
Humboldt	2,800	Santa Clara	1,332
Inyo	5,832	Santa Cruz	432
Kern	8,000	Shasta	4,500
Lake	975	Sierra	830
Lassen	4,932	Siskiyou	3,040
Los Angeles	6,000	Solano	800
Marin	570	Sonoma	1,400
Mariposa	1,440	Stanislaus	1,350
Mendocino	3,816	Sutter	576
Merced	1,975	Tehama	2,800
Modoc	7,280	Trinity	1,800
Mono	4,176	Tulare	5,500
Monterey	3,000	Tuolumne	1,944
Napa	828	Ventura	1,380
Nevada	1,026	Yolo	1,150
Placer	1,386	Yuba	600

MR. HEUSTIS. I move that it be laid on the table, and ordered printed.

THE PRESIDENT. There being no objection, it is so ordered.

COMMUNICATION FROM THE SECRETARY OF STATE.

THE PRESIDENT. Gentlemen: I have received a communication from the Secretary of State which the Secretary will read.

THE SECRETARY commenced to read.

MR. HEUSTIS. I move that the report be printed and the reading of the statement dispensed with.

THE SECRETARY read:

STATE OF CALIFORNIA, DEPARTMENT OF STATE, SACRAMENTO, November 6th, 1878.

Honorable J. P. Hoge, President Constitutional Convention:

SIR: I have the honor to present the accompanying report, being a detailed statement of the items of stationery furnished the members of the Convention, together with the prices of each item, from the commencement of the Convention, to and including the thirty-first day of October, eighteen hundred and seventy-eight, made in compliance with a resolution adopted by said Convention, November first, eighteen hundred and seventy-eight.

Very respectfully,

THOMAS BECK, Secretary of State.

MR. HILBORN. (Pending the reading) I do not see any necessity for printing it. It contains a large number of items which is of no use to this body.

(Cries of "read," "read.")

THE SECRETARY reads.

MR. McCOMAS. Mr. President: It seems to me unnecessary.

THE SECRETARY reads:

"A. R. Andrews, September twenty-eighth, one fourth ream of letter paper ——"

MR. McFARLAND: I would like to inquire if members are charged with volumes of the statutes got from the Secretary of State.

THE SECRETARY. They are charged with one copy of the Constitution.

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MR. MCFARLAND. I suppose the statutes will be returned.

THE PRESIDENT. The question is on the motion to print without reading.

Carried.

Following is the statement:

A detailed statement of the items of stationery, etc., furnished to the members of the Constitutional Convention, together with the price of each item, from the commencement of the Convention to and including the thirty-first of October eighteen hundred and seventy-eight, made in compliance with a resolution of said Convention, adopted November first, eighteen hundred and seventy-eight, and directed to the Secretary of State:

A. R. ANDREWS: One fourth ream letter paper, 77 cents; one fourth ream note paper, 38 cents; fifty envelopes Nos. 5 and 6, 10 cents; one inkstand with ink, 30 cents; one dozen steel pens, 5 cents; one fourth dozen penholders, 9 cents; one rubber and pencil eraser, 13 cents; one half dozen lead pencils, 23 cents; one Moore's hand-blotter, 42 cents; one pen rack, 25 cents $2 72

JAMES J. AYERS: Same as "Andrews," $2 72; one Sisson's magic binder, $1 33; one half ream legal cap paper, $2 10; one Mark Twain scrap book, $2 50; one mucilage stand with brush and mucilage, 50 cents 9 15

CLITUS BARBOUR: Same as "Andrews," $2 72; one fourth ream legal cap, $1 05; one pair scissors, 38 cents; one box McGill's paper fasteners, 20 cents; one steel knife eraser, $1 19; one box rubber bands one fourth inch, 55 cents; one box quill pens, 50 cents; one Sisson's magic binder, $1 33 ..... 7 92

WM. H. L. BARNES: Same as "Andrews," $2 72; one Sisson's magic binder, $1 33; one glass cup and sponge, 30 cents; one pair scissors, 38 cents; one Mark Twain scrap book, $2 50; one copy Constitution, $1 00; two quires engrossing paper, 23 cents; one waste basket, 85 cents 9 31

E. BARRY: Same as "Andrews," $2 72; one mucilage stand with brush and mucilage, 50 cents; one paper folder, 19 cents; two Sisson's magic binders, $2 66; one copy Constitution, $1 00 ..... 7 07

J. N. BARTON: Same as "Andrews," $2 72; one fourth ream legal cap, $1 05; one Sisson's magic binder, $1 33; one mucilage stand with brush and mucilage, 50 cents 5 60

C. J. BEERSTECHER: Same as "Andrews," $2 72; one fourth ream legal cap, $1 05; twenty-five No. 10 envelopes, 20 cents; fifty No. 6 envelopes, 10 cents; one rubber ruler sixteen inches, 62 cents; one tin paper cutter, 19 cents; one Mark Twain scrap book, $2 50; one pair No. 11 shears, $1 12; one waste basket, 85 cents; one mucilage stand, brush and mucilage, 50 cents; one knife eraser, 32 cents; one box quill pens, 50 cents; one box McGill's fasteners, 20 cents; one box engrossing pens, 50 cents; one box rubber bands one fourth inch, 55 cents; one bottle Carter's red ink, 30 cents; one roll red tape, 55 cents; one Sisson's magic binder, $1 33; one box quill pens, 50 cents; one box McGill's fasteners, 20 cents; one glass cup and sponge, 30 cents; one dozen Eagle rubber-head pencils, 62 cents; one board clip, 75 cents; six sheets blotitng paper (large), 36 cents; one fourth ream legal cap, $1 05; fifty No. 6 envelopes, 10 cents; twenty-five No. 9 envelopes, 20 cents; one copy Constitution, $1 00 ..... 19 18

ISAAC S. BELCHER: Same as "Andrews," $2 72; three quires legal cap, 63 cents; one magic binder, $1 33; one scrap book, $2 00: one glass cup and sponge, 30 cents; one pair banker's shears, $1 12 ..... 8 10

PETER BELL: Same as "Andrews," $2 72; one fourth ream legal cap, $1 05; one rubber ruler, sixteen inches, 62 cents; one box quill pens, 50 cents; one paper cutter, 19 cents; one Mark Twain scrap book, $2 50; one pair shears, $1 12; one steele eraser, 32 cents; one rubber, ink, and pencil eraser 13 cents; one bottle mucilage, 59 cents; one Sisson's magic binder, $1 33; one box McGill's fasteners, 20 cents; one copy Constitution $1 00 ..... 12 12

J. BERRY: Same as "Andrews," $2 72; one Sisson's magic binder, $1 33 ..... 4 05

MARION BIGGS: Same as "Andrews," $2 72; one fourth ream legal cap, $1 05; one magic binder, $1 33; one board letter clip, 75 cents; one copy Constitution, $1 00 ..... 6 85

ELI T. BLACKMER: Same as "Andrews," $2 72; one waste basket, 85 cents; one quarter ream legal cap, $1 05; one Sisson's magic binder, $1 33; one M. T. scrap book, $2 00; one glass, cup and sponge, 30 cents; one Sisson's magic binder, $1 33 ..... 9 58

H. C. BOGGS: Same as "Andrews," $2 72; two Sisson's magic binders, $2 66 ..... 5 38

Amount carried forward $107 03

Amount brought forward $107 03

JOSIAH BOUCHER: Same as "Andrews," $2 72; one M. T. scrap book, $2 50; twenty-five No. 10 envelopes, 20 cents; one waste basket, 85 cents; one quarter ream legal cap, $1 05; one Sisson's magic binder, $1 33; one paper weight, 20 cents; one pair shears, $1 12; one steel eraser, 32 cents: one box paper fasteners, 17 cents; one board clip, 75 cents; one Sisson's magic binder, $1 33; one copy Constitution, $1 00 ..... 13 54

J. C. BROWN: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; four magic binders, $5 32 ..... 9 09

S. B. BURT: Same as "Andrews," $2 72; one half ream legal cap, $2 10; one quarter ream letter paper, 77 cents; one large sheet blotting paper, 6 cents; one rubber rule, 50 cents 6 15

A. CAMPBELL, JR.: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; three penholders, 9 cents; one magic binder, $1 33 ..... 5 19

JAMES CAPLES: Same as "Andrews," $2 72; one quire legal cap, 21 cents; one half dozen penholders, 18 cents; two dozen steel pens, 20 cents 3 31

E. CASSERLY: Same as "Andrews," $2 72; one waste basket, 85 cents; one box golden pens, 75 cents; two magic binders, $2 66; one box quill pens, 50 cents; twenty-five No. 5 envelopes, 5 cents; fifty No. 6 envelopes, 10 cents; twenty-five No. 10 envelopes, 20 cents; one pair banker's shears, $1 12; one copy Constitution, $1 00 ..... 9 95

A. H. CHAPMAN: Same as "Andrews," $2 72; two magic binders, $2 66; one M. T. scrap book, $2 00; one glass, cup, and sponge, 30 cents; one mucilage stand, brush, and mucilage, 50 cents; one rubber eraser, 13 cents; one quarter ream legal cap, $1 05; one pair shears, 88 cents 10 24

J. M. CHARLES: Same as "Andrews," $2 72; two magic binders, $2 66 ..... 5 38

J. D. CONDON: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one bottle mucilage, 50 cents; one M. T. scrap book, $2 50; one magic binder, $1 33; one box paper fasteners, 20 cents; one magic binder, $1 33 ..... 9 63

D. H. COWDEN: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one paper cutter, 19 cents; one mucilage stand, brush, and mucilage, 50 cents; one magic binder, $1 33; one box rubber bands, 90 cents; one magic binder, $1 33 ..... 8 02

C. W. CROSS: Same as "Andrews," $2 72; two quires legal cap, 42 cents; one willow waste basket, 85 cents; one paper cutter, 19 cents; one box paper fasteners, 20 cents; one pair scissors, 38 cents; one Sisson's magic binder, $1 33; one paper weight, 17 cents; one half dozen cut blotters, 5 cents; one dozen Swan's pens, 10 cents; two quires legal cap, 42 cents; one mucilage stand, brush, and mucilage, 50 cents; one sponge and glass cup, 30 cents; one magic binder, $1 33; one copy Constitution, $1 00 ..... 9 96

ROBERT CROUCH: Same as "Andrews," $2 72; one quire legal cap paper, 21 cents; twenty-five No. 10 envelopes, 20 cents; one copy constitution, $1 00 ..... 4 13

H. DAVIS: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one magic binder, $1 33; fifty note envelopes, 10 cents 5 20

J. E. DEAN: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one paper cutter, 19 cents; one mucilage stand, brush, and mucilage, 50 cents: one M. T. scrap book, $2 00; one Sisson's magic binder, $1 33 ..... 7 79

P. T. DOWLING: Same as "Andrews," $2 72; one half ream legal cap, $2 10; one pair scissors, 38 cents; one box paper fasteners, 17 cents; one scrap book, $2 50; one mucilage stand, brush, and mucilage, 50 cents; twenty-five No. 9 envelopes, 20 cents; one box rubber bands, 55 cents; one bottle carmine ink, 30 cents; one Sisson's magic binder, $1 33; one glass cup, and sponge, 30 cents; one whisk broom, 34 cents; one memoranda book, 20 cents 11 54

LUKE DOYLE: Same as "Andrews," $2 72; one half ream legal cap, $2 10 ..... 4 82

J. M. DUDLEY: Same as "Andrews," $2 72; one waste basket, 85 cents; one quire legal cap, 21 cents; two Sisson's magic binders, $2 66; one copy Constitution, $1 00 ..... 7 44

W. L. DUDLEY: Same as "Andrews," $2 72; one waste basket, with D. S. Terry, 43 cents; one M. T. scrap book, $2 50: one ream legal cap, $4 20; two dozen engrossing pens, 20 cents; one mucilage stand, brush, and mucilage, 50 cents; one copy Constitution, $1 00 ..... 11 55

P. DUNLAP: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one mucilage stand, brush, ane mucilage, 50 cents; two Sisson s magic binders, $2 66 ..... 6 93

Amount carried forward $255 89

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Amount brought forward $255 89

J. A. Eagon: Same as "Andrews," $2 72; one pair shears, $1 12; one M. T. scrap book, $2 50; twenty-five No. 9 envelopes, 20 cents; one mucilage stand, brush, and mucilage, 50 cents; one quarter ream legal cap, $1 05; one hundred envelopes, 20 cents; two Sisson's magic binders, $2 66 ..... 10 95

H. Edgerton: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one paper weight, 17 cents; one mucilage stand, brush, and mucilage, 50 cents; one waste basket, 85 cents; one pair shears, $1 12; one paper cutter, 19 cents; two Sisson's magic binders, $2 66; one copy Constitution, $1 00 ..... 10 26

M. M. Estee: Same as "Andrews," except lead pencils, $2 49; one Shipman's letter file, five hundred leaves, $1 50; one pair large scissors, No. 10, $1 12; one M. T. scrap book, $2 50; one quarter ream legal cap, $1 05; one glass, cup, and sponge, 30 cents; one magic binder, $1 33; twenty-five letter envelopes, 10 cents; one magic binder, $1 33 ..... 11 72

T. H. Estey: Same as "Andrews," $2 72 ..... 2 72

Edward Evey: Same as "Andrews," $2 72; one magic binder, $1 33; one half ream legal cap, $2 10; one hundred envelopes, 20 cents; one M. T. scrap book, $2; one magic binder, $1 33; one half dozen lead pencils, 23 cents 9 91

S. J. Farrell: Same as "Andrews," $2 72; one half ream legal cap, $2 10; one pair shears, $1 12; one M. T. scrap book, $2 50; one mucilage stand, brush, and mucilage, 50 cents; one box paper fasteners, 20 cents; one rubber ruler, fourteen inch, 50 cents; one bottle carmine ink, 30 cents; one box quill pens, 50 cents; one box rubber bands, 55 cents; one glass cup, and sponge, 30 cents: one steel eraser, 32 cents; one magic binder, $1 33 ..... 12 94

E. Fawcett: Same as "Andrews," $2 72; one Moore's hand blotter, 42 cents; two magic binders, $2 66; twenty-five No. 10 envelopes, 20 cents; one quarter ream legal cap, $1 05 ..... 7 05

J. A. Filcher: Same as "Andrews," $2 72; one waste basket, 85 cents; one mucilage stand, brush, and mucilage, 50 cents; one M. T. scrap book, $2 50; one quarter ream legal cap, $1 05; one magic binder, $1 33; one paper weight, 20 cents; one box paper fasteners, 20 cents; one box one half inch rubber bands, 90 cents; one box one quarter inch rubber bands, 55 cents; one magic binder, $1 33; one pair banker's shears, $1 12; one bottle Arnold's fluid, 43 cents; one copy Constitution, $1 00 ..... 14 88

C. G. Finney: Same as "Andrews," $2 72; one pair shears, $1 12; one paper folder, 19 cents; one ivory paper cutter, 55 cents; one paper weight, 20 cents; one rubber ruler, 40 cents; one rubber eraser, 13 cents; one magic binder, $1 33; one glass cup and sponge, 30 cents; one paper weight, 20 cents; one scrap book, $2; one inkstand, 25 cents; two dozen engrossing pens, 20 cents; twenty-five large envelopes, 20 cents; fifty letter envelopes, 10 cents; one magic binder, $1 33; one rubber eraser, 13 cents; one box assorted elastics, 95 cents; one copy Constitution, $1 00 ..... 13 30

A. C. Freeman: Same as "Andrews," $2 72; quarter ream legal cap, $1 05; one magic binder, $1 33; one mucilage stand, brush, and mucilage, 50 cents 5 60

J. R. Freud: Same as "Andrews," $2 72; quarter ream legal cap, $1 05; one mucilage stand, brush, and mucilage, 50 cents; one M. T. scrap book, $2 50; one box quill pens, 50 cents; two magic binders, $2 66 ..... 9 93

J. B. Garvey: Same as "Andrews," $2 72; two magic binders, $2 66; one M. T. scrap book, $2 50; three penholders, 9 cents; one waste basket, one bottle mucilage and stand, and one copy Constitution, ordered by Garvey and Tuttle jointly, $1 18 ..... 9 15

Wm. P. Grace: Quarter ream letter paper, 77 cents; quarter ream note paper, 38 cents; fifty envelopes, Nos. 5 and 6, 10 cents; quarter ream legal cap, $1 05; twenty-five No. 9 envelopes, 20 cents; one rubber ruler, fourteen inches, 50 cents; one rubber ink and pencil eraser, 13 cents; one Moore's hand blotter, 42 cents; one mucilage stand, brush, and mucilage, 50 cents; one box quill pens, 50 cents; one M. T. scrap book, $2 00; one daily journal, 1878, $1 50; one pair shears, $1 12; one inkstand, 21 cents; one bottle black ink, 25 cents; one bottle carmine ink, 30 cents; one paper cutter, 19 cents; one steel knife eraser, $1 12; one box Swan pens, 40 cents; one quire yellow wrapping paper, 24 cents; one box McGill's fasteners, 17 cents; one dozen Dixon's lead pencils, 42 cents; one box rubber bands, 55 cents; one third dozen penholders, 12 cents; one half dozen cut blotters, 3 cents; one spool red tape, 55 cents; two magic binders, $2 66; one glass cup and sponge, 30 cents 16 68

Amount carried forward $390 98

Amount brought forward $390 98

B. B. Glasscock: Same as "Andrews," $2 72; quarter ream legal cap, $1 05; three magic binders, $3 99; one Moore's hand blotter, 42 cents 8 18

J. C. Gorman: Same as "Andrews," $2 72; one magic binder, $1 33; one pair scissors, 38 cents; one box paper fasteners, 20 cents; one M. T. scrap book, $2 00 ..... 6 63

W. J. Graves: Same as "Andrews," $2 72; two Sisson's magic binders, $2 66 ..... 5 38

V. A. Gregg: Same as "Andrews," $2 72; quarter ream legal cap, $1 05; quarter ream letter paper, 77 cents; one hundred envelopes, 20 cents; one steel knife eraser, $1 12; one dozen pens, 10 cents; three penholders, 9 cents; twenty-five No. 10 envelopes, 20 cents; one M. T. scrap book, $2 00; one mucilage stand, brush, and mucilage, 50 cents; one rubber ruler, 40 cents; one paper cutter, 19 cents; one glass cup and sponge, 30 cents; one pair shears, $1 12; one magic binder, $1 33; one box number four hundred and four pens, 42 cents; one box engrossing pens, 50 cents; one waste basket, 85 cents; one paper weight, 20 cents; one board clip, 75 cents 14 81

J. S. Hager: Same as "Andrews," $2 72; one magic binder, $1 33; one mucilage stand, brush, etc., 50 cents; one quire legal cap, 21 cents; one pair scissors, 38 cents; one magic binder, $1 33; two quires legal cap, 42 cents; one Moore's hand blotter, 42 cents 7 31

J. E. Hale: Same as "Andrews," $2 72; one dozen Faber's No. 2 pencils, 46 cents; one ream legal cap, $4 20; one inkstand, 20 cents; two mucilage stands, brushes and mucilage, $1 00; one dozen penholders, 36 cents; one box P. R. R. pens, 39 cents; one bottle ink, 25 cents; two boxes McGill's fasteners, 40 cents; one pair banker's shears, $1 12; fifty No. 10 envelopes, 40 cents; 50 No. 6 envelopes, 10 cents; one magic binder, $1 33; one M. T. scrap book, $2 00; two boxes rubber bands, one half and one fourth inch, $1 45; 1 magic binder, $1 33; one copy Constitution, $1 00 ..... 18 71

J. B. Hall: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one copy Constitution, $1 00 ..... 4 77

Thomas Harrison: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; half dozen penholders, 23 cents; one inkstand with pen rack, 75 cents; one box quill pens, 50 cents; one scrap book, $2 00; one mucilage stand, brush, and mucilage, 50 cents; one pair shears, $1 12; one steel eraser, 32 cents; one rubber ruler, 50 cents; one paper cutter, 19 cents; one magic binder, $1 33; one copy Constitution, $1 00 ..... 12 21

Joel A. Harvey: Same as "Andrews," $2 72; one M. T. scrap book, $2 00; one quarter ream legal cap, $1 05; twenty-five No. 10 envelopes, 20 cents; one pair scissors, (two magic binders drawn, but returned), 38 cents 6 35

T. D. Heiskell: Same as "Andrews," $2 72; one magic binder, $1 33; one half quire legal cap, 11 cents; one mucilage stand, brush, and mucilage, 50 cents 4 66

C. Herold: Same as "Andrews," 2 72

D. W. Herrington: Same as "Andrews," $2 72; two quires legal cap, 42 cents; one mucilage stand, brush, and mucilage, 50 cents; one magic binder, $1 33; one fourth ream legal cap, $1 05; one magic binder, $1 33 ..... 7 35

W. F. Hurstis: Same as "Andrews, $2 72: one M. T. scrap book, $2 50; one willow waste basket, 85 cents; one quarter ream legal cap, $1 05: one pair bankers' shears, $1 12; one Sissons' magic binder, $1 33; one glass, cup, and sponge, 30 cents 9 87

S. G. Hilborn: Same as "Andrews," $2 72; one quarter ream brief paper, 58 cents 3 30

J. R. W. Hitchcock: Same as "Andrews," $2 72; one M. T. scrap book, $2 00; one ream legal cap, $4 20; one pair shears, 80 cents; one mucilage stand, brush, and mucilage, 50 cents; one bottle carmine ink, 30 cents; one steel knife eraser, $1 12; one rubber ruler, fourteen inches, 50 cents; one box rubber bands, one fourth inch, 55 cents; one small sponge, 25 cents; one box paper fasteners, 17 cents; one Sissons' magic binder, $1 33; one copy Constitution, $1 00 ..... 15 44

J. P. Hoge: Same as "Andrews" 2 72

S. A. Holmes: Same as "Andrews, $2 72; one magic binder, $1 33; one quarter ream legal cap, $1 05; one magic binder, $1 33 ..... 6 43

V. E. Howard: Same as "Andrews," $2 72; two magic binders, $2 66 ..... 5 38

W. P. Hughey: Same as "Andrews," $2 72; two quires legal cap, 42 cents; one scrap book, $2 50; one mucilage stand, brush, and mucilage, 50 cents; one pair shears, 80 cents; one daily journal, 1878, $1 50; two quires yellow envelope paper, 58; two quires and fifteen sheets legal cap, 58 cents 9 60

Amount carried forward $542 80

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Amount brought forward $542 80

G. W. HUNTER: Same as "Andrews," $2 72; one ream legal cap, $4 20; one mucilage stand, brush, and mucilage, 50 cents; one half dozen quill pens, six cents; one magic binder, $1 33 ..... 8 81

DANIEL INMAN: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one magic binder, $1 33; one M. T. scrap book, $2 00; one glass, cup, and sponge, 30 cents 7 40

G. A. JOHNSON: Same as "Andrews," $2 72; two magic binders, $2 66 ..... 5 38

L. F. JONES: Same as "Andrews," $2 72; two magic binders, $2 66; one copy Constitution, $1 00 ..... 6 38

PETER J. JOYCE: Same as "Andrews," $2 72; one bottle mucilage, 59 cents; one quarter ream legal cap, $1 05; one magic binder, $1 33; one gross one half inch rubber bands, 90 cents; one pair shears, 80 cents; one scrap book, $2 00; one box McGill's fasteners, 20 cents; fifty No. 5 envelopes, 10 cents; one copy Constitution, $1 00 ..... 10 69

J. M. KELLY: Same as "Andrews," $2 72; one M. T. scrap book, $2 00; one paper weight, 20 cents; one quarter ream legal cap, $1 05; one bottle red ink, 35 cents; one pair scissors, 38 cents; one magic binder, $1 33 ..... 8 03

B. F. KENNY: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05: one rubber ruler, fourteen inch, 50 cents; one mucilage stand, brush, and mucilage, 50 cents; one box paper fasteners, 20 cents; one pair scissors, 38 cents; one M. T. scrap book, $2 00; one pair banker's shears, $1 12; one whisk broom, 34 cents; one memorandum book, 25 cents; fifty large envelopes, 40 cents; one box P. R. R. pens, 39 cents 9 85

J. H. KEYES: Same as "Andrews," $2 72; one Sisson's magic binder, $1 33 ..... 4 05

C. R. KLEINE: Same as "Andrews," $2 72; two quires legal cap, 42 cents; one pair banker's shears, $1 12: one quarter ream legal cap, $1 05; two magic binders, 2 66; one copy Constitution, $1 00 ..... 8 97

T. H. LAINE: Same as "Andrews," $2 72; one Sisson's magic binder, $1 33; one copy Constitution, $1 00 ..... 5 05

R. M. LAMPSON: Same as "Andrews," $2 72; two magic binders, $2 66 ..... 5 42

HENRY LARKIN: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one box McGill's fasteners, 17 cents; one mucilage stand, brush, and mucilage, 50 cents; one pair banker's shears, $1 12; one box P. R. R. pens, 39 cents; one half dozen pen holders, 23 cents: one ink stand, 20 cents; one bottle Arnold's fluid, 25 cents; one magic binder, $1 33 ..... 7 96

H. M. LARUE: Same as "Andrews," $2 72; one half ream legal cap, $2 10: two magic binders, $2 66; one pair shears, 80 cents; one bottle mucilage, 59 cents 8 87

R. LAVIGNE: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one box quill pens, 50 cents; one magic binder, $1 33; one scrap book, $2 50; one board clip, 75 cents; one box paper fasteners, 20 cents; one bottle red ink, 30 cents; one glass cup and sponge, 30 cents; one pair banker's shears, $1 12; twenty-five envelopes, 5 cents 10 82

DAVID LEWIS: Same as "Andrews," $2 72: one half ream legal cap, $2 10; one M. T. scrap book, $2 50; one rubber ruler, 50 cents; one pair banker's shears, $1 12: one knife eraser, 32 cents; one box paper fasteners, 17 cents; one mucilage stand, brush, and mucilage, 50 cents; one copy Constitution, $1 00 ..... 10 93

J. F. LINDOW: Same as "Andrews," $2 72; one half dozen lead pencils, 23 cents; one box golden pens, 75 cents; one quarter ream note paper, 38 cents; one half ream legal cap paper, $2 10; one mucilage stand, brush and mucilage, 50 cents; one glass cup and sponge, 30 cents; one magic binder, $1 33; one bottle red ink, 30 cents; one box Mc. Gill's paper fasteners, 20 cents; one box quill pens, 50 cents; one scrap book, $2 00; one pair banker's shears, $1 12; one ream note paper, $1 50; one board clip, 75 cents 14 68

JOHN MANSFIELD: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; twenty-five No. 10 envelopes, 20 cents; one magic binder, $1 33; one mucilage stand brush and mucilage, 50 cents; two hundred and fifty No. 10 envelopes, $2 50; two hundred and fifty No. 5 envelopes, 45 cents; one M. T. scrap book $2 00 ..... 10 75

E. MARTIN: Same as "Andrews," $2 72; one M. T. scrap book, $2 00; one willow waste basket, 85 cents; two magic binders, $2 66; one knife eraser, steel, $1 12; one mucilage stand, brush and mucilage, 50 cents; one board clip, 75 cents; one pair scissors, 38 cents 11 03

J. G. MCCALLUM: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; two magic binders, $2 66; one bottle mucilage, 25 cents 6 68

Amount carried forward $704 55

Amount brought forward $704 55

R. MCCOMAS: Same as "Andrews," $2 72; one mucilage stand, brush and mucilage, 50 cents; one willow waste basket, 85 cents; two quires legal cap paper, 42 cents; one bottle violet ink, 34 cents; one inkstand, 20 cents 5 03

THOS. MCCONNELL: Same as "Andrews," $2 72; one waste basket, 85 cents; one scrap book, $2 00; one pair shears, 80 cents; one magic binder, $1 33 ..... 7 70

JOHN MCCOY: Same as "Andrews," $2 72; two magic binders, $2 66 ..... 5 38

T. B. MCFARLAND: Same as "Andrews," $2 72; two magic binders, $2 66; one quarter ream note paper, 38 cents; one hundred and fifty No. 6 envelopes, 30 cents 6 06

J. F. MCNUTT: Same as "Andrews," $2 72; one M. T. scrap book, $2 00; one magic binder, $1 33; one pair banker's shears, $1 12; one quarter ream legal cap, $1 05; one board clip, 75 cents 9 02

J. F. MILLER: Same as "Andrews," $2 72: one half ream legal cap, $2 10; one magic binder, $1 33; one box McGill's fasteners, 20 cents 6 35

H. MILLS: Same as "Andrews," $2 72; two magic binders, $2 66; one quarter ream legal cap, $1 05; one scrap book, $2 00; one pair banker's shears, $1 12; five sheets yellow wrapping paper, 7 cents 9 62

W. S. MOFFAT: Same as "Andrews, $2 72 ..... 2 72

W. W. MORELAND: Same as "Andrews," $2 72; one mucilage stand, brush and mucilage, 50 cents; one quarter ream legal cap, $1 05; one box engrossing pens, 50 cents; one magic binder, $1 33; one copy Constitution, $1 00 ..... 7 10

L. D. MORSE: Same as "Andrews," $2 72 ..... 2 72

J. E. MURPHY: Same as "Andrews," $2 72 ..... 2 72

E. NASON: Same as "Andrews," $2 72; one M. T. scrap book, $2 50; one mucilage stand, etc., 50 cents; one magic binder, $1 33; one quarter ream legal cap, $1 05 ..... 8 10

H. NEUNABER: Same as "Andrews," $2 72 ..... 2 72

T. NELSON: Same as "Andrews," $2 72; one mucilage stand, etc., 50 cents; one scrap book, $2 00; one magic binder, $1 33; one pair banker's shears, $1 12 ..... 7 67

A. E. NOEL: Same as "Andrews," $2 72; one M. T. scrap book, $2 50; twenty-five No. 10 envelopes, 20 cents; one quarter ream legal cap, $1 05; one willow waste basket, 85 cents; three penholders, 9 cents; one box P. R. R. pens, 39 cents; fifty envelopes, 10 cents; one magic binder, $1 33; one pair shears, 80 cents; one magic binder, $1 33; one copy Constitution, $1 00 ..... 12 36

C. C. O'DONNELL: Same as "Andrews," $2 72; one mucilage stand, etc., 50 cents; one M. T. scrap book, $2 50; one quarter ream legal cap, $1 05; one magic binder, $1 33; one M. T. scrap book, $2 00; two magic binders, $2 66; one pair scissors, 38 cents; half dozen lead pencils, 23 cents 13 37

G. OHLEYER: Same as "Andrews," $2 72; one magic binder, $1 33 ..... 4 05

J. O'SULLIVAN: Same as "Andrews," $2 72; quarter legal cap, $1 05; one box quill pens, 50 cents; one M. T. scrap book, $2 00; one rubber rule, sixteen inches, 62 cents; one box quarter inch rubber bands, 55 cents; one dozen golden pens, 6 cents; one box McGill's fasteners, 20 cents; one pair scissors, 38 cents; one fountain ink stand, 80 cents; one magic binder, $1 33; one dozen monitor pens, 6 cents; one dozen Swan's pens, 5 cents; one memorandum book, 25 cents; one glass cup and sponge, 30 cents; half dozen rubber-head pencils, 30 cents; one whisk broom, 34 cents; two pen-holders, 6 cents; quarter ream legal cap, $1 05; twenty-five No. 9 envelopes, 20 cents; fifty No. 6 envelopes, 10 cents; one magic binder, $1 33; quarter ream cigarette paper, 42 cents 14 67

A. P. OVERTON: Same as "Andrews," $2 72; two dozen engrossing pens, 10 cents; one pair scissors, 38 cents; half ream legal cap, $2 10; twenty-five envelopes, 10 cents; one waste paper basket, 85 cents; two magic binders, $2 66 ..... 8 91

J. M. PORTER: Same as "Andrews," $2 72; quarter ream legal cap, $1 05; one copy Constitution, $1 00 ..... 4 77

W. H. PROUTY: Same as "Andrews," $2 72; two magic binder, $2 66; one pair banker's shears, $1 12 ..... 6 50

M. R. C. PULLIAM: Same as "Andrews," $2 72; one magic binder, $1 33; one waste basket, 85 cents; one quire legal cap paper, 21 cents; one copy Constitution, $1 00 ..... 6 11

PATRICK REDDY: Same as "Andrews," $2 72; two magic binders, $2 66; one scrap-book, $2 00; one pair banker's shears, $1 12 ..... 8 50

J. M. RHODES: Same as "Andrews," $2 72; quarter ream legal cap, $1 05 ..... 3 77

Amount carried forward $870 47

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Amount brought forward $870 47

C. F. REED: Same as "Andrews," $2 72; one waste basket, 85 cents; one mucilage stand, etc., 50 cents; half ream legal cap, $2 10; one box McGill's fasteners, 20 cents; twenty-five No. 9 envelopes, 16 cents; one pair shears, 80 cents; one scrap-book, $2 00; one ivory paper cutter, 55 cents; one tin paper cutter, 19 cents; one flexible ruler, 50 cents; one box quill pens, 50 cents; one bottle red ink, 35 cents; one board clip, 75 cents; two magic binders, $2 66; one glass cup and sponge, 30 cents; one paper weight, 20 cents; one copy Constitution, $1 00 ..... 16 33

J. S. REYNOLDS: Same as "Andrews," $2 72; one mucilage stand, etc., 50 cents; one pair scissors, 38 cents; quarter ream legal cap, $1 05; one M. T. scrap-book, $2 00; one memorandum book, 25 cents; one Shipman's letter file, 85 cents; one paper weight, 20 cents; one copy Constitution, $1 00 ..... 8 95

C. S. RINGGOLD: Same as "Andrews," $2 72; quarter ream foolscap, 80 cents; one paper cutter, 19 cents; one mucilage stand, etc., 50 cents; one rubber eraser, 13 cents; one box Swan's pens, 75 cents; one pair shears, 80 cents; one scrap-book, $2 50; two magic binders, $2 66 ..... 11 05

H. C. ROLFE: Same as "Andrews," $2 72; one waste basket, 85 cents; one Moore's blotter, 42 cents; quarter ream legal cap, $1 05; two magic binders, $2 66 ..... 7 70

G. W. SCHELL: Same as "Andrews," $2 72; quarter ream legal cap, $1 05; one dozen engrossing pens, 6 cents; one pair banker's shears, $1 12; one steel eraser, 32 cents; one magic binder, $1 33; one waste basket, 85 cents; one paper weight, 20 cents; one box paper fasteners, 20 cents; fifty envelopes, 10 cents 7 95

JUSTUS SCHOMP: Same as "Andrews," $2 72; one sponge, 25 cents; one quarter ream legal cap, $1 05; one M. T. scrap book, $2 50; one pair banker's shears, $1 12; one mucilage stand, etc., 50 cents; one bottle carmine ink, 30 cents; one steel knife eraser, $1 12; one rubber ruler, sixteen-inch, 50 cents; one box quarter-inch rubber bands, 50 cents; one box paper fasteners, 20 cents, one mucilage stand, etc., 50 cents; one magic binder, $1 33; one copy Constitution, $1 ..... 13 64

J. McM. SHAFTER: Same as "Andrews" $2 72; one scrap book, $2; one ream legal cap, $4 20; one mucilage stand, etc., 50 cents; one pair banker's shears, $1 12; two scrap books, $4 00 ..... 14 54

RUFUS SHOEMAKER: Same as "Andrews," $2 72; one half ream brief paper, $1 15; one box engrossing pens, 50 cents; one paper weight, 25 cents; one box McGill's fasteners, 20 cents; one magic binder, $1 33; one magic binder, $1 33 ..... 7 48

B. SHURTLEFF: Same as "Andrews" except one quarter ream letter paper returned, $1 95; one ream legal cap, $4 20; two dozen engrossing pens, 10 cents; one magic binder (returned), ——; one copy Constitution, $1 00 ..... 7 25

E. O. SMITH: Same as "Andrews," $2 72; twenty-five large envelopes, 20 cents; two magic binders, $2 66 ..... 5 58

GEORGE V. SMITH: Same as "Andrews," $2 72; one ream legal cap, $4 20; one pair banker's shears, $1 12; one steel knife eraser, $1 12; one rubber ink and pencil eraser, 13 cents; one mucilage stand etc., 50 cents; one bottle red ink, 30 cents; one M. T. scrap book, $2 00; one box engrossing pens, 50 cents; one rubber rule, 50 cents; one box Swan pens, 50 cents; one eyelet punch and two boxes eyelets, $2 16; one box McGill's fasteners, 20 cents; two boxes rubber bands, $1 85; one ream brief paper, $2 30; one bottle Arnold's fluid, 43 cents; one roll red tape, 55 cents; one magic binder, $1 33; one pair banker's shears, $1 12; one glass cup and sponge, 30 cents; one paper cutter, 19 cents 24 02

H. W. SMITH: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one pair banker's shears, $1 12; one mucilage stand, etc., 50 cents; one box McGill's fasteners, 20 cents; one M. T. scrap book, $2 50 ..... 8 09

E. P. SOULE: Same as "Andrews," $2 72; one quire legal cap, 21 cents; one bottle mucilage, 59 cents 3 52

J. C. STEDMAN: Same as "Andrews," $2 72; one box rubber bands, 90 cents; one box paper fasteners, 20 cents; one quarter ream legal cap, $1 05; twenty-five No. 9 envelopes, 20 cents; one pair banker's shears, $1 12; one mucilage stand etc., 50 cents; one box quill pens, 50 cents; one bottle carmine ink, 30 cents; one steel eraser, 32 cents; one box 404 pens, 42 cents; one M. T. scrap book, $2 00; one paper cutter, 19 cents; one glass cup and sponge, 30 cents; two magic binders, $2 66; one board clip, 75 cents; one whisk broom, 34 cents; one copy Constitution, $1 00 ..... 15 47

D. C. STEVENSON: Same as "Andrews," $2 72; one magic binder, $1 33; one magic binder, $1 33 ..... 5 38

Amount carried forward $1,027 42

Amount brought forward $1,027 42

GEORGE STEELE: Same as "Andrews," $2 72; one M. T. scrap book, $2 00; one pair banker's shears, $1 12; one half quire legal cap paper, 11 cents: one mucilage stand, etc. etc., 50 cents; one magic binder, $1 33; one board clip, 75 cents; one magic binder, $1 33 ..... 9 86

C. V. STUART: Same as "Andrews," $2 72; one magic binder, $1 33; one quarter ream legal cap, $1 05; two magic binders, $2 66; one copy Constitution, $1 00 ..... 8 76

W. J. SWEASEY: Same as "Andrews," $2 72; one magic binder, $1 33; one mucilage stand, etc., 50 ..... 4 55

CHAS. SWENSON: Same as "Andrews, $2 72; one box McGill's fasteners, 20 cents; one quire legal cap, 21 cents; one bottle mucilage, 50 cents 3 63

R. S. SWING: Same as "Andrews," $2 72; one ivory handle eraser, steel, 55 cents; one mucilage stand, etc., 50 cents; one quarter ream legal cap, $1 05; one box paper fasteners, 20 cents; one box rubber bands, 90 cents; one magic binder, $1 33 ..... 7 25

D. S. TERRY: Same as "Andrews," $2 72; one waste basket with W. L. Dudley, 43 cents; 1 M. T. scrap book, $2; one pair banker's shears, $1 12 ..... 6 27

W. J. TINNIN: Same as "Andrews," $2 72; one mucilage stand, etc., 50 cents; one quarter ream legal cap, $1 05; one magic binder, $1 33; twenty-five letter envelopes, 10 cents; twenty-five large envelopes, 20 cents 5 90

F. O. TOWNSEND: Same as "Andrews," $2 72; one magic binder, $1 33; one magic binder, $1 33 ..... 5 38

P. B. TULLY: Same as "Andrews," $2 72; one magic binder, $1 33; one quarter ream legal cap, $1 05; one quarter ream note paper, 38 cents; fifty No. 6 envelopes, 10 cents; five bundles phonographic note paper 5 58

H. K. TURNER: Same as "Andrews," $2 72 ..... 2 72

DANIEL TUTTLE: Same as "Andrews," $2 72; one M. T. scrap book, $2 50; three penholders, 9 cents; one half waste basket and one half mucilage stand, with Garvey, 68 cents; one magic binder, $1 33 ..... 7 32

A. VACQUERREL: Same as "Andrews," $2 72; one magic binder, $1 33; one scrap book, $2; one bottle mucilage, 59 cents; one pair scissors, 38 cents; one glass cup and sponge, 30 cents; one box quill pens, 50 cents; one bottle red ink, 37 cents; one steel eraser, 32 cents; one board clip, 75 cents; one box paper fasteners, 20 cents; twenty-five No. 6 envelopes, 5 cents; twenty-five No. 9 envelopes, 20 cents; one quarter ream legal cap, $1 05; one copy Constitution, $1 ..... 11 76

W. VAN DYKE: Same as "Andrews," $2 72; one M. T. scrap book, $2; one waste basket, 85 cents; one quarter ream legal cap, $1 05; one pair scissors, 38 cents; one glass cup and sponge, 30 cents; one magic binder, $1 33; one magic binder, $1 33; one copy Constitution, $1 ..... 10 96

WM. VAN VOORHIES: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one M. T. scrap book, $2; twenty-five large envelopes, 20 cents 5 97

HUGH WALKER: Same as "Andrews," $2 72; one magic binder, $1 33; one scrap book, $2; one pair banker's shears, $1 12 ..... 7 17

JOHN WALKER; Same as "Andrews," $2 72; one magic binder, $1 33; one magic binder, $1 33 ..... 5 38

BYRON WATERS: Same as "Andrews," $2 72; one half ream legal cap, $2 10; one half ream brief, $1 15; one paper cutter, 19 cents; fifty No. 10 envelopes, 40 cents; one mucilage stand, etc., 50 cents; one box paper fasteners, 20 cents; one pair banker's shears, $1 12 ..... 8 38

J. V. WEBSTER: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; twenty-five large envelopes, 20 cents; one dozen rubber bands, 6 cents; one waste basket, 85 cents; one M. T. scrap book, $2; one magic binder, $1 33; one copy Constitution, $1 ..... 9 21

J. R. WELLER: Same as "Andrews," $2 72; two quires legal cap, 42 cents; one mucilage stand, etc., 50 cents; one magic binder, $1 33; one magic binder, $1 33; five bunches phonographic paper; fifty large envelopes, 40 cents; one dozen Faber's No. 2 pencils, 50 cents; one M. T. scrap book, $2 ..... 9 20

JOHN T. WICKES: Same as "Andrews," $2 72; one magic binder, $1 33; one magic binder, $1 33; one copy Constitution, $1 ..... 6 38

W. F. WHITE: Same as "Andrews," $2 72; one half ream legal cap, $2 10; one pair banker's shears, $1 12; one box paper fasteners, 20 cents; one M. T. scrap book, $2; steel knife eraser, $1 12 ..... 9 26

H. C. WILSON: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one dozen rubber bands, 6 cents; one dozen large envelopes, 10 cents; one pair scissors, 38 cents; one steel knife eraser, $1 12; one box paper fasteners, 20 cents; one magic binder, $1 33; one magic binder, $1 33 ..... 8 29

Amount carried forward $1,187 60

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Amount brought forward	$1,187 60
P. M. WELLIN: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one pair banker's shears, $1 12; one box Swan's pens, 42 cents; one mucilage stand, etc., 50 cents; one bottle carmine ink, 37 cents; one steel eraser, 32 cents; one box quill pens, 50 cents; one dozen lead pencils, 46 cents; one box paper fasteners, 20 cents; one box rubber bands, 90 cents; twenty-five No. 9 envelopes, 20 cents; one M. T. scrap book, $2; one magic binder, $1 33; one paper cutter, 19 cents; one glass cup and sponge, 30 cents; one paper weight, 20 cents; one board clip, 75 cents; one magic binder, $1 33; one quarter ream note paper, 38 cents; one quarter ream letter paper, 77 cents; one hundred envelopes, 20 cents; one parallel ruler, 75 cents; one flexible rubber ruler, 50 cents; one copy Constitution, $1	18 46
J. B. WEST: Same as "Andrews," $2 72; one magic binder, $1 33; one quarter ream note paper, 38 cents; one magic binder, $1 33	5 76
S. M. WILSON: Same as "Andrews," $2 72; one magic binder, $1 33; one board clip, 75 cents; one mucilage stand, etc., 50 cents; one roll red tape, 55 cents; one pair banker's shears, $1 12 cents; one Moore's hand blotter, 42 cents; one quarter ream legal cap, $1 05; two dozen rubber bands, 15 cents; one magic binder, $1 33; one glass cup and sponge, 30 cents; one half dozen penholders, 18 cents	10 40
J. W. WINANS: Same as "Andrews," $2 72; one M. T. scrap book, $2; one rubber ruler, fourteen inches, 50 cents; one waste basket, 85 cents; one glass cup and sponge, 30 cents; one bottle red ink, 30 cents; one mucilage stand, etc., 50 cents; one inkstand and ink, 40 cents; one pair scissors, 38 cents; one magic binder, $1 33; one quarter ream legal cap, $1 05; one magic binder, $1 33	11 66
N. G. WYATT: Same as "Andrews," $2 72; one quarter ream legal cap, $1 05; one mucilage stand, etc., 50 cents; one mucilage stand, etc., 50 cents; one M. T. scrap book, $2; one dozen rubber bands, 7 cents; one pair scissors, 38 cents; one steel eraser, 32 cents; one box paper fasteners, 20 cents; one dozen No. 10 envelopes, 10 cents; one box engrossing pens, 50 cents; one mucilage stand, etc., 50 cents; one magic binder, $1 33; one copy Constitution, $1	11 07
J. WEST MARTIN: One quarter ream note paper, 38 cents; one box pens and two penholders, 45 cents; one waste basket, 85 cents; two lead pencils, 8 cents; fifty No. 6 envelopes, 10 cents; one quarter ream legal cap, $1 05	2 91
J. M. STRONG: One M. T. scrap book, $2; one magic binder, $1 33; one magic binder, $1 33	4 66
S. B. THOMPSON: One magic binder, $1 33	1 33
	$1,255 50
FOR THE CONVENTION: One hundred and four spittoons, at 80 cents	83 20
Total	$1,338 70

Respectfully submitted,
THOMAS BECK,
Secretary of State.

RESOLUTIONS AND PROPOSITIONS.

THE PRESIDENT: The next order of business is resolutions and propositions relating to the Constitution.

IN RELATION TO GAMBLING.

MR. O'SULLIVAN introduced the following proposed amendment to the Constitution:

SECTION —. Lotteries, and the sale of lottery tickets, are forever prohibited. Gambling transactions of any and every character shall not be allowed; and the Legislature is directed to pass such penal laws as may be necessary to suppress the evil practice of gambling, under whatever name it may be known.

Referred to the Committee on Legislative Department.

IN RELATION TO MINING BOARDS.

MR. MCCOY introduced the following proposed amendment to the Constitution:

Resolved, It shall be the duty of the Legislature, at each regular session thereof, to inquire into the management of all mining stock Boards doing business in this State; and if, in their judgment, the public good demands it, they shall adopt such legislation as they may deem necessary in the premises.

Referred to the Committee on Legislative Department.

IN RELATION TO GRAND JURIES.

MR. RINGGOLD introduced the following resolution to prohibit secret sessions of Grand Juries:

"That Grand Juries are prohibited from performing such duties as pertain to that office in secret session, and in all cases, when practicable, defendants shall be confronted with their accusers before a true bill shall be found."

Referred to the Committee on Preamble and Bill of Rights.

RELATIVE TO LEGISLATIVE DEPARTMENT.

MR. DOWLING introduced the following proposed amendment to the Constitution, in relation to the legislative department:

SECTION 1. It shall be a felony for any public officer, elected to any office of profit or trust in the gift of the people of the State of California, to extort, receive, or cause to be received, any money, valuables, or compensation of any kind, from any person who may make application to obtain or procure any subordinate position in the gift of said officer.

Referred to the Committee on Legislative Department.

THE LAW OF LIBEL.

MR. VAN DYKE: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Preamble and Bill of Rights.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Sacramento, Mr. McFarland.

SPEECH OF MR. AYERS.

MR. AYERS. Mr. Chairman: The gentleman from Sacramento, Mr. McFarland, moves to strike out in the libel section the words, "and the jury shall have the right to determine the law and the fact." I shall oppose the gentleman's motion on the ground that I conceive that that clause is now a protection to honest publishers against malicious prosecutions, and that it is also a protection to the people, insomuch as it is a safeguard to the freedom of the press. The clause has existed in our present constitution, down to the present time, and I find that a similar provision exists in the Constitutions of Delaware, Georgia, Michigan, Nebraska, New York, Pennsylvania, South Carolina, and Wisconsin. If I understand the gentleman aright in his argument in favor of expunging the words in this clause, it was to the effect that they were meaningless now; that they conserved no right to a defendant in a libel suit which is not conserved under the general criminal practice. At the same time, however, his argument was that citizens are being libeled in the public press, and that the individuals who are thus libeled have no redress. I submit that the argument is fallacious, and that the two positions are repugnant to each other. Either the clause has a meaning—that it is an actual protection to publishers—or else publishers, under that clause, incur no responsibility for libel. If it gives publishers a greater latitude than is given other citizens who are charged with crime, I submit to the gentlemen of this Convention that there is a vast difference between the two classes. The independent editor, the honest editor, who conducts his paper from good motives and from a just conscience, is obliged to stand between the people and public iniquity. He has frequently to stand forth as the champion of the people against concerted wrong in high places. With lance at rest and steed in high career, he must ever be charging upon public vice, if he be an honest and fearless journalist. His responsibility both to the people and to his profession is great, and certainly his immunity should be considered as being more entitled to respect than that of such gentry as the gentleman from Sacramento, Mr. McFarland, spoke of last evening as cutting a purse or stealing a cow. At this time, of all other times, I would not like to see this Convention, in its organic law, take away from the press one jot or one iota of its present safeguards. A new element has risen up in this country to fatten with the spoils that have been wrung from the hand of industry. Millionaires are meeting you in every place and combining together to crush out public opinion and to ride rough-shod over the people. Whom will you call upon then, when they are arrayed in all their power, to stand between the people and these men, who will arrogate themselves, as did Louis XIV., to be the State? If you take away the incentive to journalists to face and break down this power, where will you seek for a substitute for it? I tell you, gentlemen, that without the fear of the press in this country you are going to be in the toils, and from which you shall not, perhaps, escape without a bloody revolution.

Talk to me about newspapers traducing or libeling the characters of individuals! The law is ample now, without taking away this restriction, which is the safeguard of the honest and fearless publisher. It is, perhaps, not necessary, Mr. Chairman, to remind the gentlemen of this Convention that the clause which is now attacked was born amid the storms of one of the most notable debates that ever occurred in the history of England. In that country it had been the practice—but denied as an infringement of freedom by those who insisted upon the just rights of juries—it had been the practice of Judges to determine the law, while the rights of the juries were limited down to the narrow sphere of merely declaring the publication. The Judges decided the libel, and the jury decided the publication. But Lord Erskine, in his great forensic effort in the case of the Dean of St. Asaph, showed, in reasoning that could not be combatted, that the determination of the law and the fact, according to the British Constitution, in libel cases, rested with the jury; and upon his argument came forth Fox's Declaratory Act, upon which this law is based, and which has remained the law to this day. You may say to me that because juries in other criminal cases take from the Bench the law, and come to their conclusions through the direction of the Courts, that they are, in effect, in those cases determinators of the law and the fact. Admit it. But in this case, where the grand right is set forth in the Constitution, juries will not be influenced by a venal Judge, if it so happen that there be one. Shall we say that the ermine in this country will always remain as pure as it is? Are we not marching towards the period when you may see venality and corruption sitting on the bench, as it now sits in other public offices? When your great monopolies, your combinations of capital, to carry out their designs, shall attempt to place upon the throne of justice one of their tools—do you mean to tell me they will not accomplish it? They

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will. Then, with that clause in your Constitution, the press may defy them.

Take not away that safeguard. You may hear arguments finely spun based upon theories of reasoning drawn from hair-splitting ideas of law; but let them not prevail, for we have a safeguard in that clause which may yet prove a pillar of protection to us in our time of need. What would become of the right of a publisher before a Judge who had been installed in office by the manipulators of a party, and who was sitting in judgment upon a man who had used his paper to attack them in their most vital part? If that Judge owed his position to those men, and he could define the law to the jury and tell them what their verdict should be under the law, what honest journalist would come out of that trial triumphant? Would not the honest publisher who had sought to protect the people and to strike at rascality—would not he be consigned to a dungeon, whilst the rascals stepped forth as men who had been persecuted? As long as the jury retain in their possession the power to determine both the law and the fact, so long will the public press be preserved from malicious prosecution, so long will the public press be enabled to deal fairly, honestly and energetically with the evils that arise in our midst. But if you take away that protection, if you leave the public press to be harassed by every malevolent man who seeks to destroy its usefulness, you will heap upon it incessant charges and libel suits. You will crush it with criminal prosecutions, you will intimidate it by holding over it always the terror of costly trial; you will drive from it all but those timid or cringing men who are willing to shut their eyes to public vice and to turn their backs upon wrongs against the people. But if, on the contrary, you wish to cherish an honest, fearless and independent press, give it this protection which it has had in the past. What have been its efforts in this State? You have had a galaxy of gentlemen in the profession of journalism who have done honor to it. You have had your Gilberts and your Kings, who, in the path of duty, faced the bullet of the assassin, and went upon the ill-fated field to assert the opinions which they set forth in their journals. You have had bright minds and honest hearts to direct your best papers from the very incipiency of the State. Admit that the right has been abused; what right, what boon, has not been abused? I do not stand here to defend the common traducer and libeler. I do not stand here to defend the outrageous blackmail sheets which exist in this community, but I stand here to proclaim the principle that in your honest journals, those conducted for the public good, you have a palladium of your liberties which you cannot crush out without danger to your own liberties. Mr. Chairman, if, as it has been urged, that provision at the end of the section is useless, I submit that to leave it there cannot do any harm; but if it is useful, it is useful for good, and should be retained. I hope that the sense of this Convention will not support the amendment to strike out, by the gentleman from Sacramento, Mr. McFarland, and, for the reasons I have given, I appeal to the good sense of this Convention to retain the section as it is.

SPEECH OF MR. GREGG.

MR. GREGG. Mr. Chairman: I approve of the motion made by the gentleman from Sacramento, Mr. McFarland, but not for the reasons given by him. The theory of the section, as the report stands, is that when a publisher commits a crime he has certain immunities over all other classes of criminals. If we turn back in history we will find that it was never intended that they should enjoy any such immunity. We find, turning back to the eighteen century, that the law of England, and the law of this country also, permitted juries in criminal prosecutions to declare the whole case, and pronounce the defendant guilty or not guilty, as they should see proper, but we find in history that the Judges became censors of the public press. They were tools of kings and nobles, who condemned free journals and free speech. It will be found, sir, that in those times the jury simply declared the fact of publication, and the Courts were the judges of whether it was libelous or not. In other words, they charged the juries that they could only find the single fact of whether there had been a publication, and it remained for the Court to say whether that publication was libelous. We certainly have an innovation of the common law as it then stood. But, sir, I do not think that any gentleman on this floor can find in the history of jurisprudence of the State, at any time, when that was the law.

Mr. Fox, in his celebrated libel bill in the Parliament of England, in the year seventeen hundred and ninety-two, declared that the jury should find on the whole case; that they should, upon the whole case, as in any other case, declare whether the defendant is guilty or not guilty, and nothing should be reserved to the Judges after the return of the verdict, where it was not guilty. That was the purpose of the Act, to remove the censorship from the press. But the necessity for it has never existed here. It does not exist to-day. This clause is not to be found in the bills of rights of the Constitutions of any of the original thirteen States. In some of them it is declared this far, that the jury shall be judges of the law and the fact as in other cases. What does that mean? It means simply that the jury shall declare guilty or not guilty upon the whole case, and they do it to-day in the administration of the criminal law.

I want it understood, sir, that for myself, I do not wish to change a letter in the old Constitution where it is not demanded. I have no attacks to make upon a free press. I think, sir, that a free, enlightened press is the cloud by day and the pillar of fire by night to lead the advance of civilization, and I shall put nothing in the way of it; but I think the reasons for a clause like this have long since ceased to exist. It will have a tendency to mislead our juries. It has misled and will mislead many members of this Convention. Why should a privilege be granted to a libeler which is refused to a man being tried for his life? If you will look at the history of this thing, you will find that the original intention was to put a libel case upon exactly the same footing as any other criminal case, and let the jury declare upon the whole case, and take away from the Courts the power that they held of being censors of the press in England.

I find that in twenty-seven States of this Union there is no proposition of that kind. Two thirds of the old colonies have no such provision in their bill of rights. I find that it is not in the Constitution of Massachusetts, or the Constitutions of Maine, Alabama, Arkansas, Nebraska, Nevada, Rhode Island, West Virginia, New Hampshire, Texas, Louisiana, Missouri, Michigan—in none of these States can it be found. There is no need of it. The necessity for it never existed in this country, although it did in England. Then, if it is not needed, it should not be retained there, for the reason that it misleads the jury, when juries are told on a trial for libel—when the Court says to the jury, the law is so and so, but still you are the judges of the law as well as of the fact, the same as in any other case. This misleads them. There is no reason for that clause in the Constitution. It is giving to the press a power that no individual criminal can have. It should not be done. Anybody who cares to take the trouble to trace back the history of this thing will be satisfied that the necessity no longer exists. The people have been misled and they can be again. It has never had a place in the Constitution of the United States because no Courts in this country have become censors of the public press, and hence there has been no need of guarding against an abuse which does not exist. This clause has been misconstrued and will hereafter be misconstrued, and I think it ought to be eliminated from the Constitution.

SPEECH OF MR. BARNES.

MR. BARNES. Mr. Chairman: We have heard so much of the demands that the people make upon the delegates to this Convention—and the extent of that demand seems to be so thoroughly understood—that I almost hesitate in attempting to argue in favor of the maintenance of any single proposition, or clause, in the Constitution of California which is the subject of attack. The people of this State decided to have a Constitutional Convention, by a very small majority—a very small majorty. We may consider that those who voted for it and those who voted against it stand paired upon the proposition; and we are here at the request and bidding of a few hundred citizens of the State of California who desire a change to be made, of some kind, in the organic law. I was under the impression, during my brief residence in California—now amounting to fourteen or fifteen years—that this was a prosperous and happy people. I had formed the vague and chimerical notion that, notwithstanding we needed reform in some certain directions—notwithstanding occasions had arisen which were not contemplated when this organic law was first adopted by the people—yet, that on the whole, and upon the average, the people of this State were as happy and as well contented, as prosperous, as full of growth and progress, as any people upon whom God's sun ever shone. I have learned (because I suppose it is true, since it is asserted here) that the ship of State is rotten from truck to kelson; that the three great departments of the State are full of corruption; that you cannot trust the Executive Department; that you should have no confidence in the Judicial Department; and that the Legislative Department has sunk beyond plummet reach.

I am glad to know that the virtue and intelligence, and the wisdom, of California has been rescued and put into this Convention; and I doubt not, sir, that if at this moment the Angel Gabriel, should he blow his horn to summon the just and the unjust to the judgment of the last day—should he here and now appear, that the men who make your Governors, and have made them; the men who have been your Judges, and are your Judges; the men who have been your Legislators, and are your Legislators; that the citizens of California who make your Grand Juries and compose your petit juries, will sink to the hell prepared for the evil-doers, and that the members of this Convention will rise to slow music, to be placed upon the clouds, with white robes upon them and harps within their hands, to sing for ever hallelujahs to—themselves. [Applause and laughter.]

Now, Mr. Chairman, I am opposed to the amendment proposed by the gentleman from Sacramento. I am opposed to any amendment in this Convention that does not strike at a radical, existing, and recognized abuse—abuse in reference to taxation, or difficulties in the judicial system; abuses of corporations, and abuses wherever they exist. This Convention should meet them, and handle them without gloves. But when you come to attack other parts of this Constitution, I submit that no irreverent hands should be laid upon it; and whoever rises in his seat and proposes to change or alter one word or line in that sacred charter of the liberties of this people, should show cause—which I do not think the gentleman from Sacramento has done, or, with all his ability, he can do.

Now, sir, here is the proposition: "In all criminal prosecutions for libel the truth may be given in evidence to the jury, and if it shall appear that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact." Now, sir, the proposition embraced in that section under consideration, and which the gentleman from Sacramento, Mr. McFarland, moves to eliminate from the Bill of Rights, "the jury shall have the right to determine the law and the fact," is, so far as it is contained in this Constitution, simply a reaffirmation of the ancient charter of jury rights. That is to say, the right of every person, when charged with a crime, to have the whole verdict of the jury upon the proposition of guilty or not guilty; the law and the fact all included. It is a broad fundamental principle which lies at the very foundation of every personal right that we enjoy under government. Why has it been put into the Constitution? Let us take that question first, before we undertake to say that, by a stroke of the pen, it shall be wiped out from the knowledge and the memory of the people of the State. It makes a grand period. It is historically great; and I beg the pardon of young and sportive souls like the gentle-

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man from Marin, if I allude to history. It pains him, I suppose. Yesterday he suggested that the gentlemen who were going back into the realms of the past had better go and get a pair of knee breeches and buttons. I reverence every one of those ancient men who fought for the liberties of the English people; I reverence that great lawyer of England, who stood between a frowning Court and a quailing jury, and established the law which protected the honest publisher against the power of wealth, and against malice and fanaticism.

I say, sir, why was this put into the Constitution? Why, sir, it is not an enactment; it is a declaration of the principles of the common law; it grew out of the attempts of the judicial power to usurp the ancient rights of juries in criminal trials, by construing the privilege of passing on the law and the fact, and rendering a verdict on the whole case, to mean a mere naked, lawless power, without any right whatever to exercise it. It was not an innovation, it was a restoration. It was a proclamation that Judge-made law, as the gentleman from Marin called it, never contained in any Constitution, never found in any common law, never existing in the statute, never observed in any precedents, never practiced, should be set aside and the original instructions and practice of trial by jury should be restored with all its original intent. When did the denial of it begin? Shortly after the declaration of American Independence, when on the other side of the water, the Government and the Courts alike began to fear the restive spirit of the people. And it was applied curiously enough only to the law of libel, and to the law of what were known as seditious libels—libels against the Government, criticisms upon the Government, criticisms upon the members and directors of public institutions, such as were made by Junius, in the case of the People against Woodfall, one of the earliest cases known on the subject; in the case of the Dean of St. Asaph, who recommended the publication—as an individual, not as a newspaper-man—recommended the publication of a pamphlet in relation to public grievances existing at that time.

But it was not till after American Independence had been declared that English Judges and English law Courts commenced to deny the right of the jury to take the law and the facts of a case. I say it was done in sixteen hundred and eighty-seven, when Algernon Sidney was brought to trial before the infamous Jeffreys, and sentenced for having in his possession a paper said to be seditious. And in that case that immortal sum of all villainies declared to the jury, you are to take the law from the Court; you find the fact of the publication and we will apply the law—and the Judge did apply the law; but, sir, thereafter, in the reign of William and Mary, that principle laid down by Chief Justice Jeffreys was set aside—nay, not merely set aside, but stamped upon by the English Parliament, by an Act of William and Mary making void the attainder in which they held:

"WHEREAS, Algernon Sidney, Esq, in the term of St. Michael, in the thirty-fifth year of the reign of our late sovereign Lord King Charles the Second, in the Court of King's Bench at Westminster, was most unjustly and wrongfully convicted and attained, and afterwards executed for high treason: That it be declared and enacted—and be it enacted by the King's and Queen's most excellent majesties, by and with the advice and consent of the Lord's spiritual, and temporal, and Commons in this present Parliament assembled, and by the authority of the same: That the said conviction, judgment, and attainder of the said Algernon Sidney be and are repealed, reversed, made, and declared null and void to all intents, constructions, and purposes whatsoever, and as if no such conviction, judgment, or attainder had ever been had or given; and that no corruption of blood, or other penalty, or forfeiture of honors, dignities, goods, chattels, lands, tenements, or hereditaments, be by the said conviction and attainder incurred; any law, usage, or custom to the contrary notwithstanding. And to the end that right be done to the memory of the said Algernon Sidney, deceased, be it further enacted, that all records and proceedings relating to the said attainder be wholly canceled and taken off the file, or otherwise defaced or obliterated, to the intent that the same may not be visible in after ages; and that the records and proceedings of and to the said conviction, judgment, and attainder in the said Court of King's Bench now remaining shall, and be forthwith brought into the said Court, this present Easter term, and then and there taken off from the file and canceled."

It remains for the gentleman from Sacramento to make it visible in after ages.

Starkie, in his work on Slander, 74, declares that this attempt of the Judges to take away from the jury the right to decide the law and the fact, had its origin in the Star Chamber.

Now, when the judgment in the case of the Dean of St. Asaph was sought to be set aside, and a rule obtained to show cause why it should not be, the Court decided that the motion should be rejected and the rule discharged.

In seventeen hundred and ninety-two, the Statute of 32d George the Third, was passed, which in effect declared that the jury had the right to determine the law and the fact by a general verdict, as in any other criminal case, and that Act stands to-day. Mr. Burke says there have been passed in England over forty Acts of Parliament for the protection of the rights of jurors in various ways. We have but one; let us leave it where it is. Baron Clark and Chief Justice Bees did attempt to follow the dictum of Lord Mansfield, but it met with such universal condemnation that it was not pressed. That is the history of the English law. In America, our lawyers, our principal lawyers at least, and our pure Judges, with one or two notable exceptions, have always affirmed this right. As early as eighteen hundred and four, in the Supreme Court of the United States, Chief Justice Jay, in passing on one of the confiscation cases growing out of the war with England, said:

"Gentlemen, it must be observed that by the same law which recognizes this distribution of jurisdiction, you have, nevertheless, the right to take upon yourselves to judge of both, and to determine the law as well as the facts of the controversy. On this, and every other occasion, we have no doubt you will pay that respect which is due to the opinion of the Court, for as, on the one hand, it is presumed that the jurors are judges of the fact, it is presumed that the Courts are the best judges of the law; still, gentlemen, both of these are legally within your power of decision."

That was the law laid down in the famous case of the Commonwealth vs. Knapp, reported in 10th Pickering's Reports, page 49.

"As the jury have the right, and, if required by the prisoner, are bound to return a general verdict of guilty or not guilty, they must necessarily, in the discharge of this duty, decide such questions of law as well as of fact, as are involved in this general question, and there is no mode in which their opinions upon questions of law can be reviewed by this Court, or by any other tribunal. But this does not diminish the obligation resting upon the Court to explain the law, or their responsibility for the correctness of the principles of law by them laid down."

The same doctrine was affirmed later in a case reported in 20th Pickering's Reports, page 222, in the case of the Commonwealth vs. Kneeland: The Court say:

"In criminal cases, by the form in which the issue is made up, the jury pass upon the whole matter of law and fact. It is the duty of the Judge to give such instructions to the jury in matters of law, as in his judgment may be best calculated to aid and assist them in forming their verdict."

That was the law of Massachusetts. Now, I wish to pause a moment, and make a suggestion in reply to a statement made by my friend from Kern, Mr. Gregg, who said that he had not found in the Constitution of any of the thirteen States—the thirteen Colonies—a declaration of any principle on this subject. Why? Because it was understood to be the common law of the land at the time these Constitutions were adopted, and it was not until after the Declaration of Independence, and the American Colonies had set the whole world in a ferment with the spirit of liberty—it was then and there that the English Judges and the English Courts began to repress and suppress the rights of the people—not of the press—because the press was not half as important or troublesome as it is to-day. It was the rights of the people. I do not know to what extent the observation of the gentleman is correct. I think he is mistaken. I know that it is the Constitution of Massachusetts, and I know the reason it was put in there, was because after the decisions which I have cited in the 10th and 20th Pickering's Reports, the Supreme Court of Massachusetts in the case of the Commonwealth vs. Porter, reported in the 10th Metcalf's Reports, undertook to deny that doctrine, and say that the jury were bound to take the law from the Court. That they had a right to judge of the fact, but the Court had the right to determine the law. That the jury had the mere naked, legal right to go behind the Court, but if they did so, they violated their consciences. The Court say:

"But it is the duty of the Court to instruct the jury on all questions of law which appear to arise in the cause, and also upon all questions pertinent to the issue, upon which either party may request the direction of the Court, upon matters of law. And it is the duty of the jury to receive the law from the Court, and to conform their judgment and decision to such instructions as far as they understand them, in applying the law to the facts to be found by them; and it is not within the legitimate province of the jury to revise, reconsider, or decide contrary to such opinion or direction of the Court in matter of law. To this duty, jurors are bound by a strong social and moral obligation, enforced by the sanction of an oath, to the same extent, and in the same manner, as they are conscientiously bound to decide all questions of fact according to the evidence."

He says they have the power, but not the right. Now, when that decision was published, the mind of the people of Massachusetts took alarm, and when the Constitutional Convention met in eighteen hundred and fifty, that provision was put into the Constitution, and there it stands, and there it will stand forever. There has been only one United States Judge, I think Chief Justice Story, in a case decided in Boston, that assumed to set aside this law, by asserting and stating in a certain way, the dogma of power without the right. One word more; the provision standing in the Constitution does not mean that the jury are to violate the law, nor to make the law, nor to establish a precedent, but merely to say, "guilty or not guilty," upon the whole law of the case, upon the law which made the act in question a crime, as well as the act itself, which alleged the act to be a crime. It makes no precedent; it may be urged, I suppose it would be urged, that the jury in one county, judging, of the law and the fact, might render a verdict one way, and in another county another way, so that no two verdicts would be alike.

I say the case of the "Commonwealth against Porter," was the first case in the country where the doctrine was broached that the jury had the power, but not the right. Now, sir, I insist that when this ancient principle of right has been so often invaded by judicial determination, that it ought, for that reason, to be allowed to stand in the Constitution. Notwithstanding all that has been said here in antagonism to the jury system, I know that judicial history shows that whenever life and liberty has been at stake, the Judges and not the jury are the men to be feared. I say the books are full of cases that might be cited here to-day, showing that in such cases the Judges have been wrong and the juries have been right. I do not believe there is a case on record, Mr. Chairman, I do not believe one can be found, where juries have convicted an innocent man by disregarding the instructions of the Court, and there never will be. On the other hand, we can find cases where the jury have set free innocent men in opposition to corrupt Judges.

The gentleman from Marin made some allusion to the antiquity of witchcraft—to its being brought over with the Pilgrim Fathers, who declared they would take the law of God until they could get better

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ones. As far as the matter of witchcraft is concerned, I beg leave to call the attention of the gentleman to the fact that the juries changed on that subject a great while before the Judges did. Who hung poor Rose Colander for witchcraft, described by Hutchinson as the "fairest flower of New England?" Why, sir, it was Sir Mathew Hale who presided and compelled the jury to take from him the dictum that at common law witchcraft was a crime that ought to be punished by hanging and death. It was the same sort of Judge-made law that hung nineteen women, and arraigned seventy-nine more, to be tried and convicted and hung on a charge of witchcraft, until a Middlesex County Jury determined and passed upon the question, by their verdict, as to whether witchcraft was, under the common law, a subject of execution and death; and they found their verdict in favor of the victims, and against the instructions and will and power and opinion of the Court; and the old Judge, angered with juries, and disposed to strike them down, like the gentleman from Marin, Mr. Shafter, left the bench in high dudgeon, declaring that they were in a fair way to go to the devil; and the old fellow never sat on the bench again.

No, sir, wherever the Judges have sought convictions, and the juries have decided the law and the fact, the juries have been right. Now, sir, there is a very broad distinction, to which I call your attention, between civil and criminal cases. In a civil case either party may move for a new trial upon questions of law and fact, or the instructions of the Court. In criminal cases this right belongs to the defendant alone when he is convicted. Now here is the difference. It seems to me an answer to the whole proposition. Why, because the jury trial is the defendant's palladium of liberty, and because the Legislature and the Governor feel that there is no safety in trusting life and liberty in the hands of the Judge. Neither any Parliament, nor any Legislature, has hitherto ever allowed the Judge to grant a new trial where the defendant has been acquitted. In civil cases there always has been such power. It exists in the common law, and in our State it exists by express statute. The law takes from the jury the right to determine the law and gives it to the Court, who may control the jury by setting aside their verdict. In other words, the Court sits down with the jury as a kind of a thirteenth juror; hears the evidence, applies his judicial discretion, and if the jury renders a verdict the Court thinks right, it stands; and though the twelve men may think one way and the Court the other, the thirteenth man has power, not merely to hang the jury, but to set aside their verdict and render one for himself. Now, sir, by refusing such power to Courts in criminal cases, the law has decided that it is the jury and not the Court which is to have the whole power—to take the whole case upon the law and the fact—and the Court has no power, and ought to have no power, to interfere with the right of the jury to acquit.

The tendency of the Bench in every age has been to contest the power of juries, to control their verdicts, to regulate, from pride of place, pride of intellect, pride of high station, the judgment of the men who are put into the jury box to decide cases. We all know, who have practiced law, how common and universal that tendency is. Now I make no charge against Judges; I do not want to be understood as making any assault on Judges, for I am proud to believe that we have in the State, and in the United States, a learned, and impartial, and just judiciary. I have no complaints to make, though, like some gentlemen here, I have not the greatest respect for our judicial system, but I have no complaints to make as to the Judges. I may have had decisions that were distasteful; I may have had some imaginary injury done me. But I lay all that aside. I merely want the law to stand as it is, and I hope the obstacles between the Courts and juries may never be removed.

I might go on, if time would permit, and cite to the gentlemen of this Convention instances where unjust laws have been stayed from execution, how the fierceness of public sentiment, and the tyranny of fanaticism, have lost their sting in the jury box, until the people have time to rally and sweep them from the statute books. I do not think the citizen should be shielded from a just law, but, sir, who is to judge? For my part I prefer an honest jury instructed by an honest Judge. Why, sir, what is your law? Let it but once outrage justice, let it violate a natural right, let it run counter to the public conscience, and your preachers may preach, and your Judges may howl instructions until they are hoarse, but no jury will ever convict. They have never done it. They have never done it even in this State; only in a few rare instances have they ever failed to uphold a wholesome enactment against the violator.

These are my views, not as a lawyer, but they are my views as a citizen, standing upon the plane of a citizen and not upon the plane of that much abused professional man, the lawyer: and I appeal to you to maintain this clause as it stands. I have felt the cynicisms uttered here by those who are less skilled in dealing with that profession. I have felt hurt many times by the slurs and insinuations made on the floor of this Convention against lawyers and members of the legal profession, and I insist it is most unjust. I say that wherever liberty, wherever humanity, wherever the rights of men have demanded vindication, there in the front of the fight, with shield and sword, you will find the members of the legal profession. I want no better record for lawyers than that of Erskine, in his fight with Justice Buller, when he stood up there and contended for the rights of juries, and for the rights of the citizen. Look at Curran, standing up amidst the armies, and breathing out his last words of defiance. I want to point to Otis and to Adams, who stood all day in the Courts and argued for the rights of the people. The charge is unjust; it is cruel. You appoint a man to a high position; you take a bond from him; you exact security. No man ever asked it from a professional man. You place your life, your honor—all you have in the world—in the hands of a professional man. If you are accused of crime, you go to him for protection and advice. Your property is at stake—you come to him and put your property in his hands, lay your head down on his bosom and sleep, and leave it all to him. I know the vulgar prejudices which are fostered and pampered on the stage. I know how apt men are to repeat them, and indulge in them; but, sir, they are unjust, not only unjust, but criminal. But I make no appeal upon the ground of our being lawyers to keep this provision in; for the moment I forget that I am a lawyer. But as an American citizen, asking of American citizens to preserve in the organic law of this land this declaration which has been the bulwark of a free press, which should stand forever as a monument, piercing the very heavens, shining white as the snow that crests the tops of the Sierra Nevadas, marking the progress of the human race towards liberty, freedom, justice and peace. [Applause.]

SPEECH OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope, sir, that the amendment of the gentleman from Sacramento, Mr. McFarland, will not prevail. Speaking for myself, sir, I had rather have a licentious press than a trammeled and restricted press, and I think it is not too high a eulogium upon the press of the United States, nor upon the press of England, to say that they have been the palladium of liberty. And they are the right arm of liberty now. And with the press trammeled, with the press in any way hampered, with the press troubled, liberty will faint and die. I hope this Convention will take no backward step in this matter, but that we will maintain all the ground that has been acquired in this fight between liberty and despotism, and take another step forward if we are capable of doing it. We have not so much need of dealing with the past as with the present. We must deal with the present, for it can only be neglected at the expense of liberty itself—at the expense of those rights which are dear to every American citizen.

Does not the history of the past twenty years warn us that no step which we have taken upon the subject of the rights of the press should ever be retraced? Is there no warning in the action of the people of the State of New York in crushing the rascally Tweed ring—the corrupt ring that he and his creatures held over the people? Was he in any way checked, was he in any way controlled, was the power of that ring for robbing the people in any way interfered with by the Courts, by the Judges, by any private individual, until the press alone grappled with the monster? No one to interfere on behalf of the people until, finally, the press came to the front, and did interfere in behalf of the people. They attacked this corrupt and thieving ring alone and single-handed, and after a hard struggle they broke their power, and struck the shackles which had so long bound the people in absolute slavery. It was through the exertions of an honest and fearless press alone that the power of this ring was broken, and the ringleaders brought to account for their misdeeds—finally to die in felon's cells.

Is it not a notorious fact that the Republican party wrecked itself more, in attempting to foist the Poland Bill upon the people of the United States, than by any other act they have committed in the Congress of the United States in the last fifteen years? It was that, in connection with the various steals, which the Poland Bill was intended to hide and cover up, and prevent their being discussed which, in eighteen hundred and seventy-four, turned out three fourths of the Republican members, and sent two thirds of the Democrats in. It was not the fact of the Credit Mobilier frauds; it was not so much the fact that corruption was oozing from every pore of Government, but the fact that the free press of the country was attempted to be bridled, that the press was endeavored to be corrupted, and silenced, and trammeled—it was that fact alone which caused the political revolution in eighteen hundred and seventy-four, and the change of political power in the House of Representatives of the United States.

But, sir, without discussing this subject further, I will say that I would rather have a licentious press than a bridled press. The press is the right arm of liberty, and whatever steps we have taken, whatever advances we have made, whatever position the press has attained in advancing the rights of humanity and of liberty, I want us to hold, and I will never consent to take one backward step. I had much rather go forward. Therefore, I hope the amendment offered by the gentleman from Sacramento, Mr. McFarland, will not be adopted, and I hope that the unanimous voice of this Convention will be such that the propositions reported by the Committee on Judiciary shall stand in the Bill of Rights untouched by our hands. It is right and just, and politic as well. It has been there, let it remain there. There is no good reason to be advanced for its removal.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: The section, as reported by the committee, is the section of the old Constitution, with a simple amendment to make it conform to the action of this Convention in reference to the Grand Jury. It strikes out "by indictment." It is the same section reported by the Committee on Preamble and Bill of Rights; and, Mr. Chairman, while I have great respect for the opinions of the gentlemen who moved the amendment, I think this is one of the subjects that the people have not asked to be interfered with at all. I think it is one of the things that ought to be allowed to remain in the Constitution, as it is; and I hope that the Convention will not spend any more time upon it, but pass on to some of the live questions for which this Convention was called—reforms in the system of taxation, corporations, and those various questions which were considered of so much importance by the people when they called this Convention. I prefer to retain the old section, with the simple amendment to make it conform to the change in the Grand Jury system. I hope the amendment will not be adopted.

SPEECH OF MR. CASSERLY.

MR. CASSERLY. Mr. Chairman: I do not intend to indulge in any lengthy remarks on this important question. I have before me now a report of perhaps the greatest trial that ever occurred in the United States, in regard to criminal indictments, and that is, the case of the

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People vs. Croswell. The Judges found the case so difficult that they agreed to divide upon it. Judge Kent was on the bench, and, conservative as he was, he delivered the opinion, which at every point sustains the views of those of us here who are not disposed to make this change in the present Constitution. He refers, as a thing naturally to be respected, to the great fact of public opinion. On that point allow me to read from the book, because it is shorter and better expressed than I can express it. He says:

"The jury must judge of the seditious tendency of the libel. Some would have every censure upon the measures of government a libel. If this were the case, the voice of truth would cease to be heard amidst the notes of adulation. *It ought to be left to a jury to decide whether what was called calumny was well or ill founded.*

"I have thus shown that the rule denying permission to give the truth in evidence was not an original rule of the common law. The ancient statutes and precedents, which are the only memorials to which we can resort, all place the crime on its falsity. The Court of Star Chamber originated the doctrine, and it was considered an innovation. When it was brought into a Court of common law it was resisted and denied. The Court dared not practice upon it, and the jury gave it their negative. Lord Holt totally disregarded the rule in the case of Fuller; and it did not become an express decision of a Court of common law till Franklin's case, in seventeen hundred and thirty-one; and there the counsel made a zealous struggle against it, as new, dangerous, and arbitrary. In the trial of Horne, Lord Mansfield laid the rule aside, and the counsel for the Crown rejoiced at an opportunity to meet the defendant upon the merits of the accusation. In seventeen hundred and ninety-two it was made a questionable point, in the House of Lords, and one of the highest law characters in the House seems to have borne his testimony against it. I feel myself, therefore, at full liberty to examine this question upon principle, and to lay the doctrine aside if it shall appear unjust in itself, or incompatible with public liberty and the rights of the press.

"But, whatever may be our opinion of the English law, there is another and a very important view of the subject to be taken, and that is with respect to the true standard of the freedom of the American press. In England, they have never taken notice of the press in any parliamentry recognition of the principles of the government, or of the rights of the subject, whereas the people of this country have always classed the freedom of the press among their fundamental rights. This I can easily illustrate by a few examples:

"The first American Congress, in seventeen hundred and seventy-four, in one of their public addresses (Journals, vol. 1, p. 57) enumerated five invaluable rights, without which a people can not be free and happy, and under the protecting and encouraging influence of which these colonies had hitherto so amazingly flourished and increased. One of these rights was *the freedom of the press*, and the importance of this right consisted, as they observed, 'besides the advancement of truth, science, morality, and arts in general, in its diffusion of liberal sentiments on the administration of government, its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated into more honorable and just modes of conducting affairs.' The next high authority I shall mention is the Convention of the people of this State, which met in seventeen hundred and eighty-eight. They declared, unanimously (Journals, pp. 44, 51, 52, 73, 74), that the freedom of the press was a right which could not be abridged or violated. The same opinion is contained in the amendment to the Constitution of the United States, and to which this State was a party. It is also made an article in most of the State Constitutions, that the liberty of the press was essential to the security of freedom, and ought to be inviolably preserved; and in two of these Constitutions (Pennsylvania and Ohio) this freedom of the press is specifically defined, by saying that in prosecutions for any publications respecting the official conduct of men in a public capacity, or where the matter is proper for public information, the truth may always be given in evidence. I shall mention, lastly, the Act of Congress, of the fourteenth of July, seventeen hundred and ninety-eight, which prescribed penalties for certain specified libels upon the government of the United States, and allowed the truth to be given in evidence on every prosecution under that Act; and it is worthy of notice, that the part of the Act allowing the truth to be given in evidence was *declaratory*, and thereby conveyed the sense of Congress, that such was already the existing law.

"These multiplied acts and declarations are the highest, the most solemn, and commanding authorities, that the State or the nation can produce. They are generally the acts of the people themselves, when they came forward in their original character, to change the Constitution of the country, and to assert their indubitable rights. And it seems impossible that they could have spoken with so much explicitness and energy, if they had intended nothing more than that restricted and slavish press, which may not publish anything, true or false, that reflects on the character and administration of public men. Such is the English doctrine of the liberty of the press, as asserted in Franklin's case. (See also Hawk., tit. Libels, 7.) A treatise on hereditary rights has been held a libel, although it contained no reflections upon any part of the subsisting government. (Queen vs. Bedford, Str. 189; Gilbert's Rep. K. B. 297.) And if the theory of the prevailing doctrines in England (for even there it is now scarcely anything more than theory), had been strictly put in practice with us, where would have been all those enlightened and manly discussions which prepared and matured the great events of our revolution, or which, in a more recent period, pointed out the weakness and folly of the Confederation, and roused the nation to throw it aside, and to erect a better government upon its ruins? They were, no doubt, libels upon the existing establishments, because they tended to defame them, and to expose them to the contempt and hatred of the people. They were, however, libels founded in truth, and dictated by worthy motives.

"I am far from intending that these authorities mean, by the freedom of the press, a press wholly beyond the reach of the law, for that would be emphatically *Pandora's box, the source of every evil.* And yet the house of delegates in Virginia, by their resolution of the seventh of January, eighteen hundred, and which appears to have been intended for the benefit and instruction of the Union, came forward as the advocates of a press to-day unshackled, and declare, in so many words, that 'the baneful tendency of the Sedition Act was but little diminished by the privilege of giving in evidence the truth of the matter contained in political writings.' They seem also to consider it as the exercise of a pernicious influence, and as striking at the root of free discussion, to punish, even for a false and malicious writing, published with intent to defame those who administer the government. If this doctrine was to prevail, the press would become a pest, and destroy the public morals. Against such a commentary upon the freedom of the American press, I beg leave to enter my protest. The founders of our government were too wise and too just, even to have intended, by the freedom of the press, a right to circulate falsehood as well as truth, or that the press should be the lawful vehicle of malicious defamation, or an engine for evil and designing men, to cherish, for mischievous purposes, sedition, irreligion and impurity. Such an abuse of the press would be incompatible with the existence and good order of civil society. The true rule of law is, that the intent and tendency of the publication is, in every instance, to be the substantial inquiry on the trial, and, that the truth is admissible in evidence, to explain that intent, and not in every instance to justify it. I adopt, in this case, as perfectly correct, the comprehensive and accurate definition of one of the council at the bar (General Hamilton), *that the liberty of the press consisted in the right to publish, with impunity, truth, with good motives, and for justifiable ends, whether it respects government, magistracy, or individuals.*"

The result was, Mr. Chairman, that the Judges disagreed, standing two and two, but the Legislature of the State of New York, on that day, had two bills before them. One was a bill framed by the Council on Revision, and was supposed to be in favor of the freedom of the press; and that bill was lost by a large majority; and almost immediately afterwards a bill concerning libel was introduced by Mr. Van Ness, which passed both houses and became a law, in 1805. That Act is as follows:

"WHEREAS, Doubts exists, whether, on the trial of an indictment or information for libel, the jury have a right to give their verdict on the whole matter in issue:

"1. *Be it therefore declared and enacted by the people of the State of New York, represented in Senate and Assembly*, That on every such indictment or information, the jury, who shall try the same, shall have a right to determine the law and the fact, under the direction of the Court." *Under the direction of the Court*, mark you, sir. "shall have a right to determine the law and the fact, under the direction of the Court, in like manner as in other criminal cases, and shall not be directed or required by the Court or Judge, before whom such indictment or information shall be tried, to find the defendant guilty, merely on the proof of the publication by the defendant of the matter charged to be libelous, and of the sense ascribed thereto, in such indictment or information; *provided, nevertheless*, that nothing herein contained shall be held or taken to impair or destroy the right and privilege of the defendant to apply to the Court to have the judgment arrested, as hath heretofore been practiced.

"2. *And be it further declared and enacted*, That in every prosecution for writing or publishing any libel, it shall be lawful for the defendant, upon the trial of the cause, to give in evidence in his defense, the truth of the matter contained in the publication charged as libelous; *provided always*, that such evidence shall not be a justification, unless on the trial it shall be further made satisfactorily to appear that the matter charged as libelous, was published with good motives and for justifiable ends."

Mr. Chairman, the Constitution of New York to-day has embodied in it a declaration substantially the same as that for which we are contending here. I am not enamored of old things because they are old, nor am I an enemy of old things because they are old. This has been tried for a long period, and having been found beneficial, I think we should not change it. I contend that this is not the sort of a change which the people whom I represent sent me here to make. I do not believe that any change in this respect is required, and therefore I shall vote against the amendment.

SPEECH OF MR. JONES.

MR. JONES. Mr. Chairman: Notwithstanding the very able and very interesting arguments I have heard in support of the report of the committee, I cannot see that these arguments apply in this case. On the one hand the amendment is objected to because it tends to the protection of the freedom of the press, and on the other hand it is objected to because it trammels the freedom of the press. Now, in regard to the objection that the amendment tends to the abridgment of the freedom of the press, I submit that there is nothing whatever in the amendment tending in that direction. It seems to have been treated here as though it was the first part of the section, which provides for the freedom of the press, which this amendment aims to strike out. It is merely the last clause which is proposed to be stricken out. The freedom of the press is fully guaranteed and provided for in both of the sections, to which this amendment does not apply at all, in the words: "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right," and "In all prosecutions for libel the truth may be given in evidence." We are not seeking to restrict the citizen from freely writing his sentiments, nor to prevent him

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from giving the truth in evidence. The amendment does not do it—can not do it—but simply to strike out that clause, and put libel on the same footing with every other crime. The amendment is simply to take away that provision which does not apply to other criminal prosecutions; to take away that provision declaring that in this particular class of crime —libels—the jury shall find upon the law and the fact. I cannot conceive how any gentleman can suppose that this amendment in any way interferes with the freedom of the press, or prevents any person from freely writing or expressing his sentiments. It goes simply to this question: If your statutes define libel to be a crime, and define forgery to be a crime, and define various classes of malicious mischief to be a crime, shall they be tried by one law, or some by one system and some by another? That is to say, shall the jury have the same right to decide the one as the other, the same rules of evidence, and the same method of trying the cases in one as in the other, or shall they not; shall certain ones be selected and preferred?

Now, I know that the gentleman from San Francisco, Mr. Barnes, on the other hand, claims the need of that clause in the section as a guarantee to the jury against the usurpation of Judges; but if that be so, why then take that clause away from where it is and put it in the section that provides for trial juries in general? There is an answer to that. I understand the object of the gentleman from Sacramento to be simply to take it away from where it is; then if any gentleman wants to provide that juries may, in all criminal cases, determine both the law and the fact, let it be added to section seven. Otherwise we have this state of things. Whatever the theory upon which this clause became attached here, we do know, as the gentleman from Kern has stated, that it is a source of deception; that juries are misled, on libel trials. They are not told, upon the trial of a case of libel, "You must find a verdict of guilty or not guilty upon the whole case." They are not so instructed. They are told: "Gentlemen, in this case you are the judges of the law" They treat this class of crimes entirely on a different basis from other crimes.

Now, I do not know that the press asks anything of the sort. I do not believe that the press is asking any immunity which a person charged with any other offense before the law is not entitled to receive. I do not understand that the press asks that they shall be permitted to publish articles against the honor and reputation of citizens or officials without being held responsible. I do not understand that any gentleman will rise here and ask the privilege of defaming character without being held responsible. It is contemplated, in the very beginning of the section, that they are to be held responsible for the abuse of that right. I do not understand that gentlemen of the press ask to be relieved of that responsibility. The amendment does not attempt that at all; but it is merely this, that you are not to select certain cases to be tried by a different rule from other cases, but that all criminal cases are to be tried and considered by the jury in the same manner. If you are going to allow the jury to be the judge of the law and the fact in libel cases, then it would only be just to insert a provision here that in cases of forgery, malicious mischief, and the various classes of misdemeanors and felonies, the jury shall judge of the law and the facts: that in no case shall they be trammeled by any instructions from the Court. That would make the law harmonious. It would be just, at least, and the law would have a uniform operation. As it stands here I do not see the justice of it. I will simply repeat my proposition once. The amendment is designed to make the law harmonious—to treat one class of offenses the same as all others. Whatever the law declares to be a crime, goes before the jury, and is tried by the jury, and a verdict rendered on it upon the same principles as in any other case where a man is charged with any crime; and no class of offenses shall be preferred. As it now stands, it guarantees the freedom of speech—the right to publish one's sentiments.

For these reasons I hope this amendment will be adopted. Then, if these gentlemen wish to define the powers of the jury plainly—if they wish to provide that the jury shall be the judge of the law and the fact in all criminal cases, let it be provided in another place. Let this clause be attached where it belongs. Let us make the law uniform in its bearings. Let it not apply to one case and not to another.

THE CHAIRMAN. The question is on the amendment.

MR. McFARLAND. Mr. Chairman: I move that the committee now rise, report progress, and ask leave to sit again.

Lost.

SPEECH OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: It is somewhat amusing to me, sir, to see how certain gentlemen here one day clinging with all their powers of eloquence to the sacred charter of liberty, in order to advance their favorite propositions, and the next day they are for making a change, and against sticking to the relics of the barbarous ages. One day, like a balky mule, with clenched teeth, standing with their faces to the past, peering into the darkness, and trying to stop the revolutions of the world; and the next day we find them tugging at the wheels of the great triumphal car of human progress. One day the most conservative, and the next day the most overflowing radicals. Whenever anything new is mentioned that gentlemen do not like, "I stand by the old Constitution." Whenever a new proposition is presented which meets their views, then they are opposed to clinging to a relic of barbarism. Now, sir, it is not an argument in favor of a proposition that our fathers indorsed it, because we have rejected nine tenths of their arguments. Neither is it an argument in favor of a proposition because it is new. Why, gentlemen talk one breath about sticking to the old Constitution, and the next breath about amending it. What right have gentlemen to tell us what the people want? How do they know what the people want? I am not aware that the people have ever voted on this proposition, so as to give us any intimation of what they want, and it is amusing to hear gentlemen on this floor proclaiming what the people demand of the members of this Convention. Gentlemen seem to think that all they have to do is to get up here and talk about capital, capital, capital. The gentleman from San Francisco, where they have a great deal of money and not much land, thinks the evils of capital lie in landed estates, and I presume my friend, Colonel Barnes, is in favor of making every farmer give up half his land to the man who has none. And then, my friends, the farmers who have land and not much money, say that the people want the money of San Francisco cinched.

MR. BARNES. I am in favor of taxing that, too, right up to the handle.

MR. McFARLAND. I did not hear much about it in the gentleman's speech. The gentleman from Los Angeles, Mr. Ayers, says the fear of the press is a most healthy sentiment in public life. Sir, that was a most unfortunate expression. That fear of the press is a most unfortunate thing. The best men in America have a fear of the public press. We see it everywhere, and if it does not show its head in this Convention, it is the only political body I ever saw in which it did not. I do not believe there is but one live American to-day who is entirely free from this fear, and he is traveling abroad.

MR. AYERS. I said evil men have a fear of the press.

MR. McFARLAND. And who is to say who are evil men? You may consider a man evil whom I consider good. You may consider a man an evil man for advocating doctrines which do not meet your views, and I may think the reverse. I have seen the best men in this country driven out of public life by the press, by utterly irresponsible charges, without any foundation in fact, crammed into the ears of the people, day after day, until finally they come to believe it. You may say that men can outlive it. You may outlive the itch or small-pox, but you will suffer in the meantime. Sir, men are outliving these charges now, but they are still under the ban of public suspicion. As this Convention knows, the best men of this country have been driven out of public life by an irresponsible, licentious press ——

MR. AYERS. Belknap and Babcock, for instance.

MR. McFARLAND. Perhaps they were not bad men. Do you know that Belknap was a bad man? He was charged with a public crime, and the whole power of the administration was used to punish him; he was tried by men adverse to him in politics, and in a community where prejudice existed, and still he was acquitted.

MR. BARNES. I wish to put in a couple of counter-weights. I suggest Tweed and Tilden.

MR. McFARLAND. As I said, he was tried before a jury composed of men opposed to him politically, and the law officer of the government used his best endeavors to convict him, special counsel was employed, and yet he was acquitted. That is some answer to the charge. I am sorry that gentlemen have introduced party politics here to-day.

Now, I understand the gentleman from San Francisco, Col. Barnes, to argue this, if anything, that the jury should be the judges of the law in the case. Is not that it? I do not understand him to make any distinction at all between any other class of crimes and libel. He read authorities advocating the doctrine that the jury should have the right in all criminal cases to judge of the law and the fact. He read authorities to the effect that the jury in all cases should judge of the law and the fact. Now it is well understood that the jury is to determine the fact, and take the law from the Court. That is the law in every other case, every solitary case except libel. Now why should it not be the law in libel cases? Is there any reason for it. The gentleman talks about crushing the press. Who is trying to crush the press. What more can they ask than this: "Every citizen may freely speak, write, and publish, his sentiments, being responsible for the abuse of that right," is not that as much liberty as they want? Doesn't it give them all the liberty in the world? How can they come here and ask to be put on some higher plane, more irresponsible position than that which is occupied by other men charged with crime. Why, sir, go back to England. Why, the public press was first started in England at the expense of the government. It was considered and held as an agency, subject to the government. They could not publish anything except with the permission of the government. There is no such state of things here. What constitutes the government here? It is not the crowned heads. There the people have no voice in the government, and the Courts and judges are the creatures of the Crown. Here the government is the agency of the people themselves, and our Courts are the creatures of the people, responsible to the people. Government is an agency created by the people themselves, and there is nothing to fear from the Courts. I am rejoiced that my learned friend from San Francisco has read so many authorities to show the infamous political character of judges, and he then closed his speech with a eulogium upon lawyers, from among whom the judges are selected.

Now, I say the only question here is this: Shall men charged with libel stand on the same plane as other men charged with crime? If not, why not? Why should there be any exception? Why should there be any immunity granted to one class of crime over another? I say they should have no such immunity. Every man knows their power. They have more power than any other class in the State. Every man knows the power of the newspapers. When you run a paper it costs no more to print one thing than another. It costs no more to print a libel than it does to print an article on the price of potatoes. Then, how are you going to defend yourselves against these attacks? Can you talk to the people as cheaply as the paper can? Can you go around where the paper circulates and see and talk to every man who reads it? It is utterly impossible. If you write a communication, the chances are they will not publish it for you. Then how are you going to fight the papers? They are the most powerful agencies in the land, and they should not ask for these special privileges which other men do not have. My eloquent friend from San Francisco, Colonel Barnes, might stump the State from one end to the other for two years, and yet, with all his eloquence, he could not reach one half of the people who had read the paper. There is no defense against the

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paper. Even when a man is accused of some crime, and is cleared by a jury, the paper comes out the next day and says that he was whitewashed. [Laughter.] Now, with all this power in their hands, gentlemen want to give them these special privileges. It is unreasonable and unjust. I do not desire to make any attacks upon the press. I simply want newspaper libelers to stand before a jury just where every other man must stand when he is accused of crime.

MR. VAN DYKE. I move that the committee now rise, report progress, and ask leave to sit again.

Lost.

THE CHAIRMAN. The question is on the amendment of the gentleman from Sacramento, Mr. McFarland.

Division being called for, the Chairman declared the amendment lost by a two thirds majority, without counting.

MR. FAWCETT. I have an amendment to offer.

THE COMMITTEE RISES.

MR. SMITH of Kern. Mr. Chairman: I move that the Committee now rise, report progress, and ask leave to sit again.

The motion prevailed.

And the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and a quorum present.

THE LAW OF LIBEL CASES.

MR. VAN DYKE. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Preamble and Bill of Rights.

Carried.

IN COMMITTEE OF THE WHOLE.

MR. FAWCETT. Mr. Chairman: I send up an amendment which I desire to offer.

THE SECRETARY read:

"Strike out the words 'and the jury shall have the right to determine the law and the fact' from the last two lines, and insert the following: 'and the jury shall have the right to find a general verdict as in other criminal cases.'"

SPEECH OF MR. FAWCETT.

MR. FAWCETT. Mr. Chairman: In order to understand the purpose and scope of the proposed amendment, it will be proper, perhaps, to go back a little for the purpose of inquiring into and ascertaining the facts and reasons which led to the Constitutional provision as it has existed heretofore. At English common law, as it was originally declared, the functions of the jury and of the Court were separated by a clear and distinct line. In all criminal prosecutions in English jurisprudence, I believe, at the common law, as it was finally crystalized and declared, and as it finally assumed a well defined shape, juries were empowered to declare and find upon all the issues submitted to them in the form of a general verdict of "guilty" or "not guilty." This, I think, was the case in all criminal prosecutions. In no case, as the common law finally assumed shape, if I recollect aright, was the jury limited to the duty of finding specially and solely upon the facts of the case by a verdict in the form of a special finding. In all cases under the instructions of the Court or Judge, the jury had the final power of deciding for themselves questions of law and fact by finding a general verdict of "guilty" or "not guilty," which necessarily embraced all that there was in the case. But, about the middle of the last century, in the expanding freedom of the English people, periodicals and newspapers began to assume the privilege of criticising the Government of England in its various agencies and officers. This tendency, this assertion of liberty upon the part of the people soon grew to be exceedingly distasteful to the British officials, to the Crown, and the Courts, perhaps, and to others whom the press and the publishers were in the habit of attacking. So that about the year seventeen hundred and fifty, the Courts of Great Britain in which prosecutions for libel were urged, began to arrogate to themselves the power of directing special verdicts from juries on prosecutions for libel. That is to say, the Courts or Judges claimed the right to decide whether or not a publication was libelous on its face, and leave the jury the single question as to the fact of the publication by the defendant. The Courts began to direct and did direct juries to limit their verdicts to a special finding as to the fact of publication, taking from them the right, which up to that time had been exercised in all criminal cases, to cover all the issues in the case, both of law and fact, by a general verdict of "guilty" or "not guilty."

In the case of Woodfall, which has been cited here, where the publisher of the Morning Advertiser attacked, in seventeen hundred and seventy, a high officer of the government, or permitted a correspondent—who, I believe, was no other than Junius—to attack in his journal certain high officers of the government, Lord Mansfield, whose word was law in Westminister Hall for a quarter of a century, declared that juries in libel cases had power only to find upon the question of fact as to publication. The assertion of this doctrine, sir, was disputed by the liberty loving people of England. It was disputed by their advocates, by the lawyers of the time, led by the noble Erskine. This contest was carried on in Parliament, where the opponents of the new and dangerous doctrine were led by Fox. It continued for years and years. Fox brought forth his libel bill to defeat no less than six times.

In the year seventeen hundred and eighty-four came the now famous case of the Dean of St. Asaph, the case which gave rise to the difficulty between Justice Buller and the Advocate Erskine, and in which, allow me to say, Erskine, who belonged to what seemed to be a much disposed class of advocates or lawyers, stood in his place like a rock, clad, it may be, in purple and fine linen, even in a silken gown, with a wig, and with kid gloves on his hands, a gentleman and an advocate—stood like a rock between the liberties of the English people and the oppression of the Courts and Crown. In that case, sir, the jury undertook, as we say in these days, to take the bit in their teeth, and in spite of the injunction of the Judge to find a special verdict upon the fact, added to that the word "only," so that the verdict read in this way: "guilty of publishing only." Buller refused to receive the verdict in that shape, and insisted that the word "only" should be stricken out, because it was evident that if that word was permitted to stand that would dispose of all the issues embraced within the charge pending before the Court. Upon the question of whether that word should be stricken out this contest arose between Erskine and the Justice Buller, and which will ever make that case memorable. The result was that the foreman of the jury, speaking for himself and his fellows, coming to the rescue of Erskine, the word was permitted to stand, and in that case, for the first time in many years, the jury, through the exercise of nerve and will and determination, was allowed to find upon the law and fact which was properly before them in the case.

Then the struggle was renewed in Parliament, and in seventeen hundred and ninety-two it culminated in the famous libel Act known as "Fox's Libel Act," upon the seventh effort which had been made in Parliament to make that the law of the land. The evil to be cured by that Act was the unwarrantable assertion of power upon the part of the Court—an unwarrantable infringement upon the course of the common law, taking away from the common law jury one of the functions which it had invariably discharged in criminal cases, with the single exception of a prosecution for libel. The evil to be cured was the restoration to the jury of the power to pass generally by a verdict of "guilty" or "not guilty" upon all the issues embraced within the indictment; not to give them any greater power, not to extend their power one iota over that which was exercised habitually in other criminal cases, but simply to put a prosecution for libel upon exactly the same plane and same footing that prosecutions for the violation of other criminal laws occupied. It was a return to the ancient landmarks alone, and vindicated the power that the jury exercised in all other cases. It was not to confer additional powers upon the jury, and not to interpose any other rule in a libel case than that which was habitually interposed in all criminal prosecutions. That law declared, in fact, that "the jury may give a general verdict of 'guilty' or 'not guilty' upon the whole matter put in issue upon indictment or information, and shall not be required or directed by the Court or Judge before whom it shall be tried to find the defendant guilty merely on the proof of the publication of the paper charged to be a libel, and of the sense ascribed to the same in the indictment or information. Provided, that on every such trial the Court or Judge before whom it shall be tried, according to their discretion, give their opinion and direction to the jury on the matter in issue, in like manner as in other criminal cases."

So that the effect of that legislation was not to take away from the Judge the power to charge the jury upon questions of law, and to make the jury the ultimate and exclusive judges of questions of law, but simply to allow them to find a general verdict of "guilty" or not "guilty," which embraced within its limits a finding upon the question of intent, and as to whether the writing or printing was intended by the publisher to be libelous or not. That was the evil that was struck at and was cured by the Act known as the "Fox Libel Act." That was passed in the year 1792—not before the Declaration of Independence, as the gentleman from San Francisco, I think, asserted; not so that it became a part of the common law of this land; not so that it was in force and effect to the thirteen colonies of this nation—but in the year 1792.

MR. BARNES. Mr. Chairman: I do not like to be credited with saying what I did not say. What I said was, that it was not until after the Declaration of Independence that this contest began in England, and that the libel bill was passed.

MR FAWCETT. Mr. Chairman: The gentleman asserted that this clause under discussion was not found in the laws of the original thirteen colonies, because it was already the law of the land by virtue of the enactments of the British Parliament. There was no enactment upon that subject until 1792, so that these enactments could not have been a part of the common law of these colonies at the time of the formation of the original Constitution. There was the abuse and there was the whole corrective. It restored the English common law to its original scope, and restored the functions of the jury to its limit. That remains the law until this day, so that Judges participate with juries in the legal propositions precisely as they do in other criminal prosecutions. It has not been thought necessary to clothe the press with special immunities or privileges to put it on a plane a little different or a little higher than that occupied by others within the limits of the realm, but it occupies and stands exactly in the same position before the law as the lowest citizen or the greatest and noblest in the realm occupies to-day.

Now it seems to have happened, sir, in this country, that in attacking an evil which had been found to be gigantic—the encroachment of the Courts or the government upon the rights of juries in cases of this kind—the people, as they have often done, as they are liable to do, and as they have done here and probably will do again in this Convention, went, I think, too far the other way. The corrective was simply to restore the power of juries in libel cases, and fix it precisely as it exists in all cases. But, sir, we seem to have gone a little in the other direction, so that in this single class of cases—as the constitutional enactment is interpreted by many jurists, and as it has been interpreted by the lawmakers of this Commonwealth in the penal code—the prosecution in this country stands upon a plane by itself, and the jury is made the exclusive judge of the law as well as of the fact in the case. That is to say, we have a

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constitutional provision here as a part of the same section which reads as follows:

"In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact."

I say that although we have this provision in our Constitution, which prescribes to the jury the cause on which a verdict shall be rendered, that there is left no power in the Courts, as this law has been construed, to give this part of the constitutional law to a jury and say that they are bound by it as the law of the land. We have a Constitution which says that if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted. That is the rule by which the jury is or ought to be governed, and yet the remaining clause of the Constitution, as it has been found by the law-makers and by many of the Courts, takes away the power to read that part of that section to the jury, and to say to these gentlemen: "That is the law of the land, and you are bound by it." But if the Court is asked to give that part to the jury as an instruction, it must say in the same breath; "Gentlemen, this is the Constitution, you ought to be bound by it; you have no right to convict except in the cases pointed out; but the law obliges me to say at the same time, you need not be governed by it; you are the judges. You, if you see fit, may override the Constitution; may disregard its plain language and set it aside."

I hold that this is worse than absurd. It is criminal to permit such a provision as that to stand in the Constitution. It takes away from the Judge the power to give a constitutional provision to the jury in the nature of a charge, and to state to the jury that they are bound by that as by the law of the land. I say, sir, that the honest newspaper publishers, of which the gentleman from Los Angeles, Mr. Ayers, I am happy to say, is one, does not need any such protection as that. There is a class of publishers who do need it, and all the immunities from prosecution that they can get. But the respectable and honest editor or publisher, he who is actuated by a desire to do justice, to combat and destroy wrong, who has truth and right upon his side, needs no such immunity or privilege granted to him as that. He is ever ready to take his chances with the other citizens of the commonwealth, and to occupy the same plane that you do and I do, or any other person who may be charged in a criminal case.

The amendment proposed by myself I think covers the ground exactly. It says that the jury shall have the right to find a general verdict as in other criminal cases. It puts a person charged with libel upon the same plane exactly that all occupy in other cases.

Now, this discussion has been limited, so far as the effect of these amendments has been concerned, to the cases of publishers. But there is another large class of libels which have not been mentioned yet. A libel may be printed or may be published without being found in the columns of a newspaper. Any sort of a writing, caricature, or printing, whether found in the columns of a newspaper, or found in type, is defined by law as libelous; so that under this law, as it stands, the grossest libels, whether seen in the columns of a newspaper or not, whether in caricature, placards, or writings, enjoys the immunities and privileges granted here equally as much as newspapers. Now, is it right? Supposing a person having a grudge against another publishes a defamatory writing himself, and circulates it, not through the columns of a newspaper, but through some other medium. The arguments advanced by the gentleman from Los Angeles and others, in favor of the freedom of the press do not apply to a case of that kind. There is the case of a very common malefactor—a low-bred cuss; if you will allow me to use the expression—why should he enjoy any immunity or privilege that is not extended to any other assassin or cut-throat when placed upon his trial. I do not see.

There is one thing certain, Mr. Chairman, that I stand pledged to here, and which I think every honorable member here should stand to, and that is to prevent, by all honorable means, anything and everything in the nature of class legislation. I do not care whether legislation is sought in favor of a corporation, or whether it is sought in favor of the newspaper press, or whether it is sought in favor of any other class or occupation, or condition, or profession; I stand here, for one, to denounce it, and to say that in a Convention like this, which is framing the superstructure of society, the edifice in which we are to dwell for a quarter of a century, we should lay aside all feeling and legislate for all alike, and put everybody on the same footing. I do not recognize the right of the press any more than I do that of the corporations, to stand up before a Court and say "I am above the law; I enjoy here special immunities and privileges which others of my fellows in other avocations and employments do not enjoy." I say that this is unnecessary to the protection of the press, and that the honest editor and the honest press does not need any such protection as that.

However, this amendment performs this function. It might be said that in case this clause be stricken out, as here moved, that a doubt might arise as to whether the common law was thereby restored to force in this State, as declared by Lord Mansfield, and as to whether or not juries may not be required to find a special verdict in cases of libel. Therefore, I, for one, voted against striking that clause out. This amendment, however, will remove all doubt upon that subject, and will leave prosecutions for libel in exactly the same condition that prosecutions for other criminal offenses occupy. I submit and maintain that it is right and just, and that no fair-minded newspaper editor, or other person, when he comes to examine the matter—to examine it, and look into it, and ascertain the full bearings of the subject—can object for a moment to the insertion of this clause into the Constitution.

MR. BROWN. Now, Mr Chairman, it seems to me that this question has not been treated entirely fairly, although there has been a great deal said. We hear, for instance, advanced by every able authority it is true, and against which I feel diffident in making any reply whatever, the idea that there is class legislation here, and that we should be particularly cautious when a matter of class legislation comes up, and that no class should be favored by legislation. Now, if we will examine with very great care, section nine, which is before us, we will find that every citizen may freely speak, but also may be prosecuted for libel in his speaking as well as writing, and we see here that freedom of speech is protected by this clause. He may also publish his sentiments upon all subjects, being responsible for the abuse of the same. Now, it does appear to me that there is a misapprehension with regard to the latter clause of this provision, and that is with regard to the jury, and what it has a right to do. Now we find that it is stated plainly that "in all criminal prosecutions for libels, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted." That all appears to be strictly right. No one appears to find any fault with that, but when it comes to the last clause, "and the jury shall have the right to determine the law and the fact," the apprehension appears to exist that the jury can create law, can form law to act upon. There is no such thing. They can determine the law and the fact. They are to determine both. It does not mean that they create law or that they create fact in the case, but they are there given the opportunity to judge and the widest range in order to protect freedom of speech and the freedom of the press.

Now, Mr. Chairman, I do not intend at present, as so much has been said about antiquity and law and prestige and former things, to dwell upon anything of the kind, even if I were able, for I am under the impression that we are not under obligation here in this body to respect or regard as sacred, short breeches and knee buckles, which were worn by traitors as well as good men, but that every question comes before this body upon its merits. Taking that view of the subject I shall certainly vote against the amendment.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: I did not intend to offer any remarks upon this question, but I desire to give the reason why I think the amendment offered by the gentleman from Santa Barbara, Judge Fawcett, should not be adopted. The principal reason is that the clause as it stands has been construed. It has been a part of the Constitution for nearly thirty years. If we amend it now by striking out the provision that the jury may judge of the law and the fact, will not the presumption arise upon the construction of the section as passed by this Convention, that it was the intention of the Convention to change the rule? That having striken out a provision giving the jury the right to determine the law and the fact, that therefore it was the intention of this Convention, and the Constitution must be construed as having been intended—to restore the rule contended for by the common law Judges, that the judge should determine the law and the jury the fact. Now, of what benefit would be the privilege to render a general verdict upon a construction of the law like that? We might have as many decisions as there are District Judges. Every Judge would construe the law for himself. The questions of law and fact in prosecutions of this kind are not separate as they are in other cases. It is difficult to tell where the question of fact ceases and the question of law begins. It is not sufficient in this prosecution to prove the truth in this case. If it were, there would be no difficulty. But, it is not sufficient to show that the fact is true. You must go farther and show the motives were good and the end justifiable. Now, the fact as to whether the ends were justifiable or not is a question of law. As to what ends will justify the speaking of slanderous words, even though true, is always a question of law as to whether it was a privileged communication. I have no right to speak about a private citizen if it reflects upon his character. But if he is a candidate for office, or if he is applying for a position of trust, and a man comes to me and asks me about his character, then I have a right to tell the truth about him and the communication is privileged. But it is always a question of law as to whether it is privileged or not.

Take the case of a man prosecuted for libel. The question seems to be argued here as if newspaper publishers were the only persons ever prosecuted for libel. To be sure they are more likely to be. It applies as well to the individual as to the publisher of a newspaper, and the question arises first whether it is true. Then the question arises was the publication made with good motives and for justifiable ends. That is a question of law. What is to hinder the Judge from telling the jury, "I instruct you, as matter of law, that the ends of this publication were not justifiable. All you have got to do, gentlemen, is to vote whether this man published the thing or not. I instruct you that these words are libelous. I instruct you that the motives are not good or the end justifiable." What is the jury going to do in a general verdict, if it pays any attention at all to the instructions of the Court, although the words be true?

If the law stands as it now is the jury in considering the law might determine that the motives were justifiable and proper; that it was right that the publication should be made. The danger in striking out the words as they now stand is, that it would justify the Courts in concluding that they were stricken out with the intention of giving that question to the Courts instead of the jury. I hope that the section will be allowed to stand as it has stood in the Constitution since eighteen hundred and forty-nine. We have never heard any complaint against it until the amendment was proposed yesterday. It is understood that the juries are to determine the fact and the law. To be sure in all criminal cases they determine the fact and law when they return a general verdict. But if this change is made the defendant in a libel case would be worse off than any other criminal, for the reason that the

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Court would have the right to consider that the change of this section was intended to give the law to the Court and the facts to the jury, and that the jury would only determine the facts. That is not the rule now. A distinguished judge in charging the jury informed them that they were not bound by the instructions of the Court. He said that the Court is a sort of a thirteenth juror. He has more experience and gives his opinion upon these matters, and the jury may give them just the importance that they think they merit, but the decision of the question rests with them. That is where it should be left. The Court may advise the jury if it pleases. The Constitution places it with the jury in all cases, as it ought to be, because it is not at all likely that juries would oppress any defendant; and it might and does frequently happen that Courts do undertake by strained rules of law to throw obstacles in the way of a free expression of opinion either by publication or by word of mouth.

SPEECH OF MR. HALE.

MR. HALE. Mr. Chairman: I desire to make one or two suggestions, but before I do so I would ask the Secretary to read the amendment offered by Judge Fawcett.

THE SECRETARY read:

"Strike out the words 'and the jury shall have the right to determine the law and the fact' from the last two lines, and insert the following: 'and the jury shall have the right to find a general verdict as in other criminal cases.'"

MR. HALE. Mr. Chairman: In reply to the suggestion made here by the gentleman from San Joaquin, Mr. Terry, if I have understood him correctly, his objections to the amendments are covered by these two points: First, the danger of a misconstruction of the rule applicable to libel cases if the amendment prevails; and, second, that there is no practical danger in allowing the jury in all cases of this description, as provided in the section coming from the committee, to find both the law and the fact. The proposed amendment subjects cases of libel to the same rule that is established and in force in all other criminal cases. If, then, there be ground for complaint, it is in the application of that general rule, else it does not exist. As to the second point, that it is always safe to leave to the jury in this class of cases to determine the law as well as the fact, I have listened very patiently and I may say anxiously, to hear some good reason, if it exists, why this departure should be sanctioned in this case, when we so persistently refuse to apply it to any other case. If a good reason has been given, I have not heard it.

Now, it seems to me that there is one view that I have not heard taken here that possesses much force. It is this: it would seem here from the argument made on Wednesday, and apparently conceded on the other side, that this rule is invoked for the benefit of defendants on trial, and that it may have no pernicious application otherwise. Right here, it seems me, is the defect in the argument. Let us see now what this rule is, as it stands, and if this amendment does not prevail, will go into the Constitution. Bear in mind the general rule that a State Constitution is a limitation of power. We, of course, are all familiar with the distinction between the limits of a State Constitution and that of the Federal Government. The latter comprises a grant of power, and the powers of the government constituted under it cannot transcend this grant and those impliedly granted to carry them into effect; whereas, it has been uniformly held that the Legislature of a State or State Government is clothed with all governmental powers, except as they are restrained by the Federal Constitution first, and second by the State Constitution. Therefore, the primal object of the State Constitution is a limitation upon the powers of the State Government. True, it has an office further to regulate the organization, but after the organism of the State Government is provided for, almost the whole object of a State Constitution is to place a limitation upon the powers of the various departments. I apprehend this view will not be controverted. Now, then, taking this provision in its entirety, it is a departure from this general rule. For instance, we have not held, nor have other Constitutional Conventions deemed it necessary in Constitutions to provide a rule by which Courts and juries shall arrive at the conclusions on which judgments are made to rest. These matters are ordinarily left to the law to determine and for the Courts to administer. Departing from this rule, however, we say: "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." That is all well enough, except that we might still find this expression in law instead of Constitutional enactment. Here comes the rule. Here is the departure, contained in the next clause. Here in the Constitution we propose to enact a libel law. We say:

"In all criminal prosecutions for libels the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact."

Now then, we understand, historically speaking, why this provision finds its way into our Constitution, as indeed it has into the Constitutions of other States. Its true history is only to be readily comprehended when you understand the relation between the Crown and the subject in the early, or comparatively early, part of the English history. It was made first an English statute. It grew out of a great struggle in the Courts. It was established for the purpose of maintaining the subject against the oppression of the Crown, its magistrates, and its Courts. Its history is familiar to every student. It need not be repeated here. We have imported it, and it may possibly have had some useful office sometime within these United States. None at present occurs to me, as a matter of history. But to recur: As I have said, we have proposed here to enact a libel law. The old rule was, the greater the truth the greater the libel. This enactment is for the purpose of repealing that old rule. Again, it was not permitted for a man to defend himself upon a charge of libel by showing, in addition to evidence of its truth, that it was done without malice, or for justifiable ends, or for good purposes. The question was, was it libelous; was it injurious; did it tend to a breach of the peace? Now, perhaps that will be well enough. So far as I am concerned, I do not complain of it, except that it has no place in the Constitution.

Now we come to the last clause: "The jury shall have the right to determine the law and the fact." Why, I beg to know, shall the jury determine the law and the fact in this case more than in any other criminal case? As I have said the argument has proceeded upon the assumption, and I think a false one too, that this provision only can work to the benefit of the defendant. Let us see how that is. In the first place this amendment proposes to subordinate this to the common rule applicable to other criminal cases. The jury shall have power to render a general verdict just as in other criminal cases. Suppose a defendant to be on trial for any crime. The jury are sworn not to find a verdict according to the law; not to render a verdict according to the law, but to render a true verdict according to the evidence. That is the law. That is the oath administered to the jury, both in England and in America. I think there is no departure from that. The jury are sworn to render a true verdict according to the evidence. Now then a man is on trial for murder. How does it proceed? The witnesses are examined. The jury hear the testimony. The Court, after the argument of counsel, instructs the jury as to the law of the case, and they are usually told that it is their province to determine the facts; they are the judges of the credibility of witnesses and weight of testimony, and from the consideration of both they are to determine the fact; that the law of the case will be given them by the Court and they are obligated to take the law as given by the Court. Well, some juries, notwithstanding that, find the facts to suit themselves and they apply the law to suit themselves, and we will assume they render a verdict: "We, the jury, find the defendant not guilty." Suppose the Court and the District Attorney both know that the jury has disregarded the law of the case as given by the Court. What remedy have you got? Neither in England nor America, nor in any State of this Union, have you got any power to review that decision. The verdict of a jury being once for the defendant, he stands acquitted. What is the result. Why the jury have had the power, and they have exercised it, of not only finding the fact, but they have determined the law and they have made it final and conclusive forever by their verdict. There is no appeal, no remedy. Whether the case be libel or murder that rule obtains uniformly. There are no exceptions to it. So that in all cases, whenever the verdict is a verdict of acquittal, the jury have found the law and the fact and they have found them conclusively, so that if there be any reason why a different rule should prevail in this as distinguished from other cases, they get the benefit of it through the force of that simple practice or rule.

Let us take the other side of the case. It will not do to suppose that juries may never depart from the plain instructions except for the benefit of the defendant. It has happened, and may happen again, that men may be charged with the crime of libel, when, upon the law as contained in this clause of the Constitution—that is to say, that the matter charged as libelous has been proven to be true, and that it has been done without malice and for justifiable ends—the jury may say: "Damn this fellow; we will convict him any way." Juries sometimes render unjust verdicts for conviction as well as for acquittal. It is not always that prejudice has spoken for the acquittal of guilty men. Sometimes it shows itself for the conviction of innocent men, and as it may be the former so may it be the latter. Now let me see how this rule will apply in that sort of a case. Recollect you have put into the Constitution that in a libel case, if you prove that the matter charged as libelous in time, that it was published with good motives and for justifiable ends; that as a matter of law— as a matter of Constitutional law— constitutes a complete legal vindication and entitles the defendant to an acquittal at the hands of the jury. But, as you have said that the jury may determine the law and the fact, the jury take it into their heads that, notwithstanding this rule of Constitutional law, they will convict him, although the matter charged as libelous was true and was published with good motives and for justifiable ends. Now the defendant has been convicted and is suffering the pains and penalties of the law. He naturally asks: "What remedy have I got? I have clearly proven to this jury that what I charged is true—that it was done with good motives and for justifiable ends." But he is at once pointed to this clause in the Constitution, which says that the jury are judges alike of the law and of the fact, and they have reversed the law of the Constitution and found you guilty and you are remediless forever. Will any gentleman on this floor tell me what remedy that man has got? The jury have the power to define or determine the law, and determine therefore against the Constitution as well as for it. They have found the man guilty when he is shown to be innocent, and in place of a remedy he is told that the jury are the only arbiters, and having determined against him he has no remedy. Suppose he make an appeal to the Supreme Court. That Court would be compelled to answer: "My dear sir, the jury was authorized in this case—a solitary exception in the law—to determine the law, and, having determined it against the law of the Constitution, you must stand the consequences." If there be any answer to this—if there be any remedy for that man—I confess that I am not lawyer enough to see where he is going to find it. Why not, in view of such a contingency, subject this to the same common rule applicable to other criminal cases, so that if a jury find a party guilty and if he can show to the Supreme Court on review that there has been a misapprehension or a misapplication of the law, he can have a reversal of that judgment and have a new and a fair trial? Why not subject it to a rule that has been found so uniform and just and fair in its operation? I submit that no injury can come; no chance of misconstruction can arise; for if it is safe to apply this rule to the one case, it is to the other.

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REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I don't propose to detain this committee by a very long argument. I will be as concise as I can, but I wish merely to state the reasons which will influence my vote. My vote on the pending question will be controlled by the central idea of uniformity. In all criminal provisions, especially the boundary line between the province of the Judge and that of the jury should be the same, and no one class of citizens should be protected above any other class. If I thought that the proper liberties of the press would be restricted by the proposed amendment of the gentlemen from Santa Barbara, I should certainly vote against it. But I propose to act here as consistently as I can, upon the various propositions which may come before this committee or the Convention.

I believe the great palladium of our liberties is a free and untrammeled press. I have no sympathy with that sentiment which we find in the response of Sir William Berkeley, a Colonial Governor of Virginia, to the Commissioners of Foreign Plantations in London, when he says:

"I thank God there are no free schools, nor printing, and I hope we shall not have these hundred years; for learning has brought disobedience into the world, and printing has divulged them and libels against the best government. God keep us from both."

But in this sentiment of that fiery adherent of Charles, and opposer of Cromwell, we find some of the early jealousy of the printing press, and fear that it would bring the government into ridicule and contempt. A hundred years later on this subject we find the contestants in hostile array, Mansfield crippling the power of the jury and adjudicating in favor of the prerogative, while Junius maintained, and rightfully too, that it was the law of England that a jury could render a general verdict in every criminal case; Mansfield maintaining in effect that the jury should render a special verdict, while the Court should decide the law and the guilt; Junius maintaining that the verdict of guilty or not guilty exclusively and entirely belonged to the jury.

Whoever the writer of these fiery phillipics may have been, he deserves the grateful homage of every freeman for his vigorous maintenance of the spirit of the early common law.

But the circumstances here are different. Let us look at the reason of the thing, and I think the logic is decidedly in favor of the amendment.

In the first place the star chamber exercised a censorship over the press. The Long Parliament abolished the star chamber, and proceeded to exercise the same censorship that the star chamber had previously exercised. In sixteen hundred and eighty-eight, when the Bill of Rights was passed during the reign of William and Mary, what is most remarkable, there is not one word said about the freedom of the press. Then up to that time, as far as the English press was concerned, the freedom of the press stood entirely upon a negative ground. There was no affirmation on the subject. Is that so here, sir? I imagine not. I read here in the report of the Committee:

"Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press," etc.

That constitutes a portion of our Bill of Rights. England had no such thing. She had no such Bill of Rights. So we have our guard against any infringements of the rights of the press.

In the Woodfall case, which came up before Lord Mansfield during the reign of George the Third, Lord Mansfield instructed the jury that "the printing and sense of the paper were alone what the jury had to consider of, and if the paper should really contain no breach of the law, that was a matter which might afterwards be moved in arrest of judgment."

The judges and lawyers for the most part, in those times, claimed that the province of the jury was only to determine the fact of publication, and whether the innuendoes were properly made out; that is to say, whether the libel meant what it was alleged in the indictment to mean, but that it was a question of law for the court to decide, whether such meaning was criminal or innocent. It was admitted that the jury might acquit, but it was claimed that they violated their oath if they rejected the opinion of the judge by whom they were to be guided as to the general law. Others maintained that the jury could determine the defendant's guilt or innocence according to the nature and circumstances of the publication.

The decision in King vs. Woodfall caused Junius to thunder over England—from one end of it to the other—that the decision of Lord Mansfield was not the law of England. Fox followed in the wake of Junius, and in 1792 the Fox Libel Bill was passed. It declares the right of the jury to find a general verdict upon the whole matter, which includes the guilty or innocent intention of the publication. That was a right which was against the opinion of Mansfield.

Now, sir, some have argued that this bill did not give the jury the right to determine the law, while others have argued just the reverse, that inasmuch as the jury had the right to render a general verdict as in other cases, it might be construed that they had a right to pass upon the law. But I argue that it was simply to pass upon the facts, the innocent or guilty intention being one of the facts, and that the instructions of the Court were still binding. But say it was otherwise. I should have voted for that Act of Parliament. Why so? Because England had no Bill of Rights on this subject, and if she had had one, the Parliament could have repealed it. But that reason does not apply here. We have our Bill of Rights on this subject. In the absence of any Bill of Rights, I should say that if the previous law had been construed in effect so as to authorize a jury to return a special verdict only, or a general verdict according to the opinion of the Judge, I would have supported that Fox Libel Bill, so that the jury might render a general verdict, and decide the law in so doing. Some immunities should be thrown around the citizen in arbitrary times, when he is placed at disadvantage, and the Government occupies the vantage ground. The law might be repealed, so might the Constitution of the realm, but for the time being the Judges were to act under it and be its expositors.

There is no contest in this country, as there was in England, between the liberty of the citizen and prerogative. Why should a jury here pass upon the law in a case of libel, any more than in a case of murder? I cannot see the distinction. The law in either case should be given to the jury by the Court, and under the instructions of the Court the jury should render their verdict on all the facts in the case. This is the uniformity which should prevail in the administration and construction of the penal laws. If the Government was arbitrary and encroaching, and the Judges of our Courts its subsidized tools; if there was danger that the rights of the people would be subverted by overweening judicial power, it might be some argument that the jury should be a law unto themselves. So it might be proper if our position was the position of England in 1792. But the Bill of Rights in our Constitution impends, like the sword of Damocles, over any aggression on the freedom of the press.

There is another thought which I wish to suggest. We have heard this jury system derided heretofore by gentlemen of this committee. I have, in my feeble way, endeavored to say something for it; but while I have maintained that the jury are the proper and best judges of the facts, I have never taken the position—and never will take the position—that they are the proper and best judges of the law. And I ask those gentlemen who have voted heretofore in favor of the abridgement of the jury or a curtailment of its powers, if, after having taken that position, they are now ready to reverse arms and say that the jury shall not only judge the facts, but they shall also judge the law in one case—in the case of libel—only.

Suppose the jury were to abuse the privilege; who shall guard them? Admit that they are guardians; but who shall guard the guardians? Who shall watch the watchmen? Who shall take into custody the custodians?

I say that the learned Judge who is to administer the law in all other cases should be the custodian of that power, under the solemnities of his oath and the accountability for his acts which this Constitution will secure.

I do not believe in allowing a jury of twelve men in one particular and exceptional case to say what is the law of this great State. It would depend upon the social status of these twelve men, the locality where they happen to live, their intelligence, or the want of it, their prejudices; and thus the law, as administered, would vary in different neighborhoods.

There ought to be some power which would secure something like uniformity to this freedom of the press. I was much pleased with the effort of the distinguished gentleman from San Francisco. He made an elaborate argument; but it seems to me it must have been apparent to this committee that there was a great deal of artistic grouping for effect. I vote, therefore, in favor of the proposition of the gentleman from Santa Barbara. His amendment assures a general verdict of the jury. And, with all due deference to the Judiciary Committee and its learned chairman, I think that the logic and weight of the argument is in favor of this amendment. At any rate, I am not willing, although I am in favor of all possible freedom of the press, to see the symmetry of our work marred by exceptional provisions, when there is no occasion.

ARGUMENT OF MR. CROSS.

MR. CROSS. Mr. Chairman: This question is one which, it seems to me, deserves all the consideration that it has received at the hands of this Convention, and if there is any subject which invites discussion and consideration, that at least this is one of them. Now in this matter of libel, there is something more at stake than the mere individual who is accused of injuring or who claims to be injured by the libel. There are a great number of cases in which a prosecution for libel arises in which the conduct of some official is attacked. Now let us see for a moment what the result may be with the changes which have already been made and the change which this last amendment proposes. We have already in a sense concluded that this Constitution, when adopted, shall have this provision: that a prosecution for libel may take place without a grand jury ever having found a bill; or in fact that one man may determine as to whether or not, any man shall be prosecuted on a charge of libel; and the discussion here yesterday and the day before indicated that the man upon whom the decision of this question should rest, should be the Judge of the Court. Now we have taken another step in advance, and that is that in this class of cases, being a class not amounting to felony, that the accused shall not have the protection even of a unanimous verdict, but shall be subject to be punished for an offense of this character by the concurrence of three fourths of a jury.

Now, Mr. Chairman, what further have we had decided in this State? We have had it decided that a paper published in San Francisco and distributed throughout the entire State, if it contains matter claimed to be libelous, the libel may be prosecuted in any county of the State where the paper is circulated. Now, is it unreasonable to suppose that if some man high in public position in this State should have had something said about him by some paper that he disliked, which might be true or false, that he could find somewhere, in the numerous counties of the State, a Judge who would agree with him in the proposition that that publication was injurious to his character. He might wander the State over and hunt through all the Judges for his Judge, and may bring the charge even without an indictment. Having had the man properly informed against, he may have him brought to trial before that same Judge; and having brought him to trial, what then? A unanimous verdict is not required, but only a three fourths verdict—the mere dictum of nine men out of twelve. Is that all? No. This

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amendment as proposed will provide, that in this great range of cases where one man may speak or write ill of another, the Judge shall have the right to decide what particular words spoken or published shall amount to a defamation of character or constitute a libel. With the changes proposed a man has one chance. It is a chance of himself against the Judge from first to last. It is the rights of one man in the hands of another one man. And now, if from first to last of this whole proceeding he has been in the hands of the Court, in the hands of an unjust Judge—and I regret to say that sometimes men do find themselves in such a position—then what chance is there for him? From first to last this Judge has ruled against this man's rights, and yet he is in that class of cases in which there is no appeal; and in a class of cases which concern not merely the interests of a private individual, but which concern the interests of the people of our State. If the gentlemen ask why one manner of procedure should be adopted in one class of criminal cases, and a different one be adopted in this particular class, I pretend to say that the experience of the last eighty or one hundred years has affirmed the wisdom of such a provision. If the gentlemen say that the time was when such provisions were necessary, but that that time is not to-day, let me remind them that we make not a Constitution for a day. We make a Constitution, perhaps, for fifty or one hundred years, and no man can say whether or not this Constitution shall not prove a shield, not merely to the people of to-day, but whether or not it may not prove a shield and protection to generations yet to come; and that before it has ceased to be the Constitution of the State of California it may be a blessing and protection at one time to ten millions of people.

Let us not forget that as to the rights of men and as to the contests between the powerful and the weak, that history repeats itself, and that as our State grows rich, and great, and strong, the same questions which presented themselves in the days of Woodfall and of Junius may be the very same questions with a different coloring, which shall appear in Congress and in this very building. It is due to ourselves that in this matter which involves the liberty of the press, we should be very careful. It is not merely an ordinary type of crime. It deals with that which is our only real safeguard. Now we have done away with the Grand Jury, for I claim that is the result of the provision we have adopted: we have broken down the essence of the petit jury, and to-day we propose to do away with the old law of libel. If, in one session of the Constitutional Convention, we should succeed in sweeping away these three grandest barriers of liberty, then shall we have done more iniquity than I hope any other body of men will ever do in this State.

SPEECH OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: In what I have to say I shall endeavor to avoid the repetition of anything which has been said, and to refer in the first place to the provisions of some Constitutions which I believe have not been introduced. The fact has been shown that in two thirds of the States of the Union the language that is in our Constitution does not occur. It was shown by the gentleman from Los Angeles, on the other side, that in ten States of this Union that language does occur. I propose to read very briefly as to six out of the other eight—and I have not referred to the other two, which would make the number complete—to show that in six other Constitutions a provision like that offered by the gentleman from Santa Barbara, Judge Fawcett, has been adopted. In the State of Connecticut the qualifying words are: "Under the direction of the Court." That is, "the jury shall have the right to determine the law and the fact under the direction of the Court." In Missouri, also. In Tennessee the provision is: "And in all indictments for libel the jury shall have a right to determine the law and the facts, under the direction of the Court, as in other criminal cases." In Kentucky and Texas the provision is: "And in all indictments for libel the jury shall have the right to determine the law and the facts, under the direction of the Court, as in other cases." In Maine they have this peculiar provision: "And in all indictments for libels the jury, after having received the direction of the Court, shall have a right to determine, at their discretion, the law and the fact."

The amendment offered by the gentleman from Santa Barbara is substantially the same as I had drawn up, and it seemed to me to be so much better than either of these various qualifying phrases, and striking out the very reason of the original provision in what is called the Fox Libel Act, that it occurred to me at once that the Convention would certainly be disposed to adopt that as an amendment to the section as it now stands in our Constitution. "The jury shall have the right to return a general verdict in all cases of libel." It has been shown, and I will not repeat it, but merely allude to it, that in England the jury was allowed only to return a special verdict, and that was as to the simple fact of publication. Take the language of the section: "In all criminal prosecutions for libels, the writ may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted." Is there a question of fact that can arise in the case that is not there specially stated shall be decided by the jury? And yet the gentleman from San Joaquin tells me that there is confusion as to what is fact and what is law, and therefore the necessity of giving it the one and the other. I say that there is not a question of fact that is not enumerated in the Constitution as it is, and which it is not proposed to amend. Then all matters of fact are specifically referred to the jury. In England, this justly lauded provision, known as the Fox Libel Act, which has been read, contained several specific provisions, as will be found by referring to "Proffatt on Jury Trials." There were two provisos made showing that that was the whole object and purpose, that the jury should give a general verdict, which is proposed in the best language which could be suggested in the amendment offered by the gentleman from Santa Barbara, Judge Fawcett. In England, however, it is absolute. Here we propose to put it in the Constitution. Is not that going far enough? The Code provides now that the jury shall be the judge of the law and the fact in libel cases. I presume that Act will continue, notwithstanding our amendment. We are not legislating. If experience shall show that this distinction should be continued let it be so in the Code. There is nothing in the Constitution, as we propose to amend it, that will prevent it.

But how long shall this Constitution, if adopted, stand? If it is made as it should be made, it may stand for a generation; it may stand when the youngest of us here shall be dust, and if we make it as it should be made it will stand for a century. Why, then, govern the people in this way in which they do not ask to be governed? Gentlemen talk about the liberty of the press and the same gentlemen are continually attempting to restrain the people in their liberties. Experience may show that we are right to believe that libel ought to stand like any other offense, and be punished like any other offense. But it will be said, in times to come, that the gentlemen in Sacramento in eighteen hundred and seventy-eight, did not leave you that liberty.

I shall indulge in no eulogium upon the liberty of the press. I certainly have as high an opinion of it as those who deliver the highest eulogiums that have ever been delivered, either in ancient or modern times. But, on the other side, I have no sensitiveness on account of the abuse of that liberty. For my own part, Mr. Chairman, if it were a proper thing to put in a Constitution, I would be willing to vote for a proviso, as some gentleman suggested to me that he proposed to offer it, making men personally responsible for an abuse of that liberty; provided, however, that in case any gentleman should be a candidate for Secretary of a Constitutional Convention, and should be defeated by a majority of that Convention, that if he should see proper to call that majority a rabble, it should not be deemed an abuse of liberty. [Laughter.]

Nor have I any sympathy with any man who may be justly censured. I may be excused, as the matter has been referred to, to state here—and take all the responsibility, and that is not much, as I am not a political aspirant and can afford to be entirely independent, as I have been for many years—that I have no sympathy whatever with those leaders in political life who have been justly censured. I shall not attempt to specify them, but I believe the people sympathize with all that an honest, independent, and untrammelled press have said upon the subject. But, Mr. Chairman, the gentleman from Los Angeles tells us that there is a vast difference between different kinds of crime—between theft and libel. I confess that I concur in that sentiment, but I do not concur in conclusions that he appears to reach. If there is one crime that is greater than another,, that is the crime of stealing a man's character. The abuse of this liberty is that crime. The gentleman from Los Angeles has no reason to fear anything that he would do. No honest man has any reason to fear what he may publish in any newspaper, through pictures, letters, or any other manner; but it is this abuse of liberty—an abuse, sir, which, if it continues, will lead to a condition of things which it is the duty of law-makers to avoid. Some things are in the books which are laid down as law, but some are not in the books. Some things are written law, some things are as well understood in this age as unwritten law. I believe it has been understood for about a score of years that a man who defends his honor in social relations cannot be punished. I am not aware of any conviction at any rate in the last ten years in the United States. It has not yet been written in the books, and it has not yet perhaps got to be understood as the unwritten law; but I undertake to say, if this provision remains in the Constitution, and it is there for the purposes that some gentlemen assume, that there shall be forever a hung jury when a man seeks the only defense which the laws of his country gives him, it will be understood that another provision of the Constitution, which gives him the right to personal security, is to be construed to mean that he shall have personal security as to character as well as to person, and that he may defend his character to the same extent that he does his person, and that the unwritten law will acquit him before his countrymen. The gentleman says there is a vast difference between these crimes. I admit it. The greatest philosopher, perhaps as well as the acknowledged greatest poet in our language, has expressed that difference very well when he said: "He who steals my purse, steals trash; but he who filches from me my good name, robs me of that which naught enriches him and makes me poor indeed."

The gentleman from the First District, Mr. Barnes, says he prefers an honest jury instructed by an honest Court, and he has given us some instances where it seems there was not an honest Court. I do not know what conclusions he means to draw from these premises. I do not understand it. I am aware that there have been political parties who have denounced all the Courts as corrupt. I suppose he is not prepared to go so far. Then another gentleman from the First District has read something, in which I was very much interested, from a most celebrated case, showing the great value of this liberty of the press and how that the truth should be given in evidence, and how if it should appear to the jury that it was published for justifiable motives the party should be acquitted; but that has nothing to do with the question as to whether the Court should instruct the jury as to questions of law, and that is the important point before us.

Now, Mr. President, let us make the application of the rule here as it is contended for, and how any gentleman claiming simple justice can ask it I cannot comprehend. The defendant is interested in having the Court give the law as well as the plaintiff—the State. Suppose a case. There is proof of a gross libel having been published, but there is no legal proof that it is published in the county where the prosecution is had. The Court says to the jury: "Gentlemen, it is necessary in order to maintain this case and convict the defendant that there should be proof of publication in this county." The jury, as they may be sometimes, and are sometimes governed by their feelings, think it would not be very wrong to punish the defendant anyhow, and they return a

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verdict of guilty in that case. Now, I want to ask the legal gentlemen how this man who has been illegally convicted, unjustly convicted, is to avoid the penalty in that case? His counsel moves for a new trial. The Court answers that the jury under the Constitution as it is are the judges of the law and the fact. Plainly he must suffer the penalty under the law as it is. These questions are clearly of law. No question of fact at all; that is, where there is no testimony at all upon that point.

Again, somebody in moments of maliciousness writes an infamous libel and puts it in his desk. Somebody looking through his desk finds this paper. He shows it to the person against whom it was written and he prosecutes for libel. The Court says to the jury: "Gentlemen, this was not published." The jury think that although it was not he ought to be punished anyhow. As a gentleman said to me in discussing this point before the meeting this afternoon: "A man that would think such a thing ought to be punished for thinking it." The jury find the defendant guilty and the counsel addresses the Court and moves for a new trial. The answer is that, though there was no evidence of the publication the jury is the judge of the law and the fact.

The gentleman from San Joaquin speaks of the law with reference to the two propositions, as to whether a libel is true and whether it is published for justifiable purposes. I submit that there never has been known a case in the history of the State where if a publication was proved to be true it has not been deemed to be published for justifiable motives.

As to these illustrations of what might happen I will cite a case with which we are all familiar, and I am justified in referring to it in the Committee of the Whole as a matter of illustration. A gentleman is a candidate for a position and is defeated, which causes a bitter personal feeling. He publishes that everybody that helped to defeat him, or that nobody who voted against him, had any decency or intelligence, and that all those who voted for him had. And he says, he thanks fortune that he is not contaminated with the sand lots. The question is investigated, and it appears on the trial according to the proof, as I understand it, and there are plenty of witnesses, that he sought to be contaminated with the sand lots, and they would not contaminate worth a cent. The question would be whether that is libel, and I would be willing for a jury to determine, but I certainly would not be willing to be the prosecutor in any case of that sort. A man connected probably with political affairs, whose political associations are the same as those who wish to be candidates, prepares to unite old parties in the presence of a giant young party rising in the land, and he gets committed and the leaders of another committee fail to unite. The people in the meantime, without reference to what the politicians are doing, in their own quiet way do unite, and send people to the Conventions to unite those who have defeated them as delegates to State Conventions and Congressional Conventions, for the same purpose. The people unite them, and for all I know, he may have had considerable agency in nominating the gentleman upon the State tickets for the Convention. I know nothing about that. If anybody made any promises directly or indirectly, he should keep his promises; I made none. It is not pretended that I made any, so far as I am personally concerned, but I will suppose that this scheme, mainly for the good of the country, but partly for the purpose of being Secretary of the Constitutional Convention miscarried. It only proves what the Scotch poet has said: "The best laid plans of men and mice aft gang aglee." And it proves too what another poet has said, perhaps with more application where schemes of this kind are formed:

> "The piece well aimed at duck or plover,
> Kicked back and knocked the marksman over."

But there is no libel in this. That is my judgment as a legal proposition. I think the court ought to tell the jury so. And if a man were convicted for having said these things, though he says them repeatedly and promises to continue to say them to the last day of recorded time, and sends his paper to every delegate in the Convention—though so far as I know very few are subscribing for it—and even abuses parties because they do not answer, I still say that I do not deem it libel and I have no personal concern in the matter. But perhaps in this connection I may be excused if I speak briefly of these things. I will suppose that I have proved what is simply the facts, which every gentleman knows to be the facts. So far as I am personally concerned, I voted for a candidate from our county, who, in our judgment of matters, was fully entitled to the vote of his local delegation. He, also, in our judgment, lost nothing by not having the powerful surroundings which the other candidate claimed, I have no doubt justly, to possess. On the contrary, it was an argument, in favor of the one and against the other, sufficient, without descending, as I never have descended in any political contest in my life, to personal charges or personal considerations. So far as any combinations in the case I am supposing, this truth would also appear, that there never was a caucus of any kind on any individual candidates—not a single one—and I appeal to any gentleman of the Convention as to the correctness of that statement. But further, that there was no caucus with any party with reference to any combination. I will go still further and say that there never was a caucus between one individual of one party with another individual of another party, and I ask any gentleman to state whether that is correct or not.

I beg pardon for referring to the matter. I spoke earnestly upon the general proposition, and it seemed fitting and proper that I should say this much for fear my motives might be misunderstood in asking that this amendment now pending may be adopted.

The argument is in a nutshell. It has been stated. It has been urged. I say that the whole matter is presented in the brief proposition that our Constitution should provide that libel cases may be tried the same as all other criminal cases. Honest men have nothing to fear from that. As to rogues, we know what has been said of that class. It is a great and fearful responsibility to charge men with infamous crime. The man who publishes a newspaper, if he is honest and faithful, deserves the highest credit for standing as a sentinel upon the ramparts of liberty. But, on the other side, it is equally important that honest men should be protected from the malice of the designing and the malicious. We propose it shall stand as in all other cases; that the jury shall render a general verdict; that the court shall decide questions of law in that case as in other cases; that there shall be intelligence in arriving at the truth in that kind of cases as in every other case; and not a kind of a trial, so-called, where the presiding officer, in fact, has nothing to do whatever, except to watch the proceedings of the jury and hear the jury decide upon questions of law. These are my views, Mr. President, and these are some of the reasons why I shall vote for the amendment offered by the gentleman from Santa Barbara.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman; I propose to say a single word in regard to this proposition offered by the committee. I propose to vote for it, and for one reason—because it is in the Constitution of eighteen hundred and forty-nine. I care nothing about its being antiquated, as I am getting a little antiquated myself. Like my eloquent friend from San Francisco, I have great respect for the institutions of the past. Now, sir, this provision, as it stands in the report of the committee, has been the law of England and this country ever since seventeen hundred and ninety-two. I am ready to vote for any of the provisions of the old Constitution where they have proved to be good. But, as in the case of a unanimous verdict of a jury where abuses have grown up that I think demand correction, then, because it is a hoary-headed abuse, I do not propose to support it. What is the situation here? What is the proposition which we have before us? It is, that the truth may be published; that if a libel—if asserted to be a libel—is true in fact, and published for good motives and justifiable ends, it shall be a defense. As to whether the motives are good, and whether it is published for justifiable ends, are questions of fact, as well as the question as to whether the subject-matter is true. But what class of motives are good, and what class of ends are justifiable, are questions of law for the Courts. I do not propose to give the Courts the right to instruct the jury; for this reason, that trials of libel are proven by long practice to be the most subtlely blended questions of law and fact, in all our Courts and in all our practice. Now, then, the question is, by whom, in that class of cases, is to be settled the questions of law? Experience has shown that, in point of fact and in point of history, the jury is the safest tribunal. That being the fact—that in libels the jury is the safest tribunal to determine the matter—I propose to adhere to that experience, and to stand up for this section. There have been no abuses under it: I may say that there is nothing to reform; and when there is nothing to reform, the safest way is to leave it alone. Some strange positions have been taken here on this matter. It has been said that a defendant may be found guilty when the facts are all in his favor. I deny that proposition. If he states his case and the facts do not sustain the verdict, and he appeals to the Supreme Court, under all the rulings the Supreme Court is bound to send it back.

MR. FAWCETT. He cannot appeal to the Supreme Court.

MR. HOWARD. I say he can appeal to the Supreme Court.

MR. FAWCETT. Not being a felony, he cannot appeal to the Supreme Court.

MR. TERRY. It is a misdemeanor.

MR. HOWARD. That is true. If there be no appeal then to the Supreme Court it is the fault of the law. It is the fault of the statute, and not the fault of the law of libel. We could remedy that in the Code, or we could remedy it even if it requires a remedy. But I place my argument on this ground, that the experience of nearly a century having shown that this provision in the Constitution is a safe one, and that in these particular cases the judgment of the law by a jury is a protection to the citizens of the country, it would be best to adhere to the Constitution as it was framed in eighteen hundred and forty-nine, and that by actual working and actual experience has been proven to be safe and reliable.

SPEECH OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: The clause of the Constitution under consideration in relation to prosecutions for libel is, "and the jury shall have the right to determine the law and the fact." Now, sir, what does that mean? In order to arrive at a correct determination of the meaning of the clause it may be profitable to make a brief historical review of this subject. Towards the close of the last century there was a series of cases in England growing out of publications against the government or against officers of the British Government, and in these cases the practice was, after the evidence was in, for the Court, or the Judge, to say to the jury: "The only question"—(of course I state this in my own form, but it is substantially correct)—"for you to determine, gentlemen of the jury, is, did this man on trial publish the alleged libelous matter; and there your duty ceases. It is for you to pass simply upon the fact of publication and I, the Judge, or Court, will pass upon the questions of intent, the question of criminality, and pronounce the judgment." Now, sir, it was that usurpation of power, it was that distinction between other criminal prosecutions and the specific prosecution for libel that set all England and Ireland in a blaze. Out of that state of affairs, sir, arose the much talked about Fox statute which was passed in seventeen hundred and ninety-two.

Now, sir, I think my friend from Los Angeles entirely misapprehends that statute when he says that this clause in the Constitution means nothing more than what was sought there, according to the interpretation of the Constitution as it now stands. Let us see what that statute is, and whether it does not place prosecutions for libel on the same basis that the gentleman from Santa Barbara is now attempting to do by his amendment. That statute was passed in 1792, and will be found in the thirty-second of George III. It reads as follows:

"Whereas, doubts have arisen whether on the trial of an indictment,

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or information, for the making or publishing any libel, where an issue or issues are joined between the King and the defendant, or defendants, on the plea of not guilty pleaded, it be competent to the jury impaneled to try the same to give their verdict upon the whole matter in issue: Be it therefore declared and enacted by the King's most Excellent Majesty, by and with advice and consent of the Lord's spiritual and temporal, and Commons, in this Parliament assembled, and by authority of the same, that on every such trial, the jury sworn to try issue may give a general verdict of "guilty," or "not guilty," upon the whole matter put in issue upon such indictment or information; and shall not be required or directed by the Court or Judge, before whom such indictment or information shall be tried, to find the defendant or defendants guilty merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel and of the sense to be ascribed to the same in such indictment or information.

"II. Provided always, that, on every such trial, the Court or Judge, before whom such indictment or information shall be tried, shall, according to their or his discretion, give their or his opinion and directions to the jury on the matter in issue between the King and the defendant or defendants, in like manner as in other criminal cases.

"III. Provided, also, that nothing herein contained shall extend, or be construed to extend, to prevent the jury from finding a special verdict, in their discretion, as in other criminal cases.

"IV. Provided, also, that in case the jury shall find the defendant or defendants guilty, it shall be lawful for the said defendant or defendants to move in arrest of judgment on such ground and in such manner as by law he or they might have done before the passing of this Act; anything herein contained to the contrary notwithstanding."

That is all that great statute did. It placed the prosecution for libel upon the same ground as any other criminal prosecution in England. It meant nothing more than this: that the Judge was supposed to know more of the law than the jury. He was to give the law to the jury, and then the jury would take the whole case into their hands and pass upon it. That is, they were to determine whether it was libelous or not, whether it was published for good motives and justifiable ends or not, and whether it was true or not. And that is all that statute did. That is the law in England. The first proviso made it the duty of the Judge to charge the jury, as in all other criminal cases. The next clause provided for a special verdict, as in other criminal cases, as stated by the gentleman from Placer. I had some difficulty in hearing the gentleman from Placer, and do not know exactly what he said. At all events, that is the Fox Bill, and that is all there is of it.

I say that the law of England that was established in seventeen hundred and ninety-two is precisely the law as the gentleman from Santa Barbara, Judge Fawcett, is attempting to establish by his amendment. Now let us look a moment at the law in the United States. About the year eighteen hundred and five a great case came up, a leading case, a case that established the law, and out of which this constitutional provision subsequently grew. It was the case of the People vs. Croswell, in New York, for a libel upon Thomas Jefferson. To show that the press of this day does not monopolize all the scandal I wish to show what a newspaper of those days said about these men. The libelous matter appeared in a newspaper called The Wasp. Whether it is the same that is now published in San Francisco I do not know. Here is the libelous matter complained of as charged in the indictment: "That the said Harry Croswell did, on the ninth day of September, eighteen hundred and two, with force and arms, at the said City of Hudson, in the said county of Columbus, wickedly, maliciously, and seditiously, print and publish, and cause and procure to be printed and published, a certain scandalous, malicious, and seditious libel, in a certain paper or publication, entitled The Wasp, containing therein, among other things, certain scandalous, malicious, inflammatory, and seditious matters, of and concerning the said Thomas Jefferson, Esq., then and yet being President of the United States of America, that is to say, in one part thereof, according to the tenor and effect following, that is to say: Jefferson (the said Thomas Jefferson, Esq., meaning) paid Callender (meaning one James Thompson Callender) for calling Washington (meaning George Washington, Esq., deceased, late President of the said United States,) a traitor, a robber, and a perjurer: for calling Adams (meaning John Adams, Esq., late President of the said United States) a hoary-headed incendiary, and for most grossly slandering the private characters of men who he (meaning the said Thomas Jefferson) well knew to be virtuous."

That case was argued by Alexander Hamilton for the defendant, and he claimed nothing more than that these questions were questions of mixed law and fact, that they were like all other criminal cases, and that the jury should have the power to determine the question of intent. It never was contended that the Court should not have the direction of the law of the matter. Now let us see how Mr. Hamilton argued that:

"But it is not only the province of the jury, in all criminal cases, to judge of the intent with which the act was done, as being a parcel of the fact, they are also authorized to judge of the law as connected with the fact. In civil cases the Courts are the exclusive judges of the law, and this arose from the nature of pleadings in civil suits, for anciently matters of law arising in defense were required to be spread upon the record by a special plea, and the jury were liable to an attaint for finding a verdict contrary to law. But in criminal cases the law and the fact are necessarily blended by the general issue, and a general verdict was always final and conclusive both upon the law and the fact. Nor were the jury ever exposed to an attaint for a verdict in a criminal case, and this is decisive to prove that they had a concurrent jurisdiction with the Court on questions of law."

The whole aim and purpose of Mr. Hamilton, was to bring this prosecution for libel upon the same plane and basis that all other criminal prosecutions occupied. The result was the introduction of a bill in the Legislature of New York which was passed in eighteen hundred and five, which contains this clause: "That on every such indictment or information, the jury, who shall try the same, shall have a right to determine the law and the fact, *under the direction of the Court, in like manner as in other criminal cases.*" Now, that is all there is of it. And that is copied into the Constitution of the State of New York. I contend that that is the law and has been for nearly one hundred years; not that the jury is to take the bit in its mouth and cut loose from all legal restraint in a case of libel, but they are to take the case and determine the law and the fact as they do in other criminal cases, and they are bound by it and they ought to be bound by it. I believe that is really a fair construction of the Constitution to-day, but it has been perverted from its real meaning. For some cause the latter part of the law of England, the Fox Bill that has been so highly eulogized, has been omitted from the Constitution. I would like to ask the gentlemen from Los Angeles, General Howard and Colonel Ayers, or any other gentlemen who has taken that view, why should the jury be released from the restraint of instructions of the Court in a libel case when they are not released from the instructions of the Court in any other criminal case known from that of stealing a chicken to the murder of a man? Is it because of the liberty of the press? Is that any more sacred than the liberty of the citizen in any other case? I deny it. It seems to me, sir, that the jury, not in all libel cases, but of all cases should be under the instructions of the Court as to the law of any case. For that reason, as I understand it, I shall vote for the amendment offered by the gentleman from Santa Barbara.

MR. HOWARD. I will read the present Constitution of the State of New York, adopted in 1846-7: "And the jury shall have the right to determine the law and the fact." So that if the gentleman is right in the construction of the statute, the Constitution of the State of New York has made a different rule.

MR. EDGERTON. If the gentleman from Los Angeles, will look farther he will find that the new Constitutions of Pennsylvania and of Missouri have restored the language of the statute of New York in 1805, which grew out of the Croswell case. It never was intended, neither in England or America, by any law or any lawyer, that the jury should take the bit in their teeth in a libel case and disregard the instructions of the Court. The only object of this provision was to get rid of that old rule which allowed the Judge to tell the jury to find only as to the question of publication. That was the evil attempted to be cured by this American statute in New York, and these provisions in American Constitutions and by the Fox Bill. I do not believe that any of those Judges would have entertained for one moment a proposition that the jury was to disregard the instructions of the Court as to matters of law involved in a case of libel, when they were bound by it in every other conceivable case in the nature of a criminal prosecution. I do not see any reason for a different rule in a libel case.

But what is a prosecution for libel? Why, the Judge determines upon the admissibility of testimony, and then after that the jury determines upon the character of the libelous publication. They determine whether it was published for a good motive and for a justifiable end. No question of law now occurs to me. If one should arise I insist that it should be a man learned in the law who should instruct the jury as in all other cases. My reason, my good sense does not dictate to me any reason why there should be a distinction in favor of the editor of a paper or the writer of a calumny any more than in the case of any other man.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I rise for the purpose of expressing my opinion and for the purpose of saving my distance. It seems to me that there is a controversy between certain gentlemen in this Convention, as to who shall be entitled to the appellation of the most numerous speaker. I have not spoken yet to-day at all. I understand that a prize will be given to the most numerous speaker and I propose to contest for that prize. I give notice to the gentleman from San Francisco, two or three gentlemen from Sacramento, and the gentleman from Alameda that I have not been very well. [Laughter.] I am going for that prize, if I recover my voice and my throat gets well, a little oftener.

I propose, when this amendment that is offered by the gentleman from Santa Barbara is voted down, to offer another amendment. I shall offer it with fear and trembling. I have heard so much during the last two or three days about irreverent hands, that whenever I wish to propose any change in the existing Constitution, I feel like a culprit. I have gotten it from the right in a voice like the fog-horn of San Francisco, which is like unto the wail of some spirit that was condemned to Goat Island; and I got it from the left, in a voice like the wail of a dying bull calf, where we are appealed to not to lay irreverent hands on the Constitution. I get it from the front and I get it from the rear, I get it from the enemy's camp and my own camp, not to lay irreverent hands on the Constitution.

This proposition, Mr. Chairman, as it stands at present in the Constitution, is the invariable subject of an incessant conflict between Courts and lawyers whenever a libel suit arises. The Penal Code has provided, as plainly as language can provide, that the jury shall not only determine the law and the facts, but the Court is prohibited from charging the jury, and I propose to offer an amendment to that effect. Our only Judge—and we ought to have more of them—has offered an amendment here to preserve the power of the Judges over this subject. That very thing, sir, was the cause of the struggle that took place over this very subject—the efforts of the Judges to preserve the power to punish those who might make an attack upon them, or on the government of which they were a part. Now, sir, the plain and simple man, not versed in the law, but who takes language in its ordinary acceptation and meaning, when he sees a positive and distinct statement that the jury shall determine the law and the fact would conclude that the Court was debarred from charging the jury. Else why the distinction? Why

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not simply let it go, as all other criminal cases do go, upon the well understood line of demarkation between the power of the Court and the power of the jury. I say, therefore, that it is intended to mean more than to place it upon the ground of ordinary criminal actions, where a general verdict comprehends both the law and the fact, and wherein it is always understood that it is an obligation upon the jury to receive the law from the Court. It is stated here that the jury are under obligations, even in cases of libel, to receive the instructions of the Court upon matters of law, find the facts, and then apply the law to the facts. If any gentleman ever takes the trouble to investigate the authorities which are grouped together by Greenleaf, in section one hundred and seventy-nine, wherein he reasons himself into that conclusion, he will find not one of those authorities, except the opinion of Judge Story, in the 4th Sumner, supports the position that he takes, and that the plain intent and meaning is that the Judges under our system, elected as a part of the political machinery, shall not only be deprived of the power, but they shall not be required to charge the jury. There are but two propositions. They shall not be required, nor shall they be allowed of their own volition, to instruct the jury. I say that was the plain intent and meaning, and it is fixed in the Penal Code. I grant that the Legislature is not particularly high authority, especially upon matters of private or special legislation, but on a matter of this kind it is not improper that we should take the views of the Legislature as the views of the people upon this very subject. The Legislature has re-enacted the Constitution in the Penal Code. In section five hundred and fifty-one, under the head of "libel," it has re-enacted the identical language of the section proposed here. In section one thousand one hundred and twenty-five it re-enacts it again. That section reads:

"On the trial of an indictment for libel, the jury have the right to determine the law and the fact."

Now then, in section one thousand one hundred and twenty-six they show the purpose or the idea of the Legislature with regard to the power of the Court over the verdict of juries, for they say:

"On the trial of an indictment for any other offense than libel, questions of law are to be determined by the Court, questions of fact by the jury; and, although the jury have the power to find a general verdict, which includes questions of law as well as of fact, they are bound, nevertheless, to receive as law what is laid down as such by the Court."

Now, the exception from that general rule of the case of libel shows the intention of the law-makers, who come fresh from the people, that in cases of libel the Judges shall not have the power to charge the jury upon matters of law. Again, gentlemen say that it proceeds upon the power of the jury to render a general verdict. Section eleven hundred and fifty illustrates the proposition. It says:

"The jury may render a general verdict, or, when they are in doubt as to the legal effect of the facts proved, they may, *except upon an indictment for libel*, find a special verdict."

That declaration clearly shows that in cases of libel the jury may not avoid their obligation to pass upon the law and the fact by a general verdict, whilst they may do so in any other criminal case. And, therefore, it is, I say, that it is appropriate that a declaration should be distinctly made in this Constitution, which will in the first place avoid the confusion into which this question has always thrown the Courts and lawyers, and in the second place afford a substantial protection to the parties. I warn gentlemen now, since they have abolished the Grand Jury, and since there is a disposition on the part of this Convention to reduce the power of the petit jury, that they must lodge a complete and absolute power in the jury to pass upon questions of law and fact, or the press will be in continual danger. Why so, sir? It is for this reason: The Judges upon the bench are elected by the people just as any other officers are. They may become a target for the newspapers whilst they are candidates. They may become a target for their shafts after they get on the bench. Now the intention is to remove from the Judge upon the bench all possible temptation that he shall be influenced by any publication that has been made in reference to himself, or his political party, or his personal friends, whereby the purity of the administration of the law through him may be affected. It is because of the wide-spread influence of the press, the immense ramifications of the press, that this obligation is imposed upon the Judges to abstain from charging the jury, because it never can be determined when some such influence will not operate on his mind. These questions that gentlemen speak about as questions of law, or mixed questions of law and fact, are such as can be determined in all cases without difficulty, save and except the bare question of jurisdiction, which every lawyer knows can well be settled in another way.

I shall vote against the amendment offered by the gentleman from Santa Barbara, and when it is voted down I shall propose an amendment that the Judges in cases of libel shall not charge the juries.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I did not intend to say anything upon this subject, or participate in the discussion, and I will not now say much. What I shall say will be merely an explanation of the position in which I find myself. As Chairman of the Committee on Judiciary, I made the report of the section now under consideration, and therefore I might be supposed to favor the section as reported. On the contrary, I am in favor of the amendment offered by the gentleman from Santa Barbara. The section was taken up before the committee at a late hour—after the discussion of other subjects—and it was adopted, because it was in the old Constitution, without further consideration. I suppose every gentleman then present is now free to act upon his own convictions on the final vote.

The hour being now very late, and the matter having been very generally discussed by the Convention, and, I think, very ably discussed, there is very little left for any person to say, and I do not intend to say much in explanation of my intended vote. I understand that when a citizen is injured he has two remedies under the law—a civil remedy and a criminal remedy. It is very true that the criminal remedy is prosecuted in the name of the people, and for an offense against the people, but at the same time there is always an injured citizen. That injured citizen, or his friends, make the complaint, and he is practically the party seeking to be vindicated. If a man attacks me with a weapon, with an intent to take my life, I may sue him civilly for such danger as I may have suffered, or I may resort to the criminal Courts for the purpose of vindicating myself. So, in cases of libel, as a private individual I have my civil remedy and my criminal remedy. I may go into the civil Courts for my personal remedy, or I may call upon the people, in their name, to proceed with the criminal prosecution, and thus vindicate myself. And, after all, it is a personal remedy as well as a remedy on behalf of the people. If my life is assailed and I resort to a criminal prosecution for the offense, I bring the accused before a tribunal consisting of a Judge and jury. We clothe the different officers of that Court with certain special functions. The Judge is selected because of his legal learning; because of his familiarity with the great principles of jurisprudence which we invoke in the administration of justice. We summon a jury as a part of the machinery of the Court, for the purpose of passing upon the facts, and the jury performs that particular function—being believed, under our system, to be better judges of the fact than the Court. Such a tribunal has been considered the best that can be devised. Yet, in such a case, concerning my life or my personal safety, the Judge lays down the law to the jury and the jury finds the facts. The jury, upon their oaths, are bound to take the law from the Court, and the Court is bound to tell the jury that it is their special province to pass upon the facts.

Now, Mr. Chairman, when my character is assailed—more precious to me than life or limb, more precious to my family; more precious to my children—what is my remedy? I say to the State, this accusation has been made against me. This libel has been perpetrated; this crime has been committed, and I demand its prosecution. I bring this libeler before the Court, to be prosecuted in the name of the people. I stand upon the one side, seeking a vindication for the injury to my character. Upon the other hand he stands accused of libel. What tribunal is best for the purpose of determining whether I committed the infamy that the libeler may have charged against me? What tribunal is best to determine between him and me? Why is it that that tribunal I have just spoken of should not be trusted, when my character is assailed? Why is it that that Judge, chosen for his legal acquirements, should not exercise the same powers? Why is it that that jury, qualified only to pass on the facts, should not be limited to their accustomed powers? Why is it, when my life has been assailed, the trial is to proceed in one way, and when my character has been assailed, the trial must be conducted in a different manner? Why is it that the Judge, learned in jurisprudence, calm and impartial, who is required to lay down the law to the jury in the case when my life has been assailed, is forbidden to state the law to the jury when my character and my good name are involved?

This question involves something more than the liberty of the press. It involves the rights of the whole people as well as the press. This proposition to make the jury judges of the law as well as the fact, may cut both ways. It may endanger the press as well as the citizen at large. Each may need the protection of the Judge against the ignorance and prejudice of the jury. But the question here after all is a question of good common sense. Why should there be a distinction made between different criminal actions?

A great deal of eloquence has been heard here; a great deal has been ably and forcibly said, and I have listened with admiration to many gentlemen who have spoken on this subject. It has been a source of gratification to find so much ability, learning and eloquence in this Convention. One would suppose from the argument of the gentleman from San Francisco, Colonel Barnes, that Algernon Sidney died in order that this clause might be put in the Constitution. But when we turn to the Fox libel act, we do not find any such clause as this. We do not find that Sidney died for any such purpose. We do not find that he had anything to do with it. It was a different cause that led to the passage of that law. The distinguished gentleman from San Francisco, Colonel Barnes, has stated that the English Judges had innovated upon the common law; they had made libel cases to occupy a different position from ordinary criminal cases. He says that in ordinary criminal cases the law and the fact were presented to the jury; that is, the facts were presented to the jury, and the Court charged the jury, and the jury rendered a general verdict. But the Judges, he says, had innovated upon the common law in the case of libel against the Crown, and they only submitted to the jury the one question as to whether the publication had been made, taking into their own hands the question as to whether the publication constituted a libel, and as to what was the intent of the publication. He says, and says frankly, that the object of the Fox libel law was to restore libel cases to the same platform as other criminal cases; and undoubtedly this discussion has developed and demonstrated the fact that the Fox libel act brought libel cases from the position they held, to the common level of all other criminal cases. It never was intended to advance it to a privileged position over and above, or beyond any other criminal case. And the object of the amendment offered by the gentleman from Santa Barbara is to put it upon that basis, and to keep it exactly where other criminal cases are. That is the reason why the amendment commends itself to the judgment of all. Why should the jury be permitted to judge of the law in this case any more than in any other? Are they disposed to lean toward the press? If they lean toward the press when it has defamed my character, then they lean against me, and they are an improper tribunal to submit the question to. I do not want any tribunal that leans against any man. I want it impartial, fair, and disinterested; otherwise it is unfit to determine the

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question. If they are biased against the press they are equally unfit to determine the law.

Why should the jury determine the law in libel cases, any more than in other cases? Are they better judges of the law? No gentleman has said that they are better qualified than the Judges to say what the law is on questions of libel; or that they know better the vital principles underlying all questions of jurisprudence. Why then should they judge of the law? Why not take the law from the Judge whom the people have elected because of his proficiency and learning in the law? Why should we elect a Judge to determine questions of law and yet submit questions of law to a jury who are uninformed on questions of law? Would not the Judge in any event determine questions of evidence? Would not the Judge determine according to his idea of the law what evidence should go to the jury, and would not the jury be compelled to pass upon such evidence as the Judges admits to go to the jury? The jury has no right legally or morally to take notice of evidence which is excluded from their consideration by the Court. I say that the mere fact, that in this case there is no appeal, is sufficient to warrant the adoption of the amendment in the law, for there is no remedy if the jury commit an error. The chances are about equal whether they will decide the law wrongly against the accused or rightly in his favor. There seems to be an idea that the jury is going to decide always in favor of the defendant. I do not understand that there is any guarantee of that; if there is then we should adopt the amendment. But in fact, the jury are just as likely to find against as in favor of the defendant. I say there should be no difference in the trial or mode of procedure in criminal cases; they should all occupy one common platform. The tribunal, composed of Judge and jury, should respectively perform the same functions in libel cases that they do in other criminal cases.

I do not think the question of the liberty of the press is involved in this amendment. The rights of the people, the liberty of the press, and of everybody else is preserved by the provisions of section nine, reported by the committee, excluding entirely the last clause. The provision is just, and everybody admits it, that the citizen who writes and publishes his sentiments should be held responsible for an abuse of that privilege. A libel case charges that the defendant has abused that privilege, and that is the question that comes before the Court. In other words, has he published such an article against an individual? if so, then is it true? And if true, was it published with good motives and for justifiable ends? These are questions of fact. Now, I say that the better portions of the press are interested in having the law severe upon libel. Why? Because the better portions of the press do not commit libels. If I were the editor of a newspaper that I intended to conduct with decency and propriety, I would be in favor of the severest libel law, because the decent portion of the press is controlled by a wholesome public opinion, and does not require any such protection as is supposed to be obtained by authorizing a jury to find a verdict against the law and the right. I recollect very well Macaulay's happy description of the emancipation of the press in England. He says:

"From the day on which the emancipation of our literature was accomplished, the purification of our literature began. That purification was effected, not by the intervention of senates or magistrates, but by the opinion of the great body of educated Englishmen, before whom good and evil were set, and who were left free to make their choice." He concludes by saying: "At this day foreigners, who dare not print a word reflecting on the Government under which they live, are at a loss to understand how it happens that the freest press in Europe is the most prudish."

I pray God the time may soon come when we may truly say the same thing of the press of California.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: I will not detain the committee bnt a moment.

[Cries of "question."]

As far as I am concerned they can have the question in about five minutes. Mr. Chairman, when the proposition was made to refer these four sections of the Bill of Rights to the Committee on Judiciary, it was a close struggle in relation to carrying that reference. I was in favor of that reference, and probably it may be that my action in that matter carried the reference. I had no idea that every single recommendation that was made by that Committee on Judiciary would be against the interests of the people or I should never have advocated that reference. But I did think that in one respect where the vote had been in favor of the people that they would stand by that report, but it seems that even in this I was mistaken, and that the committee surrenders its own report. I listened to the remarks of the gentleman from Nevada, Mr. Cross, and I do not think he has drawn this picture too heavily. I ask this committee to pause. I ask them to consider whither we are drifting, and where these innovations are about to carry us. That is all that I have to say, only that I do regret that on the only proposition where the Judiciary Committee had stood by the people that they have surrendered it.

REMARKS OF MR. O'DONNELL.

MR. O'DONNELL. Mr. Chairman: I have understood that every man that voted for this amendment of Judge Fawcett would be published in the Chronicle. [Laughter.] I am going to vote for that amendment, and I say that every member of this Convention that don't vote for it is a weak-kneed man. [Laughter.] When that section was placed in the old Constitution a man had a right to stone to death the blackguard libeler, but to-day we have no redress except with the pistol. I say that we should have a clause in the Constitution to treat every libeler the same as any other criminal. The amendment which I intend to vote for is this: "And the jury shall have the right to find a general verdict as in other cases." That is the amendment that was made by Judge Fawcett, and that is the amendment I am going to vote for. We should treat these blackguard libelers the same as we would any murderer. I hope that every member upon this floor will vote for that amendment. I picked up the Chronicle a few minutes ago and read an article that I would like to read.

[Cries of "read," "read."]

I will read it. It says:

"McFarland moved to strike out the clause making the jury judge of the law and fact in libel cases. He said this would not abridge the freedom of the press, as it was freer now than anybody else, and used its freedom to malign reputable citizens and break up good names. When brought to trial they say: "For God's sake don't try us according to law;" and they call on a jury who are ignorant of the law, and the Constitution makes them judges of the law as well as of fact. He was willing to accord to the press all the freedom necessary for ordinary criticism, but he wished to bring men to justice who ruined other men's character."

The members in this hall that don't vote for that amendment, it appears to me, are afraid of that press. [Laughter.] I thank you kindly for your attention. [Applause and laughter.]

REMARKS OF MR. BARRY.

MR. BARRY. Mr. Chairman ——

[Cries of "question!" "question!"]

Mr. Chairman: The time is short and ——

[Cries of "question!"]

I shall not detain the Convention. As one having the honor of being on the Judiciary Committee; as one, believing at the time that the provision in the Constitution was right, I still stick to that proposition. I propose to stand by my opinions, even though the honorable and distinguished gentleman who is Chairman of the Committee on Judiciary, the gentleman from San Francisco, Mr. Wilson, has receded so far as to accept the amendment offered by the gentleman from Santa Barbara, Mr. Fawcett.

MR. WILSON, of San Francisco. I never voted for it.

MR. BARRY. He has the privilege, of course, which every man has and which I claim myself, to vote according to the dictates of his own judgment, regardless of what the Chronicle may do. I propose that every vote I shall cast here shall be according to what I regard to be right, regardless of what any man or any paper may say. Believing that this provision in the Constitution is what it should be, like the gentleman from Shasta, Mr. Andrews, who is opposed to change, except when the change is necessary, and is willing to stand by the Constitution when he believes it is right, I am opposed to this amendment. I say for another reason that if there is a corrupt Judge upon the bench that he might give instructions to the jury as a matter of law that might be against the liberty of the press, which for reasons urged to-day, are potent. I do not wish to deprive them of the liberty that I claim they ought to have; and if they abuse their right then we have laws sufficient to punish them. I am as much against the corrupt press as any living man.

I shall support the report of the Committee on Judiciary, believing it to be right. I say let the Constitution, in that particular, stand as it now stands.

[Cries of "question," "question."]

REMARKS OF MR. MILLS.

MR. MILLS. Mr. Chairman: I desire to call the attention of the committee to one point. Now, sir, if it be proposed that the Judge shall not charge the jury and shall have nothing to say in respect to the law in regard to libel cases, then there should be some provision to allow the Judge to retire from the bench, and possibly have the Sheriff take control of the jury, and let the attorneys argue the law to the jury. This, sir, would certainly be very proper. Why should the Judge sit upon the bench when he has nothing to say—when he has no control of the case? Why don't you provide that he can leave the Court House and go fishing or somewhere else, and leave the Sheriff and attorneys to conduct the case, and the jury to proceed to a verdict? I cannot see any business for a Judge there in such a case.

It seems to me that the amendment proposed by the honorable gentleman from Santa Barbara should be adopted. In all other cases the main question is, what was the intent; and it is so here. Our statute provides at present that the act must be willful, with an intent to injure another. Now so far as regards the matter of law, should the Judge be permitted to charge what is a willful act? Should he be permitted to charge what are the elements of intent? It seems to me that we should consider this law as we do any other law. It seems to me that the law should be the same for this case as all others. It is said that this crime is only a misdemeanor. How long will it be made a misdemeanor? How long should it remain so? Ought it not to be made a felony? Would that not do away with some of this wholesale slander and libel? You may traduce my character or do what you please in that respect, and it is only a misdemeanor. I say, ought it not to be made a felony, and ought not these cases to be prosecuted with more care than they are?

THE CHAIRMAN. The question is on the amendment to the amendment offered by the gentleman from Santa Barbara, Judge Fawcett.

The amendment was adopted, on a division, by a vote of 74 ayes to 67 noes.

MR. VAN DYKE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration certain sections of the declaration of rights, report progress, and ask leave to sit again.

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ADJOURNMENT.

MR. VAN DYKE. I move that the Convention do now adjourn.
Carried.

At five o'clock and three minutes P. M. the Convention stood adjourned until to-morrow at ten o'clock A. M.

FORTY-SECOND DAY.

SACRAMENTO, Friday, November 8th, 1878.

The Convention met in regular session at ten o'clock A. M. President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hall,	Porter,
Ayers,	Harrison,	Prouty,
Barbour,	Harvey,	Pulliam,
Barnes,	Heiskell,	Reddy,
Barry,	Herold,	Reed,
Barton,	Herrington,	Reynolds,
Beerstecher,	Hilborn,	Rhodes,
Belcher,	Hitchcock,	Ringgold,
Bell,	Holmes,	Rolfe,
Blackmer,	Howard,	Schell,
Boggs,	Huestis,	Schomp,
Boucher,	Hughey,	Shafter,
Brown,	Hunter,	Shoemaker,
Burt,	Inman,	Shurtleff,
Campbell,	Johnson,	Smith, of Santa Clara,
Caples,	Jones,	Smith, of 4th District,
Casserly,	Joyce,	Smith, of San Francisco,
Chapman,	Kelley,	Soule,
Charles,	Keyes,	Stedman,
Condon,	Kleine,	Steele,
Cowden,	Laine,	Stevenson,
Cross,	Lampson,	Strong,
Crouch,	Larkin,	Sweasey,
Davis,	Larue,	Swenson,
Dean,	Lavigne,	Swing,
Dowling,	Lewis,	Terry,
Doyle,	Lindow,	Thompson,
Dudley, of San Joaquin,	Mansfield,	Tinnin,
Dudley, of Solano,	Martin, of Santa Cruz,	Townsend,
Dunlap,	McCallum,	Tully,
Eagon,	McComas,	Turner,
Edgerton,	McConnell,	Tuttle,
Estee,	McCoy,	Vacquerel,
Estey,	McFarland,	Van Dyke,
Evey,	McNutt,	Van Voorhies,
Farrell,	Miller,	Walker, of Marin,
Fawcett,	Mills,	Walker, of Tuolumne,
Filcher,	Moffat,	Waters,
Finney,	Moreland,	Webster,
Freeman,	Morse,	Weller,
Freud,	Murphy,	Wellin,
Garvey,	Nason,	West,
Glascock,	Nelson,	Wickes,
Gorman,	Neunaber,	White,
Grace,	Noel,	Wilson, of 1st District,
Graves,	O'Donnell,	Winans,
Hager,	Ohleyer,	Wyatt,
Hale,	O'Sullivan,	Mr. President.

ABSENT.

Berry,	Kenny,	Stuart,
Biggs,	Martin, of Alameda,	Wilson, of Tehama.
Gregg,	Overton,	

The reading of the Journal was dispensed with, and the same approved.

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. Hager for two days, and to Mr. Stuart for one day.

REPORT.

MR. HILBORN. Mr. President: I send up a report of the Committee on Mileage and Contingent Expenses.

THE SECRETARY read the report, as follows:

MR. PRESIDENT: Your Committee on Mileage and Contingent Expenses have had under consideration Resolution No. 78—to provide for the payment of certain expenses incurred by the Sergeant-at-Arms, in the purchase of ice, etc., for the Convention—herewith report the same back, and recommend that it be adopted.

We have also had under consideration Resolution No. 67, presented by Mr. Barnes, to provide for the payment of Edward Wason, and Resolution No 79, presented by Mr. Estee, to provide for the payment of Hiram Clock, for work as Porters of the committee rooms, and herewith report both resolutions back and recommend that they be adopted. We have no doubt but these Porters were absolutely necessary to the proper performance of the business of the Convention. The Convention neglected to authorize the employment of the Porters, and the Sergeant-at-Arms, seeing the necessity, assumed the responsibility of having the work done. In doing so he probably made a mistake. He would have acted wiser had he permitted the committee rooms to remain in darkness and filth, in which case the several committees would have moved in the matter, and authority to employ Porters would have been sooner granted. We hope, however, that this is the last case of the kind which will occur in this Convention.

S. G. HILBORN, Chairman.

ICE BILLS.

THE PRESIDENT. The first question is on the adoption of the first resolution. The Secretary will read.

THE SECRETARY read:

Resolved, That the sum of thirty-eight and thirty one hundredths dollars be and the same is hereby allowed to pay the bill of Pacific Ice Company, and bill of Sacramento Post-office, the same to be paid out of the appropriation for expenses of the Convention, and drawn in favor of the Sergeant-at-Arms.

The resolution was adopted.

PAY OF PORTERS.

THE PRESIDENT. The question is on the next resolution, No. 67.

THE SECRETARY read:

Resolved, That Edward Wason be and he is hereby allowed the sum of eighty-eight dollars for services as Porter twenty-two days in caring for committee rooms, and that the same be paid out of the appropriation made for the Convention.

MR. CONDON. I call attention to the resolution adopted here on November second, which, I think—the recommendation in relation to this resolution—is a violation of that resolution in reference to this matter.

THE PRESIDENT. The question is on the adoption of the resolution as recommended by the committee.

MR. CONDON. I move that the report be laid on the table—that part of it.

MR. HILBORN. I hope some action will be taken on this matter. The resolution spoken of is not a rule of this Convention, and it can be rescinded at any time by this Convention ——.

THE PRESIDENT. The motion to table is not debatable. (Laughter).

MR. HILBORN. If there is no objection I would like to make a statement in connection with this matter. When the rooms were apportioned to the different committees, there were fifteen rooms, all unprepared, and they had to be put in condition to be occupied by the various committees. No provision had been made by this body for cleaning them up, and putting in the necessary furniture. The Sergeant-at-Arms, desiring to facilitate the operations of the Convention, thought best, and did employ these two gentlemen to do that work. As suggested by the committee, it would have probably been wiser to refrain from doing it, and then these various committees would have found them in darkness, and with the filth which had accumulated since last session of the Legislature. But feeling that he wanted to accommodate the Convention, and doing what he thought was for the best, and believing it was for the best, he employed these two faithful men and set them to work, and they did the work until the Convention authorized other persons to do the work. As soon as the resolution was referred to this committee they investigated the matter, and found that it was absolutely necessary that two men should be employed. I think the resolution ought to pass. They are here on expense, and I hope the Convention will do something for them.

THE PRESIDENT. The question is on laying the resolution on the table.

Lost.

THE PRESIDENT. The question is on the adoption of the resolution.

It was adopted.

THE PRESIDENT. The question is on the next resolution, number seventy-nine.

THE SECRETARY read:

Resolved, That the Controller of State be and he is hereby directed to draw his warrant in favor of Hiram Clock for one hundred and eight dollars, for twenty-seven days' services as Porter, and the State Treasurer to pay the same out of the appropriation for the Convention.

I hereby certify that Hiram Clock has been employed since the organization of the Convention in the capacity of Porter and Watchman, and that he has performed all the duties faithfully.

T. J. SHERWOOD, Sergeant-at-Arms.

THE PRESIDENT. Mr. Clock was appointed by the Governor at the opening of the Convention, and has served under that appointment.

The resolution was adopted.

REPORT OF COMMITTEE ON PREAMBLE AND BILL OF RIGHTS.

MR. VAN DYKE. Mr. President: A report from the Committee on Preamble and Bill of Rights.

THE SECRETARY read:

MR. PRESIDENT: The Committee on Preamble and Bill of Rights, to whom was referred the following propositions, to wit: Number three hundred and eighty-two, introduced by Mr. Schell; number three hundred and ninety-three, introduced by Mr. Dudley of Solano; number three hundred and ninety-seven, introduced by Mr. Beerstecher; number four hundred and nineteen, introduced by Mr. Freeman; number four hundred and twenty, introduced by Mr. Mansfield, and number four hundred and twenty-one, introduced by Mr. Ringgold—beg leave to report that the propositions relate to matters on which the committee had already acted, and had embodied their action in the draft of article one of the revised Constitution. The committee, therefore, return said propositions, and recommend that they be not adopted.

Respectfully submitted,

WALTER VAN DYKE, Chairman.

THE PRESIDENT. The report will lie on the table.

AMENDING THE RULES.

MR. NOEL. Mr. President: I gave notice that I would move to amend the rules by striking out rule seventy-one. If it is in order I will make that motion now.

THE PRESIDENT. It is not in order at this time. The next order of business is: Propositions and Resolutions relating to the Constitution.

PROPOSED AMENDMENTS—STATE OFFICERS.

MR. TINNIN introduced the following proposed amendment to the Constitution, to allow State officers to appear, in certain cases, before the Legislature.

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SECTION —. Any State officer, who is the head of any of the departments of the State Government, shall be permitted to appear in person before either or both branches of the State Legislature, to explain any subject relating to his department that is then being considered.

Referred to the Committee on the Legislative Department.

DISPOSITION OF PROPERTY.

MR. LAVIGNE introduced the following proposed amendment to the Constitution, in relation to disposition of property:

ARTICLE - -.

SECTION —. No person possessing property, real, personal, or otherwise, and who has one or more direct heirs, shall ever be allowed to dispose of more than one third of said property, either by will or gift, in favor of any other person, corporation, society, or association. The remaining two thirds shall become the property of his heir or heirs. And any sales which may have been made during the life of the testator or owner, which shall be proved illegal or fraudulent, of any part of said property, shall be declared null and void.

Referred to the Committee on Miscellaneous Subjects.

CITIES AND TOWNS.

MR. E. O. SMITH introduced the following proposed amendment to the Constitution in relation to restrictions on cities and towns, against their including adjacent farming lands within their corporate limits for purposes of taxation:

Resolved, That it is wrong in principle, and unjust to parties concerned, for cities and towns to extend their limits over tracts of adjacent farming lands in any direction for the sole purpose of taxing them for the corporate benefits of such cities or towns, and that no town or city in this State should be permitted to incorporate within its limits, and to subject to corporate taxation, any adjacent farm or lands whatever without the consent of the owners thereof, or a majority of them.

Referred to Committee on City, County, and Township Organizations.

SALARIES OF OFFICERS.

MR. BARBOUR introduced the following proposed amendment to the Constitution, concerning fees and salaries of officers:

SECTION —. No State, county, or municipal officer, whose salary is fixed by law, shall receive to his own use any fees or moneys coming into his hands as such officer, or retain the same, or any portion thereof, on account of his salary; but he shall account for the same as public money, and shall forthwith, or as soon after the receipt thereof as may be, deposit the same in the treasury of the State, or county, or municipality, as the case may be. The Legislature shall enforce the provisions of this section by suitable penalties.

Referred to the Committee on Legislative Department.

TOWNSHIP ORGANIZATIONS.

MR. HAGER introduced the following proposed amendment to the Constitution relative to City, County, and Township Organizations:

SECTION 1. Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or other chief executive officer of such city, and the other to the Recorder of Deeds of the county. Such proposed charter shall then be published in two daily papers of largest general circulation in such city for at least twenty days; and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall, at the end of sixty days thereafter, become the charter of such city; or if such city be consolidated with a county in government, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor, or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors and its ratification by them, shall be made in duplicate and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of Deeds of the county, among the archives of the city, and thereafter all Courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor submitted by the legislative authority of the city to the qualified voters thereof at a general or special election, held at least sixty days after the publication of such proposals, and ratified by at least three fifths of the qualified electors voting thereat. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

SEC. 2. In counties or cities having more than one hundred thousand inhabitants no person shall, at the same time, be a State officer and a city or county officer, nor hold two city or county offices.

Referred to Committee on City, County, and Township Organizations.

MR. VAN DYKE. I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Preamble and Bill of Rights.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section thirteen is before the committee.

MR. HOWARD. Mr. Chairman: I wish to offer an amendment to be added to section nine.

THE CHAIRMAN. It is not in order at this time.

MR. HOWARD. Then I offer it as an independent section.

THE CHAIRMAN. We are now considering section thirteen. You can offer it at a subsequent time.

MR. VAN DYKE. I offer an amendment to the section.

THE SECRETARY read:

"Add, after the word 'counsel' the words, 'to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, and to have compulsory process for obtaining witnesses in his favor.'"

THE CHAIRMAN. The Chair was mistaken as to the action on section nine. That section is still before the committee.

MR. VAN DYKE. I withdraw my amendment to section thirteen.

THE LAW OF LIBEL.

MR. HOWARD. I now offer my amendment.

THE SECRETARY read:

"Add to the end of the section: 'The judge may state the law, but the jury shall not be bound by the instructions of the Court. The Legislature shall provide for an appeal to the Supreme Court in questions of law in convictions or prosecutions for libel.'"

MR. HOWARD'S REMARKS.

MR. HOWARD, of Los Angeles. Mr. Chairman: I wish merely to state to the Convention that this is the substance of the provisions in several State Constitutions. That it is not the law, and has not been since seventeen hundred and ninety two; that the jury was bound by the instructions of the judge in libel cases. I read from the 14th Times Reports, 801, in the case of Harle vs. Catherall, in which the judge said, in summing up: "The first question was whether the correspondence which appeared in the paper was a libel at all—and according to the construction which had been put upon the Act of Parliament as regarded libel, the jury must judge for themselves. They were, perhaps, aware that it was for the Judge or the jury to decide what was a libel; but recently that question had been set at rest by Act of Parliament, which said that the jury were to decide, and not the judge. It had always been the practice, since the passing of the Act, in these cases to leave the decision to the jury. He believed also that, according to the opinions of many eminent persons, the judge ought to state to the jury what his opinion of the case submitted to a Court was; so that was only the opinion of a Judge as a thirteenth juryman, as it were, and not a matter of law, which aided the jury in arriving at their decision upon the question of libel."

That, Mr. Chairman is the law in the case.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I may be permitted to express my astonishment at the action of the Convention on this matter on yesterday evening — astonished that in the morning, by a very large majority they should have agreed to retain this substantial right in the Constitution, while in the evening of the same day they gave it away. A great deal of historical research was brought forward on yesterday in support of the position which I took on the amendment offered by the gentleman from Sacramento, Mr. McFarland. I think the amendment now offered will restore in part the safeguards which were eliminated on yesterday. Great cases were alluded to, which may be called celebrated. I wish to read a line or two more from the same authority cited by my colleague from Los Angeles, General Howard:

"If the law be clear, we may presume that the Judge states it clearly to the jury; and if he does, undoubtedly the jury, if they are well advised, will find according to such directions."

I think the amendment proposed by the gentleman from Los Angeles will be a good one. The Judge will be able to communicate to the jury what is law in his opinion, while the jury will be left as before to decide for themselves the law and the fact.

MR. VAN DYKE. Mr. Chairman: I think this is all out of order, for this very question has been voted upon by the Committee. The gentleman can reach the matter when it comes up in Convention, by refusing to adopt the report of the Committee of the Whole. We are traveling over the same ground again.

THE CHAIRMAN: Does the gentleman from Alameda raise the point of order?

MR. VAN DYKE. Yes, sir.

THE CHAIRMAN. It is not well taken.

MR. AYERS. I shall support the amendment offered by the gentleman from Los Angeles, Mr. Howard, for the reason that I believe it will restore in part to the press the safeguards eliminated by last night's vote. I would like to know of any gentleman on the floor of this Convention what mischief has been committed under the old Constitution? Has there been any wrong done? Has there been any difficulty in convicting libelers under that clause? Have there been any escapes from just and merited punishment? I say there has not; and I say there is no need at this moment, in this State, of taking away this safeguard which now surrounds a free press. This Convention will act wisely, and it will do an act of simple justice to itself and to the people by adopting the amendment proposed by my colleague, General Howard, thereby undoing a portion of the wrong you did yesterday.

SPEECH OF MR. BROWN.

MR. BROWN. Mr. Chairman: I am in favor of the amendment that has been offered by the gentleman from Los Angeles, Mr. Howard. I am convinced that there are many cases in which the Judge decides

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points of law before the jury, which might have a very unhappy effect. I am convinced that the great liberties of the people are to be defended, and the great object is the freedom of speech and the freedom of the press. Now, to illustrate my position in regard to this matter—and the President will excuse me—it is this: For instance a newspaper publishes certain things, certain statements considered to be libelous—regarded as libelous; that paper is connected with one or the other of the great political parties, representing the political sentiments of the country. It may be a Democratic paper and it may be a Republican paper—and I wish not entirely to ignore the Workingmen—it may be a Workingmen's paper. Now, we must understand that Judges, high as they are, have their feelings. We are apt to conclude that Judges should be free from politics—and perhaps it would be well if they were—but our experience has taught us that they, in common with the rest of us, have their political sentiments. They have their political feelings; they have their political friendships as other men have; and we have seen evidences enough that these things have some influence upon Judges as well as other men.

Now, the freedom of speech and the freedom of the press are the dearest rights we have. Suppose, for instance, that the Chronicle, or any other paper, is sued for libel and taken off to be tried before some Judge. Suppose the Judge is their friend: and suppose that this paper has advocated the claims of that Judge to the position, advocated them ably, in the most efficient manner, we all know human nature well enough to know that the mind of that man would lean toward the defendant more or less strongly, and the friendship thus existing would be apt to exhibit itself in the conduct of the case; and he would be more than human if it did not crop out in his charge to the jury. Now, the matter is this: If the Judge decides the law—determines the law—it will have a tremendous effect. If he determines what the law is before the jury, it will have its influence with them; it will trammel them; they cannot act independently of the instructions of the Court under the amendment which has already been adopted. And we find that this Judge will have certain politics, and these politics may influence, as any other gentlemen would be influenced. Not so with the jury. The jury is not liable to be composed of men of the same political sentiment, neither are they liable to be under obligations to any paper, as the Judge, who is to be elected, is. I believe this matter is safer with the jury. They can take up the law, investigate it, arrive at their conclusions; and they will not feel that the paper has benefited them, or laid them under obligations in any way, or injured them in any particular. Here is where the grand point comes in. The Judge is only a kind of a thirteenth juror, and merely gives his opinion in regard to the law, and they can let his opinion go for what it is worth; and he will not have authority to control the jury in this respect. He cannot control or influence the jury—which I do not think he should be allowed to do—when it is on so great and important a matter as the freedom of speech and the freedom of the press. I shall therefore, for the reasons I have stated, vote for the amendment offered by the gentleman from Los Angeles, Mr. Howard.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I have seldom witnessed, in any similar assemblage, so earnest and able discussion as has been devoted to this subject now under consideration. I have been equally astonished at the doctrines enunciated, not only by the gentleman who introduced the amendment yesterday, but by those other gentlemen this morning with reference to the section as it now stands becoming a part of the Constitution. If this amendment, as it is proposed by the gentleman from Los Angeles is not adopted, then the libel law will stand as it stood in the days of Lord Mansfield, when the great contest was had between the people and the Crown, particularly with reference to the questions involved here now.

It will be recollected by gentlemen themselves who were arguing upon the other side, that, at that early period, the instructions of Lord Mansfield in the Woodfall case were: "Gentlemen of the Jury, if you will take it upon yourselves to decide the question of law you can do so, but you must be careful how you decide upon your oaths and your consciences."

What difference is there between the law as it stood then and the law as is attempted to be established here now? The gentlemen who are fighting for this section as it stands now have fixed it in the very condition which it was in at the time that Lord Mansfield gave his famous instructions, and against which the protests of the ablest minds in Europe were hurled with terrible force and effect. It is not the province of the Judge to say to the jury, "you may disregard the law." It has been argued here, but the fact was overlooked that the jury are as much sworn officers as the Judge himself, and sworn to obey the law as much as the Judge himself. Will it be said, then, that the Judge may tell the jury, "Gentlemen, you are at liberty to disregard the plain provisions of the Codes?" No, sir. It is the province of the Judge to say to the jury, "Gentlemen, you are on your oaths. This is the law, but as far as the questions involved in this case are concerned, the Constitution intended that the jury should be the judges of the law. In this case the law and the fact are so closely interwoven that it is virtually impossible to draw the line of demarkation." In libel cases, they should not stand on any other basis. The jury should be the absolute judges of the law, as it is intended by the Constitution they should be. And the law was not intended to stand as it stood in the days of Lord Mansfield, when he took upon himself to dictate to the jury what their verdict should be. It is true that the Judge may state his opinions to the jury, but under these circumstances he should not be allowed to force his views of the law upon the jury. That state of things should not be allowed for the most weighty reasons in the world.

This class of prosecutions do not stand upon the same plane as cases of murder, or cases of treason, or any other class of cases, within the history of American jurisprudence. They stand upon a higher plane. The law and the fact are so closely connected and blended, that it is utterly impossible for the Judge to undertake to determine where the line of demarkation shall exist, so as to instruct the jury at what particular point the verdict must tend in favor of the defendant or in favor of the people. This is the reason why, and there is no other reason given in heaven or among men, why this class of cases should stand on a different basis from other criminal cases. This rule has stood since the days of Lord Mansfield, and it should be permanently established by placing it in the Constitution, so that no Judge shall be allowed to say, "Gentlemen, you are at liberty to disregard the law if you will." That is the most absurd proposition that ever was made by any enlightened Judge in this or any other age.

Now, sir, I am not here to defend the press of the State of California, or of the United States, for there is no class of citizens in the land so well able to protect themselves. They are the greatest power ever wielded by the hands of mortal man. Some of the newspapers may be corrupt; they may be run in the interests of corporations, or otherwise; their hands may be raised against every man who is not of the same opinion. I am not here to defend them. They stand as their own defenders, and they are well able to protect themselves. But it is the principle I am contending for. I am violently opposed to sacrificing a principle for the sake of wreaking vengeance on some individual evil-doer, and thereby endangering the liberty of innocent men. The newspapers are not to-day the bulwark of liberty in California. They stand rather as the bulwark of railroad corporations, banking associations, and all other classes of associations, and he who runs may read, that they make no assaults upon railroad or other great and powerful corporations. But I say that I am not contending for the press; it is a principle I am contending for. They need no defense at my hands. It is the people at large who are demanding that this plain provision shall be fixed in the Constitution; that this arbitrary power shall not be lodged again in the hands of the Judges, who may use it to oppress innocence. I do not say that we shall go back to the original provision as it was reported by the committee. I am simply asking that this last amendment may be added to the section so as to give some little protection against the usurpation of the Court.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from Los Angeles, Mr. Howard.

The amendment was rejected.

MR. CAMPBELL. Mr. Chairman: I wish to offer an amendment, to be added to section nine.

THE SECRETARY read:

"Indictments or information for publications in newspapers shall be tried in the county where such newspapers have their publication office, unless the place of trial shall be changed for good cause."

MR. ESTEE. That has been voted down.

MR. CAMPBELL. No sir; the amendment that was voted down embraced that and other matters.

MR. VAN DYKE. There was a direct vote on that matter.

MR. CAMPBELL. I think the committee will soon see the necessity of adopting such an amendment as that, under the existing circumstances. By the vote of yesterday the crime of libel was put upon the same footing as all other criminal prosecutions—as I understand the effect of the amendment—that is, that the Judge who tries the case is permitted to declare to the jury, in a form that binds them, the law of the case. The Judge has a right to declare whether the publication is a libel or not, and all that the jury have to determine is merely the fact of the publication. It is said that they may render a general verdict, but you have placed it in this position, that they may have the privilege of disregarding their oaths, for the Constitution declares that the jury shall be judges of the fact, and that the Court shall declare the law.

MR. WILSON, of First District. I will ask the Chairman whether this same motion was not made by the gentleman before, and whether it was not voted down by the Committee. He moved in the first place that actions of this kind should be tried in the county in which the newspaper was published. I raise the point of order that it has already been voted down.

THE CHAIRMAN. There was no vote taken on the former amendment, as I am informed by the Secretary.

MR. AYERS. It was put to a vote at the very heels of adjournment.

THE CHAIRMAN. Since that amendment was offered another amendment has been made to the section, which changes the character of the section; and the amendment now offered includes less matter than was included in the former amendment. The Chair therefore decides that the amendment is in order.

MR. FAWCETT. Mr. Chairman, I most respectfully appeal from the ruling of the Chair.

Messrs. McCallum, Tully and Keyes seconded the appeal.

THE CHAIRMAN. An appeal has been taken. The Chair decides that this is not the same amendment as offered before and voted down. Further, that since the other was offered, an amendment has been adopted which changes the character of the section, and renders this amendment in order. From which ruling the gentleman from Santa Barbara, Judge Fawcett, appeals, and the appeal has been seconded. The question is, shall the decision of the Chair stand as the judgment of the Convention.

The appeal was lost, and the decision of the Chair was sustained.

THE CHAIRMAN. The question is upon the amendment proposed by the gentleman from Alameda, Mr. Campbell.

SPEECH OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: With this section as it has been amended, in connection with the other sections of the Constitution, and the provision of law which declares that Judges shall determine questions of law, and the juries questions of fact, it takes away from the

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jury all discretion in prosecutions for libel, except to pass upon the simple fact of publication. They cannot determine, under the amendment which you have adopted, whether or not the language used was libelous. You may say they can render a general verdict, but if in rendering a general verdict, they go counter to the instructions of the Court they commit perjury. That is the position in which the amendment heretofore adopted places the jury in this country.

Now, with that change in the law, and with the doctrine maintained, as it is sought to be maintained in this Convention, that if a paper circulates anywhere, from San Diego to Siskiyou—if it is even purchased of the agent by a party in San Diego, or sent to somebody in Siskiyou, that the publisher may be brought to answer in Siskiyou, or in any part of the State in which that paper circulates, and you then have this state of things: That a man may be dragged eight hundred miles from his home to answer to a charge of misdemeanor before a selected Judge, and before one whose political convictions and associations are such, or whose present associations are such, that the Judge is the intimate friend of the prosecutor. The prosecutor may select any county in the State in which to bring the action, or all of the counties in the State, as has heretofore been attempted. They have their choice of all the Judges in the State, and all the advantage which locality can give them. They can take the victim from one end of the State to the other, and there is no one to prevent them, no law to interfere, and you will then have what you are pleased to call the freedom of the press.

Why, sir, this whole matter arose out of the fact that in political prosecutions the Judges undertook to control and influence the action of the jury. It is a mistake to suppose that in this republican country there will be no efforts at judicial tyranny. If you go back to the early politics of the State of New York, you will find that an attempt was made there to establish the old English doctrine, notwithstanding what the law and the Constitution declared there that the jury should be the judge of the law as well as the fact. Take away this safeguard, and you put it in the power of any man who chooses to prosecute a paper to prosecute him in every county in the State; and though the paper may have a complete defense, you put it in the power of any scoundrel, whose misdeeds may be exposed, to ruin the publishers of the best paper in the State. All that he needs to do is to follow the paper up with prosecution after prosecution, and persecution after persecution. You put it in the power of any politician who may not desire his career to be exposed, or commented upon, as in the light of justice it should be, to drag the editor of the paper all over the State, and if he cannot get a verdict against him in some one of the different counties, ruin him by the expense of defending himself.

After this, gentlemen, let me ask you where will be your boasted freedom of the press! The press, as far as public abuses are concerned, will be as dumb as oysters. There will be no incentive for them to defend the rights of the people, and expose corruption in public places. If the press is to be subjected to this kind of hazing, there will be no such thing as the freedom of the press. I trust that, after all that this Convention has done in this matter, you will at least say, that the parties shall be prosecuted at the place where the publication was originally made.

REMARKS OF MR. BARTON.

MR. BARTON. Mr. Chairman: I do not rise to make a speech, but I do desire to impress upon the minds of gentlemen in this Convention the absolute necessity, as one of the safeguards that is now left to us, to support the amendment offered by the gentleman from Alameda, Mr. Campbell. I do not understand what all this backing and filling means. Is it for the purpose of centralizing the power of the press in the hands of one man—and I believe that is the tendency of our action here. One of the grandest objects for which we are here to-day should be to prevent this; if possible, prevent history from repeating itself. If you desire to throttle, if you desire to strangle the press—the freedom of the press—then, gentleman of the Convention, by all means vote down the proposition of the gentleman from Alameda. If you propose to allow the jury to stand between the people and a corrupt bench, then in God's name vote for the amendment introduced by the gentleman from Alameda, Judge Campbell. As I stated upon taking the floor, I do not desire to consume the time of the Convention, but I do desire to call the attention of every candid mind in this Convention to the fact that I believe this to be the only safeguard left, and it is for the Convention to determine whether it shall remain or whether it shall be eliminated. I hope sincerely that the amendment will be adopted.

SPEECH OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I have but one word to say on this matter. It seems to me in the first place that the gentleman on my left, Judge Campbell, has made one mistake when he says that under the amendment which the committee has adopted all that the jury have to do is to determine simply whether the publication was made as charged. I do not understand it so. Under this section, in criminal prosecutions for libel, the truth may be given in evidence to the jury. That is a matter of fact which the jury have to determine, whether the alleged libelous matter is true, and it is a most important fact. There is another fact which they have to determine, and that is whether it was published with good motives and for justifiable ends.

Now, I am in favor of putting libelers upon the same footing as any other class of persons charged with crime. I say a man who will assail the character of my wife, by circulating papers in the streets of the city where I live, should be tried right there where he circulates the libels, just the same as he would if he comes there and makes a personal assault upon her. I say a man who publishes a libel—sets it up and prints it here in Sacramento—has his headquarters here, and then sends these libels throughout the length and breadth of the State, should be prosecuted wherever the libelous papers circulate, the same as a counterfeiter who sets up his machinery and manufactures coin of the United States, here in the city of Sacramento, and disposes of it throughout the State. If he coins the money here and goes to San Francisco and spends it, and circulates it there, there is where he should be prosecuted just as well as here in Sacramento. If a man sets up an office here in Sacramento and prints forged bills of exchange, or executes promissory notes, and goes to Nevada, or San Bernardino, or San Diego, or Siskiyou, and circulates them, he should be prosecuted there just the same as in Sacramento where his headquarters are, where he first manufactures them.

Why confine the prosecutions for libel to the place where it was originally instituted, where he has his machinery for making and printing the libel, any more than the man who is engaged in the business of forging notes or coining money. A libel is not a libel until it is published. The mere fact of setting down and writing a promissory note, and signing a name to it, does not constitute a crime. It is no crime until he attempts to issue it, until he takes it out and attempts to dispose of it. These libelous publications go into every county, and therefore I say where it is issued and circulated is where the crime is committed, and where he should stand his trial. The mere fact that a man has a printing office here in Sacramento, and publishes certain things, or sets them up, does not constitute the libel. It is circulating them broadcast where people can see and read them. There is where the crime is committed. I may live a thousand miles from the City of San Francisco, as I do about, and some people there may print an article that is libelous on me, and send ten thousand copies into the little town where I live, circulate them in every hamlet in the county: throw them broadcast, so that every man, woman, and child will get to see and read it, and then if I want redress I must travel a thousand miles with my witnesses to prosecute the perpetrators of that libel, and punish the criminal. I say I will never support any such provision as that. I am as much in favor of the freedom of the press as anybody. I say it has been the bulwark of our liberties; but I say the freedom of the press, in some instances, has been abused, and they have become licentious. But where they do commit offenses which are punishable by law there is where they should be prosecuted. They should answer for the offense where that offense has been committed. And if they commit an offense in every county in the State, then prosecute them in every county in the State, just the same as you would a man who commits a forgery, executes forged paper, and circulates it all over the State.

SPEECH OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: There is one very important difference which will apply to the illustration of the gentleman from San Bernardino, Mr. Rolfe. The profession of the forger is an unmitigated evil from every point of view. He is an outlaw and a criminal from the very day and hour that he conceives the idea of forging bills, and even before he circulates those bills, or false money, he is committing a crime. You cannot say that forgers subserve any great end in government, or that while some of them are good forgers, the majority are bad men. They are all bad men. It is different with the press. Newspapers are conducted, as a rule, by reputable citizens, and generally comprise the best talent and the highest grade of intellect. They are acknowledged to be a great public benefit. Now, in the first case, we should use all means within our power to prevent the forger from accomplishing his dangerous designs, and all means within our power to punish him for the offense. In the other, we should place no weight upon it except it be absolutely necessary. It is only a constructive commission of crime where the paper is circulated. The actual commission of the crime is where the paper is published. I do not consider that the gentleman has given a fair illustration at all.

For instance, you can take the forger up in Siskiyou County, as he suggested, and try him and convict him of forgery, and send him to the Penitentiary for the term of years prescribed by law. But will the gentleman undertake to say that after he has been sent to prison for six years from Siskiyou that he can be tried by every other county in the State, for the same batch of money, and sentenced to an additional term in every county in the State? Or does he mean to say that, failing of conviction in one county, he can be hawked over the State until a jury in some one of the counties does convict? I hardly think the law permits anything of the kind. Therefore I hope this amendment will prevail.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: When a paper is charged with having libeled a man, it is presumed that the publisher is innocent of the offense charged until the contrary is shown. But if a paper libels me—declares that I am a thief—then on the face of the paper there is an offense committed, and the burden is thrown on the paper to show that the statement is true, and that it was published with good motives and for justifiable ends. The newspaper ought to be in itself a protection to the liberties of the people. But the liberties of the people are just as much to be looked after as the liberty of the press, for the liberty of the press is nothing more nor less than the liberty of a limited number of people. The papers are to be protected only because they are supposed to subserve the cause of liberty and right. When a man is charged with being a thief, he has as much right to be vindicated at his own home as the newspaper has. I therefore move this amendment, which I think is eminently right and proper. It is to be added to the amendment already presented by Judge Campbell, and I hope that gentleman will accept it as a part of his amendment.

THE CHAIRMAN. Send up the amendment.

THE SECRETARY read:

"Or in the county where the party alleged to be libeled resided at the time of the alleged publication."

MR. SHAFTER. That will confine the trial to two places, either to the place where the paper is published or to the place where the libeled party resided at the time of the publication.

MR. CAMPBELL. I accept the amendment.

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MR. EDGERTON. Mr. Chairman: Is an amendment in order?

THE CHAIRMAN. No, sir; there is already an amendment to an amendment.

MR. CAMPBELL. I have accepted the amendment offered by the gentleman from Marin, Mr. Shafter.

THE CHAIRMAN. If the amendment is accepted, then an amendment to the amendment will be in order. The gentleman from Sacramento will send up his amendment.

MR. EDGERTON. I move to amend so as to read as follows: "Indictments or informations for publications in newspapers shall be found and tried in the county where such papers have their publication office, or in the counties where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause."

MR. VAN DYKE. The amendment is unnecessary.

MR. EDGERTON. I am opposed to the whole thing, but I suggest this merely.

THE CHAIRMAN. The question is on the adoption of the amendment.

MR. SHAFTER. I move to insert the words, "indictment found or information laid."

MR. McFARLAND. I would suggest that something be left to the Legislature, when they come to arrange the details.

THE CHAIRMAN. The Secretary will read the section as amended, with the proposed amendments.

THE SECRETARY read:

SEC. 9. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to find a general verdict, as in other criminal cases. Indictments found or information laid for publications in newspapers shall be tried in the county where such newspapers have their publication office, or in the county where the party alleged to be libeled resided at the time of the alleged publication, unless the place of trial shall be changed for good cause.

THE CHAIRMAN. The question is on the adoption of the amendment.

Adopted—ayes 107.

THE CHAIRMAN. The question is on the amendment of the Judiciary Committee as amended.

Adopted.

THE CHAIRMAN. The Secretary will read section thirteen.

THE SECRETARY read:

SEC. 13. In criminal prosecutions, in any Court whatever, the party accused shall have a right to a speedy and public trial, and to appear and defend in person and with counsel. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property without due process of law.

MR. VAN DYKE. I have an amendment, to come in after the word "counsel," which I send up.

THE SECRETARY read:

"To be informed of the nature and cause of the accusation; to be confronted by the witnesses against him, and to have compulsory process for obtaining witnesses in his favor."

So that the section will read as follows:

SEC. 13. In criminal prosecutions, in any Court whatever, the party accused shall have a right to a speedy and public trial, and to appear and defend in person with counsel: to be informed of the nature and cause of the accusation; to be confronted by the witnesses against him, and to have compulsory process for obtaining witnesses in his favor. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.

MR. VAN DYKE. Mr. Chairman: That amendment is taken from the amendments to the Constitution of the United States, and is to be found in nearly all the State Constitutions. It was substantially the same as reported by the Committee on Preamble and Bill of Rights, but the Judiciary Committee, in reconstructing this section, have omitted it. I do not know why they should have omitted it. They are right, as well as any other in that section, and they are enumerated in pretty much all the State Constitutions.

MR. HERRINGTON. Mr. Chairman: I offer a substitute for both.

THE SECRETARY read:

"In criminal prosecutions in any Court whatever, the party accused shall have a right to a speedy and public trial; to have process of the Court to compel the attendance of witnesses in his behalf; to appear and defend in person and by counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled, in any criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

THE CHAIRMAN. The amendment is out of order. There is an amendment to an amendment pending.

REMARKS OF MR. FAWCETT.

MR. FAWCETT. Mr. Chairman: I think the proposed amendment perhaps is dangerous in one of its principles. That part of the amendment which provides that the party charged with crime shall be confronted at the time in Court with the witnesses against him, it seems to me, will revolutionize the whole practice of the State. Is it not true, that if that clause is admitted, the dying declarations for instance, can no longer be offered in evidence on criminal trials? I think that will follow as one of the consequences of adopting this amendment. It is also the law at present that depositions may be introduced in evidence, and the effect of that change made in that particular a few years ago, has been remarkably beneficial, and that is a very material issue in the administration of criminal justice in this State. If this amendment prevails, that practice will be destroyed. Depositions can no longer be offered in criminal cases at the trial, even though the depositions might have been taken at a former examination, still, at the same time the defendant is entitled to be confronted with the witnesses—the living witnesses—which would exclude all such things as depositions. It is dangerous, and should not prevail in my opinion.

MR. WILSON, of First District. Mr. Chairman: I will simply say that this matter was canvassed by the Judiciary Committee, and for the reasons stated by the gentleman last on the floor it was deemed advisable to adhere to the old Constitution, and this section thirteen, as now reported by the Judiciary Committee is the old Constitution, being the latter part of section eight, and we saw no reason for altering it.

THE CHAIRMAN. The question is on the amendment.

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: I wish to ask of the Chairman of the Judiciary Committee, what reason there is for leaving out the right that is secured in all the State Constitutions of the defendant being informed of the nature of the accusation against him. That is contained in the Constitution of the United States, and in the Constitution of pretty much all of the States, and I would like to know why we should not put it in here.

MR. WILSON, of First District. That has always been given to a party in this State and always will be. He could not be brought up and tried without it. It is a matter of detail, and section thirteen declares the general principles, and secures the general rights.

MR. VAN DYKE. If we are to depend on the matter of principle, we may as well strike out the whole section. I understand this to be one of the most important rights which the defendant has, and it is recognized as such in every State in the Union. Now, sir, is it not right to give the accused the right of compulsory process to obtain witnesses in his behalf? Are we to depend on the general principle for that right? It seems to me that this is the very essence of the rights of accused persons, and they ought by all means to have a place in the Constitution. If we are to leave out this matter we may as well leave out the whole section. The Federal Constitution provides that the accused shall be confronted with his witnesses, and if it was considered necessary to put it in there, it certainly cannot be held to be immaterial in our State Constitution. There has never been any inconvenience resulting from it. It has found a place in pretty much all the State Constitutions—perhaps all of them—and it does seem to me that we should preserve these rights to the accused, for we know that it is very important to have the witnesses against the accused present, so that their conduct can be seen, so that the jury can judge of the weight of their testimony. I think the amendment should be adopted.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: It seems to me there is one provision of the amendment that is very important. Whether it is necessary to put it in the Constitution, I do not know, but it does seem to me that no man should be compelled to be tried for his life or liberty upon depositions, and it has been the universal rule of criminal practice, that depositions cannot be taken against the defendant. Men who are charged with crime are oftentimes poor men, and any one can see at a glance how this would work. A man is arrested here in Sacramento without money and without friends, and the prosecution proposes to take the deposition of a witness down in San Francisco, or Los Angeles, for instance, and the defendant is utterly unable to go there, or to employ counsel to appear for him, and the universal rule is that he must be confronted with his witnesses. Now, as to the objection made by the gentleman from Santa Barbara, Judge Fawcett, that it would exclude dying declarations, I do not remember now—perhaps there are others who do—a case in point.

MR. TERRY. It was in the case of the People vs. Glenn that they were admitted, I think.

MR. McFARLAND. I understand it is admissible in this State, because the Constitution does not exclude them, but there are other Constitutions that do. I am opposed, sir, *in toto*, to compelling a defendant to be tried upon depositions, unless he may have had the power of confronting the witnesses. I know this right has been given by the laws of the State, and I suppose it will be hereafter. I do not understand now that on a trial for felony you can introduce depositions against the defendant—I do not understand that to be the law of the State to-day, if it is I am mistaken, but it was not the last time I examined it. I do not believe you can try a man for felony upon depositions.

REPLY OF MR. FAWCETT.

MR. FAWCETT. I think the gentleman has misunderstood me. Perhaps I do not make myself plain. When I spoke of depositions I had in my mind a case where there had been a preliminary examination, and the testimony reduced to writing by question and answer. It is provided in the Amendments to the Codes of eighteen hundred and seventy-three, that in such, where the witness testifying afterwards dies, that the testimony could be introduced in evidence at the trial. The reason for that was, I suppose, that at the preliminary examination the defendant had had an opportunity to cross-examine the witness, and all his rights were preserved. In that case there could be no injury done. The Legislature provided that in such cases the deposition can be used on the trial, in evidence. Now it is questionable whether that could be done under this proposed amendment. I say this plan has

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worked well, and I think it should be continued. This proposed amendment will defeat it entirely. There is no method by which the testimony of a dead witness can be preserved. I spoke of depositions in that sense when I used the words. I hope the amendment will not prevail. The present law works satisfactorily, and I have yet to learn of any injury being done by it to the rights of a defendant.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: In confirmation of the statement made by the gentleman, I will say, that a few weeks ago there was in the Fifteenth District Court, a criminal case of considerable importance, before Judge Dwinelle. The prisoner was confined on a charge of having murdered his own wife. The officers narrated some of the circumstances, showing it to have been a most brutal and fiendish murder. The preliminary examination had been had, such as was referred to by the gentleman from Santa Barbara, and would have been sufficient to establish the case against the accused, but on account of some informality in preserving the evidence, it was ruled by the Court to be inadmissible. In the meantime the witness had died. Now, such cases as this frequently occur, and under this proposed amendment it will be impossible to admit these depositions. Such a doctrine would be dangerous.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from Alameda, Mr. Van Dyke.

Lost.

MR. HERRINGTON. Mr. Chairman: I will now offer my substitute.

THE SECRETARY read:

SEC. 13. In criminal prosecutions, in any Court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the Court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and by counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law.

MR. HERRINGTON. Mr. Chairman: I call attention to this, that it simply allows the party to have compulsory process. I do not know of any other clause in the Constitution where that clause is put in. It may be said that they will have compulsory process as a matter of course. This makes it a matter of law, not as a matter of course simply; it makes it compulsory upon the Courts, and this is a right which cannot be gainsaid. I think it should be there if it is anywhere. I think this is the proper place for it.

THE CHAIRMAN. The question is on the amendment.

The amendment was adopted.

MR. CAMPBELL. I propose the following, to be added to the section as amended, which I send up.

THE SECRETARY read:

"The Legislature shall have power to provide for the taking and using of depositions of witnesses in criminal cases when there is reason to believe that from any cause the witness will not attend at the trial, or may be unable to do so."

MR. CAMPBELL. Mr. Chairman: The reason of that amendment is simply this: There has been some doubt expressed whether the present statute upon the subject of taking depositions is constitutional, and I know that the District Attorney should always have such power. I think it is necessary, and I hope it will pass.

ARGUMENT OF MR. JONES.

MR. JONES. Mr. Chairman: If that amendment is adopted, it will, in my opinion, be a very dangerous thing. If it had been limited to a case where the deposition had been taken of a witness on preliminary examination, and the witness had died, I would not make any objection to it; but, if I understand it rightly, it would make it possible to try a man absolutely upon depositions taken from time to time, at different places, previous to the trial. It seems to me, sir, that it would take away all safeguards and protection. Suppose a man is on a ship which runs into San Francisco, and on the arrival of the ship into port the captain may throw him into jail upon a charge of mutiny, or any other charge in the catalogue. He is a poor man, unable to give bail, unable to procure able counsel. The captain wishes to sail again, and so the prosecution takes the deposition of the sailors, and the ship, with its crew, is away again. And when the man comes to trial, he may be tried purely upon depositions, there being no witnesses present. No chance to confront the witness; no opportunity of cross-examining them. I think it is no more than reasonable and right that the testimony of the witnesses, taken in the proper manner, in accordance with law, upon a preliminary examination, should be used. But to make it possible to try a man solely on depositions, I say is not right, because, in the case of a poor man, unable to employ counsel, great injustice may be done. This amendment is dangerous; it is going too far. If the gentleman would be satisfied to modify it so as to confine it to cases where the testimony is procured and used on account of the death of the witness, I see no objection to that, because on the preliminary examination the accused has an opportunity of confronting the witnesses, and cross-examining them. It is oftentimes the case that the accused cannot afford to employ counsel, and has to accept the services of counsel appointed by the Court—young men just beginning in the practice of the law. He would therefore not be prepared to face the witnesses with counsel when these depositions are taken. In the case where the testimony of a witness is taken on the preliminary examination, and that witness dies before the trial, I think likely we can safely admit it without opening the door of danger. But to throw open the door to all classes of depositions is not wise, in my opinion; and I hope, for these reasons, that the amendment, in its present shape, may not pass. It seems to me to be dangerous.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: I think the gentleman hardly comprehends the scope and purpose of the amendment which I have offered. It leaves to the Legislature the duty of throwing the proper safeguards around the taking of testimony in such cases. And I think the Legislature can be safely trusted to that extent. Now we have an immense number of cases, with our migratory population, where men come to the city to-day, and want to transact their business and go to their homes to-morrow. They come from the neighboring States of Nevada and Oregon, and from remote parts of this State, and it is difficult to get them at the trial without imprisoning them. The result is that justice often is defeated, because all that class of migratory persons are glad to get out of the way, and there is no way of securing their testimony unless they are thrown into jail. The prosecuting officers have not felt themselves safe in relying upon any section which has been enacted upon that subject, for the reason that they fear it will conflict with the Constitution. Now this merely leaves this matter to be regulated by the Legislature; it does not propose any precise system that shall be adopted, but leaves it where it should be left, to the legislative wisdom to determine the details. It is barely possible that such cases may arise as were alluded to by the gentleman from Mariposa, Mr. Jones. But such cases are decidedly improbable, and where an attempt is made to pile up depositions by any fraud such as that, I think it is safe to say that the jury would look at the matter in its true light, and regard the depositions as of no more force than so much waste paper. I think this amendment is really necessary in order to make the administration of our criminal law effective and prevent the defeat of justice. Take that class of crimes in San Francisco, swindling games of all kind, banking games, strap games, etc., by which strangers are often robbed. They either have to be put in jail for several months, or the criminal cannot be punished, for many times they would rather lose their property than go to the expense of staying, or of making another trip. That is the actual result of it. I believe the Legislature can frame a law which will be applicable to cases of that kind without endangering the rights of accused persons.

THE CHAIRMAN: The question is on the adoption of the amendment.

Adopted.

MR. MILLS. I offer an amendment.

THE SECRETARY read:

"Insert after the word counsel, 'and to have a jury selected from the district, county or township in which the crime is charged to have been committed, unless the venue be changed as provided by law.'"

THE CHAIRMAN. The amendment is not in order. The committee have adopted a substitute for that. The question is now on the amendment of the Judiciary Committee as amended in Committee of the Whole. The Secretary will read the section as it now stands, with the amendments adopted.

THE SECRETARY read:

Sec. 13. In criminal prosecutions, in any Court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the Court to compel the attendance of witnesses in his behalf, and to appear and defend, in person and by counsel. No person shall be twice put in jeopardy for the same offense; nor be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law. The Legislature shall have the power to provide for the taking and using of depositions of witnesses in criminal cases, when there is reason to believe that from any cause the witness will not attend at the trial, or may be unable to do so.

The amendment, as amended, was adopted.

EMINENT DOMAIN.

THE CHAIRMAN. The Secretary will read section fourteen.

THE SECRETARY read:

Sec. 14. Private property shall not be taken for public use without just compensation being first made to, or paid into Court for, the owner.

MR. HALE. I desire to make an amendment to section thirteen.

THE CHAIRMAN. It is too late. The committee have adopted it as amended.

MR. HALE. I ask leave of the committee.

"Object," "object."

MR. BLACKMER. I move that the committee now rise, report progress and ask leave to sit again.

Lost.

MR. DUDLEY, of Solano. I offer an amendment to section fourteen.

THE SECRETARY read:

"And no right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money, or secured by a deposit of money to the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury in a Court of record, as shall be prescribed by law."

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from Solano, Mr. Dudley.

MR. DUDLEY. Mr. Chairman: It has been a rule of the past that when damages were assessed for a right of way, to allow the prospective advantages to offset the damages. There is something unjust in permitting corporations to take for their own use the property of individuals, without rendering just and fair compensation therefor. They may run across thousands of acres of land, and ruin it, leaving the owners absolutely paupers. I hope the Convention will adopt this amendment.

MR. EDGERTON. The gentleman is entirely in error in his statement of the law.

MR. DUDLEY. I stated the proposition, I did not pretend to state the law.

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MR. BARNES. There was formerly a statute, the Act of eighteen hundred and fifty-one, as amended in eighteen hundred and sixty-two, in reference to this matter. Afterwards the principles of eminent domain were so stated that in no event could the land be taken without being paid for. Then you can proceed to assess the damages to that portion of the land not taken, and against that class of damages you can offset the benefits derived by the owner of the tract, but in no event can the land be taken without it is paid for at its full cash value. The damages and benefits form entirely different subjects.

MR. LAINE. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

The Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and a quorum present.

CORPORATIONS.

MR. ESTEE. Mr. Chairman: At the request of several gentlemen who will be obliged to leave to-morrow, I move that the report of the Committee on Corporations other than Municipal be made the special order for Tuesday next, immediately after the reading of the Journal, to take precedence over all other matter.

MR. LARKIN. Mr. Chairman: I shall oppose any special orders by this Convention, for this reason: In order to do any work in this Convention the members must stay here and not be away every Friday, Saturday, and Monday, as they do when special orders are made. I have seen enough of it. Whenever a special order is made these men go away and leave us here. We have been here now forty-four days. The reasons of our coming here were to amend our Constitution in relation to corporations, in relation to taxation, in relation to the judicial system, and in relation to the legislative department. We have not reached them. We have wasted the time and passed it all away on the Bill of Rights, and it is not finished yet. We have had special orders, and postponements, and delays, week after week, and have not touched the actual work that we came here to do. The people who voted for the Constitutional Convention demand of every member that we should oppose further delay, and see that no special orders are made.

MR. ESTEE. Mr. Chairman: I am rather amused at the enthusiasm exhibited by the gentleman from El Dorado, when I consider that this is already a special order, and there are other matters that can come up. I will say to the gentleman that I am not going away. I will be here ready to attend to it. This motion was made for the reason that it was considered by a great many of the friends of business—if I may use the term—those who desire to advance the business of this Convention, that we ought to have a full house when this important subject is taken up. The fact is that there will not be a full house to-morrow when this report will probably be reached. That is the fact. They will not be here. Now it is important that a matter of such grave importance should be considered by a full Convention, and I therefore hope that it will be made the special order for Tuesday next, immediately after the reading of the Journal. So far as I am personally concerned, I am ready to take it up now, but because the gentleman from El Dorado will be here, and because he hates to make the matter a special order, does not keep people here.

MR. BROWN. Mr. Chairman: I am opposed to this thing of special order for a day in the future. I have seen how this has worked before. We are told that certain gentlemen are going to be away, or will not be here. Do we expect the great business of this house to be carried on to perfection by a class of men, who are so exceedingly negligent that they will go away when they know that there is business of importance before the house. It is urged that these men are going to be away; that though there is important business before this body, and matters that they are expected to participate in, yet they will leave; and in view of this we must put it off until they happen to be here to suit their convenience. That is substantially the position, and the gentleman from San Francisco can see it as plain as any of the rest of us. The class of men who will be away are not the men to be depended upon in the great work of this Convention. I am in hopes that the members will not go, and that they will stay here and attend to business. It is necessary that we should, or else the one hundred days will be out and no Constitution perfected. If they will go let such gentlemen depart, and if there are some gentlemen indolent and others careless and will leave, let them leave, but let the true and faithful remain here and work regardless of the negligence of others.

MR. WILSON, of San Francisco. Mr. Chairman: Just about one week ago the Committee on Corporations other than Municipal, made a report of some very important amendments to the Constitution—exceedingly important. Probably this Convention has no business before it of greater importance that what is involved in the recommendations of that committee. This was printed and laid upon our desks, if I recollect, on Saturday last, less than a week ago. Every day this week gentlemen have been engaged in discussing the Bill of Rights, and every night if they have been doing what I have been doing, they have been sitting on committees. Now, I would like to know what gentlemen are ready to take up so important a question. I, for one, am not, and I have probably got about as much good hard work in me as any other man of my weight. I have been working every day in the house and at nights in the Committee on Judiciary. I take it for granted that every other gentleman has been working too. I do not believe that a crude and hasty discussion here is going to advance business at all. We had better make haste slowly. I do not think that when gentlemen are working upon committees, or are at work in the examination of a report that is to come up, are neglecting their business here. I know that the best part of the business of the Convention is done when it is not in session. Very little of the work of this Convention is done in the sessions of the Convention. We came here to debate questions and present what we have prepared outside of the house, and it is a very great mistake to suppose that because gentlemen do not answer roll call that they are neglecting business. Most of them study propositions outside of the house. I do not think this Convention is going to advance business by the discussion of any hasty and inconsidered ideas. I am in favor of the postponement because I think the gentlemen will be better prepared to discuss and decide the question if the postponement is made.

MR. LARKIN. Mr. Chairman: I am aware that there has been work in the committee; but at the rate we have proceeded it will probably take three or four weeks to dispose of this report of the Committee on Corporations. We can commence the discussion of that question whenever it appears on our file. We can take it up and we can proceed with it section by section, and we can examine it better here where we can consult together. After we amend it and discuss it for about three or four weeks, we may finally act upon the report of the Committee on Corporations. I am in favor of proceeding without delay or further postponement. It will take three or four weeks to dispose of it any way.

THE PRESIDENT. The question is on the motion of the gentleman from San Francisco, Mr. Estee, that the report of the Committee on Corporations other than Municipal be made the special order for Tuesday next, immediately after the reading of the Journal, to take precedence over all other matters.

The ayes and noes were demanded by Messrs. Larkin, Barbour, Larue, Stedman, and Gorman.

The roll was called, and the motion prevailed by the following vote:

AYES.

Andrews,	Hager,	Reed,
Ayers,	Hale,	Rhodes,
Barnes,	Hall,	Ringgold,
Barry,	Harvey,	Rolfe,
Beerstecher,	Herold,	Schell,
Belcher,	Herrington,	Shafter,
Blackmer,	Hilborn,	Shurtleff,
Boggs,	Howard,	Smith, of Santa Clara,
Boucher,	Huestis,	Smith, of 4th District,
Casserly,	Inman,	Steele,
Chapman,	Kleine,	Stevenson,
Charles,	Lindow,	Sweeasy,
Cowden,	Mansfield,	Swing,
Cross,	Martin, of Santa Cruz,	Thompson,
Dowling,	McFarland,	Vacquerel,
Dudley, of San Joaquin,	McNutt,	Van Dyke,
Eagon,	Miller,	Van Voorhies,
Edgerton,	Mills,	Walker, of Tuolumne,
Estee,	Murphy,	Waters,
Estey,	Nason,	West,
Fawcett,	Noel,	Wickes,
Finney,	Overton,	Wilson, of 1st District,
Freeman,	Porter,	Mr. President—71.
Garvey,	Pulliam,	

NOES.

Barbour,	Hughey,	Prouty,
Barton,	Hunter,	Reynolds,
Brown,	Jones,	Schomp,
Burt,	Joyce,	Shoemaker,
Caples,	Kelley,	Smith, of San Francisco,
Condon,	Keyes,	Soule,
Crouch,	Lampson,	Stedman,
Davis,	Larkin,	Strong,
Dean,	Larue,	Swenson,
Doyle,	Lavigne,	Terry,
Dudley, of Solano,	Lewis,	Tinnin,
Evey,	McCallum,	Tully,
Farrell,	McComas,	Turner,
Filcher,	McConnell,	Tuttle,
Freud,	McCoy,	Walker, of Marin,
Glascock,	Moreland,	Webster,
Gorman,	Morse,	Weller,
Grace,	Nelson,	Wellin,
Harrison,	Neunaber,	White,
Heiskell,	Ohleyer,	Wyatt—62.
Hitchcock,	O'Sullivan,	

AMENDMENTS TO RULES.

MR. McFARLAND. Mr. Chairman: A few days ago I made a motion to amend rule twenty-four, simply to the effect that where the ayes and noes are demanded, the names of the gentlemen making the demand shall be entered upon the minutes. I move to take it up now.

Carried.

MR. McFARLAND. Mr. Chairman: The rule now requires that "on all motions whatsoever the President shall take the sense of the Convention by ayes and noes, provided five members present shall so require." Now, my amendment is simply to add after the word "require," the words "whose names shall be entered upon the minutes." There is a great deal of time expended in calling the ayes and noes here; and if gentlemen think enough of a matter to demand the ayes and noes, they ought to be willing to have their names go into the Journal as having made the demand. I move the adoption of the amendment.

The amendment was adopted.

MR. NOEL. Mr. Chairman: In accordance with previous notice, I

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now move to amend the rules by striking out in the Standing Rules rule seventy-one, and insert in lieu thereof the following:

RULE SEVENTY-ONE.

In all cases where propositions or resolutions embodying matters proposed to be introduced into the Constitution are printed, it must be by a majority vote of the Convention; but reports of standing committees shall be printed without any vote being had.

MR. HAGER. I do not think any one understands the proposition. I have not heard it read.

THE SECRETARY read the proposed amendment as above.

MR. McCALLUM. I like that rule very well except the last clause of it. I noticed that we have the reports of committees printed twice. Where it is desired to print the report of a committee separately we can do it, but as it is, gentlemen will notice that the reports of committees are duplicated by being printed in the Journal. I move to strike out that last clause, "but reports of standing committees shall be printed without any vote being had." We can order them printed when we desire to. These things are printed twice now. The rule does not need to say anything upon that proposition. They will be printed in the Journal as a matter of course.

MR. NOEL. I accept the amendment.

MR. HUESTIS. Inasmuch as that is my notice and my proposed change of the rule, I also accept the amendment.

MR. WYATT. Inasmuch as Mr. Huestis claims the parentage of that resolution, and inasmuch as he called it up the other day and it was voted down by the Convention, I hope the Convention will not pass that in the style it is brought here. If Mr. Noel is willing to father the resolution he may do so, but I do not want Mr. Huestis to stand godfather to a child that has already been buried. [Laughter.]

The amendment was adopted on a division by a vote of sixty-three ayes to fifty-five noes.

THE REPORT ON CORPORATIONS.

MR. EDGERTON. Mr. Chairman: I move that there be ordered printed two hundred and forty extra copies of the report of the Committee on Corporations other than Municipal. Gentlemen are receiving letters from lawyers and other gentlemen all over the State to get copies of that report and the supply is exhausted. I am out myself. I have sent one away and I cannot get another. I suppose there are many gentlemen in the same fix.

MR. WYATT. I move a thousand copies as an amendment.

MR. CONDON. Forty thousand.

MR. AYERS. Nine hundred and sixty.

MR. ESTEE. Four hundred and eighty.

MR. EDGERTON. I accept the amendment making it four hundred and eighty—that four hundred and eighty extra copies of number four hundred and forty-four be printed.

The motion prevailed.

EMINENT DOMAIN.

MR. VAN DYKE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, to take into consideration the remainder of the report of the Committee on Preamble and Bill of Rights.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read the section as reported by the Committee on Judiciary and Judicial Department.

THE SECRETARY read:

SEC. 14. Private property shall not be taken for public use without just compensation having been first made to or paid into Court for the owner.

THE CHAIRMAN. The question is on the amendment to section fourteen, offered by the gentleman from Solano, Mr. Dudley. The gentleman from Solano moves to amend by adding the following: "And no right of way shall be appropriated to the use of any corporation until full compensation therefor be first made in money, or secured by a deposit of money, to the owner irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury in a Court of record, as shall be prescribed by law."

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. Chairman: I desire to offer one word upon that matter before the vote is taken. The only idea in the amendment is simply this, that damages shall be assessed and paid irrespective of the benefits that may be supposed to accrue to property because of any proposed improvement. It was stated just before the recess that the present law prevented the offsetting of the value of land by prospective damages. Undoubtedly that is correct. But it has been the rule, and I presume that it is yet the rule, that damages outside of the value of real estate condemned, damages arising from the surveys run, or from cutting a farm into irregular shape, are assessed by the offset prospective benefits which will accrue to that property. In this there is very little of justice. The whole community, in the case of a railroad, for instance, are equally benefited with the person who is suffering, and there is no good reason why one man should be compelled to suffer damage to his property for the benefit of a whole community.

Now it was urged here before dinner that the Courts had already construed this matter, and we were requested to let it alone and not interfere with it. The amendment reported even by the Committee on Judiciary is different from the old clause, which is the last clause in section eight of the Bill of Rights in the old Constitution. That is, the ideas are expressed in a greater number of words. Being a change of course it will be subject to a reconstruction by the Courts. It must be borne in mind that we are engaged in manufacturing a new Constitution, which will involve the passage of new laws, and will require a construction by the Courts on these new laws. I do not think that such reasoning as that will lie against this amendment.

Under the law which was passed, as I understood the gentleman from San Francisco, Mr. Barnes, in eighteen hundred and fifty-one, and what remained upon the statute book until eighteen hundred and sixty-eight, it was the rule, or at least it was the practice, particularly on the California Pacific road, to offset the entire damages by the supposed prospective benefits. Now, if under the old Constitution such an act was passed and was in force, unless it is prohibited, there is a possibility of the reënactment of such a law and the reëstablishment of such a rule of construction. I submit that there is that possibility, and I ask the attention of members of the Convention to this matter, particularly those who are residents of the agricultural districts, and are liable in the future to be damaged in this way. It must be borne in mind that, as land becomes more valuable, as it is more generally taken up and cultivated, and as the railroads increase, they can not be run across the country without doing very material damage; without severing farms into irregular shape; without separating buildings and destroying orchards, and there is no justice in permitting the general advantages accruing to the community to offset that class of damages.

SPEECH OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: The provision recommended by the Committee on Judiciary is as follows: "Private property shall not be taken for public use without just compensation having been first made to or paid into Court for the owner." This is a subject that has been very frequently before the Legislature in this State, and it has been very frequently before the Supreme Court of the State for adjudication. It has been a very vexed question, and the rule in regard to it has, until lately, been a very shifting one. But, finally, a system has been perfected—I say that because I so think in regard to it—a system has been adjusted to the Constitution, or that clause of the Constitution as it now exists; and this only modifies that clause by the insertion of the word "first," at the suggestion of the gentleman from San Bernardino, Mr. Waters, so that it reads "compensation first made to or paid into Court," etc.

Now, sir, it will be well enough to examine this system briefly, as it is now established, to see whether any change should be made in the Constitution, as it now stands, but the simple amendment made by the Judiciary Committee. The rule as to the compensation for the condemnation of land is as follows:

"The Court, jury, or referee must hear such legal testimony as may be offered by any of the parties to the proceedings, and thereupon must ascertain and assess:

"1. The value of the property sought to be condemned, and all improvements thereon pertaining to the realty, and of each and every separate estate or interest therein; if it consists of different parcels, the value of each parcel and each estate or interest therein shall be assessed."

We have got thus far the compensation for a thing taken—a thing taken out of the ownership, possession, and control of the individual and surrendered to a public use—no matter what it is. It may not be a railroad bed that is the thing taken under the exercise of the right of eminent domain. The whole value of the thing has to be paid independent of any considerations of benefit resulting to an adjoining property.

"2. If the property sought to be condemned constitutes only a part of a large parcel, the damage which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff."

That is, if it is a part of a thing, the remainder of which is left in the ownership and fee—the control and possession of the owner then that is to be considered in the manner indicated in the section I have read.

"3. Separately, how much the portion not sought to be condemned, and each estate, or interest therein, will be benefited, if at all, by the construction of the improvement proposed by the plaintiff; and if the benefit shall be equal to the damages assessed, under subdivision two, the owner of the parcel shall be allowed no compensation except the value of the portion taken; but if the benefit shall be less than the damages so assessed, the former shall be deducted from the latter, and the remainder shall be the only damages allowed in addition to the value."

Let us see a moment as to the flexibility of this rule. A railroad company desires to lay its track right between a large house on the one side and a man's barns and granaries, a couple of hundred yards distant, on the other. Neither the house nor barns are taken, but only the land between, but the whole value is paid for. Now, it would be unjust not to pay these secondary damages in that case, and these damages are secured to the owner of the property. But take this case, where a man has got a tract of land, two hundred and fifty acres perhaps, and you want to lay it out into streets, and the very prospect of laying it out into streets increases the value of the property five, ten, or fifteen per cent., and makes a man rich in a night, before he knows it, ought he to be paid for any damages in such a case as that? That is the flexibility of this rule. My friend from Solano must take into consideration the fact that in the case of a company it is the agent of the public, the agent of the State, because that power resides in the State alone. It is the very highest prerogative of any government to walk into a man's land and take his property. It is not railroad companies alone that are affected by this rule. It affects every swamp land district, every county or municipality that desires to open roads or streets, and every community that is interested in the construction of public works. The provisions of the law as it now stands have been adjusted to the decisions of the Supreme Court, not only in this State but in other States, and are approved by the writers on Constitutional Limitations and Law, like Sedgwick and Cooley.

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Now let us see about the Act that was passed last winter. In the first place the citizen here has a privilege which so far as I am advised is not enjoyed by the citizens of any other State. I know that in a large majority of the States they do not give the citizen the right to a jury in these cases. It is a great principle in this country that the rights of a private individual must always yield to the rights of the public. In this State a person has the right of trial by jury, and as soon as a verdict is rendered the Court makes an order that the money which the jury awards shall be paid into Court, and such sum as in the discretion of the Court may be required to answer to further damages, if upon a new trial being granted by the Supreme Court, they should be awarded. This money is to be paid into Court for the use of the individual. He has a right to withdraw it, reserving his right to proceed on motion for a new trial. If he does not take it the corporation has to keep that deposit good. If it is lost, the corporation has to make that deposit good before it can take that property. If he desires to appeal to the Supreme Court, it has to be paid into the State Treasury and kept for him. I submit that the system as it is adjusted to the decisions of the Supreme Court under that clause of the Constitution as it now stands, is as judicious, safe, and guarded, as it can possibly be made for the citizen, and it does not need any handling by this Convention.

Mr. DUDLEY, of Solano. Mr. Chairman: If this matter refers to municipal corporations as the gentleman says it probably might need some amendment, and I ask the privilege of amending my amendment by inserting after the word "corporation," I think in the second line, between the words "corporation" and "until," the words "other than municipal," so that it will read: "And no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or secured by a deposit of money to the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury in a Court of record, as shall be prescribed by law."

The CHAIRMAN. If there be no objection, the gentleman will have leave to make that amendment. Hearing none, it is so ordered.

Mr. WATERS. Is there more than one amendment now pending?

The CHAIRMAN. Two.

Mr. HOWARD. Mr. Chairman: I hope that the amendment offered by the gentleman from Solano will prevail. Everybody knows that the provision read from the Practice Act by the gentleman from Sacramento was a provision adopted under the influence and in the interests of the railroad. And everybody knows, also, that this provision of deducting the improvements from the value of the property has been abused and always will be abused in the interests of large and wealthy corporations. I hope the citizen will be protected from this abuse by the adoption of the amendment of the gentleman from Solano.

Mr. EDGERTON. Mr. Chairman: I say, sir, and I know whereof I speak, that the Act referred to was passed against the interests of the railroad company and I know they opposed it. And I know that it was passed under the influence of certain gentlemen interested in swamp land matters, and other gentlemen interested in other public enterprises. The Supreme Court decided these questions right against the corporations from beginning to end. The money was to be paid or deposited at the end of a verdict by the jury, and even then, under the order of the Court, they must deposit such additional sum as might be required to cover any additional damages. This law was adjusted to the decision of the Supreme Court. Now, sir, I know these facts.

REMARKS OF MR. WATERS.

Mr. WATERS. Mr. Chairman: As the history of this eminent domain bill, as it is called, has been asserted by one member to be one way and by another member to be another way, it appears to me to be pardonable in me to state what the history of that bill is. In the first place the eminent domain law, as you might call it, as it stood prior to this last act, was such as to allow the corporation seeking to exercise this right to file a bond in the District Court, and upon that to take the property of a citizen and fight him about the compensation afterwards. A suit under that act was carried to the Supreme Court, and it was held to be unconstitutional. When the last Legislature met a bill was handed to a Mr. Young, who then represented Santa Cruz county in the lower house of the Legislature, which he introduced, seeking to get over that difficulty. I forget the exact phraseology of that bill, but I think it authorized the payment of the money into Court, as the Supreme Court, in the case to which I refer, had said that a mere bond could not be considered sufficient security, as the bondsmen might flee the State or get out of its jurisdiction. Secondly, the bill handed to Mr. Young to introduce had a provision that the money might be paid into the State Treasury and the bond of the State Treasurer held good for it. That bill was reported back from the Judiciary Committee, and Mr. Young, becoming somewhat suspicious about it, one day asked leave to withdraw the bill, mentioning it by number and not by title. Of course he got leave to withdraw it. The next day the Chairman of the Judiciary Committee introduced a bill containing another amendment to Mr. Young's section. That went to the Judiciary Committee, and various distinguished gentlemen representing corporations, and others interested in the right of eminent domain, came before the committee and argued very fully this question, and also various gentlemen who opposed that scheme. Now, this bill that is upon the statute books is a forced compromise, and I think, in the main, is a very good one, or as near right as you can get it where strong powers are brought to bear upon the Legislature. I considered it at the time a very fair compromise measure. There is one thing in it that I do not like. If the man whose property is taken concludes to contest the matter as to whether the taking is for a public use, he must leave the money on deposit, for if, under the bill, he takes an appeal, after taking the money, he waives everything else except the measure of damages. Now, with that one exception, the bill is a good one as it stands.

Mr. EDGERTON. Is the gentleman aware that the very first section provides that the Judge shall order an additional sum to be paid into Court to cover further damages?

Mr. WATERS. The gentleman knows that if a man desires to get anything for his property in the meantime, while the corporation is using it, he must relinquish that question as to whether it is a public use or not. In other words, if the Legislature was to say that the right to take land upon which to dump tailings was a public use, and was to pass a law to that effect, the party could come into Court and defend that it was not a public use. If the company could put up money enough in the Court, and the Judge of the District Court should hold that it was a public use, the company could cover that farm five hundred feet deep with tailings, if it chose, and the farmer, if he had not wit enough to take his appeal, and leave the money in Court where it was placed for him, would have the satisfaction, at the end, to have his farm with an additional territory above it. I think that principle is wrong. In order to have his right to an appeal he should not be compelled to waive that question as to whether it is a public use or not. With that one exception, I say that the law passed last Winter is a good one. I contended, last Winter, that the Supreme Court had decided against the argument of those gentlemen who were in favor of the first bill proposed. I contended that the Supreme Court had adjudged that the preliminary taking is a taking in the sense of the law, and that compensation should be simultaneous with the preliminary taking. In order to remove any doubt, I propose to add after the word "or," in the amendment offered by the Judiciary Committee, and before the word "paid," the words "ascertained and," so that it will read: "Private property shall not be taken for public use without just compensation having been first made to or ascertained and paid into Court for the owner." If you leave it as it is, it might be open to the construction by the Courts and by the Legislature, that if the money paid into Court will be in the nature of security which may remain there for years, and the party have no right to draw it out. Before the taking is had the compensation should be ascertained and paid into Court, and the money should lie there subject to the order of the owner, and not merely as a security. With that amendment I think it is a very good section now. I think the position as to the damages is correctly stated by Mr. Edgerton. I have no factious fight to make upon this. I think we ought to be satisfied if we can get this matter good enough without having an extreme matter put into the Constitution.

Mr. EDGERTON. Mr. Chairman: I have but one additional word, that is as to the last amendment. I do not care anything about it. I do not think it would make it any stronger or any weaker. As to this question of fact I do not know anything of the compromise the gentleman refers to. I do know this, that this law—this amendment to the Code that I have read—was made by gentlemen not connected in any way with a corporation. They were connected with large tracts of territory that had been flooded by the Sacramento River. A large number of them came here attempting to get legislation through, providing for the construction of canals, to straighten the Sacramento River, and to relieve the swamp land districts; and these gentlemen concocted this law; these gentlemen pressed it; and these gentlemen waited upon the Executive of the State and brought him to give his approval of the bill.

SPEECH OF MR. BARNES.

Mr. BARNES. Mr. Chairman: This subject of eminent domain is one of paramount interest, and from a professional standpoint, having been engaged in some of the heavy litigation upon that subject, I will invite the attention of the committee very briefly to the history of this right of eminent domain in this State. In the year eighteen hundred and sixty-one, when the amended railroad Act was passed, and long before the people had felt the oppression and difficulties that have grown up out of the management of the railroad system in this State, the people were very lenient to railroad corporations. They were not only lenient, but they laid down everything they had before them. They sought to encourage their construction in every mode in which they could express themselves by legislation. You will see by reference to the Act of eighteen hundred and sixty-one—"an Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," approved May twentieth, eighteen hundred and sixty-one—and it will be found in the statutes of that year, page six hundred and seven, that in section twenty-two of this Act it was provided:

"Any railroad company, organized under the provisions of this Act, or any railroad company now organized under the laws of this State, which shall accept the provisions of this Act, as herein provided, is hereby authorized to enter upon any land for the purpose of surveying the line of its proposed railroad, the company being responsible for any damage occasioned by such entry; and such company is also authorized to acquire, purchase, and hold, any real estate, or any right, title, or interest therein, which may be necessary or proper for the purpose of the construction or maintenance of the track or tracks, water stations, depots, machine or workshops, turn-tables, or other building or structure, necessary for such railroad; but such company shall not hold such real estate, or any right, title, or interest therein, acquired or used solely or mainly for the construction or maintenance of the track or tracks of said railroad beyond the time of the legal existence of said company, nor after the location of said track or tracks has been changed therefrom, nor after the said company shall have failed, or ceased to use the same, for the maintenance of such track, for the space of five years consecutively; but in each of such cases, the said real estate, and all the right, title, and interest therein, shall revert to the person or persons, and his or their assigns, from whom the same was acquired by said company."

Special proceedings were provided in that Act, under which land might be condemned. It is simply provided that a petition should be

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filed in the County Clerk's office setting forth the estate sought to be condemned, and its extent, the names of the persons interested in the land and the nature of their interests, and the Court thereupon should fix a time for the hearing of the petition, and the owner should be notified, and notice of the hearing should be given by publication. The parties owning the land were permitted to make such answer as they could to the petition in the matter of condemnation. Then Commissioners were appointed to fix the value of the lands sought to be condemned. Section thirty says:

"The said Commissioners shall proceed to view the several tracts of land, as ordered by said Court, or Judge, and shall hear the allegations and proofs of said parties, and shall ascertain and assess the compensation for the land sought to be appropriated, to be paid by said company to the person or persons, having or holding any right, title, or interest in or to each of the several tracts of land."

Now, here comes the provision to which the gentleman from Solano objects, and I think with great reason—

"And in ascertaining and assessing such compensation, they shall take into consideration and make allowance for any benefit, or advantage, that in their opinion will accrue to such person or persons, by reason of the construction of the railroad as proposed by said company."

It provided, also, for a new trial, and for the confirmation of the reports. And that—

"Upon the report of the Commissioners being filed for record, as above provided for, and upon the payment, or tender, of the compensation and costs, as prescribed in this Act, the real estate, or the right, title, or interest therein described in such report, shall be and become the property of said company for the purposes of its incorporation, and shall be deemed to be acquired for, and appropriated to, a public use."

The effect of that statute, Mr. Chairman, was simply this: that any railroad company, after it had determined upon the line upon which it would run, and complied with the provisions of the statute in respect to the filing of the proper papers, might enter upon and take possession of any man's land they saw fit, and while still being in the possession of it have a proceeding to condemn it, and Commissioners appointed upon whose judgment the land should be paid for. But the Commissioners were allowed to take into account the benefit the party was to derive from it, and if they thought he got a greater benefit than the value of the land amounted to, the railroad paid him nothing for his land, and it was considered an act of grace that they did not require him to pay for the additional benefit obtained. That law continued until the adoption of title seven of the Code of Civil Procedure. Eminent domain is there defined as follows:

"Eminent domain is the right of the people or Government to take private property for public use. This right may be exercised in the manner provided in this title."

We all know that the right of eminent domain is a right as old as government. I believe it was either Cæsar or Nero in Rome that undertook to take the ground of a private citizen for his private garden. That brought about revolution. It is a right that is imported here from monarchical countries. In America the Legislature, instead of exercising the right itself for strictly public purposes, has granted to these quasi public corporations the right to exercise it as an agency of the State. That right is conferred upon railway corporations in the discretion of the Legislature, and they provide the means by which that right may be exercised. It provided, in fact, for Commissioners, and compelled the party to resort to a judicial proceeding in the Courts of the land. The corporation seeking the condemnation of a man's land commenced a suit, and it must all be tried according to the forms of law and under the safeguards which the law provided, and after providing what shall be done, as was stated by the gentleman from Sacramento, they made this change in the railroad law. Instead of the Court being allowed to offset the benefit against the value of the land, the law declared that in any event the value of the land, as proven, must be paid. They paid for what they got. Then the Court was directed that—

"If the property sought to be condemned constitutes only a part of a large parcel, the damages which will accrue to the portion not sought to be condemned, by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff."

In other words, they direct the Court to consider what a man suffers by reason of his land being cut up into inconvenient shapes; by taking a fair open field where plowing and agricultural work would be done and diagonally cutting it by a railway, so that a man instead of having a fair field to plow would have it divided into an irregular and inconvenient shape, by the railway running through his land in such a way as to divide his upland from the lowland so that it ceased to be valuable for pasture, and diminished its value. All these things were taken into consideration by this section. These were the two elements against the corporation: first, the value of the land; and second, the damages the parties sustained by reason of the severance. Then the Court was directed to take into account how much the property remaining was benefited by the construction of the improvement, and if the benefits should be equal to the damages he should have no damages. If the benefit was less he should have the difference, but in no case was the property owner required to pay anything for the blessing of a railroad passing through his property. Then they also required the Court to find out how much the fences would cost. The company might elect to build the fences and cattle guards and make proper crossings, and that forms an element also in the judgment. If the company give a bond they need not pay the cost of the fences. They give a bond in double the valuation of the fences, cattle guards, etc., and if they built the fences within three years they need not pay the money.

But in connection with this was the proposition that "at any time after the service of the summons"—and there was the injustice of it—"the Court may authorize the plaintiff, if already in possession, to continue therein; and if not, then to take possession of and use the property during the pendency and until the final conclusion of such proceedings, and may stay all actions and proceedings against the plaintiff on account thereof; but the plaintiff must give security, to be approved by such Court or Judge, to pay, as well the compensation in that behalf, when ascertained, all damages which may be sustained by the defendant, if for any cause the property shall not be finally taken for public use."

It fell to my lot to contest the constitutionality of that provision in this State. It was in the case of the Spring Valley Waterworks vs. the San Mateo Waterworks. Under that statute the Judge of one of our Courts made an order allowing the plaintiff to go into possession of property sought to be condemned, upon filing a bond in a very small amount. He affirmed the constitutionality of the act, and I invited him to the Supreme Court upon a petition for a writ of review. It is to be found in the fiftieth volumne of California Reports, the case of the San Mateo Waterworks vs. the Judge of the Twelfth District Court. I read from the syllabus:

"After summons had been served on the defendant, the Court made an ex parte order, upon the application of the plaintiff, permitting the plaintiff to take possession of and use the land during the pendency of the proceedings, upon executing a bond in the sum of ten thousand dollars, for the payment to the defendant of the compensation to be ascertained, and also for the payment of damage if the property was not finally taken. This was on application to the Supreme Court to review the order as in excess of jurisdiction."

Now, by the Court:

"The taking in this case amounts to a taking of private property for public use in the sense in which that phrase is used in the Constitution, and can only be effected upon the conditions prescribed in the Constitution—that is, upon just compensation being simultaneously made. Order annulled."

They followed that up with another case, Sanborn vs. Belden, in the fifty-first of California Reports. Gentlemen will find it on page two hundred and sixty-six of that volume. It was a railroad case, where the Santa Cruz Railroad Company commenced proceedings in the Twentieth District Court, County of Santa Cruz, to condemn certain lands of Sanborn and others for the use of its road. After summons had been served, the Court made an order, under section one thousand two hundred and fifty-four of the Code of Civil Procedure, authorizing the company to take possession of and use the land sought to be condemned until the final conclusion of the proceedings, upon giving bonds to pay damages. The bonds were given and approved, and a writ of assistance issued out of the Court to the Sheriff, who, by virtue thereof, placed the Railroad Company in possession of the land. The owners of the land thereupon obtained a writ to have the proceedings certified to the Supreme Court for review. Now the Court says:

"It is not necessary, in this case, to decide whether, under the Constitution of California, it is essential to the validity of a law for the exercise of eminent domain (when the property is taken directly by the State, or by a municipal corporation by State authority) that it should provide for tender of pecuniary compensation *before* actual taking.

"When property is taken by a private corporation, which, although for this purpose it is regarded as the agent of the State, appropriates it as well for the benefit and profit of the members of the corporation as for the public use, it is at least essential that an adequate fund (in the custody of an agent of the public other than the corporation or its officers) be provided, from which the owner of the property can certainly obtain compensation. As remarked by Mr. Justice Cooley: 'It is not competent to deprive him (the citizen) of his property, and turn him over to *an action at law* against a corporation, which may or may not prove responsible, and to a judgment of uncertain efficacy.' (Con. Lim. 562.)

"We are satisfied that wise policy and sound constitutional principles require us to hold that a *bond*, executed by sureties who may be supposed to be, or who in fact may be, responsible, when the preliminary order is made, does not constitute a certain and adequate compensation.

"If the corporation has acted on the order of the District Judge, the property of the petitioners has been actually taken. (San Mateo Water Co. v. Sharpstein, 50 Cal. 284.)

"If it be competent to the Legislature to declare that a mere bond shall constitute compensation upon a taking at the commencement of the condemnation proceedings, it might also declare that such bonds should constitute compensation upon the final taking—which would operate a plain violation of the provisions of the Constitution restraining the exercise of eminent domain."

They then put the corporations in this fix. They could no longer march upon a man's land and go to work to construct their railway; break up his farm, march down his crops, and make their way through by giving him a bond; but when they came to the line of a party's property there they had to stop and wait until the Court had determined what they should pay, under this provision of the statute, and pay it before they got through. These cases proceeded in that way, and it was found that notwithstanding a man's neighbors came forward and testified in favor of the owner of the land, at least putting what might be called a fair valuation on the land, and the company was willing to pay that price, after the case was tried and the judgment rendered and the damages assessed, there were still questions upon which a party might appeal and take it to the Supreme Court, and prevent a needed public improvement from being advanced as it should be. In other words a man could lie like a hog as against the rights of all his neighbors, as against the right of every farmer, as against the right of every traveler, and could stop them until he could take it up to the Supreme Court and could make it the means of extorting more money than the Courts or the jury of his own county in their wildest and most generous extravagance could see

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fit to give him. The Legislature was again resorted to, and it was provided that:

"At any time after trial by jury and judgment entered upon their verdict, or pending an appeal from the judgment to the Supreme Court, whenever the plaintiff shall have paid into Court, for the defendant, the full amount of the judgment, and such further sum as may be required by the Court, or Judge thereof at chambers, as a fund to pay any further damages and costs that may be recovered in said action, as well as all damages that may be sustained by the defendant. If, for any cause, the property shall not be finally taken for public use, the District Court in which the action was tried, or the Judge thereof at chambers, may, upon notice of not less than ten days, authorize the plaintiff, if already in possession, to continue therein, and if not, then to take possession of and use the property during the pendency of and until the final conclusion of the litigation, and may, if necessary, stay all actions and proceedings against the plaintiff on account thereof. The defendant, who is entitled to the money paid into Court for him upon any judgment, shall be entitled to demand and receive the same at any time thereafter, upon obtaining an order of the Court, or Judge thereof at chambers. It shall be the duty of the Court, or Judge, upon application being made by such defendant, to order and direct that the money so paid into the Court for him, be delivered to him upon his filing a satisfaction for the judgment, or upon filing a receipt therefor, and on abandonment of all defenses to the action, except as to the amount of damages that he may be entitled to in the event that a new trial shall be granted. A payment to the defendant, as aforesaid, shall be held to be an abandonment, by such defendant, of all defenses interposed by him, excepting his claim for further compensation. In ascertaining the amount to be paid into Court, the Court, or Judge thereof at chambers, shall take care that the same be sufficient and adequate. The payment of the money into Court, as hereinbefore provided for, shall not discharge the plaintiff from liability to keep the said fund full and without diminution; but such money shall be and remain, as to all accidents, defalcations, or other contingencies—as between the parties to the proceedings—at the risk of the plaintiff, and shall so remain until the amount of the compensation or damages is finally settled by judicial determination, and until the Court awards the money, or such part thereof as shall be determined upon, to the defendant, and until he is authorized or required by rule of Court to take it. If, for any reason, the money shall at any time be lost, or otherwise abstracted, or withdrawn through no fault of the defendant, the Court shall require the plaintiff to make and keep the sum good at all times until the litigation is finally brought to an end, and until paid over or made payable to the defendant by order of Court, as above provided. The Court, or the Judge thereof at chambers, shall order the money to be deposited in the State treasury, and it shall be the duty of the State Treasurer to receive all such moneys, duly receipt for and safely keep the same in a special fund, to be entered on his books as a condemnation fund for such purpose, and for such duty he shall be liable to the State upon his official bond. The State Treasurer shall pay out such money, so deposited, in such manner and at such times as the Court, or Judge thereof at chambers, may, by order or decree, direct."

In other words, the money has to be paid into Court. The County Clerk deposits it with the State Treasurer. It does not make any difference if it is lost or stolen, the fund has to be kept good by the corporation all the while, fully and completely. Now, it seems to me that if the right of eminent domain is to be maintained at all, that there can be no fairer mode than that provided by this statute. It is, as gentlemen will see, in harmony with the decisions of the Supreme Court of the State. The Courts have infringed upon the privileges of the corporations so that they can no longer take a man's property without paying for it. They can no longer take it at their own valuation, but they must take from the jury a judgment, and if, during an appeal, they want to take it, they must go to the Judge and he shall name a further sum which shall be sufficient, in his judgment, to cover all further costs. And that is all of the right of eminent domain to be maintained, that the citizen ought to have. The early legislation was all in favor of the corporation. The later legislation acts, as it ought to act, and as I hope it will always act, in favor of the individual and against the corporation.

There are a great many purposes contemplated in this eminent domain law. The right to condemn land for the purpose of providing a deposit for the material from the mines, for canals and waterways, for a thousand purposes as necessary to agriculture and to mining as they are to any of the railroads. And when we have now, at last, after so many years, pushed this question back upon the corporations until it puts them in the position that they cannot take any man's property until they pay for it, and at its full value, I do not see why we need alter the Constitution. It may be said that the Legislature that has encroached upon the privileges of the corporations may recede from that position and put them back where they were. It may be well, and it seems to me that we ought to put in the Constitution some clause that shall epitomise and give eternal effect, in the shape of an organic declaration, to these principles laid down in this line of decisions, so that the Legislature shall not have the right to recede from the position into which they have been urged by the people. We want to see that the corporations do not get a verdict in their favor and secure the reënactment of the Act of eighteen hundred and sixty-one. That we all want to look out for. That, I am sure, I am as anxious to prevent as any gentleman on this floor. Then let us take hold of it and make sure of that law.

I do not like the idea of the gentleman from Solano, because you take the case of county roads; that is a matter in which every neighborhood in this State is interested. Now, when you go to condemn a piece of land——

MR. DUDLEY, of Solano. Mr. Chairman: The amendment as it now stands does not apply to the county roads, nor swamp land districts, nor streets in towns, or anything of that kind.

MR. BARNES. Mr. Chairman: That is what I am coming to. That is what I understood. There can be no doubt of this, Mr. Chairman, that any man who owns property should not, under our Constitution or under the principles of the Government under which we live, be deprived of it for any purpose or object, except upon just compensation being made. Now, the motion of the gentleman from Solano is that if a man has a farm, and a county road is put through it, he should not have pay for his land, provided that the benefit is equal to the damage. I say that in all cases the man is entitled to be paid for his property, no matter who takes it, whether it is a county or municipality seeking to condemn land for any purpose, or whether it is a railroad seeking to condemn it for its road. That is the first principle that the Constitution must look to—payment for the land; and payment in money, not promises. The principle of assessing benefits and damages seems to be somewhat misunderstood. The rule of the Courts in this State and in the other States is that the assessments of land shall not be reduced by reason of the general benefit that accrues to the country. A railway coming through any sparsely populated country must, of course, increase the value of the property. There is no question about that as a general proposition. But that is not the benefit that is meant. It is where the benefit is peculiar and especial to him, and not one shared by him in common with all the rest.

Under these decisions, and with these principles in view, there certainly cannot be any difficulty in our arriving at a proper conclusion. These principles have been established and stand upon the provisions of these Acts as construed and maintained and directed by the Supreme Court of the State, and the Constitution ought not to be amended, except that the rights of the citizen as now guarded, as against this great and growing power, should be maintained, so that never hereafter shall the State recede from this position, or place the citizen for an hour at the mercy of combinations, from whatever source they may come. I think the people of the State require it and ought to have it. The tendency of the times is towards popular rights and popular liberty, and wherever a guard can be put about it, there is where the good work here will be put in.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I would ask to have the amendment proposed by the gentleman from Solano read.

THE CHAIRMAN: The Secretary will read the amendment for information.

THE SECRETARY read:

"And no right of way shall be appropriated to the use of any corporation, other than municipal, until full compensation therefor be first made in money, or secured by a deposit of money to the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury in a Court of record, as shall be prescribed by law."

MR. SHAFTER. Mr. Chairman: I hope that the Convention will retain the section precisely as it comes from the Committee on Judiciary, and for the reasons which have been so clearly given by the gentleman from San Francisco, Mr. Barnes.

The rule adopted in the formation of our earlier Constitution was to confine its provisions to a general declaration of principle, leaving all that related to their execution to the Legislature. In case of simplicity of object and expression, the Constitution often executed itself, and in other cases, on account of jealousy of the legislative department, elaborate provisions were inserted providing for all the details necessary to the accomplishment of the general principle. This latter course, it seems to me, is only to be justified in case of actual necessity. It is an open attack upon and assumption of the purely legislative function. The existing statutes seem to be attempts to effectuate the promise of our present Constitution, that private property shall not be taken for public use "without just compensation" shall be made therefor. It has always seemed to me, that the statutes of eighteen hundred and sixty-one, and other years, violate, instead of executing this provision. I know the books say, that the deposit of money in Court, or perhaps, in the hands of some public officer, subject absolutely to the call of the owner of the property taken, is sufficient, and that by such deposit the compensation is made. But how the county liability, or that of some individual who has given security, is the equivalent of money, it is impossible to see. In the one case, the injured party gets his compensation—money; in the statutory case he has a right of action merely. It doubtless is the purpose of the Committee of the Judiciary to prevent such legislation in future. As to corporations other than municipal, the committee proposes to provide that the owner of the property condemned shall be compensated in money before his property is taken. As they propose the provision stands.

"Private property shall not be taken for public use without just compensation having been first made to, or paid into Court for, the owner."

The phrase "having been" involves the idea of a completed transaction, and the word "first" seems to add nothing to it. It, however, is there; it may add something to the precision of the idea involved, and may as well stand. The gentleman from San Bernardino now moves to insert "ascertained and." I do not see that these words change in any way the true construction of the provision into which it is proposed to insert them. They neither add to, nor take from, the force or effect of the words already used. What is the compensation spoken of? It is an ascertained sum agreed upon by the party that takes, and the party that pays, as settled and adjudged by some competent authority. The objection to this proposed amendment is, that it covers more space, creates a question of construction without any necessity therefor, and leaves the true interpretation, after it is ascertained, just what it was before the interpolation. The character and intention of this section fourteen is well worthy of further attention. For what is the compensation provided for therein given?

The old Constitution provides that "just compensation shall be made"

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when private property is taken for public use. Under this provision the increase in value of adjacent property belonging to the party whose land is taken, may be deducted from the value of such land, the balance being treated as the just compensation intended. That is, the party shall be made whole. This liability to pay applied to all corporations alike. This section proposes changes, not only vital in themselves, but unjust in their discriminations. The right in the owner of private property taken, is now declared to be, to pay for that taken and for damages to all other property of his which is incidentally damaged by the proposed public use. But when it comes to the question, shall the benefits resulting from such improvement be considered and deducted from the value of the land taken, and damage to other property, there is an important distinction made. The municipality, by legislative enactment, may be enabled to deduct the benefits from the sum it would otherwise have to pay, while the railroad or turnpike corporation is prevented from acquiring any such right of offset. The right of the owner is just the same in both cases—to be made whole. If the owner of the property taken has any just or moral claim to be paid, without regarding his improvements, the municipality shall so pay; if not, the railroad should not pay.

Originally, there was serious question whether railroad corporations had the right of condemnation. This right was at last judicially declared—with many wry faces—upon the sole ground that these corporations were *quasi-public;* that is, the use to which they devoted property was public, and to the extent of such use they were performing a part of the functions of the State, by maintaining a variety of highway. That the corporation which charges itself with the performance of a duty which the State owes its subjects can be rightfully charged with liabilities which the State does not recognize as to itself, does not seem philosophical or just. The discrimination between different classes of corporations is no more unjust than is the provision itself. A corporation runs its road along the side of a hill; on the one side the excavation leaves a bluff, or embankment; on the other, the cut is left at the grade of the road. The upper lot, or field, rendered less accessible, is damaged a hundred dollars; the lower portion is benefited a thousand dollars. The road must pay the hundred dollars, but is entitled to no recoupment for the augmentation of value which it has created. That this provision is intended to punish or penalise railroad corporations, and not to do justice, is not only apparent from the considerations which I have already stated, but the fact is made further apparent by the provision now before us relative to counties, cities, and towns. In the report of the committee having charge of those matters, it is proposed that the expense of roads and streets shall be cast upon the property benefited, however remote from the road or street to be opened. In this latter case "benefits" are set-offs against "damages." The object attained is just compensation to the citizen who is injured. The natural persons assessed are required to pay money enough, and no more, than the person whose property is taken or damaged is entitled to have. The moment, however, five persons incorporate, their liability is enlarged; not because the person to whom payment is to be made has suffered any more, or is morally entitled to more or less, but because it is thought a fit and proper exercise of governmental authority to wrongfully take a corporation's money and give it to a man who has no just claim to it. It makes, in the minds of some, a marvelous difference whose ox is gored, and whose bull it is that has offended. From these considerations, I think that the proposed section is unjust, and ought not to be approved. There is another difficulty important to be considered. There is, doubtless, an appeal to be allowed from the judgment fixing damages. This will create large delays, seriously postponing important and pressing public improvements, including streets and highways as well as railroads. Now, is it advisable to allow such appeal to have the effect of producing great inconvenience and public loss; or is it not better to allow the work to proceed upon depositing the assessed damages with the Court, leaving the corporation subject to any increase which may result from a new trial?

These questions, it seems to me, are properly subjects of legislative action, and to the Legislature they ought to be left. It is, however, useless to press this consideration. This section presents a feature quite common here—a general declaration of a principle—an attempt at inserting executory provisions but half accomplished, and leaving to the Legislature the task of finishing up the work, and of extricating, if possible, the subject from the muddle which the Constitution creates.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I would like, myself, to offer an amendment if it were possible to be done. I am opposed to the amendment offered by the gentleman from Solano, and for this reason. It permits precisely the very thing which we have always attempted to avoid—that is, allowing in the exercise of the eminent domain, the parties to take the property in the first instance, and then compel the other parties to sue for damages that may accrue. That ought not to be done, and I submit, in engrafting upon the organic law measures of that character, I am opposed to considering the effect that it will have upon the interests of the general public. It is well understood that the exercise of the right of eminent domain, is vastly different in its character from the established proceedings in a Court of justice, and under that state of circumstances the jury need not necessarily appraise the property. The consequence is, that if the Legislature see fit they may appoint any other tribunal to determine that question. "Due process of law," as was defined the other evening by my friend from San Francisco, Mr. Barbour, had reference, as was stated, to twelve jurors—to a trial by twelve good and lawful men. I know that such has been some of the decisions. I know that among the many opinions rendered upon the subject—in a case in the Thirteenth N. Y., Wynehamer vs. The People—I believe, three or four Justices gave the opinion that it had reference to the common law jury. Now, Judge Cooley defines "due process of law" to mean "such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs." Now, to what class does it belong when it comes to the question of property? Unless you put it in your organic law, and in language that cannot be mistaken, the present provision you have in your Constitution, securing jury trial, will not give you a trial to fix your compensation for damages after the taking of the property. I desire to have it fixed in this identical provision that a jury trial may be had. And I desire that the jury shall determine in the first instance, the amount of compensation which any party shall be paid whose property is taken. There are none of us but want that. I am not desirous that any different rule from that which has prevailed, with reference to municipal corporations, should be adopted, but I am desirous that in every instance the jury shall determine the compensation to be paid. It is the most fatal blunder in the world to incorporate anything of that kind in a constitutional proposition. I propose to offer this amendment, if this one now pending is defeated:

"Amend section fourteen as amended by the Committee on Judiciary and Judicial Department, by adding thereto: 'And the amount of compensation shall be without rebate for benefits to accrue, and shall be first determined by a verdict of a jury, or as the parties interested shall agree.'"

There is nothing lumbering about that. That cuts to the marrow bone. It fixes your railroad companies and binds them to have the question tried before a jury. It makes one law govern all cases. I am opposed to allowing bonds to be given. I did not feel that under my duty here before this body I could sit still and permit a provision of that character to be voted upon without entering my protest against any such measure. It has been engrafted in our laws in the very teeth of the Constitution, and the Courts have gone so far even as to issue orders directing the Sheriff to put parties in possession of property under such circumstances. Of course the Supreme Court held that that could not be done under the Constitution; but it has put a great many of our private citizens to a great deal of trouble. These are the things which we seek to avoid. If there is any hardship, let these other parties undergo the hardship.

I am opposed to this amendment for the reasons I have alleged. I think it is a fatal provision to insert allowing any such things as bonds to be given and property taken in that way. I hope the amendment will be voted down, and I shall have an opportunity to present this amendment, and that it will be adopted.

REMARKS OF MR. DUDLEY.

MR. DUDLEY, of Solano. Mr. Chairman: I did not expect, when I offered that amendment, that it was going to create so much discussion. It is admitted finally by the gentleman on my left that the rule is to offset absolute damages by supposed benefits. Now, my amendment covers that one single idea alone and no other; that is, that absolute damages shall not be set off by supposed benefits. There is no question of bonds. Neither does it enable any individual to lie in the way of any corporation in any manner that does not now exist. The amendment refers simply to corporations other than municipal. So far as swamp land districts, counties, towns, or any other municipal corporation is concerned, it does not affect them the least. The clause provides that "no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury in a Court of record, as shall be prescribed by law." That is the one idea in the amendment—simply to prevent the offsetting of absolute damages against supposed benefits. It does not affect streets or public roads. And there is this difference between a railroad and a public road. A public road is generally run at right angles, and does not cut up farms into inconvenient shapes, while railroads are the very reverse of that rule. That alone might form one reason for making a little difference. Gentlemen have sought during this discussion to mystify and lead astray gentlemen of the Convention upon this subject. They have tried to make it appear that it is all right now. It is asserted that after a good deal of trouble we have Judge-made law to cover the case. We have got the decisions of the Supreme Court. Now we are providing a new Constitution, and under that Constitution there will be new legislative enactments. For the purpose of not troubling our Judges to make law, I propose that this Constitution shall have this clause, which shall make it a law unto itself.

REMARKS OF MR. MILLS.

MR. MILLS. Mr. Chairman: I have listened with a great deal of interest to this discussion, and it has mainly been on the question of what is compensation. Now, the law respecting the taking of private property, provides that before property can be taken, it must appear, first, "that the use to which it is to be applied is a use authorized by law; second, that the taking is necessary; third, if already appropriated to some public use, that the public use to which it is to be applied is a more necessary public use." Under that proposition, sir, the question as to the necessity of its being taken for that particular use, is made a question of law alone, and is never submitted to a jury. The right to submit that question to the jury is denied by the Courts. Whether it be necessary to take property or not, it seems to me, ought to be the first question and the main question for the jury to determine. An attempt may be made to locate a public highway across an orchard or through a man's garden, or through his door-yard. Now, should that question not be submitted to the jury? It seems to me, sir, that it should. I am in favor of the amendment. The rule has been well settled that general benefits are not to be counted, but it not infrequently happens that the

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damage to the land that is taken is very small while the damage to other property not taken is very large. It seems to me that this amendment places it beyond question. How can it be said that there are any other benefits than the benefit to the whole community? What particular benefit is it to a man to have a railroad run directly through his place? It seems to me that this amendment will put that question at rest and settle it.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: This right of eminent domain is perhaps the highest right exercised by government; a right under which one individual really gets the benefit of taking away the property of another without the consent of the owner. Now, if that is the highest prerogative of this goverement, it ought to be guarded, and pretty well guarded too. In framing a Constitution, we should put into it such provisions as we think will protect private rights, and the proposition of the gentleman here that it is not the proper place to guard these rights in Constitutions, is disputed by the fact that a large number of Constitutions have incorporated similar provisions. One of them has almost the words in which Mr. Dudley has proposed it. The Constitution of the State of Iowa has a provision which I will read:

"Private property shall not be taken for public use without just compensation first being made, or secured, to be paid to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to the said owner on account of the improvement for which it is taken."

Now, the proposition clearly stated, as I understand it, is this: The proposition first proposed to the committee amounts to this, that if the railroad company means to take half of my land, and takes it in such a way that not merely the land is taken but adjoining lands are injured, then the question will take the shape stated by Mr. Barnes. If the railroad runs between my house and my barn they pay for the acreage taken. They may also be assessed for the damage which it is to me to have a railroad between the house and barn, but they may offset against that the fact that I may derive some advantage by having the railroad so located. Now the objection to leaving the definition in the shape that the benefits may be offset against the damages, is illustrated by a case like this, which came within my personal knowledge. The railroad which runs from the City of Chicago to the City of Joliet, in condemning a right of way, had to take from a large building the ground upon which a wing of the building stood. Now the community were greatly interested in having that railroad constructed. Their minds were inflated with ideas of the great advantages to be derived. So they took the ground upon which the wing of the house stood and the railroad track run within thirty feet of the side of the building. When the jury came to assess the damages the evidence introduced as to the benefit which would result was to this effect: that this building was a large building; that it could be turned into a boarding-house or a place for the traveling public to put up; people would put up at the house on account of its proximity to the railroad; and that the advantages to accrue in that way would more than offset the increased danger of fire and the inconvenience of alarms at unreasonable hours, and other prospective damages. And the jury brought in no damages on account of the proximity of the railroad track to the building. But when the man came to try it on and make a boarding-house out of it, he found the station located at another place, and the result was that the man's property was ruined. The danger in this class of cases is this—and I refer to General Howard for the experiences of southern California during the late construction of railroads in that country—that when men hear of a railroad coming they almost think that it is heaven come down to earth. Land worth five dollars an acre is going to be worth fifteen or twenty dollars an acre. Sometimes that happens and sometimes it don't. But the ordinary jury, as to the question of benefits, do become inflamed until they give unreasonable benefits, and that will be the observation and experience, I think, of men who have seen the thing. I have seen railroads constructed in a certain town where a man could hardly get the government price for his land, on account of the inflamed sentiment of the public as to benefits. But what is the fact? The land adjacent that is not taken is benefited even more. The men whose lands are immediately adjacent do not get the benefit. Who does not know that the lots one or two or three blocks off are even more benefited? Then the result of the rule amounts to this: that the man over whose ground the railroad is constructed receives really no benefit from the construction of the road, because they take from him the measure of damages, or take it in such a way that he receives no benefit. But other men, through whose land the railroad does not run, get the benefit of the railroad and stand no part of the damage.

Now, as to this legislative provison, it seems to me that in the main it is a very good one. But we have not merely to inquire as to the quality of the present legislative enactment. We have to inquire as to the certainty of its being a permanent provision. If this enactment of the Legislature is in that shape that no railroad influence can shake it; if it is in that shape that twenty-five years from now it will stand just as it does to-day, it might answer the purpose very well. But who is not familiar with the fact that not only in this State, but in every State in the Union, the railroad power has been strong enough, whenever it took the matter thoroughly in hand, to control legislation, and to get such legislation as it seemed to want. Now, sir, we have a duty to perform here in making such a permanent provision in regard to this matter as seems to us necessary and right. The question is asked, what difference is there between the method of assessing damages for laying out a public road and for laying out a railroad? My idea of the matter is this: when you have laid out a public road every man has a right to the benefits of that road without cost or expense, and it is maintained by the public taxes. But when we come to talk about a railroad, railroads are not built for the public good. They are built for private gain, and if any man desires to have the benefit of the railroad he can have it by paying just what the railroad company asks him for enjoying the privilege. This is one difference, or one reason why the rule for laying out a public road and for damages in such a case is not a good rule for damages in the case of these quasi public corporations who may take private property for their public use. As was suggested here, these prospective damages can be taken into consideration as well as the prospective benefits, and I will give you a true example of it from the words of one of the gentlemen who spoke on the other side. It was said that under these provisions a farm might be taken to be used as a place to deposit tailings. Suppose that can be done under the principles which they want left in the Constitution, whenever parties propose to take a farm as a place to deposit tailings upon, the man who proposes to take it as a field to dump his tailings on has the right to say to the man whose land is taken, "Sir, tailings will improve your land. True, I take your land to deposit tailings on, but in five years the tailings will make better soil than you have to-day." Then the jury take into consideration the fact that at some future time the soil will be better than it is now. That is an illustration of the result of what the gentlemen want to engraft upon this system. But if, as they say, to put this provision in here will have no effect, I ask why it is that since this question has been up certain gentlemen, whose motives and intentions are not known, are standing about the doors of our Convention, and sending in for gentlemen to come out and talk with them on this very provision? I ask, if this has nothing to do with these matters, why it is that gentlemen who have been guardians of these rights for some years back are excited, and make such eloquent speeches on these matters? I wish that some abler man than I could deal with this question, some man who could rivet the attention of this body to the real question at issue for a moment, would stand up here and advocate this matter. But the principles we advocate are right and we must stand for them. That is what we are here for, and if we cannot talk—well, we know how to vote right on such propositions. [Applause.]

MR. BARTON. Mr. Chairman: I do not intend to make a speech upon this proposition at all; but, Mr. Chairman, I desire to say a few words. If the members of this Convention desire to do the people of this State a good—if they desire to render the people of this State a safeguard—they will not listen to the sophistries of the gentlemen opposed to this amendment, but they will put this safeguard in the Constitution in behalf of the people. I shall support this amendment, and these are the reasons why I shall support it: because I believe that it is the only safeguard that can be placed in this connection.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from Solano, Mr. Dudley.

The amendment was adopted.

THE CHAIRMAN. The question recurs on the amendment offered by the Committee on Judiciary as amended.

MR. HITCHCOCK. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Private property shall not be taken for private use, with or without compensation, unless by the consent of the owner, except for right of way for drainage ditches across the lands of others for agricultural, mining, and sanitary purposes, in such manner as may be prescribed by law."

MR. HITCHCOCK. Mr. Chairman: My reason for offering that amendment is to cover an interest in the county in which I live, and I think the same interest exists in a large portion of the State. It is to secure the right of drainage. During the Winter our land is subject to overflow, and now we have no means by which we can get drainage. One individual can block up a country of ten or fifteen thousand acres of land, and you cannot buy a right of way from him. There was a bill to cover our case, but it was inoperative because it was considered unconstitutional. We think there should be some way provided in this Constitution by which we could have the power, by paying for the right, to reclaim our lands. That is all.

MR. TERRY. Mr. Chairman: I offer an amendment to that, to follow after the last word of that.

THE SECRETARY read:

"Provided that any resident of this State who is, or who has filed his declaration of intentions to become, a citizen of the United States, and who is not the owner of one hundred and sixty acres of land, may enter upon, take, and hold, for the purpose of cultivation or residence, any unoccupied or uncultivated land in this State, not exceeding one hundred and sixty acres, upon his paying the owner thereof, or depositing to his credit in a solvent bank, the value of such land, as the same is entered upon the assessment roll for State and county taxes made last before such entry, with twenty per cent. in addition to such assessment value, and from the time of such payment or deposit the party so entering shall be the owner of, and be entitled to the exclusive possession and use of such land."

MR. TINNIN. Mr. Chairman: I rise to a point of order. It is that the amendment is not germane to the subject before the house.

THE CHAIRMAN. This amendment was only read for information. It was offered as an amendment to the amendment offered by the gentleman from San Joaquin, Mr. Hitchcock. The Chair is of the opinion that both are in violation of Rule Twenty-eight, which says: "No subject different from that under consideration shall be admitted under color of amendment."

MR. WATERS. Mr. Chairman: I move to amend section fourteen so that it will read: "Private property shall not be taken for public use without just compensation having first been made to, or ascertained and paid into the Court for the owners."

I will state briefly the object of my offering this amendment. The reason is this: the amendment proposed by the Committee on Judiciary is good, with the one exception that it allows the property to be taken when the complaint is first filed in the suit, by making a deposit in

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Court. Now, it seems to me that is not the object of this Convention, but that is the way it reads, and it has been adopted. In other words, it says the taking shall be when the money is paid into Court as security. Now, as I understand it, the Convention does not wish the deposit put there as security. It seems to me that this Convention adopted that amendment without consideration, or without understanding it. That is its effect, unless I have mistaken its reading. Now, the reason why I support this amendment in preference to that part of the old Constitution upon the same subject is this: this clause, as Judge Cooley says, is liable to construction, one way or the other, and while we are sitting here we should do away with the chance of misconstruction. I think we should make the terms so plain that the Supreme Court, or the Supreme Court lawyers, may not be able to get around it. It says that the damages shall first be ascertained and paid into Court, where they can get them, after being ascertained by the jury; that he can receive his pay, if he desires to receive his pay, or he can let it remain there until the final termination of the case. I think that that is all we could ask, and it seems to me that the Convention should adopt it. But the amendment you have already adopted, although it allows them to take the property of that man, he may not have the right to go there and draw down the money. I think that is a mistake you have made.

MR. BARNES. Mr. Chairman: During the remarks of the gentleman from Nevada, Mr. Cross, I had occasion to speak to a member in another part of the room, and I went there and did not hear his speech, at least not all of it. But following that the amendment was adopted. I think that there should be some little care about the adoption, and certainly about the phraseology of an article that is to stand for so long a time.

[Cries of "louder."]

A very distinguished gentleman was once making a speech and somebody kept halloing "louder, louder," and he said he doubted not that at the last day, when the heavens should be rolled away as a scroll, and the elements were melted away with fervent heat, and men should be summoned to the judgment, there would be some fellow from that part of the hall halloing "louder, louder." I think if the gentlemen wish to listen they can hear. But with reference to this amendment, I wish it to be understood that I desired, and I so stated, to see the results of the statutes and the decisions of the Supreme Court crystallized into this Constitution, so that they will stay there. That was my idea, and I supposed that the debate would continue long enough to enable us to effect that object. I would suggest now that this section be referred back to the committee for to-night, to present to-morrow a properly phrased amendment to the section, if the committee so desire, which shall fix it so as to conform to the statutes as now determined by the Courts of the State.

MR. DUDLEY, of Solano. Mr. Chairman: That amendment that I offered is couched in the identical language contained in the Constitution of Alabama. I did not trust my own ability to express ideas in language to suit the gentlemen here.

MR. BARNES. Mr. Chairman: I did not mean to reflect on his language or upon the law of it as it stands, only to put it together properly. I was not criticising any particular thing.

MR. DUDLEY, of Solano. Mr. Chairman: I do not know what objection there is to it. The first part of the section stands exactly as reported by the Committee on Judiciary. The latter part of the section reads: "The right of way shall be appropriated to the use of any corporation, other than municipal, until full compensation therefor be first made in money, or secured by a deposit of money to the owner, irrespective of any benefit from any improvement proposed by such corporation; which compensation shall be ascertained by a jury in a Court of record, as shall be prescribed by law." Now I have no pride at all with regard to the manner in which the ideas shall be expressed. I only ask that this Convention shall stand by the decision it has made. I have no objection to its being couched in other language. But I believe, that considering the fact that it is expressed in English, that one part is written by the Committee on Judiciary, and that the balance is expressed in the language that has been adopted in the Constitution of the State of Alabama, you might as well stand by it.

THE CHAIRMAN. The question is on the adoption of the amendment offered by the gentleman from San Bernardino, Mr. Waters.

MR. DUDLEY. Mr. Chairman: I would like to ask whether, if this amendment is adopted, my amendment will stand as a part of the section.

THE CHAIRMAN. No, sir; it will not. If this is adopted it will strike out the amended section.

MR. ESTEE. I rise to a point of order: that there can be no amendment made to it that strikes that amendment out. If I understand that the amendment proposed by the gentleman from San Bernardino will entirely wipe out the amendment that was presented by the gentleman from Solano, I hold that it is out of order.

MR. WATERS. If that is the case, in view of the fact that I do not think the Convention desires to put in a clause that this is a mere security to be placed in Court, and as that seems to be the evident construction, I move that the vote by which that amendment was adopted be reconsidered.

MR. HERRINGTON. I second the motion.

MR. ROLFE. Mr. Chairman: I think the same object can be accomplished in a different way, if the gentleman will change his amendment by simply moving to insert the two words "ascertained and" between the words "or" and "paid."

MR. WATERS. I would state to the gentleman that only having heard it read, and not having it before me, I cannot put in the amendment there.

MR. HAGER. Mr. Chairman: I would like to hear the proposition read in a way that we can hear it. I am unable to tell what it is. I thought that the amendment as reported by the Committee on Judiciary would stand as reported, and that the amendment of the gentleman from Solano would come in after it. If I understood it properly, the section reported by the Committee on Judiciary still stands and is not stricken out. Now, then, if I can hear it read, and if we can all hear it read, we will understand it.

THE SECRETARY read:

"Amend section fourteen, by adding the following, namely: No right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury in a Court of record, as shall be prescribed by law."

MR. HAGER. Mr. Chairman: I ask that the proposition be read as amended. The Secretary reads the amendment. I want the proposition read as amended.

THE SECRETARY read:

SEC. 14. Private property shall not be taken for public use without just compensation having been first made to or paid into Court for the owner. No right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or secured by a deposit of money to the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury in a Court of record, as shall be prescribed by law.

MR. HAGER. It reads as I suppose it was intended to be. That is the first proposition as reported by the Committee on Judiciary stands as it was reported by them: "Private property shall not be taken for public use without just compensation having been first made to or paid into Court for the owner." In that it is provided that private property shall not in any case be taken without compensation being made to or paid into Court for the owner. That stands as it is. Then comes the succeeding amendment about the right of way. Now, there may be a little conflict between the two propositions. The one relating to the right of way seems to adopt a rather different rule in order to ascertain the damages from what the first proposition does in regard to private property. That is, that one must be paid to the owner, or into Court for the owner, and that the other seems to squint at the idea that it may be in some way secured. It would open the door for a bond, or something of that kind. I think it should read right; that compensation being paid to the owner, or being placed in Court for him, he could be able to obtain it; and so that those who wish to make improvements shall pay it after the jury has made the award of the proper compensation. It ought to be secured beyond a peradventure that he should have a right to get the money out whenever they are put in possession.

MR. EDGERTON. Mr. Chairman: I have but one word to say. The author of this amendment, in his zeal to wrestle with a question that has exercised the finest jurists in this country, who have sought to place this right of eminent domain on a footing that would be just to the people and to those who want to condemn, has run off to a foreign Constitution and abstracted a provision which restores the whole question to the place where it was before this last legislation was had. The gentleman from San Bernardino, Mr. Waters, is entirely right when he says that it robs the owners of private property of the benefit of every beneficent provision as contained in the laws as they stand. Any railroad corporation, under this amendment, can walk into any man's farm and file a bond and take his property and go ahead with it. A deposit of money or security——

MR. DUDLEY, of Solano. Secured by a deposit of money.

MR. ESTEE. Mr. Chairman: I certainly think that this thing is a little mixed, and I think that in order to clearly express the views of this Convention, as indicated by the adoption of the amendment offered by the gentleman from Solano, that it would be wise to re-refer it to the committee to formulate it so that it will express the idea desired. Certainly, I hope it will not be adopted in its present shape. In that respect I agree with the gentleman from San Bernardino, Mr. Waters, and to some extent with the gentleman from Sacramento. I move that the committee rise and recommend that this section be re-referred to the Committee on Judiciary, with instructions to formulate it so as to contain the ideas expressed in the amendment.

MR. EDGERTON. Mr. Chairman: I have one word to say in regard to the reference. I wish to advise the Convention of this fact, that this subject was most maturely considered in the committee. I do not see any use in sending it back to the committee, because it would undoubtedly come back from them with the same recommendation that they have made.

MR. ESTEE. Let it come; but we do not want that section as it now is to go into the Constitution.

THE CHAIRMAN. The question is not debatable.

MR. BARTON. I desire to make an amendment.

THE CHAIRMAN. The question is not debatable.

MR. BARTON. I wish to amend the gentleman's motion, that it be referred back to the Committee on Preamble and Bill of Rights.

THE CHAIRMAN. The gentleman from San Francisco, Mr. Estee, moves that the committee rise and report this section to the Convention, and request that it be referred to the Committee on Judiciary.

The motion was lost.

THE CHAIRMAN. The Chair will state the precise condition of the question: Section fourteen, as reported by the Committee on Judiciary and Judicial Department, is reported as an amendment. It has not been adopted by the committee. It stands as an amendment offered. The gentleman from Solano moved an amendment to that amendment, and it was adopted. The gentleman from San Bernardino, Mr. Waters, moves to strike out and insert a substitute which he has offered, and which is as follows: "Private property shall not be taken for public use

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without just compensation having been first made to or ascertained and paid into Court for the owner."

MR. MCCALLUM. I understand that the question is on the motion to reconsider.

MR. WATERS. I withdraw that motion to reconsider.

MR. BARBOUR. I would like to know how on a question of order that amendment was withdrawn?

THE CHAIRMAN. The amendment is not withdrawn. The question is on the adoption of the amendment offered by the gentleman from San Bernardino, Mr. Waters, to strike out the whole of this section as amended, and insert this substitute, which I have just read.

The amendment was lost.

THE CHAIRMAN. The question now recurs on the adoption of the amendment offered by the Committee on Judiciary, as amended.

MR. LAINE. I move to reconsider the vote by which the last amendment was adopted. It seems to me that the word "secured" has crept in there. It will drive us back to the place we have been laboring out of for the last ten years.

MR. HOWARD. Mr. Chairman: He is entirely mistaken. The language employed in the amendment of the gentleman from Solano is: "Until full compensation therefor be first made in money, or secured by a deposit of money." It is secured by the money paid into Court. All that any of the provisions which have been adopted or proposed will effect is simply that. The money is paid into Court, and the money remains in Court for security. There is no ambiguity about it. There is no trouble about it.

MR. WHITE. I think that word "secured" is most objectionable, and I trust the Convention will reconsider it.

MR. DUDLEY, of Solano. I ask leave to amend it by striking out the words, "secured by a deposit of money," and inserting the words, "or deposited in Court." Then it will conform to the section as reported by the Committee on Judiciary; that is, in that respect it will be just like their report.

THE SECRETARY read:

"Until full compensation therefor be first made in money, or deposited in Court for the owner."

THE CHAIRMAN. It will require unanimous consent of the committee.

MR. WATERS. I move to amend that so that it will read: "Until full compensation therefor be first made in money, or ascertained and paid into Court for the owner."

MR. DUDLEY, of Solano. I am willing to accept that amendment if the committee is willing.

THE CHAIRMAN. It cannot be done except by general consent.

No objection was made.

MR. SHAFTER. Mr. Chairman: I call attention to the fact that this provision of the Alabama Constitution has been repealed for several years.

THE CHAIRMAN. The question recurs on the adoption of the amendment offered by the Committee on Judiciary as amended. The Secretary will read the section as it now stands amended.

THE SECRETARY read:

SEC. 14. Private property shall not be taken for public use without just compensation having been first made to or paid into Court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into Court for the owner, irrespective of any benefit from any improvement proposed by such corporation; which compensation shall be ascertained by a jury in a Court of record, as shall be prescribed by law.

The amendment was adopted.

MR. MCCALLUM. I move that the committee rise and report this article to the Convention as amended.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the Article on Preamble and Declaration of Rights, have adopted sundry amendments thereto, and ask the Convention at what time it will receive and act upon the report of the Committee of the Whole.

MR. VAN DYKE. I move that four hundred and eighty copies of the amendments adopted in Committee of the Whole, together with the plan as reported by the Committee on Preamble and Bill of Rights, be printed, and that the amendments be printed in brackets so that they can be distinguished.

MR. EDGERTON. I hope the gentleman will withhold that motion for the present.

MR. VAN DYKE. I wish to state that the copies are all exhausted. We want some printed with the amendments adopted in Committee of the Whole.

The motion prevailed.

ADJOURNMENT.

MR. GRACE. I move that the Convention adjourn.

The motion prevailed, and at four o'clock and fifty minutes P. M. the Convention stood adjourned until to-morrow at ten A. M.

FORTY-THIRD DAY.

SACRAMENTO, Saturday, November 9th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Herold,	Pulliam,
Ayers,	Herrington,	Reddy,
Barbour,	Hitchcock,	Reed,
Barry,	Howard,	Reynolds,
Barton,	Huestis,	Ringgold,
Beerstecher,	Hughey,	Rolfe,
Belcher,	Hunter,	Schell,
Bell,	Inman,	Schomp,
Blackmer,	Johnson,	Shafter,
Brown,	Jones,	Shoemaker,
Burt,	Joyce,	Shurtleff,
Caples,	Kenny,	Smith, of 4th District,
Casserly,	Keyes,	Smith, of San Francisco,
Charles,	Kleine,	Soule,
Condon,	Laine,	Stedman,
Cowden,	Lampson,	Steele,
Crouch,	Larkin,	Stevenson,
Davis,	Larue,	Strong,
Dean,	Lavigne,	Stuart,
Dowling,	Lewis,	Sweasey,
Doyle,	Lindow,	Swenson,
Dudley, of Solano,	Mansfield,	Swing,
Dunlap,	Martin, of Santa Cruz,	Terry,
Edgerton,	McCallum,	Thompson,
Estey,	McComas,	Tinnin,
Evey,	McConnell,	Tully,
Farrell,	McCoy,	Turner,
Fawcett,	McFarland,	Tuttle,
Filcher,	McNutt,	Vacquerel,
Finney,	Moffat,	Van Dyke,
Freeman,	Moreland,	Van Voorhies,
Freud,	Morse,	Walker, of Marin,
Garvey,	Murphy,	Walker, of Tuolumne,
Glascock,	Nason,	Waters,
Gorman,	Nelson,	Webster,
Grace,	Neunaber,	Weller,
Graves,	Noel,	Wellin,
Hager,	Ohleyer,	West,
Hale,	O'Sullivan,	Wickes,
Hall,	Overton,	White,
Harvey,	Porter,	Wyatt,
Heiskell,	Prouty,	Mr. President.

ABSENT.

Barnes,	Eagon,	Mills,
Berry,	Estee,	O'Donnell,
Biggs,	Gregg,	Rhodes,
Boggs,	Harrison,	Smith, of Santa Clara,
Boucher,	Hilborn,	Townsend,
Campbell,	Holmes,	Wilson, of Tehama,
Chapman,	Kelley,	Wilson, of 1st District,
Cross,	Martin, of Alameda,	Winans.
Dudley, of San Joaquin,	Miller,	

LEAVE OF ABSENCE.

Leave of absence was granted to Messrs. Cross, Smith of Santa Clara, O'Donnell, Gregg, and Chapman, each for one day, to Mr. Holmes for three days, and to Mr. Winans for two days.

MR. HUESTIS. I move that the reading of the Journal be dispensed with.

So ordered.

A CORRECTION.

MR. JOYCE. Mr. President: In yesterday's Journal I am incorrectly reported as having moved to lay the resolution on the table, and I want it fixed. The resolution was number sixty-seven.

PROPOSED AMENDMENTS.

THE PRESIDENT. Propositions and resolutions relating to the Constitution are now in order.

RELATIVE TO RAILROADS.

MR. HUGHEY introduced the following proposed amendment to the Constitution, in relation to purchase of railroads by the State:

ARTICLE —.

SECTION —. The Legislature shall, at its first session after the adoption of this Constitution, pass all necessary laws to submit to a direct vote of the qualified voters of this State, the proposition, that the State shall take possession by condemnation and purchase, at a fair and just valuation, of all railroads, their franchises, rights, and privileges, which may be in operation in this State, paying therefor in bonds of the State, bearing six per cent. interest, and payable in full in thirty (30) years or sooner if the State desire. Said railroads so purchased to be thereafter the property of the State, to be operated for the benefit of the State by duly appointed Superintendents and officers.

Referred to the Committee on Corporations other than Municipal.

UNITED STATES CURRENCY.

MR. BARTON introduced the following proposition, relating to United States currency:

Resolved, That a clause be inserted in the Constitution declaring that all moneys issued by the Government of the United States of America shall be a legal tender for all debts, public and private, and that no law shall ever be enacted by the Legislature of this State to discriminate against the currency of the National Government.

Referred to the Committee on Legislative Department.

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ON EDUCATION.

MR. BARRY introduced the following proposition to amend sections one and two of article nine:

SECTION 1. A Superintendent of Public Instruction shall, at the general election for Judicial, State, and county officers, to be held in the year eighteen hundred and seventy-nine, and every four years thereafter, at such general elections, be elected by the qualified voters of the State, and shall enter upon the duties of his office on the second Monday of January ensuing his election.

The following shall be prefixed to section two:

"The diffusion of knowledge, as well asof virtue, among the people, being essential to the preservation of their rights and liberties, it shall be the duty of the Legislature to promote public schools, and to adopt all means which they may deem necessary and proper to secure to the people the advantages and opportunities of education."

Referred to the Committee on Education.

NOTICE TO AMEND RULE FIFTY-SIX.

MR. TINNIN. Mr. President: I give notice of a motion to amend Rule Fifty-six, by striking out the words, "and that the previous question shall not be moved."

REPORT OF COMMITTEE ON PRINTING.

MR. SHOEMAKER. Mr. President: I ask leave to make a report from the Committee on Reporting and Printing, out of order.

THE SECRETARY read:

MR. PRESIDENT: Your Committee on Reporting and Printing, to whom was referred the matter of the cost of printing for the Convention up to and including the nineteenth day of October last, beg leave to report that they have had the same under consideration, and find the following facts:

Due to employés in the composing and press rooms of the State Printing Office, as per time book	$674 23
Cost of paper, estimated on each job	488 90
Folding, stitching, and binding (at contract price)	226 50
Making a total of	$1,389 63

You committee report that the estimates are correct, and that the amount should be allowed as a proper charge.

Respectfully submitted.

SHOEMAKER, Chairman.

THE PRESIDENT. The report will lie on the table. The Convention has now gone through the order of business, what is the further pleasure of the Convention?

MR. VAN DYKE. Mr. President: I move that the consideration of the article on Preamble and Bill of Rights in Convention be set for Monday next, at two o'clock.

MR. LARKIN. I desire to hear some reasons.

MR. VAN DYKE. There is nothing set for Monday, and they cannot be printed in time for the morning session.

THE PRESIDENT. The question is on the motion of the gentleman from Alameda, Mr. Van Dyke.

Lost.

MR. VAN DYKE. I move, then, to set it for ten o'clock on Monday, immediately after the reading of the Journal.

MR. LARKIN. I ask if it is not printed now.

MR. VAN DYKE. No, sir, it has been ordered printed, but has not gone to the printer yet.

MR. FILCHER. Mr. President: It seems to me to be a bad idea. Generally, the Convention is very thin on Monday morning. Last Monday morning there was only just a quorum here. There will be a small number present on next Monday morning. I think this report of the committee should be considered when the Convention is full, or nearly so. Monday morning is a very bad time to set it.

MR. VAN DYKE. The greater portion of it will be acted upon without any discussion. If any of the sections produce discussion and provoke amendments, then action upon them can be postponed. I would like to have it set down for Monday.

MR. HAGER. Mr. President: I voted against the motion, for the reason that I thought we might consider it to-day. If it has gone to the printer I do not think we can act upon it to-day. We have gone through it once in the Committee of the Whole. If it be not printed, I do not think we can act upon it to-day, and therefore I move to reconsider the motion for setting it for Monday, at two o'clock. The printer should have had it here this morning, as the order to print was made yesterday. I understand it is against the rule to reconsider, and I move that it be postponed until Monday, at half-past two o'clock.

MR. MCCALLUM. I voted against the motion to make it a special order, because I didn't see where we would accomplish anything by doing so. If the report should be printed and upon the tables on Monday morning, or if it should come in to-day, we can take it up whenever it comes. We have a number of special orders, and there is no necessity in making this the special order. Take it up when it comes in is the best way.

MR. VAN DYKE. It was on the file this morning, and my purpose was to get rid of it.

MR. MCCALLUM. It will come up in its regular order.

THE PRESIDENT. The question is on the motion of the gentleman from San Francisco, Judge Hager, to make it the special order for half-past two o'clock on Monday.

MR. FREEMAN. Mr. President: I find that nearly a week ago we had printed all the report of the Committee of the Whole except these sections which were referred to the Judiciary Committee. I see no reason why we cannot take up and consider those sections which were printed a week ago.

The motion was lost.

MR. NOEL. Mr. President: I now move that it be made the special order for Monday morning, at ten o'clock. It seems to me that the report of the Committee of the Whole ought to be printed and placed before us by that time. If we delay another week the consideration of the propositions contained in that report, there will be two weeks discussion upon it. I therefore move that it be made the special order for Monday morning, at ten o'clock.

Lost.

PARDONING POWER.

MR. FREEMAN. I move that the Convention resolve itself into Committee of the Whole, for the purpose of taking into consideration the report of the Committee on Pardoning Power.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read the section as reported by the committee.

THE SECRETARY read:

SEC. 13. The Governor shall have the power to grant reprieves, and the Governor and Chief Justice of the Supreme Court shall have power to grant pardons and commutations of sentence, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations as they may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the pardon and reprieve, and the reasons for granting the same. Neither the Governor and Chief Justice, nor the Legislature, shall have power to grant pardons and commutations of sentence in any case where the convict has been previously thrice convicted of felony.

THE CHAIRMAN. The amendment is that of the gentleman from Alameda, Mr. Campbell, to strike out "Chief Justice of the Supreme Court," and insert in lieu thereof, "Attorney-General."

MR. BLACKMER. Mr. Chairman: At the time this article was under discussion I had offered an amendment to the amendment.

THE CHAIRMAN. That will come in after this amendment.

MR. MCCALLUM. Mr. Chairman: Is another amendment in order?

THE CHAIRMAN. An amendment to an amendment is in order.

MR. MCCALLUM. I move to amend so as to make the Governor, the Chief Justice, and the Attorney-General, the Pardoning Board. I will write it out. That is one of the improvements in other Constitutions that I read here the other day.

MR. MCFARLAND. Mr. Chairman: My recollection is that I offered an amendment, so as to strike out the word "Chief Justice," so as to leave it exactly as it was in the old Constitution.

THE CHAIRMAN. The amendment pending is that offered by the gentleman from Alameda, Judge Campbell.

MR. MCFARLAND. I certainly offered an amendment so as to leave it to the Governor.

THE CHAIRMAN. The gentleman simply offered a verbal amendment. The Chair directed him to send it up in writing, and before the written amendment was sent up the Convention adjourned.

MR. MCCALLUM. I send up my amendment now in writing.

THE SECRETARY read:

"Add after the word 'Chief Justice,' in line two, and before the word 'shall,' in same line, the words 'and the Attorney-General.'"

MR. MCCALLUM. Mr. President: The section will then read as follows:

SEC. 13. The Governor shall have the power to grant reprieves, and the Governor, Chief Justice of the Supreme Court, and the Attorney-General, shall have power to grant pardons and commutations of sentence, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as they may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of the pardon and reprieve, and the reasons for granting the same. Neither the Governor, Chief Justice, and Attorney-General, nor the Legislature, shall have power to grant pardons or commutations of sentence in any case where the convict has been previously thrice convicted of felony.

My colleague moved to strike out "Chief Justice" and insert "Attorney-General." My proposition is to add the Attorney-General to the Board. In looking over the Constitutions of the different States, I have found no place where there was anything in the nature of a Commission or Board of Pardons where it did not consist of more than two persons. I think the section requires some further amendment, but that is the general feature, that the Board shall consist of the Governor, Chief Justice, and Attorney-General, and that any two of these, of which the Governor must always be one, shall have power to grant pardons.

THE CHAIRMAN. The Chair is of the opinion that the amendment is not now in order. It will be in order if this amendment of the gentleman from Alameda, Judge Campbell, is voted down. The question is now on that amendment, to strike out "Chief Justice" and insert "Attorney General."

Lost.

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THE CHAIRMAN. The question is now on the amendment of the gentleman from Alameda, Mr. McCallum.

MR. McFARLAND. I ask the gentleman to allow me to offer my amendment.

MR. McCALLUM. I give way temporarily.

MR. McFARLAND. The committee will notice that my amendment simply leaves the matter in the hands of the Governor.

THE SECRETARY read the amendment:

"Amend by striking out the words 'Chief Justice of the Supreme Court,' in the second line, and the word 'they' in the fifth line, and insert the word 'he' and strike out the words 'and Chief Justice' in the fifteenth line."

MR. McFARLAND. It will then read:

SEC. 13. The Governor shall have the power to grant reprieves, and the Governor shall have power to grant pardons and commutations of sentence, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature, at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, and its date, the date of the pardon and reprieve, and the reasons for granting the same. Neither the Governor nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been previously thrice convicted of felony.

I argued this amendment the other day. I still think it is safer to leave it where it is.

MR. TERRY. Mr. Chairman: It occurs to me that the Chief Justice is the very last person to be on that commission. The complaint is made that the Court is not able to keep up, and it requires the attention of one of the members of the Court in listening to cases of pardon. It seems to me that he should be the very last person to be put on that commission.

THE CHAIRMAN. The question is on the amendment.

Cries of "Division, division."

MR. McFARLAND. If that is adopted it leaves it as it is in the old Constitution, except that provision that a man three times convicted shall not be pardoned.

The amendment was adopted on a standing vote; ayes, 46; noes, 41.

MR. HAGER. Mr. Chairman: The pardoning power, as it has heretofore been exercised, has been subjected to some considerable criticism, and I have been thinking about it so as to know how to remedy this state of things. I notice in a great many of the Constitutions the Governor has the exclusive power of pardon. In other Constitutions we find that the Governor and Senate in some cases, and the Senate alone in other States; and in other States, which is still better I think, they constitute a Court of Pardons, so that parties coming before the Court make their applications, introduce testimony, and it is then passed upon judicially.

MR. TULLY. What is the question before the house.

THE CHAIRMAN. There is nothing before the committee.

MR. HAGER. I was going to offer an amendment, and I was explaining the amendment which I intended to offer. I will offer it first.

THE CHAIRMAN. The gentleman must offer his amendment and get it seconded before he can debate it. Send up your amendment.

THE SECRETARY read the amendment:

"In line seven, before the word 'pardon,' insert the words, 'and granting.'"

SPEECH OF MR. HAGER.

MR. HAGER. Mr. Chairman: That amendment I will read and explain it. It is a matter of discretion as to where we shall lodge the pardoning power. In some cases it is left to the Governor simply, and in other States the Governor and Senate, and in other States, which I think is the better way, they form a sort of Court of Pardons. Here, with the report of the committee, I do not suppose we can undertake to establish a Court. I am therefore inclined to adhere to the present provisions, that it shall be left to the Governor, subject to such legislation as the Legislature may pass, not only to the mode of applying for pardons, but the mode of granting pardons. The Governor shall have power, in case it rest with him alone, to grant pardons and commutations of sentence, etc., upon such conditions and such restrictions and limitations as may be thought proper, subject to such regulations as may be provided by law, in the matter of applying for and granting pardons. As it now reads, the Legislature can only regulate the matter of applying for pardons. This is the purpose of the amendment, to regulate the manner of applying for pardons, and the manner in which they shall be granted. They may say, for instance, that it shall be upon consultation with the Judge that tried the case. They may put in any provision of that kind, and the Governor must confine himself to the provision of the statute. I am of the opinion that the first person for him to advise with would be the Judge who tried the case. Not that the advice so obtained should be binding, but I think the pardoning power should always consult about the facts. I have known cases of pardons being obtained through misrepresentations; cases where the Governor has been imposed upon. Most everybody will sign a petition as an act of courtesy. But sometimes misrepresentations have been made, letters have been presented to the Governor which have turned out afterwards were not true in fact. The Legislature, therefore, might impose certain rules and regulations upon the acts of the Governor, not only as to the matter of applying for pardons, but also as to the manner of granting pardons. If you do nothing more than to leave the pardoning power with the Governor, then the Legislature may regulate it as the circumstances may induce them to do.

MR. BLACKMER. Mr. Chairman: My amendment proposes to strike out this whole clause, and insert other words in the place. I would like to ask what position my amendment is now in, whether it should not now come up under this head.

THE CHAIRMAN. The amendment offered by the gentleman from San Francisco, Judge Hager, is the first amendment.

MR. BLACKMER. This amendment does not touch the question as brought up by Judge Campbell, but it is in reference to the section proposed to be amended. My amendment, if it should prevail in the committee, would strike out the clause proposed to be amended by the gentleman from San Francisco, and insert other words.

THE CHAIRMAN. The amendment offered by the gentleman from San Francisco, Judge Hager, comes up first, and then your amendment to strike out the whole of it. The question is on that amendment.

MR. SHAFTER. Mr. Chairman: I did not just exactly understand the explanation made by the gentleman from San Francisco, Judge Hager. I think the language is equivocal in regard to terms. Is it intended to confine the Act of the Legislature to simply regulating the manner in which the pardon shall be granted—the language in which it shall be couched, and the particular circumstance under which it shall be made, or is it intended to cover the grounds of pardon. It seems to me that the language admits of both constructions. I shall object to the Legislature passing laws to fix and define the grounds upon which a pardon shall be granted. The whole theory of our government is to leave that entirely with the Governor. Perhaps the Legislature might say there shall be no pardons at all. I do not propose to trust that power with the Legislature. It seems to me the amendment is not plain. If it does not touch the power and right to grant pardons, then it cannot affect that part of it. But as to letting the Legislature specify what that power shall be, and under what circumstances it shall be exercised, seems to me is going entirely too far.

MR. HAGER. Mr. Chairman: I do not think there is anything in the objections urged by my friend from Marin, Judge Shafter, except the general distrust of the legislative power. He might as well say he distrusts the Governor, or that he distrusts the judicial power. We must confide in the legislative power of the State. I can see no harm in lodging with them the power to say, in case the Governor did abuse his power, that he should be restricted in the exercise of that power. I do not think there is any danger of the Legislature passing a law that will do an injustice and take away the power of pardoning any man. On the contrary, the inclination is always on the side of mercy. If mistakes are made they will always be found upon the side of mercy. Where appeals have been made to the Legislature, and errors have been made, they have always been made on that side. There is no difficulty on that ground. In some States the Legislature has the entire pardoning power, and in that view of the case I do not see why we need hesitate about saying that both branches of the Legislature may pass a law regulating the mode of granting pardons, especially when the Governor has the veto power on that as in all other cases. I fail to see the objection.

ARGUMENT OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: He proposes to have the Legislature exercise the pardoning power. That is the whole proposition. To take it away from the Governor virtually by giving the Legislature power to control it. When it comes to a difference between the Legislature and the Governor in regard to the grounds upon which a pardon shall be granted, the Legislature will control. The whole proposition is, that the Legislature is to have the pardoning power, and to that I object. If this Convention thinks it worth while to change the whole system, and put this pardoning power into the hands of this Board—this town meeting—I have nothing to say against it. But let us understand this matter. I protest against it. My friend from Alameda, General McCallum, gives an epitome of the Constitutions of the various States on this subject. I have looked over the Constitutions and I do not get exactly the same result that he does. In Alabama, Arkansas, Colorado, California, Indiana, Illinois, Iowa, Kansas, Missouri, Minnesota, Nebraska, North Carolina, Ohio, Oregon, Texas, Virginia, West Virginia, and Wisconsin, the pardoning power is confined to the Governor. Now, in Louisiana it is by and with the approval of the Senate. In Maine, Massachusetts, and New Hampshire, it is with the Senate. In Nevada it is with the Legislature. They simply allow the Governor to reprieve within sixty days, and the Legislature operates directly. In Rhode Island the Governor and Senate pardon. In Georgia the Governor pardons, except in cases of treason and murder. There are twenty States where the Governor exercises unlimited authority. But the committee here thought that a Commission would be preferable, and we compromised and put the Governor and Chief Justice together. I do not think that the majority of the Convention are satisfied with it. They wanted a more numerous Commission, and the gentleman from Alameda proposed adding the Attorney-General, the Commission to be appointed by the Governor, by and with the consent of the Senate, to consist of three members. As far as my opinion goes, the three should concur, and not a majority act. There exists to-day too much leniency, too much regard for the feelings of the criminals, and too little for the rights of the community. That is a thing we should all try to avoid. It is a fair difference of opinion as to whether this power should be left with the Governor and two other persons, or with the Governor alone. I have prepared an amendment in case a Commission is decided upon, to make their decision unanimous. As to the amendment giving the Legislature any control, I am most decidedly opposed to it, and I trust it will not prevail.

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REMARKS OF MR. TOWNSEND.

MR. TOWNSEND. Mr. Chairman: This leaves the pardoning power with the Legislature. It is not objectionable, sir, I think. I believe in allowing the Legislature to deal with it, either by creating a Court of Pardons, or by associating some other persons with the Governor, or creating a separate Commission. Now, I am not afraid of the danger which the gentlemen speak of in leaving it with the Legislature to regulate it. They are representatives of the people; come direct from the people, impressed with the views and wishes of the people. I fail to see any danger that will follow the leaving of this matter to legislative wisdom and discretion. If we should be unfortunate enough at some future time to have a corrupt Governor, we might see the absolute necessity of taking the pardoning power out of his hands. Then, again, I believe the Governor would be relieved of a great deal of care and labor by such a course. He has letters from all parts of the State; he is importuned by women with tears, and gray-haired men—every phase of sympathy that can be brought to bear, is used upon him to induce him to grant pardons, and of this he would be relieved, while the pardoning power would be in just as safe hands. I cannot see any objection to it, and I shall vote for the amendment.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: Whatever may be the opinions of this Convention, it certainly owes to the people of the State the duty of expressing those opinions in intelligent language. Now, I think one of the first objections to the amendment is this: that if its author should happen to die we would never be able to understand what it means. It would seem, upon first glance, that the amendment was directed to the mere mode and manner, as for instance, that the pardon should be in writing, or that it should be attested by the great seal of State, or that it should be connected with some other formality. But upon the debate which has arisen, and particularly from what has been said by the author, he is aiming, not at the mode and manner, but at the substance. He is aiming to accomplish something which the Convention does not intend shall be accomplished. He is aiming to subvert the vote which has already been taken, by which we have determined to vest this power in the Executive. Now, if any gentleman here desires that this power should be vested in the Legislature, or that it should be vested in a Commission, or that it should be vested in any way or manner whatever, let him formulate that idea in such language that a man of ordinary comprehension can understand it, and then let us vote upon it. But at present it certainly would be unsafe to allow this amendment, because the Convention could not understand what it was doing, and because perhaps different Judges and different men would put different constructions upon this provision. If it is desired to vest the power in the Legislature, let it be proposed in an amendment which all can understand, and let the Convention vote intelligently upon the proposition. This amendment should be promptly voted down, both on account of its ambiguity, and on principle. It is unsafe and unwise.

MR. WICKES. Mr. Chairman: It seems to me this matter has got into the shape of a question that is often debated in the lyceum. If a man has hold of a tiger's tail, what is the best thing to be done; to let go or hold on? I would say that I think the pardoning power should be vested in the Supreme Court.

SPEECH OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: If I understand the proposition, it is that the Legislature may create a Board to act with the Governor; and following out that plan they may take the power entirely away from the Governor, and provide, if they see fit, that in certain classes of crimes, no pardon shall be granted at all. The majority of the Legislature may be disposed to pardon some notorious criminal whom the Governor has refused to pardon; and if the Legislature is so disposed, they can issue the pardon themselves. It says they may create a Board to act with the Governor, and the majority of the Board shall have power to grant pardons and to overrule the decision of the Governor. I say if we are going to place such a power in any one, let it be done by the Constitution, and not leave it in the hands of the Legislature to fritter away this power. If we are going to make the Governor take the responsibility of pardoning criminals, or refusing to pardon, then let us in this Constitution place that power in his hands, and not leave it to the Legislature to change it and tinker with it from time to time. As the section would stand the Legislature would have the power of saying in what manner pardons may be granted. We will all admit that this pardoning power has been abused. Not that the Governor has done any willful wrong, because I do not believe it; but Governors have been imposed upon. It is proposed by the old section to give the Legislature the power of regulating the manner of applying for pardons—simply the manner of applying, which I think is just and proper; and I think that much should be left to the discretion of the Legislature. I am willing to leave that to the Legislature. The object is this: that the Governor is liable to be imposed upon by false statements and false rumors. They are approached and besieged in private as well as in public. I think for one that a legislative enactment regulating the mode of applying for pardons, requiring that all applications for pardons must be made in public, heard in public, and decided in public; and making it a misdemeanor for any person to approach the Governor privately to ask for a pardon—make it as much a misdemeanor as it would be to approach a Judge privately to solicit a decision in a case being tried before him. I think this is a great improvement in that respect.

This matter of the mode of applying for pardons can with entire safety be left to the Legislature, because that in nowise affects the power itself. It in nowise interferes with the Executive in the exercise of that power. But any change in the Constitution which would make it possible for the Legislature to take the pardoning power out of the hands of the Governor, or out of the hands of any Board of Officers which this Convention may decide to provide, I shall most strenuously oppose. I say if this Convention is going to say that the Governor, and the Governor only shall have power to grant pardons, then do not leave it to the Legislature to tinker with it, but make him shoulder the responsibility, or any other Board that you may decide to vest with this power. If this Convention says that the Governor, Chief Justice, and Attorney-General shall constitute a Pardoning Board, then give them the power and make them shoulder the responsibility, but do not leave it to the Legislature to fritter away that power by creating an additional Board whose decision shall be binding in any way upon the Board or individual upon whom we shall confer this power.

SPEECH OF MR. BARRY.

MR. BARRY. Mr. Chairman: I am opposed to the amendment for several of the reasons already advanced. I believe we had enough of the legislative power as exercised at the last session, whereby more than eighty prisoners were discharged from the State Prison, two thirds of whom have since committed high crimes, and have been returned to prison, at an enormous expense to the various counties. I say, sir, the exercise of a power of this kind should be conducted with the greatest caution. I say that if it is placed in the hands of the Legislature it is more liable to be abused than where it is now. I shall not now take the time to comment upon the acts which have been passed by the Legislature upon this subject. I am satisfied that it is not a safe place to lodge this power—in the hands of the Legislature—as provided by the amendment offered by the gentleman from San Francisco, Judge Hager. I am also opposed to allowing this power to remain in the hands of the Governor, for reasons already given. We all know how that power has been abused in the past, and I believe this body sufficiently understands the reasons why the Governor should no longer be entrusted to wield this power alone. The Attorney-General should be associated with him at least, and perhaps the Chief Justice, as has been suggested here. I think three would be enough. As gentlemen have remarked, we do not charge the Governor with corruption, but, we all know that one man is more liable to be influenced by sympathy than two or more. I think for these reasons that the Attorney-General at least should be associated with the Governor, and perhaps one other. When the proper time comes I shall move an amendment to carry out the ideas which I have advanced.

MR. WHITE. Mr. Chairman: Would an amendment be in order.

THE CHAIRMAN. No, sir; there are already two amendments pending.

ARGUMENT OF MR. HAGER.

MR. HAGER. Mr. Chairman: I have a word to say in defense of myself, at least. I regret exceedingly that the gentlemen have so misinterpreted the language and purport of this amendment. Certainly I had no intention of giving this power to the Legislature. On the contrary I would vote against any such proposition. I understand the Committee on Legislative Department have prepared and will report a proposition taking it entirely away from the Legislature. I hope they will do so and I shall support the proposition. I make this declaration to satisfy gentlemen that I have no such intention as represented, of giving the pardoning power to the Legislature. The amendment does not so read. The report of the committee reads now, "subject to such regulations as may be provided by law relative to the manner of applying for pardons." That is the language of the report of the committee. Now my amendment proposes to read in this way: "subject to such regulations as may be provided by law relative to the manner of applying for and granting pardons." Does that authorize the Legislature to grant pardons? My friend from Sacramento, who writes law books, ought to know better than to put such an interpretation upon that language. It says by general law. They shall regulate by law the manner of applying for pardons, and also the manner of granting pardons. Does that give the power of granting pardons to the Legislature? My understanding of it is simply this, that the law should regulate the mode, not only of applying for pardons, but the mode of granting them. And suppose the Legislature should pass a law that when the Governor is applied to for a pardon he shall notify the Judge that convicted the man, and give him an opportunity to be heard before the pardon is granted. There is nothing wrong in that, is there? I understand that it is merely to throw some restrictions around the pardoning power; that it will not be absolutely left in the hands of one man who may be unduly influenced by manifestations of grief to the side of mercy. Suppose the Legislature should say that the Governor should set a day at which the District Attorney who prosecuted the man could be present, or the Judge before whom he was tried, or both—is there anything wrong in that? Would that be giving to the Legislature the right to grant pardons? Why, sir, I do not see how any man of sound mind could put such an interpretation as that upon the language here; nor can I see any reason why any member of this Convention should object to the Legislature prescribing by law the manner in which these pardons may be acted upon and granted. Does the amendment say the Legislature may grant pardons? On the contrary, it says the Governor shall have power to grant pardons himself; not the Governor and the Legislature, but the Governor shall have power to grant pardons. The language of the section is that the Governor shall have the sole power, because the Chief Justice was stricken out, and the amendment to add the Attorney-General was voted down, and it stands now that the Governor alone shall have power to grant pardons and reprieves. And then what follows, "subject to such regulations as may be provided by general law, as to the manner of applying for pardons," etc. The power is not taken from the Governor; there is no attempt to take it from him; there is no excuse for saying that it is to be taken away from him by this amendment, and I am surprised that gentlemen learned in the law

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should get up here and attempt to put any such forced interpretation upon the language of the amendment. It will bear no such construction.

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: There are two propositions which it seems to me ought not to be considered at all. One is giving the Legislature power to grant pardons. That we certainly cannot do, because it would take up a great deal of the time of the Legislature for which they would have to be paid by the State. They would have to adjourn their committees, and no matter how important the business, their time would have to be taken up in the consideration of these applications for pardon. Therefore, it appears to be foolish, and against the principles of economy, to give this pardoning power to the Legislature.

Now, in respect to the third party on this Commission. If we are to have a Commission, it will hardly do to take those who are not State officers, because if we do we will have to pay them a salary. I think that whatever is done by this Convention—and this power will, of course, have to be lodged somewhere—whatever is done, it should be lodged somewhere where we will not have to pay any extra salaries. I understand that the amendment proposed by the gentleman from Sacramento has been passed, and the gentleman from San Francisco, Judge Hager, proposes an amendment to it. The amendment of the gentleman from Sacramento applies only to the manner of applying for pardons—the manner of the application. That would not necessarily include notice to the Judge who passed the sentence, or notice to any other persons to be present in open session and defend against the application for pardon. But as I understand the amendment proposed by the gentleman from San Francisco, Judge Hager, it does contemplate something of that kind. It has a great deal more in it. It adds to the mode of applying for pardons the mode of granting pardons. That would include notice; it would give the power to the Legislature to demand that notice be given to all persons they might see proper to designate. Therefore, I am not in favor of the amendment. My notion is that it is best to lodge this power in the hands of the Governor and Chief Justice. One is a political office, and the other is a judicial office. The one would hold in check the other.

MR. ROLFE. Mr. Chairman: I think the gentlemen who favor this amendment are laboring under a serious misapprehension as to its scope. Now, if this power is given by the Constitution to the Legislature to regulate the manner of applying for pardons, the Legislature can prescribe that notice can be given. They can prescribe that notice must be given, before the application can be heard, to the Judge and the District Attorney, or to any other person. They may prescribe that this notice shall be published in the newspapers for thirty days. All that power the Legislature has. That is the manner of applying for pardons. Therefore, I say it is not necessary to put in this additional word "granting." The Legislature can prescribe that before an application can be heard, notice shall be given, and there is no need of the amendment.

THE CHAIRMAN. The question is on the amendment.

MR. SCHELL. I move to strike out all of line two, and the words "power to grant," in the third line. I can see no reason for such repetition.

THE CHAIRMAN. The question comes first on the amendment of the gentleman from San Francisco, Judge Hager.

Lost.

THE CHAIRMAN. The amendment of the gentleman from San Diego, Mr. Blackmer, is now in order. The Secretary will read it.

THE SECRETARY read:

"Strike out all after the word 'impeachment' to and inclusive of the word 'pardon,' and insert in lieu thereof, 'and such power shall be exercised only in cases where evidence is newly discovered after judgment establishing the innocence of the convicted party, or the injustice of the sentence.'"

THE CHAIRMAN. The question is on the amendment.

SPEECH OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: It has been conceded by all who have spoken on this subject in the Convention, that there has been an abuse of the pardoning power, and I believe there is no one in this committee but will agree to that proposition. I believe if they were questioned further in regard to it they would also take this position, that the abuse has not been in the interest of innocent parties, but in the interest of those who had been sentenced, and justly sentenced. The leniency has been shown to those to whom it should not have been shown. Now, sir, I believe that the great evil of our present system of punishment is that the punishment is not sure to follow after the sentence. First, the criminal takes his chances that he will be able to escape without being arrested, and next that by some flaw or some error in the proceedings of the Court he will be able to escape conviction. Then, as another important factor in his calculations, if he is sentenced and incarcerated in prison, there is a very fair chance for him to be pardoned out. And it has its effect upon all criminals, and upon those who are apt to be criminals, who hope that sentence will be light. Now what is the remedy? It is, in my judgment, to make the sentence as sure to follow conviction, when it is just and equitable, as sure as the sun is to rise. I believe if it was understood by the criminals that whenever sentence was passed upon them justly there could be no escape from one moment of that sentence, that it would have a very salutary effect.

I move this amendment in the interest of just such a principle as that. I believe the pardoning power should be placed, first of all, in the hands of one man. That the Executive of the State should be the responsible party. I believe, as this amendment states, that no pardon should ever be granted, except in cases where evidence has been newly discovered, after judgment, that would show the innocence of the convicted party, or go to prove that the sentence had been an unjust one, and that then the application should be made, and that the Governor should be held responsible; and that such evidence having been brought to his notice, it is for him to determine whether it is true and correct, and then he may entertain it. In that way we would relieve this power of a very great amount of work that is now imposed upon the Governor. The applications for pardon would be very few. The criminal classes would be given to understand that whenever sentence is passed there is absolutely no escaping, unless they can find evidence to establish their innocence. I believe this Convention could do nothing that would be a greater benefit to this State upon this subject, than to pass an amendment of this kind. The Legislature, perhaps, it will be said, has the power to make these regulations which have been spoken of. Well, it has had the power, but has never done it; and I believe the time has come when we should place this matter in the fundamental law of the State, so that the Legislature shall not have the power to open wide the doors and allow those who are justly convicted and sentenced, to be turned loose again, to commit the same crimes for which they have been once imprisoned. By doing so you will put an effectual stop upon such proceedings. I think the time has come when the State should take that ground upon the subject of pardons, and I hope this amendment will prevail. If this amendment is adopted, I shall move to strike out the last clause, in order to perfect it, because it will be useless to say, after this amendment has been adopted, that "Neither the Governor, and Chief Justice, nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been previously thrice convicted of felony." I had better, perhaps, include that in the amendment, so as to perfect it, and put it all in one motion.

SPEECH OF MR. TERRY.

MR. TERRY. Mr. Chairman: This amendment would deprive the Governor of the pardoning power, except in the single instance of newly discovered evidence which tends to show the innocence of the party convicted. Now, it occurs to me that there are very many instances where a party properly convicted should receive executive clemency. On account of some prejudice in the Court, his sentence may be altogether disproportionate to the crime.

MR. BLACKMER. The amendment provides for cases where the sentence has been unjust simply.

MR. TERRY. Yes, where the sentence is unjust; but what is an unjust sentence? For instance: for a certain offense the statute allows a punishment of from one to four years. It is absolutely in the discretion of the Judge. And in case of a first offense, where punishment has been wrongfully inflicted, why should not the Governor have a right to step in, after the lapse of a reasonable time, and relieve him from the remainder of the sentence? There may be instances where boys have wandered away from home and have committed crimes, and have been tried and properly convicted, and sent to prison. Suppose a case of this kind. The friends of the party, living in other States, think they can reform the boy. Nobody was ever reformed in San Quentin. No man ever left there a better man than when he went in. He is sent there to mingle with the most hardened criminals, and he becomes more and more degraded, and he leaves there an accomplished criminal. Why should not the Governor be permitted, if the parents of the boy come from another State and ask that he be pardoned on condition that he leave the State never to return, to grant the request? This is only one out of many cases that might be cited where wrong would be done. There are many other cases where, under the law, the party is rightly convicted and punished—where there may be mitigating circumstances which excuse the offense in the minds of a large majority of the right-thinking people of this country. A man may commit murder under the influence of a knowledge of an outrage upon wife or sister, and be technically guilty, to be sure, but in such cases why should not the Governor be allowed to pardon him? I say it is not well for this Convention to take away the pardoning power; and this amendment, in effect, will do it. I say every man who is consigned to prison by a prejudiced Judge should have a right to have his application for executive clemency heard. This Convention ought not to take away the power to grant relief to any one who is wrongfully imprisoned or too harshly punished. I do not believe this Convention is prepared to adopt an amendment of this kind.

MR. JOHNSON. Mr. Chairman: That amendment reverses every rule of criminal law. In criminal law it is not for the party to prove his innocence, it is for the State to prove his guilt. By this amendment he has to prove his innocence, therefore I am opposed to it.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I trust the amendment will prevail, and the reason I do so is that I believe it will meet the sentiments of the people. The way criminals are sentenced now is a mere farce. Every man who is convicted of a crime expects to get out. After he has packed wood for a year, a petition is got up by somebody and sent round, and signatures obtained, and the Governor is imposed upon, and pardons the man out. I think if they knew they would have to suffer, they would be more careful about committing crimes. But they feel pretty sure that they will get out in a year or two at most, and so the punishment has no terrors for them. I believe that the pardoning power has been greatly abused in the past, and many times executive clemency is granted when it is unmerited. The Governor is imposed upon over and over again, and I believe that this power should have guards and restrictions thrown around it in some way. I trust for these reasons that the amendment will prevail.

SPEECH OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I cannot support the amendment because it is practically destroying the pardoning power. Neither do I

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agree with the proposition so generally expressed here, that the pardoning power has been abused. I have been in the State a long time, and except in a few instances of unintentional abuse, there has been none. The whole object of the pardoning power is to act upon precisely the same evidence upon which the defendant was convicted, and to exercise the quality of mercy upon that evidence. This argument is that the Executive is the safest depository for the pardoning power, because there the responsibility is direct. You hold the Governor responsible, and the political party by which he was elected is also made responsible, for unfortunately in this country we never will be able to get rid of party government, and the responsibility is best placed when it reflects upon not only the officer, but upon the party that elects him. Therefore, dividing the power will cure no evil, but will augment it, and if the error has been on the side of mercy, if you divide the power, it will be still more loosely exercised than before. I shall read a couple of paragraphs on this subject from Story. He handles the subject with his usual ability and learning. I read paragraph fourteen hundred and ninety-four, page three hundred and seventeen. He says:

"The next power is 'to grant reprieves and pardons.' It has been said by the Marquis Beccaria that the power of pardon does not exist under a perfect administration of laws, and that the admission of the power is a tacit acknowledgment of the infirmity of the course of justice. But if this be a defect at all, it arises from the infirmity of human nature generally, and in this view is no more objectionable than any other power of government, for every such power in some sort arises from human infirmity. But if it be meant that it is an imperfection in human legislation to admit the power of pardon in any case, the proposition may well be denied, and some proof at least required of its sober reality. The common argument is, that where punishments are mild they ought to be certain, and that the clemency of the chief magistrate is a tacit disapprobation of the laws. But surely no man in his senses will contend that any system of laws can provide for every possible shade of guilt a proportionate degree of punishment. The most that ever has been and ever can be done is to provide for the punishment of crimes by some general rules, and within some general limitations. The total exclusion of all power of pardon would necessarily introduce a very dangerous power in Judges and juries of following the spirit rather than the letter of the laws, or out of humanity, of suffering real offenders wholly to escape punishment; or else it must be holden (what no man will seriously avow) that the situation and circumstances of the offender, though they alter not the essence of the offense, ought to make no distinction in the punishment. There are not only various gradations of guilt in the commission of the same crime which are not susceptible of any previous enumeration and definition, but the proofs must in many cases be imperfect in their own nature, not only as to the actual commission of the offense, but also as to the aggravating or mitigating circumstances. In many cases convictions must be founded upon presumptions and probabilities. Would it not be at once unjust and unreasonable to exclude all means of mitigating punishment when subsequent inquiries should demonstrate that the accusation was wholly unfounded, or the crime greatly diminished in point of atrocity and aggravation from what the evidence at the trial seemed to establish? A power to pardon seems indeed indispensable under the most correct administration of the law by human tribunals, since otherwise men would sometimes fall a prey to the vindictiveness of accusers, the inaccuracy of testimony, and the fallibility of jurors and Courts. Besides, the law may be broken, and yet the offender placed in such circumstances that he will stand in a great measure, and perhaps wholly, excused in moral and general justice, though not in the strictness of the law. What, then, is to be done? Is he to be acquitted against the law; or convicted, and to suffer punishment infinitely beyond his deserts? If an arbitrary power is to be given to meet such cases, where can it be so properly lodged as in the executive department?

"The power to pardon, then, being a fit one to be intrusted to all governments, humanity and sound policy dictate that this benign prerogative should be as little as possible fettered or embarrassed. The criminal code of every country partakes so much of necessary severity that, without an easy access to exceptions in favor of unfortunate guilt, justice would assume an aspect too sanguinary and cruel. The only question is, in what department of the government it can be most safely lodged? and that must principally refer to the executive or legislative departments. The reasoning in favor of vesting it in the executive department may be thus stated: a sense of responsibility is always strongest in proportion as it is undivided. A single person would, therefore, be most ready to attend to the force of those motives which might plead for a mitigation of the rigor of the law, and least apt to yield to considerations which were calculated to shelter a fit object of its vengeance. The consciousness that the life or happiness of an offender was exclusively within his discretion would inspire scrupulousness and caution; and the dread of being accused of weakness or connivance would beget circumspection of a different sort. On the other hand, as men generally derive confidence from numbers, a large assembly might naturally encourage each other in acts of obduracy, as no one would feel much apprehension of public censure. A public body, too, ordinarily engaged in other duties, would be little apt to sift cases of this sort thoroughly to the bottom, and would be disposed to yield to the solicitations, or be guided by the prejudices of the few, and thus shelter their own acts, of yielding too much or too little, under the common apology of ignorance or confidence. A single magistrate would be compelled to search and act upon his own responsibility, and, therefore, would be at once a more enlightened dispenser of mercy, and a more firm administrator of public justice."

I think, sir, that we had better leave this matter where it is. The Executive is compelled to act with more consideration and caution alone than he would be if other parties were associated with him, and we know who is to be held responsible, and to be censured in case he abuses the pardoning power.

SPEECH OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: I hope the amendment proposed by the gentleman from San Diego will prevail. As for myself, I would be in favor of the total abolition of the pardoning power. It was a power exercised by the kings and monarchs of Europe as a matter of divine justice placed in them, placing them over and above the law and the Courts.

MR. REDDY. Is it not also exercised by God Almighty according to all religious notions?

MR. BEERSTECHER. I am not here to discuss the limitations of the power of God Almighty, so I am not prepared to answer the question. Now, whenever a pardon is granted, under this system which allows pardons to be granted without stating the reasons or cause, it is a direct acknowledgment of the fallibility of judicial proceedings. Pardons, as a rule, are granted, not for the reason that anything new intervenes in favor of the prisoner, but they are granted almost solely and exclusively through the favor of political influence. There may be exceptions to the rule, but generally pardons are granted through pressure brought to bear upon the Chief Executive by reason of great political influence or the influence of friends.

Now, Mr. President, the amendment proposed by the gentleman from San Diego, Mr. Blackmer, says that a pardon shall not be granted unless upon newly discovered evidence. What objection is there to that? Who can say that it is not right and just? What possible objection can be urged to it? Or, if the injustice of the sentence is made apparent, the pardon can be granted. These are the only two grounds upon which pardons should ever be granted: first, newly discovered evidence; or, second, where the injustice of the sentence is apparent. Then if the Executive grants a pardon, he must specifically state the newly discovered evidence upon which he predicates the pardon, or point out the injustice of the sentence. And it seems to me that in no case other than these two which I have mentioned should a pardon be granted. With due deference to the opinions of the gentleman from San Joaquin, Mr. Terry, I don't see that he has made any argument at all, or given any good reason why this amendment should not prevail. He states a case where men are brought up and tried by a jury of their countrymen. After a thorough investigation into the facts of the case, these jurymen find him guilty of murder. They are men who come from among the people, representing the sympathies of the people. If a man is not prepared to influence the sympathies of twelve jurors who are unanimous in their verdict, or if he cannot influence the sympathy of one out of the twelve, I say he is guilty, and upon that verdict he is sentenced to the State Prison. Then I must say, Mr. President, that I don't see any reason why the Governor should step in, and of his own volition, and without cause or reason, grant a pardon and turn that man out of jail.

The gentleman from Sonoma, Mr. Johnson, raised the objection that by the terms of this amendment the burden of proving innocence rests upon the convicted person, and that thus the rule of law, which says the burden is on the State to prove his guilt, is reversed. I call the attention of the gentleman to the fact that in this case the situation has been reversed. The State has already proved the guilt of the prisoner, and the prisoner is no longer in the position of an innocent man, and it is then for him to remove the shadow that rests upon him, and prove his own innocence. It is not for the State to keep on proving the guilt of persons who have been convicted on legal judicial proceedings. After conviction the man occupies a different position, and it is incumbent upon him then to show that he is innocent. I hope the amendment of the gentleman from San Diego will prevail. If it does prevail, it will wipe out all the rottenness existing in the system of granting pardons, and place pardons, first, upon the basis of newly discovered evidence showing that the man was not guilty, and second, that the sentence is an unjust sentence. It will work a beneficial change in the system, in my humble opinion.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. President: I did not intend to say anything about this matter. It is a matter that I was willing to cast my vote upon. But from the speeches I have heard I think there is great misapprehension as to the number of persons pardoned in this State. I had occasion to inquire into this matter a short time ago, and I found that out of the thousands and thousands convicted in this State during the last twenty-eight years, not over seven hundred and thirty have been pardoned. Out of that immense number only seven hundred and thirty have been pardoned. Can any one say that the pardoning power has been abused? We have often seen cases where the Governor refused to pardon a man when we thought he should. I believe the power is not so much abused in this State. There are cases where strong pressure is brought to bear for the conviction of a man, and in cooler moments the jury who brought the verdict, and the Judge who sentenced him, join in signing a petition for his pardon.

MR. BEERSTECHER. Can the gentleman cite an instance where a poor man has been pardoned?

MR. LARKIN. Yes, sir, many a one. I can cite cases in the County of El Dorado, because we are all poor men up there. I do not know, in the whole long list of Governors of this State, where wealth or power has ever controlled any one of them, and I do not believe that any gentleman will charge that any one of them has ever been so controlled. From the first to the last I have known them all, and no man to-day that knew these men will get up and state that one of them ever bowed to wealth in the exercise of the pardoning power. I defy the gentleman to point out one instance where any Governor of this State has fallen down to money or power in the exercise of the pardoning power. I have never heard of political influence influencing any Governor in these matters. I cannot believe that any man whom the people of the State of California would intrust with this high position would stoop so low as to allow

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political prejudice or political friendship to swerve him from his line of duty. Insinuations such as these should not have been heard on this floor.

MR. BLACKMER. Mr. Chairman: The gentleman misunderstood me if he gathered any such ideas from what I had to say on this subject. In speaking of the abuse of that power, I had no thought that any Governor had ever been unduly influenced, or ever corrupted, in granting pardons. I certainly could not have intimated any such a thing. I only intended to say that I believed every man here would agree with me that the sympathies of a man have been so worked upon that in cases where a pardon should never be granted he has found it impossible to resist that influence. I believe that such demands should not be allowed to be made, because it is enlisting the sympathies unjustly to overturn a just verdict. Not that the Governor was ever bought up with so much gold. I do not believe that any gentleman who has advocated this amendment intended to insinuate that Governors had been bought to do these things, and I do not think any of them entertain any such an idea for a moment. I do not wish to detain the committee, as it is time for the usual recess. I therefore move that the committee rise, report progress, and ask leave to sit again.

Carried.

The Convention took a recess until two o'clock.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M. President Hoge in the chair.

COMMITTEE CLERK.

MR. SCHOMP. Mr. Chairman: I wish to send up a resolution, with the leave of the Convention.

THE SECRETARY read:

Resolved, That the Committee on the Right of Suffrage be allowed to employ a clerk for two (2) days only, at a compensation of five (5) dollars per day.

THE PRESIDENT. It will be referred to the Committee on Mileage and Contingent Expenses.

MR. BLACKMER. I move that the Convention resolve itself into Committee of the Whole for the purpose of further considering the report of the Committee on Pardoning Power.

REPORT.

MR. SHAFTER. If the gentleman will allow me I would like to make a report from the Committee on Pardoning Power.

THE PRESIDENT. If there is no objection the gentleman will send it up.

THE SECRETARY read:

MR. PRESIDENT: The Committee upon the Pardoning Power, having considered the proposition number four hundred and eighty-four, introduced by Mr. Grace, report the same, with a recommendation that the same be not adopted.

SHAFTER, for Committee.

THE PRESIDENT. The report will lie on the table.

STATIONERY ACCOUNTS OF MEMBERS.

MR. LARKIN. Mr. President: There was a report made the other day in regard to the amount of stationery drawn by the members. I desire that the gross amount drawn by each member be printed; not the itemized account, but the gross amount.

[Cries of "division," "ayes and noes," "ayes and noes."]

MR. VAN DYKE. Mr. President: I would like to have a supplemental report, as I understand that some of the members who were deficient on that report have, since that report was made, drawn the full amount. [Laughter.]

MR. LARKIN. I know that gentlemen desire to know what their stationery account is. I desire to know what they are. I understand by a gentleman that the Secretary of State's office never received the resolution restricting the amount to ten dollars. I desire that the gross amounts shall be printed and laid on the desks of members. No one should draw any stationery except such as is needed for use in the Convention.

[Cries of "question," "question."]

MR. SMITH of Fourth District. Mr. President: I do not object to its being printed if it is printed correctly. There is a mistake in my account which makes it appear very large, when in fact it is not large. I took it to one of the clerks and found out that it was not correct. I want it printed correctly when it is printed.

MR. SHAFTER. Mr. President: I am charged with fourteen dollars. I am ready to pay that amount back to the State if the rest of the gentlemen will do the same. [Laughter.] There was a parcel of stuff put in my desk which I did not want. The State may have it all back if it wants it. I think, however, that this is a very small business for one hundred and fifty men, drawing fifteen hundred dollars a day from the State, to be engaged in.

MR. BEERSTECHER. Mr. President: In the account which the Secretary of State has presented, he has charged the spittoons and penracks, and other things which we cannot take home with us. I understand from the Secretary of State that he does not propose to pay any attention at all to the resolution of the Convention limiting the individual members to ten dollars worth of stationery. The statute upon the subject is plain and explicit. It says the members of the Convention shall have the same right to draw stationery as the members of the Legislature. The members of the Legislature are not limited. Some of them draw eighty or ninety dollars worth of stationery. Now I have drawn, according to the bill, eighteen dollars worth of stationery. I don't care who knows it. The privilege was granted and I embraced it, and I am willing to have it posted in flaming letters all over San Francisco, that I drew eighteen dollars worth of stationery, and if any of my constituents desire to vote against me on account of it they are welcome to do it. At the same time, I think the resolution is useless. It is putting the State to a heavy expense and brings nothing in. I cannot see the use of putting the State to the additional expense of printing the report, and the amount of stationery which each individual member has drawn; therefore, I think on the grounds of economy, the resolution offered by Mr. Larkin should be voted down. If he desires this published so that he can use it on the stump as a campaign document, common decency would dictate that he print it at his own expense, and not saddle the State with the cost of printing.

MR. LARKIN. In reply to the gentleman, if he will look over the Journals, he will find that a large majority of Legislatures have limited the amounts. A better reason why this Convention should do so is that the sum total now amounts to over seven hundred dollars. We have only one hundred and fifty thousand dollars, and that should be devoted to the work for which it was set apart.

MR. STEDMAN. Mr. President: I object to the printing of these amounts, not from the fact that I have drawn fifteen dollars' worth of stationery, but for this reason: the Secretary of State says I have drawn fifteen dollars, but I understood that each committee was allowed to draw ten dollars. I have acted as Secretary of two committees, and I have drawn stationery for both committees in my own name, which is all included in this fifteen dollars. Therefore I do not think these amounts should be printed, because they will convey an erroneous impression. At the same time there is another reason given by the gentleman from San Francisco, Mr. Beerstecher, and that is the ground of economy. I do not see what benefit is going to be derived from printing these amounts. If ten dollars' worth is all that a member is allowed to draw, I am ready and willing to pay the other five dollars back to the State. But I understand the Secretary of State has refused one gentleman who offered to pay the amount over the ten dollars back, refused to receive it. Actually I do not see any use in their being printed. If the Convention should vote that all over ten dollars should be refunded, I do not think there is a gentleman on this floor who is not ready to comply.

MR. BLACKMER. Mr. President: I do not desire to take up the valuable time of the Convention debating these frivolous resolutions, but I wish to state, in regard to the Secretary of State not being disposed to comply with the resolution of this Convention, in regard to limiting the amount of stationery, that I was in need of a little stationery the first of this week, and sent down by one of the Pages a requisition for an extra bunch of envelopes, and some other article, and he sent back the requisition unfilled, stating that I had already drawn nine dollars and ninety-eight cents' worth.

[Cries of "question, question!" "ayes and noes!" "ayes and noes!"]

MR. BEERSTECHER. I call for the names of the gentlemen who demand the ayes and noes.

THE PRESIDENT. The ayes and noes are called for by Messrs. Larkin, Murphy, Shoemaker, Larue, and Gorman. The question is on the adoption of the resolution.

MR. TURNER. Mr. President: I shall vote against this resolution. I am afraid that the usefulness of the members will be gauged by the amount of stationery they have drawn, and as I stand lowest on the list I am afraid the comparison will not be favorable to my ability as a statesman. [Laughter.] Therefore I am opposed to the resolution.

THE PRESIDENT. The question is on the resolution. The Secretary will call the roll.

The roll was called, and the resolution adopted by the following vote:

AYES.

Ayers,	Hager,	Reddy,
Barbour,	Hall,	Reynolds,
Beerstecher,	Heiskell,	Ringgold,
Belcher,	Hitchcock,	Schell,
Bell,	Howard,	Schomp,
Brown,	Huestis,	Shoemaker,
Caples,	Hughey,	Smith, of 4th District,
Casserly,	Hunter,	Smith, of San Francisco,
Charles,	Johnson,	Soule,
Condon,	Jones,	Stevenson,
Cowden,	Joyce,	Stuart,
Davis,	Larkin,	Swing,
Dean,	Larue,	Tinnin,
Dowling,	Lavigne,	Townsend,
Doyle,	Lewis,	Tuttle,
Dudley, of Solano,	McCallum,	Vacquerel,
Dunlap,	McComas,	Walker, of Marin,
Eagon,	McCoy,	Waters,
Evey,	Mills,	Webster,
Farrell,	Moreland,	Weller,
Freud,	Morse,	White,
Glascock,	Murphy,	Wyatt—68.
Gorman,	Nelson,	

NOES.

Andrews,	Herold,	Rolfe,
Barry,	Lampson,	Shafter,
Barton,	Lindow,	Shurtleff,
Blackmer,	Mansfield,	Stedman,
Boucher,	Martin, of Santa Cruz,	Steele,
Burt,	McFarland,	Strong,
Crouch,	McNutt,	Terry,
Estey,	Nason,	Thompson,
Finney,	Neunaber,	Turner,
Freeman,	O'Sullivan,	Van Dyke,
Garvey,	Overton,	Walker, of Tuolumne,
Grace,	Porter,	Wellin,
Hale,	Pulliam,	Wickes,
Harvey,	Reed,	Mr. President—42.

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MR. WICKES (pending roll-call.) I would like to explain my vote. [Cries of "object!" "object!" amidst loud laughter.]

ANOTHER RESOLUTION.

MR. REYNOLDS. Mr. President: I desire to offer a resolution on this subject.

THE SECRETARY read:

Resolved, That those members who have drawn stationery of the Secretary of State to any amount more than ten dollars, be and they are hereby instructed to pay the excess of such amount over ten dollars into the State treasury, for the benefit of the appropriation for the expenses of this Convention.

MR. CROSS. I move that the resolution be laid on the table.

THE PRESIDENT. The author of the resolution has the floor.

MR. REYNOLDS. Mr. President: This Convention passed a resolution the other day that members of this Convention should draw but ten dollars' worth of stationery. It appears from the report of the Secretary of State that some have drawn two dollars and fifty cents, and some twenty-four dollars; and unless there is some action taken, there the matter stands. The resolution allowing but ten dollars was a waste of time and paper. I send up the resolution for the purpose of supplementing that and correcting the inequality, so that the first resolution will be of some use, and so that this matter shall be finally settled, and no more time wasted in discussing it. We passed a resolution instructing the Judiciary Committee to inquire whether the printing for this Convention should come out of the appropriation for the Convention, or out of the appropriation for the State Printing Office. That very able and wise committee reported that the expense of printing should come out of the appropriation for the State Printing Office. But the Board of Examiners proceeded to pay the printing out of the appropriation for this Convention, without regard to the opinions of the Judiciary Committee and without regard to the resolution of this Convention adopting that report. So with this stationery account, which is on the same footing. I do not know whether this Convention can help itself or not; but this I do know, that unless there is some such action as I propose, there will be nothing to prevent members drawing twenty-four dollars' worth, or two hundred and forty dollars' worth, if they want to, and carrying it home to set up a junk shop with. That is the reason I offer this resolution, to supplement the other and make it of some use and force. I hope the Convention will pass the resolution.

MR. VAN DYKE. I certainly have a misapprehension here, or else a great many others have. I never understood that members were at liberty to take home with them any stationery. It is a new idea to me that members can pack their trunks full of stationery, and when they leave the Capitol take it home with them. I had supposed that it was furnished for the use of the members because they were performing services for the State, and that it was only for their use while here. I myself have drawn a few cents over ten dollars' worth. I am allowed ten dollars for the committee. I do not intend to draw any to take home with me. I need things for my use here which I have not drawn. I want envelopes, I have not drawn any. I want inkstands and several other articles for use here in the Convention. I think this is a very small business, and it is spending time for no purpose.

MR. TINNIN. We have been acting under the law passed by the last Legislature, which gives the members of this body a right to draw stationery. There was no limit to the amount. This body has passed a resolution limiting the amount to ten dollars, it is true, but most of this material was drawn before that resolution was passed. I believe we have wasted enough time, therefore I move to lay the resolution on the table.

THE PRESIDENT. It is moved and seconded that the resolution be laid on the table.

Division being called, the motion to lay on the table prevailed by a vote of forty-four ayes to forty-one noes.

THE PARDONING POWER.

MR. MCCALLUM. I move that the Convention now resolve itself into Committee of the Whole for the purpose of further considering the article on pardoning power.

Carried.

IN COMMITTEE OF THE WHOLE.

Mr. Tinnin in the chair.

MR. MCCALLUM. I ask the Secretary to read the amendment of the gentleman from San Diego.

THE SECRETARY read:

"Strike out all after the word 'impeachment' to and inclusive of the word 'pardon,' and insert in lieu thereof, 'and such power shall be exercised only in cases where evidence is newly discovered after judgment establishing the innocence of the convicted party, or the injustice of the sentence.' Also strike out the last clause of the section."

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: Now I am opposed to the principle of this amendment as interpreted by the author. But the proposition goes far beyond what the gentleman intended, because the language is that the innocence of the party must be established by proof, leaving not even the question as to the benefit of any testimony which might subsequently be discovered, raising a reasonable doubt as to whether he had been justly convicted or not. I suppose the language of the amendment is stronger even than the gentlemen intended himself. But this is not a new question. I have some authority ——

MR. BEERSTECHER. If the gentleman will permit me I desire to correct him. The amendment reads that such power shall be exercised only in case of newly discovered evidence after judgment, which establishes the innocence of the convicted party, or where it can be shown that he was unjustly sentenced.

MR. MCCALLUM. Establishing the innocence of the party or establishing the injustice of the sentence. That is the way it reads, and that is what I say now. I say the idea presented by the gentleman from San Francisco, and by others, is an idea that has never been received with favor, and in addition to the authority quoted by the gentleman from Los Angeles, Mr. Howard, I propose to read from Kent, first volume, page two hundred and eighty-four. He says:

"The President has also the power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment. The Marquis Beccaria has contended that the power of pardon does not exist under a perfect administration of law, and that the admission of the power is a tacit acknowledgment of the infirmity of the Courts of justice. And where is the administration of justice, it may be asked, that is free from infirmity? Were it possible, in every instance, to maintain a just proportion between the crime and the penalty, and were the rules of testimony and the mode of trial so perfect as to preclude every possibility of mistake or injustice, there would be some color for the admission of this plausible theory. But, even in that case, policy would sometimes require a remission of a punishment strictly due, for a crime certainly ascertained. The very notion of mercy implies the accuracy of the claims of justice. An inexorable government, says Mr. Yorke, in his Considerations on the Law of Forfeiture, will not only carry justice in some instances to the height of injury, but with respect to itself it will be dangerously just. The clemency of Massachusetts, in seventeen hundred and eighty-six, after an unprovoked and wanton rebellion, in not inflicting a single capital punishment, contributed, by the judicious manner in which its clemency was applied, to the more firm establishment of their government. And this power of pardon will appear to be more essential, when we consider that, under the most correct administration of the law, men will sometimes fall a prey to the vindictiveness of accusers, the inaccuracy of testimony, and the fallibility of jurors. Notwithstanding this power is clearly supported on principles of policy, if not of justice, English lawyers of the first class and highest reputation have strangely concluded that it cannot exist in a republic, because nothing higher is acknowledged than a magistrate. Instead of falling into such an erroneous conclusion, it might fairly be insisted that the power may exist with greater safety in free States than in any other forms of government; because abuses of the discretion unavoidably confided to the magistrate in granting pardons are much better guarded against by the sense of responsibility under which he acts.

"The power of pardon vested in the President is without limitation except in the single case of impeachments. He is checked in that case from screening public officers, with whom he might possibly have formed a dangerous or corrupt coalition, or who might be his particular favorites and dependents."

I say it is not too much to say that no precedent for this amendment can be found, neither in the Constitution of the United States, nor in the Constitution of any one of all the States in this Union. It is safe to say that no precedent for such a proposition can be found in any nation under the sun, in any country on earth, and it certainly does not exist in heaven, as we are taught by theologists. I have not heard from that other place called hell, and there is a dispute between leading theologists as to whether there is such a place as hell, though old Californians remember there used to be a place called Hell Itself. I say that it is without precedent in any country, and it seems to me it is a most remarkable proposition. I have but this to add, that when men shall devise a perfect government, when there shall be no mistakes made in the administration of government, then there will be no need of pardon in any case, because there would be no supposition that there could be any injustice done in any case. But we are all liable to err. Jurors are liable to commit errors; Judges are liable to commit errors; witnesses are liable to make mistakes and misstatements. All human testimony is fallible.

Now, without saying anything further on that part of the amendment, I wish to say that I am in favor of, and shall vote for, a Commission. I am not particular as to how that Commission shall be constituted. I believe that there should be a change in the pardoning power in this respect. I believe that it should be the Governor, Chief Justice, and Attorney-General. As I understand it, the Judiciary Committee have agreed to a report, in which they recommend that the Supreme Court shall consist of seven, the Court to be held in two sections, and in that case the Chief Justice could spare the time to act. The Governor, Attorney-General, and the Chief Justice, in my opinion, would constitute the best Commission. I am not in favor of the idea that there should be a Commission elected by the people. There should not be any increase in the number of State officers, for it is not necessary. But the idea of the Chief Justice, Governor, and Attorney-General I had written out the other day with the intention of presenting it. I borrowed it from another Constitution. I could not very well hear what the gentleman from Marin had to say about the Nevada Constitution. In Indiana they have a provision equally as good, that the Legislature shall provide for a Commission to act with the Governor.

A POINT OF ORDER.

MR. WATERS. I raise the point of order that there is not a quorum present. I am so informed.

MR. MCCALLUM. I call attention to the provisions of the Indiana Constitution.

MR. MURPHY. I move that the committee rise, report progress, and ask leave to sit again. I do this for the purpose of ascertaining whether there is a quorum present.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentleman: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Pardoning Power, have made progress

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therein, and ask leave to sit again. What is the pleasure of the Convention?

MINORITY REPORT OF THE COMMITTEE ON CORPORATIONS.

MR. BARBOUR. Mr. President: I ask leave to send up a minority report of the Committee or Corporations other than Municipal.

THE PRESIDENT. If there is no objection the report will be received.

To the Honorable President of the Convention:

A minority of the above committee, while agreeing in the main with the report of the majority herein, beg leave to submit their report recommending certain additional provisions and certain changes in the propositions recommended by the majority:

First—At the end of section three insert the following:

"The President, Manager, and Directors or Trustees of savings banks or trust companies, or any corporation for the deposit and loan of money, shall be individually and severally liable for any and all misappropriation of the funds intrusted to them, or any neglect or abuse in the administration of their trust."

Second—At the end of section five insert the following:

"All laws passed pursuant to this section may be altered from time to time, or repealed. It shall be the duty of the Legislature to pass laws for the regulation and control of corporations formed under this section; to protect depositors of savings banks; to prohibit loans by the officers to themselves or their partners, or the receipt by officers of commissions; to prohibit discriminations between borrowers on account of difference in the amounts borrowed; to prohibit exactions by attorneys of savings banks from intending borrowers; and to regulate by law the salaries paid the officers of savings banks.

Third—In section eight, after the word "companies," in line three, insert the words "at their own valuation, as made for the purpose of taxation."

Fourth—At the end of section twelve insert the following:

"*Provided*, that co-operative societies may be formed under general laws, which may provide by-laws of their own for limiting the representation of shareholders of their stock, and the number of shares that may be held; and the Legislature shall enact such laws as may be necessary for their faithful management and protection, and may limit the liabilities of their members."

Fifth—At the end of section fourteen insert the following:

"It shall be the duty of the Legislature to regulate by law the dealing in shares of stock of corporations; to prohibit margin and time sales; to prevent wash or pretended sales; to prohibit and punish the circulation of false reports to affect the price of shares of stocks; and to punish and prohibit combining or pooling means for the purpose of inflating or depressing the price of shares of stocks."

Sixth—In section fifteen, after the word "control," in line two, insert the following:

"Railroads heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property."

Seventh—In section twenty, after the word "commission," in line seven, insert the following:

"Said Commissioners shall have supervision of all railroads, other than street railroads, in this State; they shall have the sole power, and it shall be their duty to establish rates of charges for the transportation of passengers and freight thereon, and publish the same from time to time, with such changes as they may make; they shall have power to correct abuses and violations of law by such railroad corporations or other transportation companies; to hear and determine complaints against such railroad corporation or other transportation companies, and affix penalties and enforce them through the medium of the Courts; examine the books and papers of all such railroad corporations; administer oaths, and summon and examine witnesses; they shall report to the Governor annually their proceedings, and such other facts as may be deemed important; and shall perform such other duties, and shall have such further powers as shall be imposed and conferred by law. Nothing contained in this section shall be held to deny the right of action against any such companies of any person or any other company."

Each of said Commissioners shall receive an annual salary of three thousand dollars. They shall be allowed one Secretary, who shall receive an annual salary of one thousand eight hundred dollars.

CLITUS BARBOUR.
WM. F. WHITE.

LEAVE OF ABSENCE.

MR. LARKIN. I ask leave of absence for Messrs. Hoge and Belcher for two days.

Granted.

MR. GRAVES. I ask leave of absence for Mr. Mills for one day.

Granted.

A CALL OF THE CONVENTION.

MR. HUESTIS. There is not a quorum present, and I move that the Convention do now adjourn.

MR. NOEL. I object to any business being transacted.

MR. HUESTIS. I move we adjourn.

["Question," "question."]

MR. WICKES. I have a resolution to offer.

MR. ROLFE. There is no quorum present; I object.

[Cries of "object," "object," "question," "question," "call the roll," "ayes and noes."]

THE PRESIDENT. The Secretary will read the resolution.

THE SECRETARY read:

Resolved, That the Secretary of State be requested to state the cost price of articles furnished to members under the head of stationery.

MR. TERRY. There is no quorum present, and no business can be transacted.

MR. HOWARD, of Los Angeles (at two o'clock and fifty-seven minutes, P. M.)—I move to adjourn.

THE PRESIDENT. The question is on the motion to adjourn.

[Cries of "division," "ayes and noes."]

The motion was lost.

MR. MANSFIELD. I move a call of the house.

THE PRESIDENT. A call of the house is moved under Rule Twenty-two.

Carried.

THE PRESIDENT. The Sergeant-at-Arms will close the doors.

The doors were closed.

The Secretary called the roll, and the following members answered to their names:

Andrews,	Barton,	Boucher,
Barbour,	Beerstecher,	Brown,
Barry,	Blackmer,	Burt,
Caples,	Hunter,	Schell,
Charles,	Jones,	Schomp,
Condon,	Lampson,	Shurtleff,
Cowden,	Larkin,	Smith, of 4th District,
Crouch,	Larue,	Smith, of San Francisco,
Davis,	Lavigne,	Soule,
Dean,	Lewis,	Stedman,
Dowling,	Lindow,	Steele,
Dunlap,	Mansfield,	Stevenson,
Eagon,	Martin, of Santa Cruz,	Strong,
Estey,	McCallum,	Terry,
Evey,	McComas,	Thompson,
Finney,	McConnell,	Tinnin,
Freeman,	McFarland,	Townsend,
Garvey,	McNutt,	Turner,
Glascock,	Moreland,	Tuttle,
Grace,	Morse,	Vacquerel,
Graves,	Nason,	Van Dyke,
Hall,	Neunaber,	Walker, of Tuolumne,
Heiskell,	Noel,	Webster,
Herold,	O'Sullivan,	Weller,
Herrington,	Overton,	Wellin,
Hitchcock,	Porter,	Wickes,
Howard,	Pulliam,	White,
Huestis,	Ringgold,	Wyatt—86.
Hughey,	Rolfe,	

THE PRESIDENT. There is a quorum present.

MR. TURNER. I move that further proceedings under the call be dispensed with.

Lost.

THE PRESIDENT. What is the pleasure of the Convention?

MR. MURPHY. I move we now adjourn.

Division was called.

MR. BEERSTECHER. I see by the roll-call that the gentleman from Del Norte, Mr. Murphy, is absent, and I object to his voting or making any motion. [Laughter.]

MR. ROLFE. I object to the Secretary counting any one who is not present.

MR. BEERSTECHER. I object to his counting Mr. Reddy or Mr. Murphy, both absentees, according to the roll.

THE PRESIDENT. Out of order. The motion is lost—ayes, 38; noes, 49.

MR. STEDMAN. I move that the Sergeant-at-Arms be instructed to bring in all absent members who are found around town, at the hotels, etc.

MR. NOEL. I move to amend the motion so as to read, "That the Sergeant-at-Arms be instructed to bring in all absentees to the bar of this Convention."

Division was called.

THE PRESIDENT. The ayes have it.

MR. EAGON (at three o'clock and fifteen minutes P. M.) I move we now adjourn.

Division being called, the motion prevailed—ayes, 54; noes, 42—and the Convention stood adjourned.

FORTY-FIFTH DAY.

SACRAMENTO, Monday, November 11th, 1878.

At ten o'clock A. M., the President and President pro tem. both being absent, Mr. Larkin moved that Mr. Tinnin take the chair.

The motion being seconded, Mr. Larkin put the question, and it was carried.

MR. TINNIN. The Convention will come to order. The Secretary will call the roll.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Filcher,	Martin, of Santa Cruz,
Barbour,	Finney,	McCallum,
Barry,	Freeman,	McComas,
Barton,	Garvey,	McConnell,
Beerstecher,	Glascock,	McCoy,
Belcher,	Gorman,	McFarland,
Bell,	Grace,	McNutt,
Blackmer,	Graves,	Moffat,
Boucher,	Gregg,	Moreland,
Brown,	Heiskell,	Morse,
Burt,	Herold,	Murphy,
Caples,	Herrington,	Nason,
Chapman,	Hitchcock,	Nelson,
Charles,	Howard,	Neunaber,
Condon,	Huestis,	Noel,
Cowden,	Hughey,	Ohleyer,
Crouch,	Hunter,	O'Sullivan,
Davis,	Jones,	Overton,
Dean,	Kelley,	Porter,
Dowling,	Keyes,	Prouty,
Dunlap,	Kleine,	Pulliam,
Eagon,	Lampson,	Reddy,
Edgerton,	Larkin,	Reed,
Estee,	Larue,	Rhodes,
Estey,	Lavigne,	Ringgold,
Evey,	Lindow,	Rolfe,
Farrell,	Mansfield,	Schell,

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Schomp,	Swing,	Waters,
Shoemaker,	Terry,	Webster,
Shurtleff,	Thompson,	Weller,
Smith, of 4th District,	Tinnin,	Wellin,
Smith, of San Francisco,	Townsend,	West,
Soule,	Turner,	Wickes,
Stedman,	Tuttle,	White,
Steele,	Vacquerel,	Wilson, of Tehama,
Stevenson,	Van Dyke,	Wilson, of 1st District,
Strong,	Walker, of Tuolumne,	Wyatt,
Stuart,		

ABSENT.

Ayers,	Hale,	Miller,
Barnes,	Hall,	Mills,
Berry,	Harrison,	O'Donnell,
Biggs,	Harvey,	Reynolds,
Boggs,	Hilborn,	Shafter,
Campbell,	Holmes,	Smith, of Santa Clara,
Casserly,	Inman,	Sweasey,
Cross,	Johnson,	Swenson,
Doyle,	Joyce,	Tully,
Dudley, of San Joaquin,	Kenny,	Van Voorhies,
Dudley, of Solano,	Laine,	Walker, of Marin,
Fawcett,	Lewis,	Winans,
Freud,	Martin, of Alameda,	Mr. President.
Hager,		

LEAVE OF ABSENCE.

One day's leave of absence was granted Messrs. Dudley, of Solano, and Sweasey.

Two days' leave of absence was granted Mr. Tully.

MR. MURPHY. I move that one day's leave of absence be granted all absentees.

The motion prevailed, on a division, by a vote of forty-one ayes to twenty-one noes.

THE JOURNAL.

MR. HUESTIS. I move that the reading of the Journal be dispensed with.

Carried.

PETITION.

MR. CONDON presented a petition from furniture manufacturers and cabinet makers, in San Francisco, requesting that a clause be inserted in the Constitution prohibiting the further letting out by contracts of convict labor.

Reading was dispensed with, and it was referred to Committee on State Institutions and Public Buildings.

REPORT.

MR. TERRY presented the following report from the Committee on Legislative Department:

MR. PRESIDENT: The Committee on Legislative Department beg leave to report that they have examined the various propositions submitted to them, and report the same back with the following substitute, which they recommend may be adopted as article four of the proposed Constitution.

D. S. TERRY, Chairman.
JNO. MANSFIELD,
T. D. HEISKELL,
J. B. GARVEY,
JAMES CAPLES,
CHAS. T. FINNEY,
J. A. FILCHER,
W. J. GRAVES,
D. H. COWDEN,
J. G. McCALLUM.

ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power of this State shall be vested in a Senate and Assembly, which shall be designated the Legislature of the State of California, and the enacting clause of every law shall be as follows: "The people of the State of California, represented in Senate and Assembly, do enact as follows."

SEC. 2. The sessions of the Legislature shall be biennial, and shall commence on the first Monday after the first Tuesday in January next ensuing the election of its members, at twelve o'clock M., unless the Governor shall, in the interim, convene the Legislature by proclamation. No session shall continue longer than sixty days, except the first session called after the adoption of this Constitution, which may continue eighty days. And no bill shall be introduced, in either house, during the last ten days of the session without the consent of two thirds of the members of said house.

SEC. 3. The members of the Assembly shall be chosen biennially, by the qualified electors of their respective districts, on the first Tuesday after the first Monday in November, and their term of office shall be two years.

SEC. 4. Senators shall be chosen for the term of four years, at the same time and places as members of the Assembly; and no person shall be a member of the Senate or Assembly who has not been a citizen and inhabitant of the State, and of the district for which he shall be chosen, one year next before his election.

SEC. 5. The Senate shall consist of thirty members, and the Assembly of sixty members, to be elected by districts, as hereinafter provided. The seats of the fifteen Senators from the odd-numbered districts chosen at the first election under this Constitution shall be vacated at the expiration of the second year, so that one half of the Senate, after the first election, shall be chosen every two years.

SEC. 6. For the purpose of choosing members of the Legislature the State shall be divided into thirty districts, as nearly equal in population as may be, and composed of contiguous territory, to be called Legislative Districts. Each district shall choose one Senator and two members of the Assembly. The districts shall be numbered from one to thirty, inclusive, in numerical order, commencing at the northern boundary of of the State and ending at the southern boundary thereof. In the formation of said districts no county, or city and county, shall be divided, unless it contain sufficient population within itself to form two or more districts; nor shall a part of any county, or city and county, be united with any other county, or city and county, in forming any district. The census taken under the direction of the Congress of the United States in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the Legislature shall, at its first session after each census, adjust said districts and reapportion the representation, so as to preserve them as near equal in population as may be; but, in making such adjustment, no persons who are not eligible to become citizens of the United States under the naturalization laws shall be counted as forming the population of any district. Until such adjustment shall be made the First District shall consist of the Counties of Del Norte, Siskiyou, Modoc, Lassen, Shasta, and Trinity; the Second, of the Counties of Humboldt and Mendocino; the Third, of the Counties of Tehama and Butte; the Fourth, of the Counties of Colusa, Lake, and Sutter; the Fifth, of the County of Sonoma; the Sixth, of the Counties of Marin, Napa, and Contra Costa; the Seventh, of the Counties of Solano and Yolo; the eighth, of the Counties of Sierra, Yuba, and Plumas; the Ninth, of the County of Nevada; the Tenth, of the Counties of Placer and El Dorado; the Eleventh, of the County of Sacramento; the Twelfth, of the Counties of Calaveras, Alpine, and Amador; the Thirteenth, of the County of San Joaquin; the Fourteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at a point where Larkin Street intersects the waters of the Bay of San Francisco; thence meandering along the shore of said bay, in an easterly and southeasterly direction, to the point where Market Street intersects said bay; thence along Market Street to California Street; thence along California Street to Kearny Street; thence along Kearny street to Vallejo Street; thence along Vallejo Street to Larkin Street; and thence along Larkin Street to the waters of the Bay of San Francisco, the place of beginning; the Fifteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Larkin Street intersects Vallejo Street; thence along Vallejo Street to Kearny street; thence along Kearny Street to California Street; thence along California Street to Market Street; thence along Market Street to Kearny Street; thence along Kearny Street to Pine Street; thence along Pine Street to Larkin Street; and thence along Larkin Street to Vallejo Street, the place of beginning. The Sixteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Franklin Street intersects Pine Street; thence along Pine Street to Kearny Street; thence along Kearny Street to Market Street; thence along Market Street to Van Ness Avenue; thence along Van Ness Avenue to Tyler Street; thence along Tyler Street to Gough Street; thence along Gough Street to Geary Street; thence along Geary Street to Franklin Street; and thence along Franklin Street to Pine Street, the place of beginning. The Seventeenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Larkin Street intersects the waters of the Bay of San Francisco; thence along Larkin Street to Pine Street; thence along Pine Street to Franklin Street; thence along Franklin Street to Geary Street; thence along Geary Street to Gough Street; thence along Gough Street to Tyler Street; thence along Tyler Street to Van Ness Avenue; thence along Van Ness Avenue to Market Street; thence along Market Street to Ridley Street; thence along Ridley Street, and said Ridley Street produced in a direct line westerly to the Pacific Ocean; and thence meandering northerly and easterly along the waters of the Pacific Ocean and the Bay of San Francisco to Larkin Street, the place of beginning. The Eighteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Market Street intersects the waters of the Bay of San Francisco; thence meandering along the waters of said bay to the point where Channel Street intersects the waters of said bay; thence along Channel Street to Seventh Street; thence along Seventh Street to Harrison Street; thence along Harrison Street to Second Street; thence along Second Street to Market Street; and thence along Market Street to the waters of the Bay of San Francisco, the place of beginning. The Nineteenth, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Second Street intersects Market Street; thence along Second Street to Harrison Street; thence along Harrison Street to Sixth Street; thence along Sixth Street to Market Street; and thence along Market Street to Second Street, the place of beginning. The Twentieth, of all that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Sixth Street intersects Market Street; thence along Sixth Street to Harrison Street; thence along Harrison Street to Seventh Street; thence along Seventh Street to Channel Street; thence along Channel Street to Harrison Street; thence along Harrison Street to Fifteenth Street; thence along Fifteenth Street to Howard Street; thence along Howard Street to Fourteenth Street; thence along Fourteenth Street to Mission Street; thence along Mission Street to Ridley Street; thence along Ridley Street to Market Street; and thence along Market Street to Sixth Street, the place of beginning. The Twenty-first, of that portion of the City and County of San Francisco bounded and described as follows, to wit: Beginning at the point where Channel Street intersects the Bay of San Francisco; thence along Channel Street to Harrison Street; thence along Harrison Street to Fifteenth Street; thence along Fifteenth Street to Howard Street; thence along Howard Street to Fourteenth Street; thence along Fourteenth Street to Mission Street; thence along Mission Street to Rid-

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ley Street; thence along Ridley Street and the line of Ridley Street, projected westerly, to the Pacific Ocean; thence southerly along the Pacific Ocean to the southern boundary line of the City and County of San Francisco; thence along said southern boundary line to the Bay of San Francisco; and thence meandering along the waters of the Bay of San Francisco to Channel Street, the place of beginning. The Twenty-second, of Oakland Township, County of Alameda. The Twenty-third, of all that portion of the County of Alameda exclusive of Oakland Township. The Twenty-fourth, of the County of Santa Clara. The Twenty-fifth, of the Counties of Merced, Mariposa, Stanislaus, and Tuolumne. The Twenty-sixth, of the Counties of Tulare, Inyo, Fresno, and Mono. The Twenty-Seventh, of the Counties of Santa Cruz, San Mateo, and San Benito. The Twenty-eighth, of the Counties of Santa Barbara, San Luis Obispo, and Monterey. The Twenty-ninth, of the County of Los Angeles. The Thirtieth, of the Counties of San Bernardino, San Diego, Kern, and Ventura.

SEC. 7. Each house shall choose its own officers, and judge of the qualifications, elections, and returns of its own members.

SEC. 8. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide.

SEC. 9. Each house shall determine the rule of its own proceeding, and may, with the concurrence of two thirds of all the members elected, expel a member.

SEC. 10. Each house shall keep a Journal of its own proceedings, and publish the same, and the yeas and nays of the members of either house, on any question, shall, at the desire of any three members present, be entered on the Journal.

SEC. 11. Members of the Legislature shall, in all cases except treason, felony, and breach of the peace, be privileged from arrest, and shall not be subject to any civil process during the session of the Legislature, nor for fifteen days next before the commencement and after the termination of each session.

SEC. 12. When a vacancy occurs in either house, from any cause, during the session of the Legislature, the house in which said vacancy occurs shall proceed immediately to elect, from the constituency deprived of representation, a member to fill said vacancy for said session. If the Legislature is not in session at the time the vacancy occurs, the Governor, or the person exercising the functions of Governor, shall issue writs of election to fill such vacancy.

SEC. 13. The doors of each house shall be open, except on such occasions as in the opinion of the house may require secrecy.

SEC. 14. Neither house shall, without consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. 15. No law shall be passed except by bill. Any bill may originate in either house, but may be amended or rejected by the other, and on the final passage of all bills they shall be read at length, and the vote shall be by yeas and nays upon each bill separately, and shall be entered on the Journal; and no bill shall become a law without the concurrence of a majority of the members elected to each house.

SEC. 16. Every bill which may have passed the Legislature shall, before it becomes a law, be presented to the Governor. If he approve it, he shall sign it; but if not, he shall return it, with his objections, to the house in which it originated, which shall enter the same upon the Journal and proceed to reconsider it. If, after such reconsideration, it again pass both houses, by yeas and nays, by a majority of two thirds of the members of each house, it shall become a law notwithstanding the Governor's objection. If any bill shall not be returned within ten days after it shall have been presented to him (Sundays excepted), the same shall become a law in like manner as if he had signed it, unless the Legislature, by adjournment, prevents such return, in which case it shall not become a law, unless the Governor, within ten days after such adjournment (Sundays excepted), shall sign and deposit the same in the office of the Secretary of State, in which case it shall become a law in like manner as if it had been signed by him before adjournment. If any bill presented to the Governor contains several items of appropriation of money, he may object to one or more items, while approving other portions of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and the reasons therefor, and the appropriations so objected to shall not take effect unless passed over the Governor's veto, as hereinbefore provided. If the Legislature be in session, the Governor shall transmit to the house in which the bill originated a copy of such statement, and the items so objected to shall be separately reconsidered in the same manner as bills which have been disapproved by the Governor.

SEC. 17. The Assembly shall have the sole power of impeachment, and all impeachments shall be tried by the Senate. When sitting for that purpose, the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two thirds of the members elected.

SEC. 18. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, Surveyor-General, Justices of the Supreme Court, and Judges of the Superior Courts, shall be liable to impeachment for any misdemeanor in office; but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust, or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial, and punishment according to law. All other civil officers shall be tried for misdemeanor in office in such manner as the Legislature may provide.

SEC. 19. No Senator or member of Assembly shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which have been increased, during such term, except such offices as may be filled by election by the people.

SEC. 20. No person holding any lucrative office under the United States, or any other power, shall be eligible to any civil office of profit under this State; *provided*, that officers in the militia, to which there is attached no annual salary, or local officers, or Postmasters whose compensation does not exceed five hundred dollars per annum, shall not be deemed lucrative.

SEC. 21. No person who shall be convicted of the embezzlement or defalcation of the public funds of this State, or of any county or municipality therein, shall ever be eligible to any office of honor, trust, or profit under this State; and the Legislature shall provide by law for the punishment of such embezzlement or defalcation as a felony.

SEC. 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State as a State institution; nor shall any grant or donation of property ever be made thereto by the State. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature.

SEC. 23. The members of the Legislature shall receive for their services a compensation, per diem, and mileage, to be fixed by law, and paid out of the public treasury; but no increase of the compensation shall take effect during the term for which the members of either house shall have been elected.

SEC. 24. Every law enacted by the Legislature shall embrace but one subject, which shall be expressed in the title, and no law shall be revised or amended by reference to its title; but in such case the Act revised, or section amended, shall be reënacted and published at length as revised or amended.

SEC. 25. The Legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

First—Regulating the jurisdiction and duties of Justices of the Peace, Police Judges, and of Constables.

Second—For the punishment of crimes and misdemeanors.

Third—Regulating the practice of Courts of justice.

Fourth—Providing for changing the venue in civil or criminal cases.

Fifth—Granting divorces.

Sixth—Changing the names of persons or places.

Seventh—Vacating roads, town plats, streets, alleys, or public grounds not owned by the State.

Eighth—Summoning and impaneling grand and petit juries, and providing for their compensation.

Ninth—Regulating county and township business, or the election of county and township officers.

Tenth—For the assessment or collection of taxes.

Eleventh—Providing for conducting elections, or designating the places of voting, except on the organization of new counties.

Twelfth—Affecting estates belonging to minors or other persons under legal disabilities.

Thirteenth—Extending the time for the collection of taxes.

Fourteenth—Giving effect to invalid deeds, wills, or other instruments.

Fifteenth—Refunding money paid into the State treasury.

Sixteenth—Releasing or extinguishing, in whole or in part, the indebtedness, liability, or obligation of any corporation or person to this State, or to any municipal corporation therein.

Seventeenth—Declaring any person of age, or authorizing any minor to sell, lease, or incumber his or her property.

Eighteenth—Legalizing, except as against the State, the unauthorized or invalid act of any officer.

Nineteenth—Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

Twentieth—Exempting property from taxation.

Twenty-first—Changing county seats.

Twenty-second—Restoring to citizenship persons convicted of infamous crimes.

Twenty-third—Regulating the rate of interest on money.

Twenty-fourth—Authorizing the creation, extension, or impairing of liens.

Twenty-fifth—Chartering or licensing ferries, bridges, or roads.

Twenty-sixth—Remitting fines, penalties, or forfeitures.

Twenty-seventh—Providing for the management of common schools.

Twenty-eighth—Creating offices, or prescribing the powers and duties of officers in counties, cities, cities and counties, townships, election or school districts.

Twenty-ninth—Affecting the fees or salary of any officer.

Thirtieth—Changing the law of descent, or succession.

Thirty-first—Authorizing the adoption or legitimation of children.

Thirty-second—Authorizing the laying out, opening, altering, or maintaining roads, highways, streets, alleys, or public grounds.

Thirty-third—For limitation of civil or criminal actions.

Thirty-fourth—In all other cases where a general law can be made applicable, no local or special law shall be enacted.

SEC. 26. The Legislature shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery, in this State. The Legislature shall pass laws to regulate or prohibit the buying and selling of the shares of the capital stock of corporations in any stock board, stock exchange, or stock market under the control of any association. All contracts for the sale of shares of the capital stock of any corporation or association, on margin or to be delivered at a future day, shall be void, and any money paid on such contracts may be recovered by the party paying it by suit in any Court of competent jurisdiction.

SEC. 27. When a congressional district shall be composed of two or

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more counties, it shall not be separated by any county belonging to another district. No county or city and county shall be divided in forming a congressional district so as to attach one portion of a county or city and county to another county or city and county; but the Legislature may divide any county or city and county into as many congressional districts as it may be entitled to by law.

SEC. 28. The Legislature shall pass laws for the regulation and limitation of the charges for services performed and commodities furnished by corporations, and where laws shall provide for the selection of any person or officer to regulate and limit such rates, no such person or officer shall be selected by any corporation, and no person shall be selected who is an officer or stockholder in any corporation.

SEC. 29. Dues from corporations shall be secured by such individual liabilities of the corporators and other means as may be prescribed by law. The property of corporations now existing, or hereafter created, shall forever be subject to taxation, the same as the property of individuals, and the franchises of such corporations shall be assessed at their actual cash value, and taxed accordingly.

SEC. 30. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all Courts, in like cases as natural persons.

SEC. 31. The Legislature shall have no power to pass any Act granting any charter for banking purposes, but associations may be formed under general laws for the deposit of gold and silver and other lawful money of the United States; but no such associations shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank to circulate as money.

SEC. 32. The Legislature of this State shall prohibit by law any person or persons, association, company, or corporation, from exercising the privileges of banking or creating paper to circulate as money.

SEC. 33. Each stockholder of a corporation or joint stock association shall be individually and personally liable for his proportion of all its debts and liabilities contracted or incurred while he was a stockholder, and the Trustees or Directors of such corporation or association, and each of them, shall be responsible, individually, for the misappropriation by the officers thereof of the funds or deposits of such corporation or association.

SEC. 34. It shall be the duty of the Legislature to provide, by general laws, for the organization of city, town, and county governments, and for assessing and collecting taxes for the support of the same; *provided*, that no city, city and county, town, or county shall ever incur a debt which, together with existing indebtedness, shall exceed two per cent. of the assessed value of the property therein. Such value shall be ascertained from the assessment roll for State and county purposes made immediately previous to incurring such indebtedness; *provided, however*, that a city, city and county, town, or county may borrow money under and in accordance with the following conditions and limitations in addition to any other conditions and limitations contained in the Constitution, namely: the debt must be for some single work or object only, and must be authorized by a resolution passed by a vote of three fourths of all the members elected to the Board of Supervisors, Common Council, or local Legislature. Such resolution shall also distinctly specify the single work or object for which the debt is to be created, and the amount of the debt authorized, and shall contain provisions for a sinking fund to meet the same at maturity, and requiring at least ten per cent. of the principal to be annually raised by taxation and paid into the sinking fund. Such resolution shall not take effect until it shall be ratified at an election held in said city, city and county, county, or town, at which no other matter is voted upon, and which shall be held within —— days after the passage of said order or resolution. The Legislature shall make such laws as may be necessary to provide for holding such election and ascertaining the result thereof.

SEC. 35. In all elections by the Legislature the members thereof shall vote viva voce, and the votes shall be entered on the Journal.

SEC. 36. The general appropriation bill shall contain no item or items of appropriation other than such as are required to pay the salaries of the State officers, the expenses of the government, and of the institutions under the exclusive control and management of the State.

SEC. 37. Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.

SEC. 38. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal, or other corporation whatever; nor shall it have power to make any grant, or authorize the making of any grant, of any public money or thing of value to any individual, municipal, or other corporation whatever; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever.

SEC. 39. The Legislature shall have no power to grant, or authorize any county or municipal authority to grant, any extra compensation or allowance to any public officer, agent, servant, or contractor, after service has been rendered or a contract has been entered into and performed in whole or in part, nor to pay or to authorize the payment of any claim hereafter created against the State, or any county or municipality of the State, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void.

SEC. 40. The Legislature shall not ratify any amendment to the Constitution of the United States which may be proposed by Congress, except such as shall have been proposed and published at least thirty days next preceding the general election for members of the Legislature ratifying such amendment.

SEC. 41. In case of a contested election in either branch of the Legislature, only the claimant decided entitled to the seat shall receive from the State per diem compensation or mileage.

SEC. 42. In order that no inconvenience may result to the public service from the taking effect of this Constitution, no officer shall be suspended or superseded thereby until the election and qualification of the several officers provided for in this Constitution.

READING OF REPORTS.

MR. TERRY. Mr. President: The report is rather a long one, and it would probably be well to dispense with the reading and have it printed. I will state that the report is signed by all of the committee who were present. There are three propositions upon which the committee were not unanimous. Of course, any member of the committee can, in the house or in the Committee of the Whole, propose any such amendments as they deem proper.

MR. ROLFE. I move that the rule requiring reports of committees to be read be suspended, and that the reading of this report be dispensed with.

THE PRESIDENT. It requires one day's notice.

MR. GARVEY. A rule in order may be temporarily suspended.

MR. COWDEN. Part of the Legislative Committee have agreed upon a part of the report. I presume it would be the proper time now to put in the minority report. Mr. Garvey has it.

THE PRESIDENT. The Chair will rule that we cannot suspend the reading of the report.

MR. LARKIN. Is a motion in order now?

THE PRESIDENT. Yes.

MR. LARKIN. I move to take up and consider the resolution offered by Mr. Tinnin, to amend Rule Fifty-six by striking out "that the previous question shall not be moved."

THE PRESIDENT. The Chair misunderstood the gentleman. There is a report of a committee before the house.

MR. MURPHY. By unanimous consent the rule can be suspended.

THE PRESIDENT. Hearing no objection, the rule is suspended and the reading of the report dispensed with.

MINORITY REPORT.

MR. HEISKELL presented the following report from a minority of the Committee on Legislative Department:

MR. PRESIDENT: The undersigned members of the Committee on Legislative Department dissent from the conclusions arrived at by a majority of the committee as to State aid to the various charitable and benevolent institutions that have hitherto cared for the orphaned wards of this State. The State is the guardian; it stands in the place of parents towards the orphans within its limits. The trust is a high one and should be administered with a fidelity commensurate with its obligations. It is the purpose of the majority of your committee to destroy existing institutions which, as agents of the State, perform a portion of the functions of government—institutions which educate and rear these wards; institutions from whose doors the orphan is discharged properly trained to take upon himself the obligations and discharge the duties of American citizenship. Yet the majority have not pointed out any way in which the places of these institutions are to be filled in the economy of government. None will be so reckless as to assert that the State must not, in some form or other, care for them; and the only alternative, if the opinion of the majority of the committee should prevail with the Convention, would be the creation of costly asylums and the multiplication of public offices and commissions to manage them. That such a course would be unwise and would result in a lower grade of service at an increased cost, is a proposition which the undersigned believe cannot be successfully controverted.

The Legislature of this State has appropriated for several years past annually, the sum of one hundred dollars for the support of each whole orphan, the sum of seventy-five dollars for the support of each half orphan or abandoned child. An examination of the Controller's books will show that this is an average appropriation of about eighty-four dollars per annum, the half orphan and abandoned children being in excess of the whole orphans. That makes the cost twenty-three cents per day for each child. Out of this twenty-three cents should be taken, also, to start with, the cost of supporting some two hundred orphans of this State for which the asylums receive no compensation, but which would have to be supported in the State institutions. The asylums receive no compensation for orphans over fourteen years of age, while they receive within their doors many children twelve or thirteen years of age who have been brought up without any special training, whose habits are bad, and whom they dare not turn loose upon the world at that age. We will assume that we have twenty-three cents as the cost of maintaining the orphans. Now, let us compare that with the cost of maintaining any other class of persons in State institutions. From the report of the Directors of the Insane Asylum at Napa, we find it costs one dollar and thirty-one cents per day to maintain each person. At Stockton it costs under forty-three cents, about, we think, forty-two cents. Now, it is conceded, we believe, on all hands, that the Stockton Asylum is one of the best managed institutions in the United States, if not the best in the world. It has been so for years, so that it will not do to take the Stockton Asylum as a standard. The cost at our State Prison is forty-two and seven-tenths; at the Deaf, Dumb, and Blind Asylum, ninety-five cents. Now, to start with, we support the orphans at a less expense than any other class of people supported by the State. But that is not all. Besides supporting them we clothe them, and it costs more to clothe a boy or girl in an asylum than it does a convict in the State Prison, or an inmate in the Insane Asylum. Besides that, we educate them. The average cost of educating each child in the public schools of the State is twenty-nine dollars and six cents. They furnish them with books, which the State would have to do if it had a State institution. The cost of books cannot be less than three dollars per annum; so before you compare the cost of supporting these orphans in the asylums with these other public institutions, you must at the very outset, deduct from this eighty-four dollars per annum that the State now pays to these different associations, the cost of education, twenty-nine dollars and six cents, and the cost of books, three dollars per annum, which, deducted from eighty-four dollars, leaves fifty-one dollars per annum to pay for the support and maintenance, leaving a charge to the State, under the present

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system, of but fourteen cents per day. In other words, it costs this State but fourteen cents per day more to support its orphans than it costs to maintain the other children of the State. Each other child is an expense of twenty-nine dollars to the State, which the State has to pay every year in some form or other, and their books are an expense to you individually.

What will it cost to maintain these orphans if you build a State asylum? In the first place you must build asylums; and what will they cost this State? The money must be taken from the people, and the money is worth to the people of the State to-day not less than ten per cent. per annum—in fact that is below the average rate of interest in this State. Nearly half the taxpayers of the State borrow money and pay that rate of interest. What must you disburse at the very start for the orphans? We turn to the report of the Board of Directors and officers of the Deaf, Dumb, and Blind in order to state the cost of buildings in an authoritative manner: "The expense of housing the deaf, dumb, and blind sick, and insane in combustible buildings, ranges from one thousand dollars to three thousand dollars per capita. In our building it was about one thousand two hundred dollars. I am satisfied that in the cottage system, which can be constructed practically fire-proof, they can be constructed for one thousand dollars." Let us start with the lowest estimate. The Napa Asylum cost three thousand dollars per capita, and is not yet completed. But let us start with the lowest estimate, conceding that they will be as cheaply built and as economically managed as the Stockton institution, and we must expend for every child we maintain one thousand dollars to begin with. We must expend one thousand at the very outset. That is worth at ten per cent. per annum one hundred dollars per annum, or sixteen dollars more per annum for interest on the cost of constructing the buildings alone than you now pay for the entire support of these orphans. At eight per cent., which is an exceedingly low rate of interest, it would be eighty dollars a year; and at seven per cent.—and it is very hard to borrow money at that rate—it would be seventy dollars. Here you have spent the entire amount which you now pay; and your expenditures are yet to come for maintenance. Let us inquire what has been the success of reformatory schools controlled by the State. We tried this experiment at Marysville. We spent thousands of dollars there, and we found it cost four hundred dollars per annum to take care of each boy, and at the end the whole system was abolished, and the buildings were given to the City of Marysville. In the State of Nevada they have a public orphan asylum. There it has cost about four hundred dollars per annum for each child We may with propriety look at similar institutions in other States. We see from the report of the Board of State Charities of Massachusetts for eighteen hundred and seventy-five that the average weekly expenses there in one set of hospitals was three dollars and eighty-one cents; in another set, the almshouses, schools, etc., the weekly expense ranged all the way from one dollar and eighty cents to four dollars and eighty-nine cents; but the general average of the State was two dollars and eighty-nine cents per week. In the San Francisco Industrial School the average number of inmates was one thousand eight hundred and fifteen; total annual cost, thirty-eight thousand and seventy dollars and three cents; per capita, two hundred and sixty-two dollars and twelve cents per annum. In the Wisconsin Industrial School the cost is one hundred and forty-nine dollars and twenty-nine cents per annum per capita.

In Minnesota the average cost per capita is two dollars and seventy-two and a half cents. In Maine the State Reform School average per capita cost per week is: boys, three dollars and forty-nine cents; girls, two dollars and thirteen cents. In Pennsylvania the average cost of the Philadelphia House of Refuge was two hundred and five dollars and thirty-three cents per annum for each pupil, and in the Reform School, one hundred and eighty-five dollars and thirty-three cents.

No political party in this State has ever been charged with extravagance in making the usual appropriations for the orphans. No demand comes up from the people for a change. No complaint has been made as to the manner in which these great charities have been maintained.

But above the question of costs there stands another as to the efficiency of the service, and the undersigned have no hesitation in asserting that the destinies of the orphans are better placed in the hands of the good men and women of this State, who perform the duty as a labor of love, than they would be in the hands of officers chosen at random and paid with gold for their services.

We believe that under the present system the good of the orphans and of the State is best subserved. That under this system the ends of government have been fully met in the "best service at the least expense."

Respectfully submitted.

MARION BIGGS,
J. B. GARVEY,
T. D. HEISKELL,
D. H. COWDEN.

MR. HEISKELL. Mr. President: I move that report take the same course.

THE PRESIDENT. If there are no objections.

MR. MCCALLUM. I call for the reading of the report.

THE SECRETARY commenced the reading of the report.

MR. MCCALLUM. I now move that the reading of the report be dispensed with. I only wanted to see what was in it.

Carried.

MR. TERRY. I move that both reports be printed.

Carried.

PREVIOUS QUESTION IN COMMITTEE OF THE WHOLE.

MR. LARKIN. I move to take up the amendment to Rule Fifty-six offered by Mr. Tinnin, of Trinity. The amendment can be read by the Secretary.

THE SECRETARY read:

"Amend Rule Fifty-six by striking out the words, 'and the previous question shall not be moved.'"

The rule as it stood was as follows:

RULE 56. The rules of the Convention shall be observed in Committee of the Whole, so far as they may be applicable, except for limiting the times of speaking, and except that the ayes and noes shall not be taken, and that the previous question shall not be moved.

MR. LARKIN. Mr. President: In the interest of this Convention for the purposes we have assembled, I think it is necessary that that provision of the rule be struck out. I think there is much debate in the Committee of the Whole that is not necessary. I do not see why men should talk an hour on one proposition. Each gentleman can get up and give his views on the general reason why he votes for or against a proposition. I think it is time that we had power on the Committee of the Whole to move the previous question. I think it will expedite business. I therefore move that that amendment be adopted.

MR. ESTEE. Mr. President: That is very probably the case, and probably this Convention will adopt it, but it will have no effect unless another rule is changed. Another rule provides that Cushing's Manual shall be taken in all cases not provided for in the rules, and Cushing's Manual will prescribe that in Committee of the Whole the previous question cannot be moved. The gentleman might move to amend so as to read, "the previous question may be called in Committee of the Whole."

MR. LARKIN. I accept the amendment.

MR. TERRY. It would be better, and I move, to strike out the words "shall not" and insert the word "may." It will then read: "The rules of the Convention shall be observed in Committee of the Whole, so far as they may be applicable, except for limiting the times of speaking, and except that the ayes and noes shall not be taken, and that the previous question may be moved."

MR. HOWARD. I think it is too soon to adopt that rule. We ought to dispose of the question of corporations and taxation first. I move to amend so that it will read: "On and after the twentieth of November the previous question may be moved."

MR. BEERSTECHER. Mr. President: I hope that the rule will not be adopted. Jefferson's Manual, Cushing's Manual, and the rule as adopted by the deliberative bodies of the United States generally, do not allow the previous question to be moved in the Committee of the Whole. That has been the rule in this country for over fifty years. I do not see why we have become so wise—so much wiser than all deliberative bodies, and therefore desire to break a rule that has been found to work justly, and which has been found to be necessary in all deliberative bodies. If the gentlemen do not desire to have this rule take effect, the easiest way is not to resolve yourselves into Committee of the Whole. That is the very purpose and the very object of going into Committee of the Whole, that the previous question cannot be moved. It is to give more liberty of action, more freedom of speech, and if you do not desire to have that freedom of speech, then do not resolve into Committee of the Whole, but remain in Convention. It seems to me that when we go into Committee of the Whole, we should have the liberty of action which the Committee of the Whole gives to a deliberative body. This has been found necessary by the parliamentarians for over fifty years in this country.

I do not see, Mr. President, why the gentleman from El Dorado, Mr. Larkin, should be imbued with so much more wisdom than the parliamentarians whose names are recorded in history in this country, or why this gentleman should desire every day to break rules that have been approved by the wisdom of this country. I hope that this Convention will vote down anything of this character.

Mr. President, for those gentlemen who have a sufficient amount of brass it is easy to jump upon the floor at any time, and they will talk after they get upon the floor. As far as I am concerned, I am not afraid of this motion at all; but I desire to allow every individual member of this Convention an opportunity to get upon the floor and saying a few words. He may not be as interesting as some individuals are, but at the same time if he cannot so fluently utter his thoughts he may be able to stutter out words of wisdom. I believe in the stutterer of words of wisdom. I do hope that this amendment will not be adopted so as to give a few men in this Convention an opportunity of absolutely choking off a man who desires to speak. And therefore I hope that the Convention will not depart from the general rule adopted by the brightest parliamentarians of this country.

MR. LARKIN. Mr. President: We have been now forty-five days, I think, in session here since we have met. The appropriation for this Convention will not last more than thirty days more—I do not think it will last that. We have not yet adopted one section of the Constitution. We have not yet agreed upon one single article of the Constitution. Over half the time which a majority of the Convention expected it would take them has passed. Nothing yet has been done. The motion is not made to cut off the remarks of the gentleman from San Francisco, because we appreciate his remarks. It is not made for the purpose of hindering any member upon this floor from stating his position, for members are always courteous enough to yield to any man that privilege. But this Convention should now come to its work. We have considered that bill of rights for over two weeks. The Convention should have the right to move the previous question, and come to a vote on it. I am in favor of proceeding with this work. I am not here as a missionary to enlighten men, nor do I expect any other man to enlighten me by the arguments which are used here. If you expect to make a Constitution, you have got to adopt some rule by which you will proceed to it, and not by continuing the course we have. I ask it in the name of the people that desire a new Constitution, that we start now and consider these propositions, and that we have no more delays by speeches or special orders. The motion is made in good faith, and not to reflect upon any gentleman for occupying the floor. It is made in the interest of making the Constitution that the people demand that we should make. This Convention will not choke off debate. No member desires to choke off debate until we have exhausted the subject. But I believe that this Convention can best determine when they are satisfied with the discussion of a question and when it should close. I ask that we adopt the amendment offered by the gentleman from Trinity.

MR. TOWNSEND. Mr. President: I hope this amendment will prevail. I do not think that Cushing's Manual or Jefferson's Manual ever contemplated such a body as this meeting together in the world. [Laughter.] Some members seem to think that they must give us their enlightened views upon every question. Although I admit that it is very liberal of them, I do think that we can struggle through without their opinions in some cases. I think by the adoption of the amendment we would save time and get along with the business better.

MR. TERRY. Mr. President: There is an additional reason for the rule. A great many speeches have been made here which were no doubt very edifying to the members who sit in the immediate vicinity of the speakers, but the acoustics of this hall are so bad that the other members cannot hear. There are not more than seven or eight men in this hall whose voices can be heard by one third of the members of this Convention, and therefore I do not see that any great amount of instruction is to be received by any long debates under circumstances of that

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kind. The members in the immediate vicinity of a speaker can hear what he says, but the others can hear the racket but not the words. It strikes me that we have been long enough here together, and these propositions have been printed long enough, and the reports have been printed and considered long enough, for every member to have read and digested them, and made up his mind. I do not think that we want any more long speeches by members of the Convention.

MR. BLACKMER. Mr. President: I desire to offer an amendment to the amendment.

THE PRESIDENT. There are already two amendments.

MR. BEERSTECHER. I move that this whole matter be laid upon the table. I do it because nearly one half of this Convention are absent.

MR. LARKIN. I call for the ayes and noes.

MR. MURPHY. Ayes and noes.

MR. McCALLUM. Ayes and noes.

MR. DUNLAP. Ayes and noes.

MR. HUNTER. Ayes and noes.

MR. McCALLUM. It takes two thirds to change a rule, and it will take only a majority to lay on the table. It takes two thirds to change a rule.

MR. BEERSTECHER. I withdraw the motion, with the consent of the Convention.

THE PRESIDENT The question is on the adoption of the motion made by the gentleman from Los Angeles, General Howard.

THE SECRETARY read:

"Amend by striking out the words 'that the previous question shall not be moved,' and insert in lieu thereof the words, 'that the previous question shall not be moved until after the twentieth of November.'"

THE PRESIDENT. That is the amendment to the amendment, on which the question comes first.

Lost.

MR. BLACKMER. I desire to offer an amendment, which I have sent up.

THE SECRETARY read:

"Strike out all after the word 'taken,' in the last line, and insert the following: 'but the previous question may be moved by a two-third vote of the members present.'"

MR. BLACKMER. Mr. President: I offer this amendment for two reasons. First, because I think there should be more liberty in a discussion in Committee of the Whole than in the Convention. This will secure it, because it will take a two-third vote to move the previous question. For another reason, that the phraseology will be such as ought to be in a rule of this house. As it reads now with the amendment offered, we couple the time for speaking and the ayes and noes shall not be taken with a provision that the previous question may be moved. That is not what the Convention wishes to do. For these reasons I offer this amendment. It will give further liberty in the Committee of the Whole for discussion than we have in Convention, where the previous question may be called by a majority.

MR. NOEL. Mr. President: I hope that the amendment will not prevail, and that the rules of the Convention in this particular will not be changed. If the previous question may be moved in Committee of the Whole, the Convention may then very well dispense with the Committee of the Whole altogether. The only object that there can be in resolving the Convention into Committee of the Whole is to allow the utmost freedom of debate. If the debate in Committee of the Whole is to be cut off, we need have no Committee of the Whole. If the very purpose of it is taken from it we certainly will not need it.

MR. MURPHY. As the previous question is under discussion, I now move the previous question.

MR. WATERS. I second the motion.

MR. DOWLING. I call for the ayes and noes.

The question was put, and the Chair declared it carried, on a division, by an affirmative vote of eighty.

THE PRESIDENT. The first question is on the amendment offered by the gentleman from San Diego, Mr. Blackmer.

The amendment was lost.

THE PRESIDENT. The Secretary will read the next amendment.

THE SECRETARY read:

"Substitute the word 'may' for the words 'shall not.'"

MR. VAN DYKE. It ought to be stricken out and insert.

MR. TERRY. I accept the amendment.

THE SECRETARY read:

"Strike out the words 'shall not,' and insert the word 'may.'"

The amendment was adopted, on a division, by a vote of seventy-three ayes to twenty-four noes.

THE PRESIDENT. The question now recurs on the adoption of the rule as amended.

MR. EDGERTON. Will the Chair state the positon of the question.

THE PRESIDENT. Notice was given of a motion to amend Rule Fifty-six, by striking out the words, "that the previous question shall not be moved." The gentleman from San Joaquin, Mr. Terry, moved to amend the amendment, by striking out the words "shall not" and inserting the word "may." That amendment was adopted. The question now recurs on the adoption of the rule as amended.

MR. STEDMAN. I call for the ayes and noes.

THE PRESIDENT. We are acting under the previous question. The ayes and noes have been demanded by the gentleman from San Francisco, Mr. Beerstecher, the gentleman from San Francisco, Mr. Dowling, the gentleman from Monterey, Mr. Wyatt, the gentleman from Santa Clara, Mr. Herrington, and the gentleman from San Francisco, Mr. Bell. The Secretary will call the roll.

The roll was called.

MR. BARBOUR (when his name was called.) Mr. President: I ask leave to explain my vote.

THE PRESIDENT. If there be no objection the gentleman will have leave to explain his vote.

MR. TERRY. I object.

[Cries of "object," "object."]

MR. BARBOUR. Very good. That illustrates the object of the amendment, and I shall vote "no."

THE PRESIDENT announced the rule as amended adopted, by the following vote:

AYES.

Andrews,	Heiskell,	O'Sullivan,
Barry,	Herold,	Overton,
Belcher,	Hitchcock,	Porter,
Boucher,	Huestis,	Pulliam,
Burt,	Hughey,	Reed,
Caples,	Hunter,	Rhodes,
Chapman,	Jones,	Rolfe,
Charles,	Kelley,	Schell,
Condon,	Keyes,	Schomp,
Cowden,	Lampson,	Shurtleff,
Crouch,	Larkin,	Smith, of 4th District,
Davis,	Larue,	Soule,
Dean,	Lavigne,	Stevenson,
Dunlap,	Mansfield,	Strong,
Edgerton,	Martin, of Santa Cruz,	Stuart,
Estee,	McComas,	Terry,
Estey,	McConnell,	Tinnin,
Evey,	McCoy,	Townsend,
Filcher,	McNutt,	Turner,
Finney,	Moffat,	Van Dyke,
Freeman,	Moreland,	Waters,
Garvey,	Morse,	Webster,
Glascock,	Murphy,	Weller,
Gorman,	Nason,	West,
Graves,	Nelson,	Wilson, of Tehama—77.
Gregg,	Ohleyer,	

NOES.

Barbour,	Howard,	Stedman,
Barton,	Kleine,	Steele,
Beerstecher,	Lindow,	Tuttle,
Bell,	McCallum,	Vacquerel,
Blackmer,	McFarland,	Walker, of Tuolumne,
Brown,	Noel,	Wellin,
Dowling,	Reddy,	Wickes,
Farrell,	Ringgold,	White,
Grace,	Shoemaker,	Wyatt—29.
Herrington,	Smith, of San Francisco,	

MR. DOWLING. I desire to change my vote from "aye" to "no," for the purpose——

THE PRESIDENT. The gentleman is too late; the Chair has announced the result.

MR. EDGERTON. I wish to state that the gentleman was upon his feet, and distinctly called, "Mr. President," before the vote was announced.

MR. CONDON. I voted in the affirmative for the purpose of giving notice of a motion to reconsider, and I now give that notice.

PARDONING POWER.

MR. FREEMAN. Mr. President: I move that the Convention resolve itself into Committee of the Whole, Mr. Tinnin in the chair, for the purpose of further consideration of the report of the Committee on Pardoning Power.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from San Diego, Mr. Blackmer. The Secretary will read it.

THE SECRETARY read:

"Strike out all after the word 'impeachment,' in the fourth line, down to and including the word 'pardon,' in the seventh line, and insert the following: 'And such power shall be exercised only in case where new evidence is discovered after judgment establishing the innocence of the convicted party or the injustice of the sentence.'"

SPEECH OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: This discussion has already occupied considerable time. I do not wish to detain the committee for any length of time to further discuss the proposition, but I desire to say a few words upon the question, and perhaps this will be as good a time as I can take. I believe, sir, that all will agree, that we must have some government, and that that government must embrace among its other powers that of restraining and punishing those who transgress the laws made for the protection of its citizens. It will be admitted that a government without such authority could not exist. Now, sir, this being conceded, it follows that the laws, or the enforcement of such authority, should be uniform in their operation; and the restraint and punishment should be effective and certain in its application. The uncertainty of arrest and conviction could not be entirely eliminated from the problem, because it was beyond the reach of the authority that provides for the punishment; but the uncertainty of punishment after conviction should be reduced to the lowest minimum, both for the protection of society at large and for its influence on the criminal classes. A very large proportion of our criminals are educated to the profession. They are not the victims of some sudden impulse that carries them away, but they start wrong in the beginning, and their whole lives have been a school of iniquity, from which they have graduated as outcasts and criminals.

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The object of the law is two fold: first, to restrain and punish for the crime committed; and second, to deter others from committing like offenses; and no system can be effective unless these things are kept in view. The first ought to be done by the conviction, and the punishment determined upon by law. So long as the convict be retained he is punished for his crime. The second can only be effected when the punishment determined upon is sure to follow, without hope of pardon or abridgment. No one who has committed a crime against the peace of society should have reason to hope that he may escape the consequence of that crime after being convicted of it.

Now, Mr. President, I see no way to accomplish this very desirable object without making the punishment sure to follow the conviction, except where evidence is discovered that establishes the innocence of the convicted party or the injustice of the sentence passed upon him. This does not, as has been contended, abolish the pardoning power. It simply restricts the exercise to that class of cases where alone it should be exercised. The criminal who has been justly convicted of a crime has no claim upon executive clemency, and he ought not to be encouraged to expect it. Society has a right to protection from the injuries inflicted upon it by this dangerous class, and especially so if it has taken the necessary steps to protect itself by procuring a conviction and a sentence. It is not supposed that by any system we can adopt every case will be met exactly, but under the present system many are released while it is yet unsafe to allow them to go at large, and this is a case where there must be a judgment upon the basis of what is right as near as may be. We cannot consistently with our duty overlook the wrongs likely to be done society by an indiscriminate use of the pardoning power.

I do not believe, nor would I be understood to say, that the Executives of this State have ever been influenced by money or by the hope of political preferment to exercise this power in favor of any criminal or class of criminals. The cases in which they are urged to exercise it are made up with a view to enlisting sympathy in favor of the convict, and to make it appear that an injustice has been done him in the sentence, and they are so successfully managed that it is often impossible to determine the true inwardness of the application. Many of the honorable gentlemen in this Convention know by experience or observation how easy it is, after a criminal has been convicted and served a portion of his time in the State Prison, to get a petition signed for his pardon. It is not an uncommon thing for the Judge before whom he was tried and the entire jury that convicted him to petition for the pardon through sympathy for his family, who are the innocent sufferers for his crime. This has become so common that it is endangering society.

I heartily agree with the sentiment that justice should be tempered with mercy, but we have no right to carry that sentiment so far in its application as to forget that mercy should also be tempered with justice. Sympathy for the guilty should not blind us to the right of society to be protected.

Now, let us examine this proposition, and see what its effects would be if adopted. The first condition on which a pardon could be granted would be where evidence may be found after judgment establishing the innocence of the convicted party. This does not establish a new rule in regard to such cases. Pardons ought to be granted under such circumstances. It is thought by some that the word "establishing" there is too restricted; that it compels applicants for pardons to prove too much; and if this was the only class to which this provision might apply there would be some point in the objection, but this goes farther and includes every criminal who can produce evidence discovered after judgment, going to prove that the sentence was unjust. Now, if we take the whole proposition, it seems to me that it includes all who are entitled to pardons. If the convicted party be guilty, he has still an opportunity to prove the injustice of the sentence.

I think it is safe to say that there are many in whose favor this power has been exercised who would have been as well off to remain where they were, and that society would have been more secure, while much needless expense would have been saved if they had not been pardoned.

I have for many years believed that one of the needed reforms in our criminal jurisprudence was the making the prescribed punishment sure to follow upon conviction. I see no way of bringing about such a result except by restricting the pardoning power. I have no particular pride in this amendment, and do not object to its amendment if it can be improved, but I believe in the principle of it. I believe there is a demand for it, and I do not think we should hesitate to take this step in advance, and I believe, because we do not find a precedent behind which to shield ourselves, we should accept it or reject it upon its merits.

REMARKS OF MR. STEELE.

MR. STEELE. Mr. Chairman: "To err is human; to forgive, divine." I am opposed to the adoption of the amendment, because it is too cast-iron, too inflexible, too relentless in its scope to be incorporated in the Constitution. It has been well said, I think, that the laws which a people or a nation enacts for its self-government furnish the best criterion by which to judge of its intellectual and moral status. I do not believe that the people of the State of California are willing to incorporate into their Constitution a provision virtually abolishing the pardoning power, or, at least, so curtailing and crippling it as to render it almost ineffectual. I believe there should be some room left for the exercise of mercy. Mercy blesses both the giver and receiver. I have no doubt that the object of the gentleman in pressing the amendment is a good one. He wishes to relieve the Executive from this great pressure that is brought to bear upon him; and, in the second place, to protect society more effectually against criminals. Those objects are good, but we ought not to do it in such a manner as to render the pardoning power ineffectual, or abolish it almost entirely.

SPEECH OF MR. DOWLING.

MR. DOWLING. Mr. Chairman: I am not a sentimental man, and I am in favor of the amendment offered by the gentleman from San Diego, Mr. Blackmer, because, sir, the question of the pardoning power is one of essential importance to the people of California. We have to-day in this country—in this State—thousands of men running rampant through the land that ought to be ornamenting a rope, or in San Quentin. We have them in San Francisco by the hundred. Why? On account of the laxity of our laws; because we are not inflexible enough. We want the best welded iron in order to keep down criminals nowadays.

Mr. President, the reason that men should be more honest and more noble in this country than anywhere else, is because we have liberty here. We have liberty everywhere; liberty to rob, liberty to plunder, liberty to steal, liberty to do as we like, liberty to violate our laws. That is not liberty; for, Mr. President, liberty lies in obedience to just laws equitably administered and sternly executed. There is an invisible ligament binding liberty to justice, and if that is once severed, liberty is very vague—very capricious, I should say—and it may depart forever. But if we do not allow justice to have its course and hold the scales, and deal out justice to every offender of the law, why, we will never have what we call peace and tranquillity in the State.

Why, sir, if a man commits a crime and is tried by an impartial jury, before a just Judge, the jury has time to deliberate. They are called from all the walks of life; they are called from the plow, from the workshop, and from the counting house. When they pronounce a verdict of guilty on a criminal, I say that the eternal words should be written over the gates of San Quentin: "He who enters here leaves all hope behind;" and out of those doors he should not go until the last hour, until the last minute has expired. When once we do that, why, we will not have the gates of San Quentin opened every now and then by the good and philanthropic Governor. I saw an account of a man, in the Sacramento *Union*, that assaulted and murdered a woman in San Francisco, and he has confessed that he has been half a dozen times in the State Prison. This thing of the pardoning power is getting to be used too freely. We have got to punish crime or we will never have an end of crime, and I hope that that amendment will pass, for it is the very thing we want in California.

SPEECH OF MR. BELCHER.

MR. BELCHER. Mr. Chairman: I hope that the amendment will not pass. I do not believe that there has been any serious abuse of the pardoning power in this State. We have at this time one thousand five hundred men in the State Prison. We have had a large number at all times. Instead of the pardoning power having been abused, I think it might have been exercised more freely than it has with advantage. It is true, probably, that now and then a man has been pardoned who ought not to have been. But it is human to err, and it must be possible, with any system, that sometimes the Governor may be mistaken in the exercise of clemency. But there are, in my judgment, a hundred men in San Quentin now that would be better out than there, and no danger would be incurred by the State if they were pardoned. Now, it is said by the gentleman last on his feet that the State is running over with criminals, and that may be. There are a great many traversing the country who are criminals. It is said that one has been found lately in San Francisco who is charged with murdering a woman, and who has confessed to having been twice in the State Prison. That I saw, but it does not appear that the man had ever been pardoned. There are criminals sent to the State Prison that never ought to be turned loose upon society, but there are men sometimes in the State Prison who ought to be pardoned. There are boys, such as were spoken of by the gentleman from San Joaquin. There is a large number of boys there. If the object of sending them there is reform, you will never reform them if you keep them there. And it may be that many of those boys might be reformed if let out and taken by their friends.

I read yesterday of a boy some eighteen years of age, who came from Missouri less than a year ago, and has just been sentenced in Colusa County to four years in the State Prison. This boy was the son of an eminent physician in Missouri. He came to this State and tried to get work, but finding difficulties in his way at every step, and being unable to obtain work, he finally committed a crime, which was proven upon him, and he is sentenced to the State Prison. Now, that boy might not be really lost. It may be that the boy can be saved, not by keeping him four years in the State Prison, but by turning him over to better influences outside. Now, while it is true that one object of punishment is to deter others from committing like offenses, still you must strive, as far as may be, to save those who have already committed crimes. Now, I say that instead of the Governors having abused this power, they have not exercised it enough, in my judgment. It ought ought to be exercised freely. Out of the one thousand five hundred men and boys in the State Prison, there are many of them that might be pardoned and the State be all the better off for their being pardoned.

Now, I hold that the amendment offered by the gentleman from San Diego, Mr. Blackmer, would practically abolish the pardoning power. You say that pardon may be granted when the party is proved to be innocent. Of course such a one ought to be pardoned. Or, when it appears that the judgment is unjust. What is meant by a judgment being unjust? Here is a man who is called up and tried for a homicide, and the jury find him guilty of manslaughter, or murder in the second degree. There was evidence tending to show him guilty of an offense under the law. What is meant by saying that the judgment is unjust? One Judge might sentence him for life, and another Judge might sentence him to five or ten years. Which one of these judgments is unjust? They may say it is just in any case, because the man has been found guilty of the homicide. It is a just judgment, unless the party was convicted wrongfully. There ought to be a place where this question can be considered. There ought to be a man or a Board that can consider it. There are many cases where the judgment of the

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Governor can be exercised properly when those who do not understand his reasons may wonder why parties should be released from prison. A man is sometimes convicted under such circumstances that there is almost a general feeling of sympathy for him. Take some of these cases that have been spoken of, where there are some family disturbances. Somebody has entered into the family circle; the man is generally acquitted by the jury; but suppose the jury convicts? Now, the Judge cannot help himself. If the jury says "guilty," the Judge must pronounce the sentence, because it is the law. The man has committed a homicide and is guilty before the law; he must go to the State Prison for life, or for ten years, or for such time as the law prescribes, unless the Governor interposes his power and releases him from his imprisonment. I say that the Governor ought to do it, and if I were Governor I would do it if I had the power. I would be willing to put more power in the hands of our Governors in this respect. They have not betrayed this trust; they have not abused this privilege; they have exercised it fairly and well. I hope the amendment will be voted down.

SPEECH OF MR. BARRY.

MR. BARRY. Mr. Chairman: I do not agree with the gentleman from Yuba, that the Governors have not abused this power. I believe that it has been abused, not in one case, but in a great many cases. I will not charge any particular Governor with exercising the executive clemency improperly, but cases have been too frequent where it has been exercised to the detriment of justice. Nor will I hold that they have been governed by political influence, or by money. I would not lay any such charge at the door of any Governor. But it has been done by sympathetic appeals which they could not withstand. No wonder, is it, that the Governor will hie himself away to the mountains and remain away for weeks, when a wife or sister will be knocking at his door and pleading to him with the powers of speech and all the love that they have for a brother, son, husband, or father, as the case may be, until he is finally overpowered by the importunities on the part of friends or relatives of the prisoner, until he is finally compelled to grant a pardon.

Now, sir, as gentlemen have intimated, pardons are frequently recommended by the jury and sometimes by the Judge, which I am sorry to say is against the interests of justice. When a man is convicted of a felony, sometimes the whole community feels that he ought to be punished severely; but I care not how great that feeling is at the time, in a very short time it is removed, and gradually sympathy takes the place of it. Yet, at the same time, that will be abused. It is often carried too far, and it is so that men forget the perpetrator of the crime in the desire to have him pardoned, through sympathy.

There is another objection to this amendment. I think that it places too great a restriction upon the power of pardon in this: that if a prisoner was taken sick, or when they are liable to die within a short time, there will be no power to pardon them. That is the case in a number of instances. Men who have been confined for five, ten, fifteen, or twenty years will fall into consumption, and it is evident that they can not live but a short time unless removed from there. There are times, in cases like that, when the executive clemency should be interposed; when mercy and humanity calls for it; that a person in that condition should be removed, especially when he has relatives that are willing to take charge of him; where in a short time he will answer before the Judge of all. I hold that in a case of that kind, where a man has relatives and where his time on earth is short, and there is no fear that the case will be abused, it is right that those who are relatives of his should take charge of him. It is right that his eyes should be closed in death by the mother who looks upon him as fondly as when she rocked him as a baby; she who never thinks that her boy was guilty, or son, or father, or husband, no matter what the crime may be. No matter how others look upon him; though he may be an object upon whom all look with disdain; though he may be ostracised from society, yet there is still one and sometimes others whose hearts beat as warmly towards him as they ever did, and who cannot think him guilty.

MR. BLACKMER. Mr. Chairman: Is it not true to-day that the prison discipline allows this class of convicts to be out as trusties in different parts of the place or near by? It would be unlikely that a man would be denied that privilege of being put out in that way.

MR. BARRY. Mr. Chairman: I believe that under this amendment the Governor would be denied the exercise of the pardoning power even in a case of that kind. While that class of prisoners could go out in the yard, they could not go to their relatives. I do not think if the Pardoning Board had this power they would abuse it. If a man was simply sick temporarily, for a short time, I do not believe that the Board would say that he should be pardoned, but only in those cases where the interests of humanity required it. When men become sick so that it is certain that they will die, then is the time for executive clemency.

MR. BLACKMER. If the gentleman will propose an amendment to cover that point, I will accept it.

MR. BARRY. Mr. Chairman: My idea is that this pardoning power should be placed in a Board of two, or three or more. Probably the best would be the Governor, Attorney-General, and the Supreme Court constituting a Board of Pardons. I have heard that with them the power has not been abused; that it has been used wisely; and I think that if we had it in this State it would be much better. The argument is used that the Supreme Court is overworked now. Well, I think that with the provisions that we shall put into the Constitution, their labor will not be so great as in the past, and that they could attend to this duty. But we might allow the Governor to use the power in cases of misdemeanor, and in cases of felony leave it be decided by the Governor, Attorney-General, and Chief Justice, or a majority of them. I do not think anything less will satisfy the people of this State, than to have a Board of Pardons. So amend the Constitution that they shall be selected—either the Governor and Attorney-General, or the Governor, Attorney-General, and the Chief Justice—if gentlemen object to the Supreme Court being associated with it. I believe that with the Chief Justice, with his ability, with his calm judicial mind, exercising the power with the Governor and Attorney-General, it would be a wise provision. I think that with such a Board of Pardons where the interests of justice required that a man should not be pardoned the pardon will be refused. I think, therefore, that I shall vote against this proposition.

SPEECH OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: It seems to me that the amendment under consideration removes the word "pardon," in its proper signification, from the Constitution and laws of this State. If it is to be adopted California will be the first State in the Union to place a constitutional prohibition upon the promptings of mercy and the voice of humanity. Why talk about pardoning a man who is shown to be innocent? Such a man has done nothing to be forgiven. His release from punishment is a matter of right and not a matter of grace. Neither is it a pardon to relieve a man, though guilty of crime, who has served out so much of his penalty as is just. Such a man, having paid the equitable penalty of his crime, is released as a matter of justice and not as a matter of favor. Pardon, as I understand the word, is forgiveness for a crime committed, and in that sense of the term I defend the existence of the pardoning power. It is not wise to place even a criminal where there is no incentive to good rather than to bad conduct. Is there to be no difference between that convict who obeys all the rules of the prison, who labors industriously and faithfully, and who, so far as he can, respects and preserves the interests of the State, and that other convict who lives in constant defiance of the prison discipline, who is universally an incorrigible dissolute, and who embraces every opportunity to injure the State and to take the lives of his keepers? Is it not common, even for convicts, in time of revolt, to place their services on the side of the State, and have they not even rescued from death the keepers who are placed over them? Is it not true that the sentences of several convicts in the State Prison were commuted a few years ago for their heroic conduct at the time of the fire there? Would you say to such men, "Sir, the State accepts your services and your devotion, but a provision in our Constitution prevents us from expressing our gratitude to you. We cannot make any distinction in your favor. Your good deeds must await their reward in heaven?"

And, sir, besides the instances I have just alluded to, there must be many cases where even after a just conviction, even considering the guilt of a man, his subsequent demeanor and his subsequent conduct shows that he ought to be restored to society, and given an opportunity to make a man of himself. The proposition under consideration would make the pardoning power simply a Court of appeal, or a place for the correction of errors. If that is the purpose, we ought to strike out the words, "Chief Justice of the Supreme Court," and the word, "Governor," and place it in the hands of the legal authorities. Pardon is intended to exist as a matter of grace, and there must be some one intrusted with this power in a civilized country.

But it is said that the pardoning power has been abused. I suppose that no power can exist without mistakes. I suppose that there is no department of our government but what commits errors, and if we are resolved not to do anything that will not always operate correctly, we will stay the operations of every department of government. But I believe that more errors have been committed against than in favor of mercy. Why, sir, in the twenty-eight or twenty-nine years during which California has been a State, it is said that only seven hundred and thirty persons have been pardoned. That is not a large percentage. Do we not know that many of these persons were only set free after their sentences had almost expired, and when they had paid nearly the full penalty due to the State? Do we not know that many were only set free because the sands of life were ebbing low, and it was desired that they might end their days in the presence and care of friends?

I deny that this power has been abused to any considerable extent, and I believe that a limitation, such as is proposed here, would take from every young man their incentive to good behavior and to good conduct. But there is another consideration. It must be remembered that the pardoning power has been a part of our system of government. It must be remembered that the consideration of the existence of the pardoning power has entered into every sentence of every one of those one thousand five hundred men who are said to be serving there. I know a number of Judges who have told me that they have sentenced men to long periods of confinement because they believed that a desire to escape would be an incentive to behave righteously and properly, to so ingratiate themselves with the prison authorities that at the end of a suitable time, when the Wardens believed they had been sufficiently punished, and when they believed it was safe to restore them to society, that they would be restored; and the adoption of this will add to the sentence of these men who have been sentenced with a view to the existence and continuance of this power.

REMARKS OF MR. SMITH, OF SAN FRANCISCO.

MR. SMITH, of San Francisco. Mr. Chairman: I am opposed to the whole section, because in my estimation there are too many pardons entirely. I think that the Governor should be the last man to have any thing to do with the pardoning power. I am in favor of abolishing the pardoning power altogether. It appears to me that when a man has once been convicted of a crime, he should suffer the consequences. It is offering a premium on crime. It is opening the door to corruption. I hope, if we must have the pardoning power at all, it will be vested in a Pardoning Board. I think the Governor should be the last man to hold this power, because he is generally too tender. He would not like to offend any political friends, as it would hinder his chances of elevating himself in political position. I do not wish to leave it in the power of

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any Governor of this State to turn loose the bank smashers and political thieves to again rob the people. Therefore, I think it should be in a Board of Pardon Commissioners.

MR. RINGGOLD. Mr. Chairman: I am opposed to all the propositions, so far. I see no improvement upon the original section. For one reason, I should prefer that the Governor should be responsible, and that is that the Governor is anxious to be relieved of it. For that reason I prefer to keep it there. I would be willing to have the power left right where it is.

REMARKS OF MR. OVERTON.

MR. OVERTON. Mr. Chairman: It is a little surprising to me to see gentlemen get up here, some of them, and seem to want to abrogate entirely this pardoning power. One of the reasons that some of the gentlemen assign is that some particular man has got away with the funds of some savings bank, or he has done something which it is true he ought to be punished for, and they seem to think that because of that we ought to close the doors forever against the pardoning of prisoners. There are instances where I think this pardoning power should be exercised, and many of them. So far as I am concerned, I am willing to leave it where it has been, and where it is left in most of the States. I remember a case which illustrates it. I remember when I was prosecuting attorney, that I tried some eight boys, at one time, for a robbery that they had perpetrated upon a lot of Chinamen—all of them young excepting one. They were led to it by this older head. They were convicted—necessarily convicted—under the law, and had to be sent to San Quentin. Nearly all of those boys, who were young, and many of them I had known from little children, were pardoned by the Governor. Nearly every one of them to-day, and all of them, so far as I know, are doing well. They reformed and became good citizens. There are many cases of this kind, and like that mentioned by Judge Belcher, where the penalty must be inflicted, because it is the law. I say that there should be some way in which executive clemency can be exercised. I am in favor, so far as I am concerned, of leaving the pardoning power just as it is. I do not believe that it has ever been abused, except in very few instances, and then I think it has been by the Executive being imposed upon. If the Executive has been imposed upon, they are just as likely to impose upon other men. I think it is better where there is only one man, because he will be more careful than where you divide the responsibility.

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was lost.

MR. SCHELL. Mr. Chairman: I desire to renew a motion made on Saturday in regard to this section. It is to "strike out all of line two and the words 'power to grant,' in the third line." It does not alter the sense in anywise. The motion is simply to make a verbal correction. It will then read: "The Governor shall have the power to grant reprieves, pardons, and commutations of sentence," etc.

Adopted.

MR. HUESTIS. I move to strike out the word "previously," in the seventeenth line. As it now stands, the language is equivocal, and conveys the idea that where a man shall have been thrice convicted he can be pardoned.

MR. SCHELL. I understand that that word has already been stricken out.

THE CHAIRMAN. The Chair understands that it is not stricken out.

MR. ROLFE. Mr. Chairman: It is obvious to any gentleman who will read this that this leaves it equivocal. If I understand the intention of the committee it was to fix it so that where a person had been convicted of a felony three times, he could not be pardoned. Now, I think this would bear the construction that he would have to get up to his fourth conviction before this inhibition would apply. To prohibit the pardon it would have to appear that he had been convicted three times previously to that conviction for which the pardon was asked. Now, it simply means that if with that conviction he has been three times convicted, a pardon cannot be granted. Therefore, it will read right if this word "previously" is stricken out. I know that is what was intended by the committee. I am on that committee myself, and Judge Shafter called my attention to it before he left.

The amendment was adopted.

MR. GRACE. I wish to submit a substitute for the whole section.

MR. ESTEE. I rise to a point of order. A substitute cannot be offered, as the committee has already adopted a part of the section.

THE CHAIRMAN. The Chair will so rule. The motion is out of order as a substitute for the whole.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. Chairman: I am opposed to this thing of granting the power of pardon to the Governor. I do not think that the Governor knows any more about the sentence of a criminal than a jury of twelve men. When a man has been arrested and tried before a jury of twelve men, who have sat in Court for days, with the best counsel that can be procured in the State; they hear the evidence and they investigate it; they sit there with a disposition only to do justice; when the case goes to the jury they are instructed by a just and impartial Judge that if there remains any reasonable doubt in relation to the guilt or innocence of the prisoner, that the prisoner is entitled to the benefit of the doubt; when he is convicted after the jury has given him the benefit of the doubt, then I am of the opinion that that man is guilty, and when he is sentenced to the Penitentiary, he should stay there until he serves out the last day of that sentence. In relation to one other thing that was said——

MR. TERRY. I rise to a point of order. There is nothing before the house.

MR. GRACE. Isn't the pardoning power——

THE CHAIRMAN. The Chair rules that the whole section is now before the committee. The gentleman has a right to speak to it.

MR. TERRY. I understand that there is no motion to amend.

MR. GRACE. If the gentleman will sit down——

THE CHAIRMAN. The Chair will rule that the whole section is before the house.

MR. GRACE. The gentleman from Sacramento says that there has been seven hundred and fifty men pardoned out. Well, let us multiply that by twelve. There has been nine thousand impartial jurors that have said men ought to go to the penitentiary, and seven or eight Governors have pardoned them out. We have their opinions against nine thousand honest jurymen. These jurymen have investigated the cases and rendered impartial verdicts. It was their opinion that they were guilty, and these Governors, for reasons brought to bear by friends, have seen fit, in their wisdom, to say that they should be pardoned. I believe that the Governor should have the right to grant reprieves. I put in a proposition to that effect, and they recommended that it be not adopted. I would like to have had the sense of the Committee of the Whole on that. I believe that there are instances where new facts are developed that would bring into question the justice of the sentence, and that the criminal should have a reprieve. I believe it should be the duty of the Governor to remand him to the District Court from whence he was sentenced, and if he could show anything to bring into question the justice of the sentence, let him prove it before a jury of his countrymen. I claim that there should be no other tribunal, and nothing above a jury of his countrymen. That no Governor should have the power to say that a man should be pardoned after he had been sentenced by twelve jurymen of his country. And then, if you want to come down to exact justice, if you want to meet the ends of justice, say that no man should go unpunished after that opportunity. There is nothing inhuman about that. It would never affect any poor man. The poor man may go to the penitentiary and the circumstances do not develop. It takes something metallic to show the innocence of a criminal. I say that the bank smashing thieves and stock gambling thieves in this State, and every other State in the Union, can do things with impunity, and can ride roughshod over the law—steal, rob, and murder—and when they are sentenced then the Governor will pardon them out. There are cases in this State, and there have been in others. There is the case of Stokes, who murdered Fisk. He was only up in the penitentiary of New York for a few years and then he was turned loose, though it was in my opinion a cold blooded murder. There is not only a dozen cases in the United States, but hundreds of cases, where men of influence and wealth have been convicted and there is no prison strong enough to hold them. If you give the pardoning power to the Governor there is no punishing the moneyed aristocracy of the land. Put it into the hands of jurymen, who are good men.

MR. HERRINGTON. Mr. Chairman: I have an amendment to offer.

THE SECRETARY read:

"Amend section thirteen, of article five, as proposed by the Committee on Pardoning Power, by inserting in line sixteen, after the word 'case' and before the word 'where' the words 'of embezzlement or.'"

THE CHAIRMAN. The question is on the adoption of the amendment.

MR. HERRINGTON. Mr. Chairman: I offer that amendment because of the peculiarity of the offense of embezzlement. It is an offense which but few persons, where an opportunity is given to commit it, are able to avoid. The trust that is reposed in these banking corporations, saving and loan societies; the trust that is reposed in public officers who have committed to their charge public funds; the trusts that are reposed in persons who have in their hands the estates of deceased persons and those of minors, orphans, and persons committed to the insane asylum, are peculiar cases in my estimation of the law. I think they ought to be exempt from the general rule applicable to pardons, and that is the reason for offering this amendment. It will make that clause of the section read: "Neither the Governor and Chief Justice nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case of embezzlement, or where the convict has been thrice convicted of felony." These are the reasons that I offer that amendment. I think that that amendment presents a case which ought to be exempted from the general rule.

MR. ROLFE. Mr. Chairman: If I understand the amendment correctly, it seems to me that it would make an absurdity on its face. "Neither the Governor and Chief Justice, nor the Legislature"—whereas the section does not propose to allow anybody but the Governor to grant any kind of a pardon.

MR. HERRINGTON. Mr. Chairman: I ask leave to include in that amendment such an amendment as will make this last sentence conform to the first part of the section. Of course that is the way the section now reads, and it did not occur to me at the time that an amendment had been made to the former part of the section. Of course this last part ought to conform. I overlooked the fact that the amendment to the first part of the section had confined pardons to the Governor. It will not vitiate the section if it remains even in the form that it is now presented. If the gentleman will offer that amendment I will accept it; otherwise I ask leave to amend it so as to make it conform in that way.

The amendment was lost.

MR. SHOEMAKER (at twelve noon). I move that the committee rise, report progress, and ask leave to sit again.

Lost.

MR. WHITE. Mr. Chairman: I offer the following amendment.

THE SECRETARY read:

"The Governor of the State shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence, and pardons, except in cases of impeachment; but no pardon shall be granted, nor sentence commuted, except upon the recommendation, in writing, of

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the Lieutenant-Governor, Secretary of the Commonwealth, Attorney-General, and Secretary of Internal Affairs, or any three of them, after full hearing, upon due public notice and in open session, and such recommendation, with reasons therefor at length, shall be recorded and filed in the office of the Secretary of the Commonwealth."

MR. WHITE. Mr. Chairman: That is the mode adopted in Pennsylvania. I copied it from the late Constitution of that State. Pennsylvania formerly left it to the Governor altogether. When she had her last Convention they adopted this mode. I think it is excellent. Next, to do away with it altogether, which I am in favor of.

THE CHAIRMAN. The Chair will rule that the amendment is out of order, as it seems to be a substitute for the whole matter.

MR. GRACE. I wish to offer an amendment.

THE SECRETARY read:

"Insert after the word 'reprieves' the following: 'But nothing herein contained shall be construed to authorize the granting of pardons or commutations of sentence after conviction; but if it shall appear to the Governor that in the case of any person undergoing sentence, additional testimony mitigating the other circumstances have been developed which bring into question the justice of such sentence, the Governor shall have the power to remand such person to the custody of the Court in which the sentence was passed, for a new trial.'"

MR. GRACE. Mr. Chairman: Now, all I have to say to this Convention is this: that if they want to meet the ends of justice and come down to just exactly what is right, they will adopt this amendment. If any man has been convicted of a crime of which he is not guilty, and facts have been developed since his sentence, why, that leaves a chance that he may still be acquitted of it; and, if he is really guilty, and there has nothing occurred only sympathy and friends and moneyed influence on the outside, he will have to stay in the penitentiary. I tell you that a jury of twelve men ain't going to let them out. It takes evidence. It must be the truth that is sworn to and proved. The same rule should apply to pardons as to trials. It should be the same kind of evidence. If you establish a commission it will be something like the machine that got Mr. Hayes into the Presidential chair. I contend that three Democrats and two Republicans could have decided that just as well as eight Republicans and seven Democrats. [Laughter.] If you want to get justice let it be an even tribunal. And, sir, if it is right for twelve men to send men to the penitentiary, then it will be nothing more than right and fair to submit the question of the justice of a sentence to twelve men. Justice should be blind, and they should look at the evidence instead of the sympathy and the filthy lucre that has been brought to bear upon the Executive. I do not believe that there has been seven hundred and fifty men put in the penitentiary who ought not to have been. If so, you say nine thousand jurymen were not honest, and the Governors were infallible. I do not believe in the infallibility of the Governor. I think he is more liable to err than twelve jurymen. If you are in favor of coming down to a fair, square proposition, whereby no man can be left in the penitentiary unless he deserves to be there, and no man can get out unless he ought to, then vote for this proposition. I am in hopes that this amendment will prevail.

REMARKS OF MR. STEDMAN.

MR. STEDMAN. Mr. Chairman: I do not desire to detain this Convention with a long speech. I desire simply to say that in my opinion the section is now in its proper form. I hope that all amendments will be voted down, and that the section will be adopted as it now stands. As I understand our prisons, they are, or ought to be, reformatory in character. When men are placed in the State Prison, and understand it, they are placed there in order that they might be reformed and become better men. Can we not extend to them mercy and charity? Mr. Chairman, let us put ourselves in their places.

[Laughter and cries of "Oh, no!"]

MR. ROLFE. I move that the gentleman have leave to put himself in that position.

[Cries of "Leave!" "leave!"]

MR. STEDMAN. Mr. Chairman: I cannot better express my sentiments than by reading—for I do not remember it—the words of the old Scotch poem, and then I will sit down, and after which I hope the section will be adopted. Here it is:

"Oh, gently scan your brother man,
Still gentler, sister woman;
Though they may gang ——

MR. EDGERTON. Mr. Chairman: I merely rise to suggest that the gentleman sing it.

[Cries of "sing!" "sing!"]

MR. STEDMAN. As I am not in the habit of soaring aloft as my friend from Sacramento is, I am sure that I could not as aptly be called a bird; therefore, if he desires to sing it, I will turn it over to him. Perhaps I am not competent to read it correctly:

"Oh, gently scan your brother man,
Still gentler, sister woman;
Though they may gang a kennin' wrang—
To step aside is human.
One point must still be greatly dark,
The moving why they do it;
And just as lamely can ye mark
How far, perhaps, they rue it."

MR. HOWARD. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Pardoning Power, report progress, and ask leave to sit again.

The hour having arrived, the Convention took the usual recess until two P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., Mr. Tinnin in the chair.

Roll called, and quorum present.

NOTICES TO AMEND RULES.

MR. ESTEE. Mr. President: I wish to give notice that to-morrow I will move the adoption of the following rule, to be known as Rule Seventy-six:

THE SECRETARY read the notice:

"Every section adopted by the Committee of the Whole shall be referred to the Committee on Revision and Adjusting without debate, whose duty it shall be to formulate the same and report it back to the Convention before final action thereon."

MR. CONDON. Mr. President: I give notice that I will, on to-morrow, move to amend Rule Fifty-two, by striking therefrom the words, "by title."

MR. STEDMAN. Mr. President: I desire to give notice that I shall, to-morrow, move to strike out of Rule Fifty-six the words, "except for a limited time," and substitute other words.

THE PRESIDENT. Send up the notice in writing.

AMENDMENTS.

MR. HERRINGTON. Mr. President: I ask leave to introduce, at this time, a proposed amendment to the article introduced by the Committee on Corporations other than Municipal, by adding thereto the following:

THE SECRETARY read:

"Every railroad company or association existing under the laws of this State at the time of the adoption of this Constitution, shall accept the provisions of this article in good faith before being entitled to claim or have any of the benefits of any future legislation thereunder."

MR. HERRINGTON. My intention is to make that section twenty-four of the report.

THE PRESIDENT. It will be printed and referred to the Committee of the Whole, to be considered with the article on corporations.

MR. FREEMAN. I move that the Convention resolve itself into Committee of the Whole to further consider the report of the Committee on Pardoning Power.

MR. BEERSTECHER. I would like to have leave, before we go into Committee of the Whole, to introduce an amendment in relation to the creation of a State Department of Labor. The amendment was received:

STATE DEPARTMENT OF LABOR AND LABOR STATISTICS.

SECTION 1. There shall be a State Department of Labor and Labor Statistics.

SEC. 2. The duty of the department shall be to collect and publish statistical details concerning every class of labor in this State; also to have general supervision of the commercial, industrial, educational, social, and sanitary condition of the laboring classes.

SEC. 3. Weekly and annual reports shall be made by the department and printed by the State Printer, and gratuitously distributed throughout the State. The chief of the department shall also report to each Legislature, and advise such legislation as may be necessary to encourage and protect labor.

SEC. 4. The officers shall be a General Superintendent, with an office in the State Capitol building; and a Superintendent, with an office in the City of San Francisco. They shall be elected at the general State election, and hold office for four years. Their salary shall be two hundred ($200) dollars per month.

SEC. 5. The Legislature may provide for traveling and other incidental expenses, and for employment of clerks, and their compensation.

MR. BEERSTECHER. This amendment was referred to the Committee on Legislative Department. I think it was improperly referred. I understand that there will be a meeting of the Committee on Labor and Capital this evening, and I would like to have this amendment considered at that time, therefore I move its reference to that committee.

So ordered.

NOTICE TO AMEND A RULE.

MR. STEELE. Mr. President: I hereby give notice that, to-morrow, immediately after the meeting of the Convention, I will move to amend Rule Fifty-six as follows:

After the word "applicable" in the second line, strike out all the words down to the word "except" in the third line; in the fourth line, after the word "question," strike out "may" and insert "shall not," and then add to the end of the rule: "Each speaker shall be limited to one speech of ten minutes, except the Chairman of a standing committee, who shall have the closing speech and double time when any section of the report of his committee is under consideration and discussion." Then the rule will read as follows:

"The rules of the Convention shall be observed in Committee of the Whole, so far as they may be applicable, except that the ayes and noes shall not be taken, and the previous question shall not be moved. Each speaker shall be limited to one speech of ten minutes, except the Chairman of a standing committee, who shall have the closing speech and double time when any section of the report of his committee shall be under consideration and discussion."

PARDONING POWER.

MR. FREEMAN. I now renew my motion that the Convention resolve itself into Committee of the Whole to further consider the report of the Committee on Pardoning Power.

Carried.

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IN COMMITTEE OF THE WHOLE.

MR. VACQUEREL. I send up an amendment.

THE SECRETARY read:

"Add to the end of the section the following: 'But when a criminal has been sentenced to death, and the execution shall not take place on the day set, such sentence shall be commuted and another penalty inflicted.'"

MR. VACQUEREL. The object of that amendment, Mr. Chairman, is to prevent the repetition of a scene that occurred four or five months ago. A man was tried and condemned, and should have been hung on a certain day, but it appears that through some mismanagement he was subject to the torture of a postponement for eight days, and after that postponement he got ready to be executed, and then there was another postponement. I do not believe that the law intends that a man shall suffer torture. Therefore this amendment provides that when a day is set for the execution, and it does not take place, the sentence must be commuted to imprisonment for life.

The amendment was rejected.

MR. BARTON. I offer an amendment.

THE SECRETARY read:

"Amend by substituting the word 'twice' for 'thrice,' in line seventeen."

THE CHAIRMAN. The question is on the amendment.

REMARKS OF MR. BARTON.

MR. BARTON. Mr. Chairman: I desire to briefly explain why I desire this amendment. Gentlemen of this Convention will remember, a few years ago, in eighteen hundred and fifty-seven, that France, being overrun with her criminals, her prisons being full to overflowing, took it upon herself to appropriate a sufficient amount of money to place these criminals on board of ships, and did so, and forwarded them to the coast of America. They were landed on the shores of North America, and they were scattered broadcast throughout the land. Many if not all of them were hardened criminals, unfit to remain in the enlightened and civilized country of France, and they were poured upon the American nation, and upon American society. I think, in this view, it would be very proper to restrict these sentences to twice instead of thrice. I think that when a hardened criminal has been convicted twice, that there should be no pardon granted.

Again, many of you who have lived in this country very well understand that the penal colonies of Great Britain, from the Island of Australia, day after day, and week after week, have poured these hardened criminals upon us, and the sooner we do something to protect ourselves and stop this influx of criminals the better. Therefore I hope this amendment will prevail. Why should a man who has been convicted twice, and is then convicted and sentenced a third time, be pardoned. If you leave it as it is, there will hardly be a case that it will reach. It says no one who has been previously thrice convicted of felony shall be pardoned. Hence a criminal must be serving out his fourth term before this provision will debar him from a pardon. A man would hardly have time to serve four terms for felony during an ordinary lifetime, so that as it stands, it will avail but little.

THE CHAIRMAN. The question is on the adoption of the amendment.

MR. CROSS. Some gentlemen near me could not hear the amendment. Will the Secretary please read it again.

THE SECRETARY read the amendment.

Division being called, the committee divided, and the amendment was adopted by a vote of sixty-seven ayes to twenty-seven noes.

MR. McCALLUM. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Insert between the word 'Court,' in line two, and the word 'shall,' in same line, in the article proposed by the committee, the following: 'and the Attorney-General, or a majority of them, the Governor being one,' so that it will read:

SEC. 13. The Governor shall have the power to grant reprieves, and the Governor and the Chief Justice of the Supreme Court, and the Attorney General, or a majority of them, the Governor being one, shall have power to grant pardons and commutations of sentence, after conviction, for all offenses, except treason and cases of impeachment, upon such conditions, and with such restrictions and limitations, as they may think proper, subject to such regulations as may be provided by law relative to the manner of applying for pardons. Upon conviction for treason, the Governor shall have power to suspend the execution of the sentence until the case shall be reported to the Legislature, at its next meeting, when the Legislature shall either pardon, direct the execution of the sentence, or grant a further reprieve. The Governor shall communicate to the Legislature, at the beginning of every session, every case of reprieve or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence, and its date, the date of the pardon and reprieve, and the reasons for granting the same. Neither the Governor and Chief Justice nor the Legislature shall have power to grant pardons, or commutations of sentence, in any case where the convict has been previously thrice convicted of felony."

THE CHAIRMAN. The question is on the amendment.

MR. McCALLUM. I have waited for the various amendments to be disposed of before offering this. I now offer it and ask that a vote be taken on it.

MR. TERRY. There is no such wording as the above. It has been stricken out by the Committee of the Whole. There is no such word as "Court" in there. I raise that as a point of order.

MR. McCALLUM. I am taking the report.

THE CHAIRMAN. The whole of the second line has been stricken out. The Secretary will read it as amended.

THE SECRETARY read:

"SEC. 13. The Governor shall have power to grant reprieves, pardons, and commutations of sentence, etc."

THE CHAIRMAN. All the rest in relation to the Court has been stricken out.

MR. McCALLUM. Then I move to insert the words, "And the Governor, Chief Justice of the Supreme Court, and the Attorney-General."

MR. ESTEE. I raise the point of order that it has already been voted upon.

MR. McCALLUM. It has never been voted upon by the Committee of the Whole, or by the Convention.

MR. HOWARD. It is not in order, because it has already been voted upon.

MR. TERRY. That has been voted upon, and it is left in that way.

SPEECH OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: If you will allow me. The committee reported that the Chief Justice should be added to the Governor. My colleague, Judge Campbell, moved to strike out "Chief Justice" and insert "Attorney-General." That amendment was voted down. Then an amendment was offered by the gentleman from Sacramento, Mr. McFarland, to strike out certain portions of the section. That was the way that stood on that proposition. That there should be a council, consisting of the Governor, Attorney-General, and Chief Justice, has not been voted upon yet by the Committee of the Whole. I ask a vote of the committee upon it. I have waited for other gentlemen to present their various propositions, and in fact the other day, at the suggestion of the gentleman from Sacramento, Mr. McFarland, I gave way and let him present his proposition first, and I now desire a vote of the committee on the proposition. I have but a word to say on it. We have voted upon so many propositions, that it comes to this at last, that unless we adopt something to this effect the Constitution will stand substantially as it is, which, if it is the wish of a majority of this Convention, of course we must submit to. But I desire to have an expression on this one proposition.

As far as I am concerned, in the County of Alameda, while this proposition was being discussed, every voter in the county is committed to the proposition which has been expressed in this brief language, that the Constitution should be so amended as to vest the pardoning power, now exercised by the Executive, in a Commission. I hold that where gentlemen stand on a plain proposition of that sort, if they can't vote for it, it is their business to resign, and let others who choose to vote stand in their places. I recognize the right of the people, and my object has been to have a Commission constituted. So many have been suggested and voted down that it seems to me this is about all there is left. On this question I wish to call attention to the Constitution of the State of Nevada. There the language is this:

"The Governor, Justices of the Supreme Court, and Attorney-General, or a majority of them, of whom the Governor shall be one, may, upon such conditions and with such limitations and restrictions as they may think proper, remit fines and forfeitures, commute punishments, and grant pardons after convictions in all cases except treason," etc.

Instead of having all the Justices, I use the name of the Chief Justice alone. As I understand the report of the Judiciary Committee, the Supreme Court is to consist of seven, and the Court will probably be held in two sections, in which case there would be less labor for the Chief Justice than either of the others. That is a good argument for it. I submit that while objections may be made to any form of Commission suggested, that the Chief Justice should be one and the Attorney-General another; and in this connection I will state that I have had a consultation with some gentlemen from Nevada, and I understand from them that that constitutional provision there, on this subject, works exceedingly well, and without complaint from anybody. I have left out this large number of Judges, for one Judge is enough. Now, the Attorney-General and the Chief Justice can't grant pardons, but the Chief Justice and the Governor can grant pardons. I believe, without discussing this question, that I express the sentiments of the people that I represent, and the sentiments of a very large majority of the people of this State, that this immense power should be in a Commission, to say nothing about the question whether it has been abused or not. It is too great a power. I would not take it from the Executive, but I would have a Commission, so as to have some additional authority with him. I believe there should be a Commission. I have no doubt that the judgment of this Convention will be that there shall not be any more officers. I ask for a vote on the proposition, and then I shall have discharged my duty. Will the Secretary read the amendment?

THE SECRETARY read:

"The Governor, Chief Justice of the Supreme Court, and the Attorney-General, or a majority of them, the Governor being one, shall have power to grant reprieves, pardons, commutations of sentences," etc.

MR. McCALLUM. It should read in this way:

"The Governor shall have power to grant reprieves, and the Governor, Chief Justice of the Supreme Court, and the Attorney-General, or a majority of them, the Governor being one, shall have power to grant," etc.

REMARKS OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I don't see why we should not be allowed to vote on this amendment. The majority of this Convention have not settled down upon the proposition that the Governor alone should act in this matter. The plan suggested by Mr. McCallum is the one that came very near being settled upon. Now, as for me, as far as I am concerned, it makes no difference, but it seems to me that this great power should not be left in the hands of one man, because if it is left to one man it is liable to abuse, not by any intention on the part of the individual, not by any political influence upon the Governor alone, but on account of the difficulty connected with the exercise of a wise discretion, it should be exercised by more than one

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man. This pardoning power is one of considerable importance. It has a great bearing upon the amount of crime, and should be exercised with a great deal of caution. Therefore, it seems to me that a commission of some kind, that would deal with this matter, probably two or three persons passing judgment upon it, they would be more apt to treat the matter of a pardon, when it came before them, with justice and impartiality than one man alone could possibly do. I say I think the proposed amendment is a good one, and I shall favor it.

MR. STRONG. Mr. Chairman: I do not see, sir, why the members of this Convention should be so fearful of the Grand Jury, and yet be so particular about the pardoning power. I hope that amendment will not pass, because I think that the gentlemen of this Convention may at some future time stand in need of executive clemency.

SPEECH OF MR. HALE.

MR. HALE. Mr. Chairman: I was not aware, until a few minutes ago, that the committee had decided to strike out the Chief Justice. I am informed that that was the action of the committee, on Saturday last. It would seem, therefore, that we are left the alternative of leaving the pardoning power to the Governor alone, as in the present Constitution; or to confer that power upon him in conjunction with the Chief Justice and Attorney-General; or, which is a very improbable thing, that the committee will elect to constitute a Pardoning Board, of other and new officers, created for that purpose. Mr. Chairman, I take it for granted that there is a general disposition, or, rather, a general indisposition, on the part of the committee, to create new offices beyond the reasonable necessities of the government. I take it, therefore, that the committee will decide either to lodge the pardoning power in the hands of the Governor alone, or confer it upon him together with the Chief Justice and Attorney-General. Now, we have had a very considerable experience under the present Constitution, and I doubt not there are many members on this floor who, in one way or another, have come to have some personal knowledge of the difficulties surrounding the exercise of this power by the Governor solely. Sometimes there have been public complaints of the absolutely improper exercise of this power. I am not here to say that these complaints are well or ill-founded. I speak only of the fact that these complaints have been made. That would lead one to the conclusion that the complaints have been well founded.

Now, sir, this power of pardon is one of the highest prerogatives ever conferred upon the officers of government. One is convicted of crime—and presumably he has been properly convicted—he has been arrested, charged with a crime, has had his day in Court, has had the opportunity of defending in person and by counsel, and has not, by his own exertions, and the aid of friends, been able to secure an acquittal. Then he asks the Executive to interfere in his behalf. Therefore a great responsibility devolves upon the officers who are clothed with the power of pardon. Who will question the truth of the assertion that this power should be lodged in responsible hands in the interest of justice and good government. Now, how shall we lodge this power? Where shall we lodge this power? The amendment says with the Governor, Chief Justice, and Attorney-General. It is to be noted in this connection that it creates no new officers, nor any additional expense. That it neither requires any additional salaries, nor any increase in the salaries of those officers who are named as composing the Board. We are simply charging three high officers of the government with this highest responsibility that can devolve upon any person. It does seem to me that it would be well disposed of, and well administered, if we leave this power in such hands as these. We might give our consent that the Governor should be one.

As to myself, therefore, there can be no doubt. Can any rational objection be urged to allowing the Chief Justice to act in this matter—a man who is selected for that high position on account of his high personal qualifications, for his unimpeachable character, and for his judicial learning? Can you well place it in safer or more responsible hands? I know it can be said on the other hand—as a proposition it may have been said—that the duties of the Chief Justice would perhaps be so onerous, as Chief Justice, that this additional responsibility should not be cast upon him. There is some force in the objection, but the responsibility will be divided. If the system proposed here—if I understand correctly the proposition of the Judiciary Committee, the duties of the Chief Justice at least will be somewhat different—perhaps somewhat less in the amount of labor than hitherto have devolved, and now devolve, upon the Chief Justice. If the general plan should be adopted of two sections of the Supreme Court, the two sections might transact business without his presence. His presence would be required only when the Court would be sitting together. I am, of course, discussing it from the standpoint of the committee's report.

Now, it seems to me, in view of the grave responsibility which will devolve upon whoever exercises this power of pardon, that it cannot be more safely and more judiciously invested than in the hands of the Chief Justice, and as some have remarked, with the Attorney-General, who is the law officer of the government, and peculiarly qualified by his knowledge of cases coming before this Board to give valuable advice and aid. Now I would suggest also to the gentlemen of the Convention that this is one of those grave responsibilities where it is thought proper to the ends of justice, and partly as a matter of justice to the officers who discharge their duty, to divide it in some manner. Why, sir, I have had occasion to talk with more than one of the Governors of this State in times past, who assured me that they have often found themselves driven clear to the verge of insanity by importunities and entreaties of persons and their friends asking for pardons. I can well conceive how this may be true. Any one of us placed in such a position, charged with this sole duty, would not only find himself greatly burdened, but greatly affected by the importunities of these parties. I would suggest, in view of these considerations, that we take the Governor, the Executive of the State, selected by all the electors of the State; the Chief Justice of the Supreme Court, selected for his probity of character, for his learning, for his soundness of judgment, for his wisdom; and the Attorney-General, selected as the representative of the people to see that justice is done. When these three concur, or a majority of them, there will be no reasonable ground for doubting that a pardon will ever be granted improperly, or that it will ever be refused when it is just. In view of the circumstances I am strongly inclined to vote for this amendment.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I do not rise for the purpose of making a speech. [Laughter.] But I do rise to protest earnestly and explicitly against this interminable speech-making, because we are all worn out. I, sir, with every other gentleman on this floor, am prepared to vote, and we were prepared to vote before this discussion commenced, and I hope I may be permitted to suggest to the gentlemen who are so anxious to air their eloquence, that they will have a better opportunity to air their eloquence on the live subjects of the day, and I therefore demand a vote on this question. [Applause.]

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I am somewhat terrified. I propose to state that I shall support the amendment, and I shall do so for these reasons. In the first place, because I believe the pardoning power is too great a power to be safely vested in one man. In the second place, because I believe a large majority of the electors of this State demand that the power shall be taken out of the hands of the Governor. In the third place, because I myself was elected upon a platform which distinctly calls for it. Read the tenth resolution of the platform of the Workingmen's party. The pardoning power now vested in the Governor shall be abolished." Nearly one half of the people voted upon that proposition in voting for the candidates of the Workingmen's party, and there is no reason to presume that the other half were opposed to it. Therefore I maintain that the majority of the people of this State demand the abolition of it. How it is to be abolished was not specified. I believe the amendment of the gentleman from Alameda is as good a one as can be devised.

THE CHAIRMAN. The question is on the amendment.

Division being called, the committee divided, and the amendment was rejected by a vote of fifty ayes to fifty-five noes.

MR. LARUE. Mr. Chairman: I move the committee now rise.

MR. TERRY. I move that the section be adopted as amended.

THE CHAIRMAN. The question is——

MR. MCCALLUM. Mr. Chairman, Mr. Chairman: I propose, sir, to submit a proposition from the Indiana Constitution, and ask a vote of the Committee of the Whole upon it. It reads as follows:

"The General Assembly may, by law,"——

MR. TERRY. Mr. Chairman: I rise to a point of order. Is it in order to offer an amendment when a vote is being taken?

THE CHAIRMAN. The Chair hadn't put the vote yet.

MR. MCCALLUM. I have a right to call a division.

MR. TERRY. Has the gentlemen a right to propose an amendment while a vote is being taken?

THE CHAIRMAN. Gentlemen have a right to discuss a proposition until the result is announced by the Chair.

MR. MCCALLUM. I offer an amendment, and ask leave to read it here, and then I will send it up:

"Insert between the words 'reprieve,' in line two, and the word 'shall' these words: 'The Legislature shall have power by law to constitute a Council, to be composed of the Governor and other State officers, a majority of whom, the Governor being one, shall,'" etc.

THE CHAIRMAN. The amendment is out of order, because the word "shall" has been stricken out by previous action of the committee.

MR. MCCALLUM. The last two words, "shall have," are there. The Chair is in error.

THE CHAIRMAN. The Chair rules that the whole line was stricken out. The question is on the adoption of the section as amended.

Adopted.

MR. LARUE. Mr. Chairman: I move that the committee rise, report back that we have had under consideration the report of the Committee on Pardoning Power, amended the same, and recommend its adoption as amended.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report to the Convention that they have had under consideration the report of the Committee on Pardoning Power, have amended the same, and recommend its adoption as amended. Those in favor of the adoption of the amendment say aye——

MR. VAN DYKE. That is upon the amendment, I suppose.

MR. WHITE. I move a substitute for the whole section.

MR. EVEY. I move that the report lie on the table and be printed, as adopted by the Committee of the Whole.

Carried.

EXECUTIVE DEPARTMENT.

MR. FREEMAN. Mr. Chairman: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the Article on Executive Department.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN Section nineteen and amendments were under consideration. The Secretary will read the section.

THE SECRETARY read:

SEC. 19. The Governor, Lieutenant-Governor, Secretary of State, Con-

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troller, Treasurer, Attorney-General, and Surveyor-General, shall each, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected, which compensation is hereby fixed for the following officers for the two terms next ensuing the adoption of this Constitution, as follows: Governor, six thousand dollars per annum; Lieutenant-Governor, the same per diem as may be provided by law for the Speaker of the Assembly; the Secretary of State, Controller, and Treasurer, three thousand dollars each per annum, said compensation to be in full for all services by them respectively rendered in any official capacity or employment whatsoever during their respective terms of office; *provided, however*, that the Legislature, after the expiration of the terms hereinbefore mentioned, may by law diminish the compensation of any or all of said officers, but in no case shall have the power to increase the same above the sums hereby fixed by this Constitution. The Legislature shall by law fix the compensation of the Attorney-General and the Surveyor-General, and may in its discretion, abolish the office of Surveyor-General; and none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty.

THE CHAIRMAN. The question is on the amendment, or substitute, offered by the gentleman from Sacramento, Mr. McFarland.

THE SECRETARY read the substitute:

SEC. 19. The Governor, Lieutenant-Governor, Secretary of State, Controller, Treasurer, Attorney-General, and Surveyor-General, shall each, at stated times during their continuance in office, receive for their services a compensation which shall not be increased or diminished during the term for which they shall have been elected; but neither of these officers shall receive, for his own use, any fees for the performance of his official duties, and said compensation shall be in full for all services rendered in all official capacities during their respective terms of office.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: I do not think the committee understand the purport of that amendment. It is simply to leave the compensation of State officers to the Legislature. That is the whole object of it. In the report of the committee the compensation of State officers is fixed at a stated amount. The amendment now before the committee strikes out that part, and leaves the Legislature to determine the salaries of those officers. It may vary from time to time, and I think this is a matter that can be safely left to the Legislature. It ought not to be fixed arbitrarily in the Constitution.

MR. WHITE. I think it should be fixed permanently in the Constitution, and I am very anxious to get in an amendment of that kind. I don't know exactly how to do it. I have an amendment, but I expect it is out of order now.

MR. LARKIN. I am in favor of fixing the maximum of all salaries, and leave it to the Legislature to reduce them still lower. I think that is the general intention of the Convention.

MR. HALE. I would inquire of the gentleman from Sacramento, if his amendment prevails, how does he propose to fix the compensation of those officers under the first term after the adoption of this Constitution?

MR. MCFARLAND. I will answer the gentleman. I do not want to include everything in one proposition, but I want the Convention to vote on the question whether this matter shall be left to the Legislature. If it is adopted I have another amendment providing for that matter. There will be a difference of opinion, of course. I thought that it was better for the committee to vote upon one proposition at a time. If they desire to fix salaries in the Constitution they will vote this down.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. I submit to the gentleman that this is not correct as a legal proposition. The present salaries would remain without any provision on the subject. This same question was up before the legislative committee with respect to the per diem of members of the Legislature, and I believe there was no difference of opinion whatever; I think every gentleman will say I am correct. Being not inconsistent with the general law it would continue. The proposition was this, substantially, to reduce the salary of Governor two thousand two hundred dollars, that is, his present salary is seven thousand dollars, not eight thousand, as stated the other day. But he gets a salary as member of the Board of State Prison Directors and as a member of the Board of Examiners, which makes his whole salary aggregate nine thousand two hundred dollars. But in the provisions of the proposition, as now presented, his services in any other official position is struck out. In that view I believe we had better not go into the business of the Legislature too extensively, perhaps, but vote on the amendment.

THE CHAIRMAN. The question is on the amendment of the gentleman from Sacramento.

The amendment was rejected by a standing vote of eleven ayes.

MR. WHITE. I now offer my amendment.

THE SECRETARY read:

"Strike out all after the word 'follows' in the seventh line and insert as follows: 'Governor, five thousand dollars per annum; Lieutenant Governor, the same per diem as provided by law for the Speaker of the Assembly; Secretary of State, Controller, Attorney-General, and Surveyor-General, shall each receive three thousand dollars a year; and the Treasurer, four thousand dollars; *provided*, however, that the Legislature, after the expiration of the terms of the present incumbents, may by law diminish the salaries of any or all of such officers; but in no case shall have power to increase the same above the sums hereby fixed. The Legislature may, at any time, in its discretion, abolish the office of Controller and Surveyor-General; and none of the officers hereinbefore named shall receive for their own use any fees or perquisites for the performance of any official duty. No deputy or clerk employed by a State officer shall receive a higher compensation than one thousand eight hundred dollars per annum.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I desire to say that in most of the new Constitutions I find the compensation of State officers fixed, and it has become evident that it is necessary to guard against the constant increase of salaries. It is not so much what we save by this provision directly, but we want to set an example, and begin by paying just exactly what is right. You will see that this does not allow extravagant salaries to these clerks and deputies. This Convention should step in and say that no clerk should receive a higher compensation than one thousand eight hundred dollars per annum. Let us do what is right in the matter. I trust, sir, that the amendment will pass.

SPEECH OF MR. BROWN.

MR. BROWN. Mr. Chairman: It seems to me that there should be some degree of economy exercised. Economy is right when we consider it properly. I am under the impression that there is no member of this body who is not in favor of economy in a certain sense. But it does appear to me that when we come to an office so high as that of Executive of the State of California, to begin and cut down the salary of his office, it seems to me that we should go very carefully, and take into consideration some other matters. I have not heard very much said about high salaries; in fact there has been very little said on that subject among the people. I am under the impression that the people of this great State wish their Governor, and all their officers, to be properly and fully paid. The principal thing that the people of this State are anxious about, is that they may know where every dollar goes that is paid out. That there shall be no purloining—in common parlance, no stealing. That is the grand point that the people are aiming at. And I do not think it is the wish of the people that the salaries of these officers shall be reduced down in any such way. Now, the Governor of a great State like California is in a position socially to be compelled to spend an amount of money that men in other positions do not have to spend. In every sense of the word, it seems to be proper that we shall pay sufficient to keep up the position as it should be kept up. Few honest Governors—perhaps none—have ever made anything out of the office. Then why attack them in this manner? I am under the impression that the figure is entirely too low. I shall consequently object to the amendment. I think it is contrary to the sentiments of a large majority of the people of this State. I am in for reform in everything that deserves it, but I do not think this does, therefore I shall vote against the amendment.

THE CHAIRMAN. The question is on the amendment.

Division being called, the committee divided, and the amendment was rejected; ayes, 41; noes, 51.

THE CHAIRMAN. The next question is on the amendment of the gentleman from Santa Clara, Mr. Smith, to strike out "six thousand dollars" and insert "five thousand dollars," as the Governor's salary.

The amendment was lost on a division vote; ayes, 39; noes, 60.

THE CHAIRMAN. Are there any further amendments?

MR. SMITH, of Fourth District. I move that the word "Treasurer" be stricken from the list of three thousand dollar salaries.

THE CHAIRMAN. Send it up in writing.

THE SECRETARY read:

Resolved, That the words "and Treasurer," be stricken out, and the word "and" be inserted before the word "Controller," in the same line.

THE CHAIRMAN. The question is on that amendment.

MR. SMITH. Mr. Chairman: I undertake to say that the Treasurer should receive more than three thousand dollars per year. It is certainly not right to cut the salary of that office down to three thousand dollars a year. It is absurd. The laborious duties connected with that office, as well as the great responsibilities, certainly require at least five thousand dollars a year. If the clerk will return me my amendment I will change it so that the Legislature may by law fix the compensation of the Surveyor-General and Treasurer.

THE SECRETARY read the amendment as modified:

"Strike out the words 'and Treasurer,' and insert 'and' in the same line, and insert 'and Treasurer' in the seventeenth line."

MR. WEST. I ask for a division of the question. There are two questions involved—to strike out and to insert. If the question prevails, it will leave the compensation of the Treasurer to be fixed by the Legislature. I think it is the opinion of this Convention that the compensation of that officer should be fixed in the Constitution. If it is the opinion that he should receive a small salary, why, say so, and not make an exception by leaving it to the Legislature.

MR. GRACE. Mr. Chairman: I am not certain what this proposition is, but if it is to strike out so as to increase the salary of the Controller and Treasurer of this State, I am opposed to it, because three thousand dollars a year would be eight dollars and twenty-one cents for every day in the year, and I think that is enough. We can get the best mechanics for four dollars a day, and they can't always get that. Now, if a man doing nothing but counting out money, can get eight dollars and twenty-one cents a day, I think it is enough, so I am opposed to the amendment.

THE CHAIRMAN. A division of the question is called for. The first question is on the motion to strike out.

MR. SMITH, of Fourth District. Mr. Chairman: It seems that the amendment is not understood. The amendment intends that the Treasurer shall not be included among the officers who receive a salary of three thousand dollars per annum; that it shall be left among the officers whose salaries are to be fixed by the Legislature.

MR. GRACE. Is the object to increase, or reduce the salary?

MR. SMITH. To increase it.

MR. GRACE. I think he gets too much now,

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THE CHAIRMAN. The question is on the motion to strike out.

Lost.

MR. BARBOUR. I offer an amendment.

THE SECRETARY read:

"In line nine, after the word 'Assembly,' the words, 'to be allowed only during the session of the Legislature.'"

THE CHAIRMAN. The question is on the amendment.

MR. BARBOUR. Mr. Chairman: I offer that amendment to make the section conform to the probable intention of the committee. As it reads now, the construction might be put upon it that the Lieutenant-Governor was to draw a salary during the whole of his term; in other words, that his salary will amount to three thousand six hundred and fifty dollars a year. I suppose the intention of the committee was that he should be paid only during the session of the Legislature, for it is well known that during the balance of the year his office would be a mere sinecure.

The amendment was adopted.

MR. MCFARLAND. Mr. Chairman: I offer an amendment to the section.

THE SECRETARY read:

"Strike out 'three' in line nine and insert 'four,' so as to read four thousand dollars instead of three thousand dollars."

THE CHAIRMAN. The question is on that amendment.

SPEECH OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: That will make the salaries of all the State officers four thousand dollars a year. I have no idea that it will carry, but I want a chance myself to vote for it. There is a great deal of talk on this floor about what the people demand. They have sent their representatives to these halls of legislation year after year, for thirty years, and never made any demand or expressed any opinion through their representatives to reduce the salaries of these State officers. I say no man has any right to say here that the people demand this reduction; and if they did demand it I would not vote for it knowing it to be unreasonable and wrong. We are sent here to do what is right. Now I see gentlemen around me here who belong to one or the other of the great political parties of the country, and who expect to find some gentleman who will be their standard bearer—and that is the only way that men are elected to office. They are elevated to office through the machinery of political parties, and each of these parties, representing half of the people, expect to select men of high character in the State, men of ability, and when they select them, they expect them to perform the ordinary duties of candidates in the first place. How could you ask any reputable citizen of this State to take an office at such a salary. If he is rich, and cares not for the expense, he may do it, but take any gentleman engaged in business, are you going to ask him to take a nomination from one of your political parties, and leave his business, and come to Sacramento for four years, for three thousand dollars a year? What will he do it for? The honor of the thing? A man cannot sacrifice his business for honor. Men occupying responsible positions as these in private life get more than that without going away from their homes. I would like to know what farmer—not a rich farmer—who perhaps has got his farm all paid for—his plans all laid out, so that by strict attention to business he will be able to get out of debt; a nice little home, who, when called on by the people, would be willing to leave his home and his business and come to the Capitol for four years, for a salary of three thousand dollars a year. Can you expect a merchant, who is making an ordinary, decent living, to leave his business in Marysville or Shasta, or Los Angeles, and come here and serve for four years for three thousand dollars a year? Do you expect a lawyer with a lucrative practice to do it; or a doctor with a good practice that will suffer by his absence? I do not believe we should ask it; I do not believe it is right. I say that according to the cost of living, four thousand dollars is little enough for a man to leave his business and come here. If you cut down these salaries you will simply have this state of things, that you cannot get the ability, you cannot get the kind of material that you want for these positions. Then you will be compelled to select your State officers from one of two extreme classes—either from the very wealthy class—who can afford to leave their business and come here, or else take a man without any business, a mere carpet-bagger through the country. I ask you if you think that is a fair price for a man who is qualified to fill these positions, and who is responsible? I do not believe it is. I think four thousand dollars is little enough.

REMARKS OF MR. LINDOW.

MR. LINDOW. Mr. Chairman: I am sorry to make any back remark, because he states that the people don't demand it. The cry has been for the last eight years that salaries was too much, because taxes was so high. I think we must lower the salaries. They always leave up the big salaries for the big officials. [Laughter.] When a man is getting five or six dollars a day he don't mind high taxes. But when a man is getting only one dollar a day, I think we better look at these big salaries and cut them down according to this business. I think when one man gets six dollars a day and one man gets one dollar a day, we better lower these big salaries. The people, I am satisfied, want it.

SPEECH OF MR. WEST.

MR. WEST. Mr. Chairman: I have not occupied the time of this Convention to any great extent, nor do I intend to do so. But I cannot permit the present occasion to pass without bearing testimony to the fact that the people have demanded a reduction of salaries of their public officers; that one of the burdens of which the people have complained, has been the exorbitant salaries paid to public officials. It is true that about the time that nominating conventions meet, and political platforms are to be made, the ears of these statesmen are open to the cries of the people, and they incorporate into their platforms a plank in favor of a reduction of salaries paid to public officers. Now, when the time has come that these promises are to be kept, and these pledges carried out, the testimony should be given to the people that the men who pledged themselves didn't mean it; that it was simply an electioneering dodge in order to get into office. The times demand the change. In the history of California we have come down to a level with the other States of this Union. Our trade, our commerce, our business, our industries, and all our material wealth rests upon the same basis with those of the other States east of the Rocky Mountains; and why should there be such a distinction between the money paid for like services here and there? I cannot see any reason for it. I cannot see any justice in it, nor any demand for it at the present time, when we all know that the people have called this Convention together as much for that as for any other one object—to reduce the salaries of public officers. I deny the truth of the proposition that you cannot get good men to fill these offices. Our country is full of men capable of performing the duties of these offices, who will gladly accept the reduction. The time will not come in the history of this commonwealth, even if you reduce these salaries below the amount fixed by the report of the committee, when good and efficient men cannot be obtained to perform these duties and fill these offices with as much ability as has ever been shown in the past.

SPEECH OF MR. BARTON.

MR. BARTON. Mr. Chairman: I do not know, neither do I care, what the sentiment of this Convention may be with regard to the reduction of salaries of State officers. But for me, I come here under a pledge of reform, reform in everything within the power of this Convention, that is in my power where my voice can be heard. It has been stated, Mr. Chairman, and gentlemen of the Convention, that this is not demanded, but I want you to understand that the voice of the people has gone up from the north to the south, from the east to the west, in this State, demanding from your hands retrenchment and reform. And I demand that the voice of the people shall be heard through their representatives here when they cry aloud for relief. Go with me to the poor struggling men and women in this State, who are trying to drive the wolf from the door, and ask them if they do not demand at your hands retrenchment and reform? That voice is coming up from every part of the State, and from all conditions of men, and they demand retrenchment and reform at your hands, not only in regard to State officers, in county and municipal offices; they demand reform in every shape possible, in every department of the public service. Now, when the Governor of the great State of Iowa can perform the duties of his office for one third less per annum, I would like to ask you if it is not high time that the people of California should come down from that high and exalted position of false pride, and false ideas, and false principles? Thirty years ago I came to this place, and then I could get my five and ten, and even fifteen, dollars a day for the labor of my hands. But all that is changed now, and why should we keep up these exalted ideas and customs that were the outgrowth of that condition of business? I repeat again, that the people demand retrenchment and reform at our hands. And when you go back and tell your people that I am not acting in their interest, that I am a demagogue, I say they will thrust it back into your teeth, and tell you it is false. [Applause.]

THE CHAIRMAN. The question is on the amendment of the gentleman from Sacramento, to strike out "three thousand dollars," and insert "four thousand dollars."

Lost.

MR. WICKES. Mr. Chairman: I have an amendment.

THE SECRETARY read:

"Strike out all after the word 'assembly' as far as the word 'State' in the ninth line, and insert: 'The State Treasurer shall receive four thousand dollars per annum, and the Secretary of State and Controller of State shall each receive three thousand dollars per annum."

THE CHAIRMAN. The question is on this amendment.

Rejected.

MR. BARBOUR. Mr. Chairman: I wish to offer an amendment to the section.

THE SECRETARY read:

"Add in line sixteen, the following: 'No salary shall be authorized by law for clerical services in any office provided for in this article exceeding one thousand eight hundred dollars per annum.'"

THE CHAIRMAN. The question is on the amendment.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: As has been well observed by the speakers here, one of the great curses of the administration of public affairs in this country is the high salaries of public officers and the sinecures that exist. Men in the State of California, devoting from six hours a day down to nothing at all to the public service, cooling their heels in public office, are receiving from one third to one half more pay than is paid for like service in private employment. I know of no better criterion or test by which to fix the salaries of public officers than the same pay allowed to men of equal capacity, equal education, and equal ability, as found in the private stations of life. And I assert, without fear of successful contradiction, that in the State of California, educated men, competent men to conduct the affairs of office, are not paid on an average one thousand dollars a year. I know, Mr. Chairman, that there are men in this State, of superior ability, who may make fifty thousand dollars a year, or a hundred thousand dollars a year, by speculation, but not by legitimate pursuits. I know of men within my own personal knowledge, who are incapable of making an honest decent living at legitimate business, and yet they come to San Francisco and become millionaires. But these are not to be taken as a criterion by which to fix the salaries of public officers. Not at all, sir. There is no reason that can be given by any gentleman on this floor why more should be paid public officers than is paid in the private affairs of life. And in the matter of clerical service to which my amendment is directed, I maintain that I have proposed the highest figure that is paid

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for clerical services in the State of California. That, too, in instances where the services rendered are as laborious, and where it requires as much capacity as is required for a clerk in the office of the Governor, or any of the other State offices. Stock-broker's clerks, and all other clerks, do not average, as I am informed, more than one hundred dollars per month compensation. Gentlemen need not be afraid that there will be no one to fill these offices if the pay is reduced. Thomas Jefferson well said that few die and none resign, and I have never seen in all my experience, the salary reduced so low that capable men could not be found to fill them. The people are crying out against these abuses, and the cry comes up in such a form that it is no longer the policy of true statesmanship to leave it to the regulation of the Legislature, especially where they themselves are directly interested. I suppose gentlemen all know how this country was convulsed by the huge scale of salaries fixed by the Congress of the United States, and those men by a simple vote, dug their political graves forever, and buried themselves beyond the reach of the resurrecting hand forever and forever. And so it is that now, in the Constitution, is the time and place to fix these salaries, and if it becomes apparent to the mind of the people that the salaries are so low that good men cannot be obtained to fill these various positions, there will be no difficulty in procuring an amendment to the Constitution. I say that we should remove it beyond the power of the Legislature. I am in favor of making a limit in the Constitution beyond which the Legislature cannot go, while they may reduce salaries still lower if they find it necessary.

MR. LARKIN. I would like to have the amendment read again.

THE SECRETARY read:

"Amend section nineteen, in line sixteen, by adding, after the word 'Constitution,' the words: 'No salary shall be authorized by law for clerical services in any office provided for in this article exceeding one thousand eight hundred dollars per annum.'"

THE CHAIRMAN. The question is on the amendmeut.

MR. McCONNELL. Mr. Chairman: I move an amendment to the amendment.

THE SECRETARY read:

"Strike out 'one thousand eight hundred dollars,' and insert, 'one thousand six hundred dollars.'"

MR. BARBOUR. I accept the amendment.

THE CHAIRMAN. The question is on the amendment as amended.

Division being called, the committee divided, and the amendment was adopted—ayes, 61; noes, 44.

MR. LARKIN. Mr. Chairman: I move an amendment.

THE SECRETARY read:

"Add, after the word 'Controller,' in line nine, the words: 'Attorney-General and Surveyor-General;' and strike out, in line seventeen, 'Attorney-General and Surveyor-General.'"

THE CHAIRMAN. The question is on the amendment.

MR. LARKIN. The object is to fix the salaries the same as the other officers, and not leave it to the Legislature.

MR. HUESTIS. I would suggest to the mover of the amendment that, in order to make it read right, he will have to strike out all of the latter part, commencing with the word "Legislature."

MR. LARKIN. I accept the amendment. No, hold on; let me correct my amendment. After the word "Legislature," strike out the words: "shall by law fix the compensation of the Attorney-General and the Surveyor-General;" and strike out between "Legislature" and "may."

MR. BEERSTECHER. I would like to inquire what is done with the Attorney-General.

MR. LARKIN. He is added to the list of three thousand dollar a year officers, in line nine.

THE CHAIRMAN. The question is on the amendment.

Adopted.

MR. WICKES. I think there is a clause here which reads a little curious:

"The Legislature shall by law fix," etc.

I think it should read: "The Legislature shall fix, by law."

MR. HERRINGTON. I would like to offer an amendment, to correct the phraseology of the section. The condition in which it now is, places it in a very awkward attitude. It now reads:

"The Secretary of State, Controller, Attorney-General, each three thousand dollars per annum; such compensation to be in full for all services by them respectively rendered," etc.

A very plausible construction would limit those last words to the offices last above mentioned. I propose the following amendment.

THE SECRETARY read:

"Strike out all after the word 'Assembly,' in the ninth line, down to and including the word 'office,' in line twelve, and insert: 'Secretary of State and Controller, shall each receive three thousand dollars; and the Treasurer, four thousand dollars, per annum. Said compensation shall be in full for all services by the aforesaid officers, respectively rendered by them in any official capacity or employment.'"

MR. VAN DYKE. I understood the motion to insert Attorney-General and Surveyor-General prevailed.

MR. HERRINGTON. I accept the amendment.

THE CHAIRMAN. That has all been passed.

MR. WHITE. The only motion, then, is to raise the Treasurer to four thousand dollars.

MR. FREUD. In looking over this section it has occurred to me that the committee has made an omission. It seems to me that the Superintendent of Public Instruction should be added to the list of offices in the Department of State. I move an amendment, that after the words "Secretary of State," shall be inserted the words "Superintendent of Public Instruction."

MR. MARTIN, of Alameda. That is already provided for.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from San Francisco, Mr. Freud.

MR. VAN DYKE. It seems to me that belongs to the article on education. That is the proper place to provide for that, and I suppose that is the reason for the omission.

MR. BLACKMER. The Committee on Education have formulated an article that will cover that.

THE CHAIRMAN. The gentleman has a right to have his amendment put if he sees fit to do it. The question is on the amendment.

Rejected.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Santa Clara, Mr. Herrington.

Rejected.

MR. BLACKMER. Mr. Chairman: I move that the committee now rise, report back the article on Executive Department, and recommend its adoption as amended.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen, the Committee of the Whole have instructed me to report to the Convention that they have had under consideration the report of the Committee on Executive Department, have amended the same, and recommend its adoption as amended. What is the pleasure of the Convention?

MR. HALE. I move that it lie on the table and be printed.

So ordered.

ADJOURNMENT.

MR. MARTIN, of Santa Cruz. I move we now adjourn.

The motion prevailed by a standing vote of ninety-three ayes, and at four o'clock P. M. the Convention stood adjourned.

FORTY-SIXTH DAY.

SACRAMENTO, Tuesday, November 12th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Harrison,	Porter,
Ayers,	Harvey,	Prouty,
Barbour,	Heiskell,	Pulliam,
Barnes,	Herold,	Reddy,
Barry,	Herrington,	Reed,
Barton,	Hilborn,	Reynolds,
Beerstecher,	Hitchcock,	Rhodes,
Belcher,	Holmes,	Ringgold,
Bell,	Howard,	Rolfe,
Blackmer,	Huestis,	Schell,
Boggs,	Hughey,	Schomp,
Boucher,	Hunter,	Shafter,
Brown,	Inman,	Shoemaker,
Burt,	Johnson,	Shurtleff,
Caples,	Jones,	Smith, of Santa Clara,
Chapman,	Joyce,	Smith, of 4th District,
Charles,	Kelley,	Smith, of San Francisco,
Condon,	Keyes,	Soule,
Cowden,	Kleine,	Stedman,
Cross,	Laine,	Steele,
Crouch,	Larkin,	Stevenson,
Davis,	Larue,	Stuart,
Dean,	Lavigne,	Sweasey,
Dowling,	Lindow,	Swenson,
Dudley, of San Joaquin,	Mansfield,	Swing,
Dudley, of Solano,	Martin, of Alameda,	Terry,
Dunlap,	Martin, of Santa Cruz,	Thompson,
Eagon,	McCallum,	Tinnin,
Edgerton,	McComas,	Townsend,
Estee,	McConnell,	Turner,
Estey,	McCoy,	Tuttle,
Evey,	McFarland,	Vacquerel,
Farrell,	McNutt,	Van Dyke,
Fawcett,	Miller,	Van Voorhies,
Filcher,	Mills,	Walker, of Tuolumne,
Finney,	Moffat,	Waters,
Freeman,	Moreland,	Webster,
Freud,	Morse,	Weller,
Garvey,	Murphy,	Wellin,
Glascock,	Nason,	West,
Gorman,	Nelson,	Wickes,
Grace,	Neunaber,	White,
Graves,	Noel,	Wilson, of Tehama,
Gregg,	O'Donnell,	Wilson, of 1st District,
Hager,	Ohleyer,	Winans,
Hale,	O'Sullivan,	Wyatt,
Hall,	Overton,	Mr. President.

ABSENT.

Berry,	Doyle,	Strong,
Biggs,	Kenny,	Tully,
Campbell,	Lampson,	Walker, of Marin.
Casserly,	Lewis,	

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Doyle, Strong, Sweasey, and Swenson.

Indefinite leave of absence was granted Mr. Lewis.

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THE JOURNAL.

MR. HUESTIS. I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

PETITIONS.

MR. SHOEMAKER presented the following protest, signed by several hundred citizens of Nevada County, against taxing the capital stock of corporations:

To the honorable the President and members of the Constitutional Convention of the State of California:

WHEREAS, Propositions have been offered in your honorable body, to be ingrafted in the new organic law, making it mandatory upon the Legislature to tax the stock of incorporations organized under the laws of the State; and whereas, incorporations so organized are mainly for the purpose of opening and developing mines, which, as a rule, have no certain or fixed value until made so by an expenditure of moneys derived by assessments upon the stockholders of such incorporations; and whereas, the development of mining property, and the encouragement of mining industry is largely dependent upon the coöperation of individuals associated together under the law governing incorporations; and whereas, the taxing of the stock of incorporations of this character would have a tendency to discourage mining, and retard the growth of one of the important interests of the State; and whereas, the property created by the expenditure of money upon the development of mines is the only legitimate subject of taxation of such incorporations, the certificates of stock being but the evidence of ownership therein; therefore your petitioners, citizens of Nevada County, do hereby enter their earnest protest against the adoption of any clause in the Constitution whereby the stock of incorporations shall be taxed, as wrong in principle, and calculated to discourage mining and other legitimate pursuits, and to cripple the efforts of those who, by their association in companies, would otherwise add to the material wealth of the State.

Referred to Committee on Revenue and Taxation.

MR. SHAFTER presented the following petition, signed by a large number of citizens of California, asking a provision in the Constitution for female suffrage:

To the Constitutional Convention in Sacramento, California, assembled:

The undersigned citizens of California, respectfully petition your honorable body to so amend the Constitution that no citizen of the State shall be disfranchised on account of sex.

Referred to the Committee on Right of Suffrage.

MR. SMITH, of Santa Clara, presented the following petition, signed by a number of citizens of California, asking the insertion of a section in the Constitution providing for a local option law:

To the honorable, the Constitutional Convention of the State of California:

We, the undersigned, respectfully petition your honorable body to insert in the new Constitution of this State, a clause similar to that now in force in the State of Texas, to wit:

SECTION —. The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, voting precinct, town, or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.

Referred to the Committee on Legislative Department.

MR. BEERSTECHER presented the following protest against the establishment of a State religion:

To the Constitutional Convention at Sacramento:

Whereas, Propositions have been laid before your honorable body for adoption, demanding: The recognition of the Christian God and His so-called revelation as the source of all moral law, as well as of all civil power; the exemption of church property from taxation; and the compulsory observance of the Christian Sabbath; and whereas, these, and all similar propositions, are simply efforts to create and establish a State religion, and as such are hostile to the great principle of absolute religious liberty, as guaranteed by the Constitution of the United States, and solemnly affirmed by the declaration of our Government, in the eleventh article of the Treaty with Tripoli, of November fourth, seventeen hundred and ninety-six, George Washington, President, that "the Government of the United States is not in any sense founded on the Christian religion."

Therefore, the San Francisco Turn Verein earnestly protests against all and every measure having a tendency to establish a State religion, and prays your honorable body to uphold in its integrity the principles of religious liberty, the separation of Church and State, by rejecting all propositions looking to an abridgment of the right of conscience.

The San Francisco Turn Verein.

AUGUST OTTO, President.

ROBERT C. HAHN, Secretary.

Referred to the Committee on Legislative Department.

CORPORATIONS OTHER THAN MUNICIPAL.

MR. FREEMAN. I see that on Friday we made the report of the Committee on Corporations other than Municipal, the special order for this morning, immediately after the reading of the Journal. I call for the special order.

THE PRESIDENT. The special order is the report of the Committee on Corporations other than Municipal.

THE COMMITTEE'S DRAFT.

Following is the draft of the article on Corporations other than Municipal as presented by the committee:

ARTICLE —.

CORPORATIONS.

SECTION 1. Corporations may be formed under general laws, but shall not be created by special Act. All laws passed pursuant to this section may be altered from time to time, or repealed.

SEC. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

SEC. 3. Each stockholder of a corporation, or joint stock association, shall be individually and personally liable for his proportion of all its debts and liabilities.

SEC. 4. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and shall be subject to be sued in all Courts, in like cases as natural persons.

SEC. 5. The Legislature shall have no power to pass any Act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws; but no corporation or association shall make, issue, or put in circulation, any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money in this State, except the lawful money of the United States.

SEC. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter have no validity.

SEC. 7. The Legislature shall not extend any franchise or charter, or remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State.

SEC. 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies, and subject them to public use the same as the property of individuals, and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well being of the State.

SEC. 9. No corporation shall engage in business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold any real estate for a longer period than five years, except such as may be necessary for carrying on its business, or which is incident thereto.

SEC. 10. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise or property held thereunder from liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

SEC. 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting called for that purpose, first giving sixty days public notice, as may be provided by law.

SEC. 12. The Legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of the directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

SEC. 13. The State shall not subscribe to or be interested in the stock of, or in any manner loan its credit to, any person, company, association, or corporation.

SEC. 14. Every corporation organized or doing business in this State, under the laws or authority thereof, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

RAILROADS.

SEC. 15. All railroads, canal, and transportation companies shall be common carriers and subject to legislative control. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination.

SEC. 16. No President, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company.

SEC. 17. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket, by a member of the Legislature or any public officer, shall work a forfeiture of his office.

SEC. 18. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

SEC. 19. No discrimination in charges or facilities for transportation shall be made by any railroad or transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

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SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State at the regular gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the sole power, and it shall be their duty, to correct abuses by railroad corporations or other transportation companies; establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; report to the Governor annually, their proceedings, and such other facts as may be deemed important; hear and determine complaints against railroad or other transportation companies; affix penalties and enforce them through the medium of the Courts, and perform such other duties as may be prescribed by law. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in the foregoing sections.

SEC. 21. The State shall be divided into three railroad districts, as nearly equal in population as practicable, from each of which one of the three Railroad Commissioners shall be elected.

SEC. 22. Until the Legislature shall district the State, the following shall be the railroad districts: The First District shall be composed of the Counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one Railroad Commissioner shall be elected. The Second District shall be composed of the Counties of Marin, San Francisco, and San Mateo, from which one Railroad Commissioner shall be elected. The Third District shall be composed of the Counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, from which one Railroad Commissioner shall be elected.

SEC. 23. The Legislature shall pass all laws necessary for the enforcement of the provisions of this article.

MR. STEELE. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE SECRETARY read section one, as follows:

SECTION 1. Corporations may be formed under general laws, but shall not be created by special Act. All laws passed pursuant to this section may be altered from time to time, or repealed.

MR. ESTEE. Mr. Chairman: I ask that the Secretary read the whole article, because so far as the committee are concerned, at least some of us, are going to treat the report all as one great proposition, traversing the whole subject. I ask that the Secretary read the whole report. Under the rule I understand that it has to be read.

THE CHAIRMAN. If there be no objection the Secretary will read the whole report.

MR. PORTER. I object.

MR. GRACE. I object.

MR. LAINE. Mr. Chairman: I desire to offer an amendment to section one.

THE SECRETARY read:

"Amend second clause of section one of the article on corporations, as reported by the committee, so as to read as follows: 'All laws now in force in this State concerning corporations, and all that may hereafter be passed pursuant to this section, may be altered from time to time or repealed.'"

MR. LARKIN. Mr. Chairman: I understand that the Chairman of the committee desires to give his views and the reasons for that report this morning, and I presume that there is no member of this Convention but what will be perfectly willing to hear him discuss the principle involved in that report, and the reasons for making that report. The Chairman, I think, should have leave to make his speech this morning upon the whole report as submitted. I therefore move that he be permitted by the Convention to proceed with his remarks.

[Cries of "Second the motion."]

THE CHAIRMAN. If there be no objection the Chairman of the Committee on Corporations other than Municipal will be permitted to address himself to the entire article.

MR. ESTEE. Mr. Chairman: I hope that the same courtesy will be extended to all who wish to speak on either side of the question. I think it would facilitate business if we go through and give the reasons that actuated the committee in presenting the report that they have, as a grand whole, traversing the different sections in our own way. I hope that it will be understood that we may all be at liberty to address ourselves to the whole report.

THE CHAIRMAN. The Chair will hold that members are at liberty to travel over the entire article in discussing this amendment.

MR. ESTEE. I understand that the question really before the committee is the amendment offered by the gentleman from Santa Clara, Mr. Laine.

THE CHAIRMAN. That is the question.

MR. ESTEE. I do not care to address the committee upon that.

THE CHAIRMAN. The Chair has already stated that any gentleman has entire liberty to travel over the whole subject.

MR. GRACE. I have no objection—debate.

MR. LAINE. Mr. Chairman: I ask leave of the committee to withdraw my amendment so that the whole article may be discussed first.

[Cries of "Leave."]

The amendment was withdrawn.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. President: In opening the debate on the subject of the reports of the Committee on Corporations other than Municipal, I am reminded that the questions presented for our consideration are among the gravest that can come before this Convention.

For years the people of this State, and indeed all the Pacific States, nay, of most of the other States of the Union, have been brought face to face with these great questions. In some instances they have been settled by constitutional or statutory provisions; in others they are yet unsettled; in all instances they have inspired the most serious consideration of the leading statesmen of the country.

The result of the action of this Convention, if favorable to the report of your committee, will mark a new era in the history of this State; it will stamp upon the organic law of California that right of visitation and regulation of railroads necessary for the protection of the people.

It will establish a tribunal whose officers are selected by the people, and before which the individual and the corporation may appear and demand justice.

It will take from the halls of legislation the corrupting influence of corporate power; and it will establish mutual confidence between the producer and common carrier, which nothing else thus far devised has.

It may be admitted that nearly all the great business enterprises of the country are in the hands of corporations.

The insurance business is conducted by corporations, the banking business is conducted by corporations, the mining business is in the hands of corporations, the entire carrying trade of the country, not only of the Pacific Coast but of the whole nation, is in the hands of corporations. Natural persons no longer control these great interests. The reasons, Mr. Chairman and gentlemen of the Convention, I attribute to three causes: First, the difficulty of one man controlling money sufficient to handle such great enterprises; second, the personal, financial, and moral irresponsibility of corporations; and lastly, "corporations never die."

Mr. Chairman, in rising to defend the report made by your committee, sir, I am prepared to say for one, and I think in this respect I echo the voice of your committee, that your committee had no desire to imperil any of the great interests of the country. They had no personal or other motives to attack any of these interests. They know, and we all know, that the dollar owned by a corporation has as much right to be protected, to be defended by the organic law of this State, as the dollar owned by the humblest individual in the country. They know, and we all know, that the whole republic, and especially this coast, has been largely indebted for its prosperity to the railroad corporations of the country. We are aware, sir, and every member on this floor must be aware, that it would be impossible now to carry on the great commercial interests of the country but for railroads. We are aware, sir, every thoughtful man everywhere must be aware, that at this time the wagon, the old stage coach, the old time-honored means of transportation of freight and passengers, have passed away forever. That a new era has dawned upon the country, almost without our knowledge and in less than a generation. The capital invested in railroads has become enormous. We are aware, and every person, every thoughtful man must be aware, that no man can attempt to transport his freight to market, wherever his home may be, unless he lives upon some of the great streams of the country, except by railroads. No person visits his old home in the East, or thinks of visiting it, except by railroads. We acknowledge, then, sir, that railroads are great controlling carrying institutions, not only of this country, but of the world. Why, sir, on looking at the statistics we find that while there is but two hundred million dollars engaged in the transportation of all of the freight and passengers to foreign countries from the United States—in railroads alone there is more than five thousand million dollars; that while the entire foreign traffic of the country last year was less than one thousand eight hundred million dollars, yet the entire traffic of the United States by railroads far exceeds eighteen thousand million dollars. The whole thing is immense—it is grand in all its proportions. Nothing like it ever existed before in any country; nothing like it ever existed in any age; nothing like it, that we can anticipate, will ever exist again.

The great services to the country of railroads in peace or war are beyond computation; they are widespread, reaching every interest, touching every individual. It being of such vast importance, the American people have come to think upon this question. The political and financial power of railroads in the United States are immense, and have become a grand *imperium in imperio*—a government within a government, a power within a power, greater than the mightiest, grander and more colossal than any other financial institution hitherto known in the history of civilization. Sir, it was originally the belief of most of us—it was the belief of the fathers of the republic—that monopolies in a free country could not and ought not to exist. On that proposition there was a warfare made many years ago against the National Bank, and after a long and most earnest contest, that institution was destroyed. That was not the sole reason, but it was one of the grand moving powers that controlled the public sentiment of the American people at that time, that monopolies must not be established in a free country. But, sir, monopolies do exist; monopolies will exist; in the very nature of things, they must exist. We cannot help it. You may talk to the winds and tell them not to blow, and they will still blow. So it is with monopolies. We have got to take facts as they are. The people will not put fifty, or a hundred, or two hundred millions of dollars, or any other vast sum, in a great enterprise like a railroad institution or the

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building or establishing of railroads, unless it is virtually a monopoly. It is true that when it was found out that monopolies did exist to a certain extent, it was believed the evil could be remedied, if it be an evil—which I will reach hereafter—by competition, and thereby avoid the effect of the monopoly. But, sir, now I lay down the doctrine adopted by George Stephenson, and by many of the most eminent men of the country, that where combination is possible, competition is impossible; that in truth and in fact there is no such thing as competition to-day in the great carrying trade of the country on land; that there cannot be. I am not prepared to say that it is best that it should be so. It is a great problem whether it is best to have two institutions to make you contribute to, or to have one. It is yet a very grave question whether two institutions, representing a large amount of capital—a larger amount, certainly, than one—can oppress the people a good deal more than one. For, let me say, Mr. Chairman and gentlemen of the Convention, that it is the highest intelligence of the country, the most careful minds, the most thoughtful intellects, that control the dollars of the country; that dollars are not going to be frittered away by useless competition when combination is possible—and combination is always possible in most of the transportation of freight and passengers by land.

Now, sir, I wish very briefly to call your attention to some few established authorities upon these propositions: First—That competition with the railroad corporations is impossible, for I claim that we must educate ourselves up to the questions of the day so far as it is possible; that we have got to measure the facts as they come before us, and we have got to consider them as they are, not as some gentlemen may think or as I may think, they ought to be. I read, sir, from page two hundred and four of Adams' book on "Railroads, their Origin and Problems," in eighteen hundred and seventy-eight, written by Charles Francis Adams, Jr. He says, after following out a long argument made on that subject: "Carrying now the argument directly into the case of railroads, and having recourse again to experience, we find that railroad competition has been tried all over the world, and that everywhere, consciously or unconsciously, but with one consent, it is slowly but surely being abandoned. In its place the principle of responsible, regulated monopoly is asserting itself." And I maintain that to-day that is the live doctrine, that "responsible and regulated monopoly must assert itself." That it is impossible for such vast amounts of money so invested not to be a monopoly, and that it is impossible to make them compete with each other, even if there are two roads running to a given point; and hence, that we must recognize the fact that responsible and regulated monopolies must assert themselves. Now, sir, I will call your attention, right on that point; to a well known authority. I read from a recent address made by Simon Stearn, before a meeting of the business men of New York, at Steinway Hall, April nineteenth, eighteen hundred and seventy-eight, printed by order of the Chamber of Commerce of New York. He says on page eighteen:

"Effectual competition by sea does not exist; that competition by river and canal exists only to a limited and partial extent, and that committees and Commissions carefully chosen have, for the last thirty years, clung to one form of competition after another; that it has, nevertheless, become more and more evident that competition must fail to do for the railway what it does for ordinary trade, and that means have yet to be devised by which competition can be permanently maintained."

Mr. Stearn is a publicist of well known ability, invited by the merchants and the ablest men of the State of New York to address them in Steinway Hall, on these great questions, and he undertook to teach the people as to the marked advancement made in these great institutions in order to show to them that the old idea that monopolies did not exist and that they could not exist, or that competition was a remedy, was untrue. And I think he succeeded in the most signal degree. Now, sir, I find, in Poor's Manual of Railroads for eighteen hundred and seventy-eight, page one—I read from page one to four, Roman paging: "The statistics up to the beginning of eighteen hundred and seventy-eight showed that there were invested in the United States in railroads four thousand four hundred and sixty-eight million five hundred and ninety-one thousand nine hundred and thirty-five dollars; that the gross earnings up to that time was four hundred and ninety-seven millions two hundred and fifty-seven thousand nine hundred and fifty-nine dollars. Since then it has increased very largely; that there was seventy-three thousand miles of railroad in the United States, while now there is seventy-seven thousand miles of railroad. In ten years the amount of money invested in railroads, as appears by the official report, had increased four hundred and thirty-three per cent., while the miles of railroad had only increased a little over one hundred and twenty per cent., thus showing that the amount invested in these great enterprises is simply enormous; that over two hundred thousand people, adults, are employed in the United States to-day by the railroad corporations; that to-day in New York there are twenty-seven thousand miles of railroad, represented by one grand combination, representing over two thousand million dollars; that one man (Colonel Finck) makes the rate of freights and fares for over forty lines of railroad in the United States, and over twenty-seven thousand miles of road."

I say this much, sir, to show only one point: that competition is impossible; the power of such vast sums of money used in combined railroad operations is too great to allow of competition: the Government itself cannot compete with them; that we might as well face the music first as last—that monopolies do exist. Whenever a railroad company comes to you and says we want to compete with another line, by building another road to San Francisco, it costs the people just so much more, and that is the experience everywhere. Now, upon this same subject, I wish to call your attention, to show that it is not confined to the United States alone; that in England, in eighteen hundred and seventy-two, one of the most able reports was made ever made in any country, signed by the Chairman, Mr. Fortescue, then in Parliament. He says as follows, in the report of the Transportation Commission of England:

"Next, as regards competition between railroad companies, there has, on different occasions, been effected competition between railway companies in matters of charges, and it is probable that the charges now made bear traces of that competition. But it may be taken as a general rule that there is now no active competition between different railways in the matter of rates and fares. Wherever different companies run between the same places, they arrange their prices. For instance, not only do the London and North Western, Midland and Great Western make the same rates between Manchester and Southampton, but bind themselves by agreement not to make lower rates, so that we cannot lower its rates without the consent of the other two. And if a new railway should ever be started with a promise of lower rates, it is sure, after a short time, to arrange with its original rivals a system of equal charges."

Mr. Chairman and gentlemen, that is only following out the ordinary course of business, and it is fallacy for peopte to expect of gentlemen engaged in a great business of that character to do for them what no man in the ordinary affairs of business will do for his neighbor. Two men engaged in teaming, living side by side, would not be very apt to compete with each other so that they could not make money.

Again, I find, in the eighth volume of the debates of Pennsylvania, before the Constitutional Convention, that it was laid down as a general rule, and adopted by that Convention, that no competition could be longer maintained. In that debate one of the most distinguished members said:

"The only excuse or palliation made by any one has been by the gentleman from Philadelphia, who alleged that competition would cure these abuses. It is the weakest remark that he ever made in his life, because to talk about competition curing these evils is as idle as the wind itself. Competition to cure evils alleged, indeed conceded, against great corporations like these, is mere idle assertion. It cannot be done. Where can the competition come from to effect such great reformation? The great aggregation of wealth now centered in one or two great corporations of the State very effectually preclude any remedy by competition."

Sir Robert Peel, in that very able report to Parliament as far back as eighteen hundred and forty, told the English people that competition was impracticable; that it was contrary to the ordinary rules of business sense, and that we need not think they would be protected from future action of these great corporations by competition. Nay, sir, I might add still another authority. Sir Henry Tyler, than whom no more distinguished man on the question of finance has ever been in the English Parliament, said the other day, in a great speech made before that body, that competition was impossible; that regulation was the only means of correcting any evils that may exist. He said more, sir. He said: "Gentlemen, the State must control the railroads, or the railroads will control the State." So, also, I call your attention to modern authorities, to James Parton's "Topics of the Times." I will not read it, but refer to page two hundred and eighty and pages two hundred and seventy-eight and two hundred and seventy-nine, where gentlemen of the Convention can find additional authority on this subject; and I might add here, also, "Adams' Chapters on Erie," written in eighteen hundred and seventy-one. He says it is fallacy to suppose that competition is possible. He also says: "Single men have controlled hundreds of miles of railway, thousands of men, tens of millions of revenue, and hundreds of millions of capital. The strength implied in all this they wielded in practical independence of the control both of governments and individuals, much as petty German despots might have governed their little principalities a century or two ago. Thus by degrees almost the whole of the system of internal communication through the northern half of the United States has practically been partitioned out among a few individuals, and, as proximity, or competition on certain debatable grounds—the Belgiums of the system—brought the interests represented by these men into conflict, a series of struggles have ensued, replete with dramatic episodes."

I might call your attention also to the combination of all the railroads East. See the book by Adams, recently written on railroads, on page one hundred and seventy-four. I merely wish to read one word and then I am through on this question. He is a recognized authority, and as I understand a Government Director of the Union Pacific—or was so a few years ago—a man of great ability and of large experience, and for many years he has been a Railroad Commissioner in the State of Massachusetts. Speaking of the recent meeting of railroad people in New York, he says: "The business was divided among the four trunk lines, on the basis of an apportionment of tonnage, and not an apportionment of earnings. Daily returns of all shipments from New York to the West were made to the Commissioner, and thirty-three per cent of this business was allotted each to the New York Central and the Erie, twenty-five per cent to the Pennsylvania and nine per cent to the Baltimore and Ohio. Any road doing more than its allotted share of business had, under the Commissioner's instructions, to turn the excess over to the road doing less than its allotted share, and to pay full rates for it." In other words, these four great trunk lines, the only ones that lead to New York and Boston, except the Grand Trunk of Canada, the only ones between Baltimore and Philadelphia and Washington, and all that extent of sea line, stretching over a distance of twelve hundred miles, combined to neutralize competition, and they are doing it to-day. "In February and March, eighteen hundred and seventy-eight, a succession of meetings were held in New York which were attended by the representatives of no less than forty different corporations, operating some twenty-five thousand miles of road, or about one third of the whole system of the United States." Since then they had a meeting there which represented twenty-seven thousand miles. "After some preliminary difficulties had been disposed of, a plan was adopted. Seven points of general railroad divergence at the West were selected." Again, I find the English Railroad Commission, hitherto and now existing, of whom Mr. Fortescue, in his report in eighteen hundred and seventy-two, says: "There is little real competition between railway companies,

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and that little is rapidly disappearing. The monopoly is inevitable. The self-interest of the companies cannot be trusted. That it is a mistake to suppose that their interest and that of the public are one. The only practicable way out is by some form of regulation."

Now, Mr. Chairman and gentlemen of the Convention, I maintain that we have shown you, thus far, two propositions: First, that monopolies, with this class of corporations, do exist, that they must exist; that from the amount involved they always will exist. And I am not prepared to say that it is not just as well for the people to have them exist, because that much money invested in any enterprise always makes a monopoly. Next, I think we have shown you that competition cannot exist. The very name of monopoly of any business grows out of the idea, or the thought rather, that competition is impossible. Then if it be true that the carrying trade of the country is a monopoly—that there is no remedy by competition—the next question which I propose to submit to your consideration, is as to what is the remedy, if one is required. Now, in all the recent Constitutional Conventions the ablest men have recognized the necessity of the regulation of railroads. Not with the view, sir, of destroying them; far from it. Not with the view of injuring a dollar of their money; very far from that. In the Pennsylvania Convention it was admitted that some form of regulation was necessary; that without it, the people would not be protected; that without it the rights of the corporations even were uncertain; that it would be a benefit to both; that without the people the railroad corporations could not exist an hour, and that the interests of the people and the corporations ought to be mutual; that one was a public institution, carrying on a public trust, and the other was represented by the mass of the people in their individual sovereign capacity, incapable of maintaining their own interests individually, if infringed upon. In the United States Senate, at the last meeting of Congress, there was a most marked instance of the regulation of railroads by legislation; the well known Thurman Act was passed. It is true that Act was for the specific purpose of making the companies pay up; but, on recurring to those debates, we find the master spirits of the nation taking hold of this great subject, and they treated it as one of national importanee. And looking at it in that view alone, they claimed it was the interest of the people, their right, their duty, to regulate the railroad companies of the country. But, sir, regulation is of many forms.

That regulation of some character is necessary is now admitted by all the thoughtful men in the country not engaged in that peculiar business. Why, let me put an instance. I apprehend that there is not a gentleman on this floor but would say that if any transportation company charged a hundred dollars for a passage from here to San Francisco the Courts would remedy the evil by declaring that it was an outrageous price. Then if the Courts, or the Legislature, or the people, can keep the corporations from charging an outrageous price for transportation of person and property, they can make them carry at a reasonable price. But, sir, there is nothing in the report of your committee, let me say, fixing even a maximum of what that reasonable price is. The railroad companies are not even referred to as to any maximum rates. I do not believe this Convention—and I express only my own opinion—nor do I believe any legislative body, in the time allotted to it to consider such important questions, can fix maximum rates of freights and fares. I do not believe this can be rationally done by any legislative body, because it is a business of itself; because it requires large study and great experience in order to fix such maximums as may be just to the people and fair to the companies. Now, before I approach the other branch of this question, namely, as to the *form of regulation*, let me say that I recognize that railroad companies, in their relations with the people, are a power. As was well stated by a distinguished gentleman in the Pennsylvania Convention, "the power of railroads is like that of steam—you cannot measure it, you cannot compute its value; but you must control it." Massey said of steam:

> "You must harness me down with your iron bands,
> Be sure of your curb and rein,
> For I scorn the strength of your puny hands
> As the tempest scorns the chain."

Before we approach the question as to the form of control that ought to be adopted over this class of corporations, we must first inquire whether we have the power. The Supreme Court of the United States has decided we have. I will read from the 4th of Otto the decision in the case of Munn vs. the State of Illinois—the well known warehouse cases—page 125. Chief Justice Waite says:

"From this source come the police powers, which, as was said by Mr. Chief Justice Taney, in the License Cases, 5 How., 583, 'are nothing more or less than the powers of government inherent in every sovereignty, * * * that is to say, * * * the power to govern men and things.' Under these powers the government regulates the conduct of its citizens one towards another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, or articles sold."

Now, why should they regulate ferries? Because of the public relation of the ferry keeper with the people; because in most States he got the franchise from the people to run the ferry. In other words, the people in its sovereign capacity said: "This stream of water runs up through our valleys and belongs to the sovereign, but we will allow you to run a ferry here and collect toll from the people, but always and everywhere reserve the right to control that ferry." Chief Justice Waite continues:

"To this day statutes are to be found in many of the States upon some or all of these subjects, and we think it has never been successfully contended that such legislation came within any constitutional prohibition against interference with private property."

In the same decision, page one hundred and twenty-nine, the same authority says:

"In later times the same principle came under consideration in the Supreme Court of Alabama. That Court was called upon in eighteen hundred and forty-one to decide whether the power granted to the City of Mobile to regulate the weight and price of bread was constitutional, and it was contended that 'it would interfere with the right of the citizen to pursue his lawful trade or calling in the mode his judgment might dictate;' but the Court said: 'There is no motive * * * for this interference on the part of the Legislature, with the lawful actions of individuals, or the mode in which private property shall be enjoyed, unless such calling affects the public interest or private property in a manner which directly affects the body of the people. Upon this principle in this State tavern keepers are licensed, * * * and the County Court is required at least once a year to settle the rates of innkeepers. Upon the same principle is founded the control which the Legislature has always exercised in the establishment and regulation of mills, ferries, bridges, turnpike roads, and other kindred subjects.'"

It has been stated that corporations are in danger of being destroyed by the people. There never was an instance—and I challenge the presentation of one—where the people, either in their sovereign capacity, by their Constitutional Convention, or by their Legislature, have imposed terms upon any corporation whereby their interests have been imperiled. There is not an instance, so far as I have been able to find, where a corporation has been obliged to go into liquidation by the acts of the people; while thousands upon thousands of them have fallen to pieces by their own improvident acts. The same Judge says further:

"Under such circumstances it is difficult to see why, if the common carrier, or the miller, or the ferryman, or the inn-keeper, or the wharfinger, or the barber, or the cartman, or the hackney coachman, pursues a public employment, and exercises 'a sort of public office,' these plaintiffs in error do not. They stand, to use the language of their counsel, in the very 'gateway of commerce,' and take toll from all who pass. Their business most certainly 'tends to a common charge, and is become a thing of public interest and use.' Every bushel of grain for its passage 'pays a toll, which is a common charge,' and, therefore, according to Lord Hale, every such warehouseman 'ought to be under public regulation, viz.: that he * * * take but reasonable tolls.' Certainly, if any business can be clothed 'with a public interest, and cease to be *juris privati* only,' this has been. It may not be made so by the operation of the Constitution of Illinois, or this statute, but it is by the facts." Hence I argue that we have the right by precedent and experience to regulate corporations. The next question is as to its policy, and in the adoption of that rule, whether it is politic to do it is a question appealing to every individual mind. It is a question of judgment—from his experience, from the history of the past—and let me say to my distinguished friend from Marin, that there is nothing ancient about the railroads of the country; none of them came down here with knee-breeches and old flintlocks. The great railroad questions of the nation, are of recent origin—nothing old, nothing historical. There are no precedents that are not of the living present; we can see it all around and about us. We don't go to any old musty tomes to find out what the opinions of our fathers were as to railroads, for they had none. The gentleman's reference to the past goes back too far. Many different remedies are presented in this article on corporations, each reaching, in some degree, a wrong complained of, and all touching the question of regulation. And about the first of them is the one relative to the establishment of a Commission.

I am aware, sir, that the question of adopting a section of that character, providing for a Railroad Commission, struck many minds in this Convention as something unusual and extraordinary; that to provide for a Commission in a Constitution was too grave a matter, because it would take a long time to remedy the evil, if evil arises from it; that it would be better to leave this matter in the hands of the people, or, in other words, in the hands of the Legislature. On this point your committee—or a majority of them—agreed. And among the reasons—all of which I shall not attempt to give—they claimed, first, that a Commission was the fairest body that could be selected; the fairest to the companies and the fairest to the people. They claimed it was the fairest, sir, because no man can act justly and fairly upon any important question of that kind unless he comprehends the subject; and that a Commission elected for the term of four years can certainly so inform itself upon the questions as to be able to pass upon those questions that necessarily require the consideration of strong reasoning capacity; that a legislative body coming together once in two years, in session but a comparatively short time, could not give to this question such consideration as the magnitude of the subject demanded. Another of the chief reasons which was urged or discussed in that committee, sir, was that it got rid, to a large degree, of the great disgraces of the time—I will not say in California only—namely, the corrupting influences in legislative bodies. I am not saying, sir, that it always happens in legislative bodies, or that legislative bodies are always corrupt when handling these questions, but what I do say is that it is recognized everywhere throughout the Union among thoughtful men that when questions materially affecting the railroads come up for consideration before legislative bodies the bad men of the country swarm around the Legislature. They seem to know something that nobody else does. That money is freely used on such occasions is not and cannot be denied. Why, sir, the other day I looked at the report of the committee appointed by the New York Legislature, in eighteen hundred and seventy-four, to investigate the operation of the Erie road. They brought before that committee that great magnate Jay Gould, and they asked him many questions which he answered with a frankness that none can help but admire, even if it was an outrageous admission. When asked what a charge meant for

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over one million twelve hundred thousand dollars to the India rubber account, he said, "Why, that is our legislative expenses." In other words, "India rubber account" in the Erie books means legislative expenses.

Your committee seriously think that it would be a happy day for the country, and a happy day for the people, when there shall be no "India rubber accounts" in the books of corporations. I do not claim that there has been any here. I hope not. I certainly do not charge it. And again, on the same memorable occasion—and I refer to it here because the question of legislative bodies attempting to control this subject is before us—he was asked what his politics was. He was the President of the Erie road, and he said: "In Democratic districts I am a Democrat; in Republican districts I am a Republican; in doubtful districts I am doubtful, but I am always for Erie." He is admitted to be one of the greatest railroad financiers of the country. Your committee thought that the remedy rested in a Commission, and whether that section which has been framed by them will represent your ideas I am not here to argue. We believe that the principle is right; that a Commission elected by the people ought to control this matter; that while it is possible, sir, to buy three men—more possible to buy three men than to buy one hundred and twenty—yet personal responsibility makes men honest; personal responsibility makes men conservative; personal responsibility always make men capable. When you throw the whole weight of this great question into a legislative body no one is responsible. All are, it is true, but there is no individual responsibility. But when you elect a constitutional officer whose duty it shall be settle these questions; when he takes the oath of office it carries with it a solemnity and a realization of the duties which devolve upon him that in no case can rest upon the member of the Legislature. Again, I say there is nothing new in it. In the State of Maine they have Railroad Commissioners, and in New Hampshire, Vermont, Massachusetts, New York, Connecticut, Pennsylvania, Michigan, Ohio, Illinois, Iowa, Minnesota, Wisconsin, New Jersey, Missouri, and California. It is true, sir, that most of these Commissions have very little power. But they are of recent origin—most of them provided for within the last five years, all of them within the last twelve. They control these questions. In England, France, Germany, Italy, and Austria, the railways are under the strictest State surveillance by officers occupying a similar relative position to these Commissioners. A remedy by Commission seems to us to be the correct one. And there is nothing new about that relative to other corporations. I was struck the other day very curiously by seeing in some of the papers that "we might as well think of controlling a bank and having a Bank Commission and an Insurance Commission." Why, sir, there are but a few of the States in the Union that have not had a Bank Commission. California has only had one a year, and you already observe its beneficial results. And that Bank Commission has twice the power that is given in this section of the Constitution. It can go and close the doors of any bank in this State. It can demand the combination of their safes, and count their money, and examine their books and accounts, and can say: "Your securities are not good, sir; you are insolvent, sir, and we close your doors and shut down your business." And still it is a bank owned by private capital entirely. There is not one of the public has any money there except as individuals. In New York they have an Insurance Commissioner, and that Insurance Commissioner not only controls the insurance companies of that State, but when the insurance companies fail he handles all the money and distributes it to those to whom it is due and makes the collection. In other words, the State steps in and says to the individuals composing the companies: "You have been dealing with the public in some public relation and have proved untrue to your trust, and now the State in its sovereign capacity will take the power from you and settle with your creditors." So there is nothing new; there is nothing extraordinary about this.

Let me say further—and I hope I do not offend any person who believes there is agrarianism in this—that there is no such thing as the existence of a railroad anywhere, in any country, except by and through the sovereign will of the State. The right of eminent domain has to be invoked everywhere before they can build the road. To make a personal illustration—not with a view of bringing the gentleman's name into my argument—Mr. Stanford, for instance, has a farm five miles long. He builds a railroad across it; he carries as many passengers or as few as he pleases on his own land; he can charge any price he pleases; he can discriminate between you and I; run his cars on any time he pleases. It is his; everything about it is his—the roadbed, the iron, the engine, everything is his, and he controls it; because the law says that the man who owns the land owns everything, from the heavens above to the center of the earth. But, sir, he comes to the line of my friend here sitting in front of me, and he says, "I want to go through your land; I want to go to Sacramento." My friend says: "I don't want you to go through my farm; this is my land, which I inherited from my father; every tree here is dear to me; this land is mine; it is my castle; as an American citizen, standing on my own soil, I say to you, 'halt!'" The laws of the country say to him, as he marches on to the line, "halt!" and he stops. He cannot built his road any further. No private power can get him through. But he turns over to a certain section in the Constitution which reads: "Private property may be taken for public use." He goes on, and in the ordinary course of law he appeals to the State of California. He says: "You are the sovereign. I am about to establish a road for the public use, for carrying on a public enterprise—the transportation of passengers and freights. I demand that you come and aid me to force my way through this man's land, because the good of the many, instead of the good of the few, is always recognized by States, and this is for a public use." The State comes, and it raps at his door, and says: "It is true you are the sovereign here, but the State is higher than you, and we say to you when this man pays you a reasonable price for the land, he can pass on with his railroad." And so he goes on through farm after farm, and by the exercise of the right of eminent domain, he finally completes his road. In other words, in the building of his road, he has to appeal to the sovereign power of the State; but when we undertake to say that we will regulate the use of that road, which he acquired by the sovereign power of the State, he says it is his private property; that you have no more right to say what he shall charge than you have to take a man's shoes, who manufactures them in his shop, without paying. I contend that the analogy is not good. Mr. Stanford, in his recent letter, which was written with marked ability, and I must say with extreme moderation—with a fairness that we cannot help but commend in the main—says: "Almost from the commencement of railroad operations in this State, we have found individuals anxious to commend themselves to the many; ready, under the plea of regulation, to confiscate. There has been no measure of regulation yet proposed in this State that did not contain and which was not based upon the idea of confiscating the railroads—so far as applied to the regulation of the rates of freights and fares."

In every civilized country where railroads have been built, some form of regulation has been adopted. And why should it not be? They are established for a public use. They are common carriers. The people are all interested. Their money may be in it. But I am assuming that these roads were built by their own money. But when they built that road, when they incorporated themselves to build it, they knew exactly in what direction they were going to build it, and over what line. They knew that they were going to perform a certain duty to the public, namely, transporting passengers and freight for a certain price, and the people had a right to regulate it just as much as they have a right to regulate a toll road. And it is really marvelous, when we come to think of it, that every gentleman will admit that everywhere in this nation the Boards of Supervisors in the various counties have always regulated the toll roads where the franchise has been given to them, but that it is wrong to regulate these matters of paramount interest on these great highways of the nation. It is because the railroads perform these great functions, and because they affect every interest and every want of the people, that they should be regulated by the people. I do not say that this company here has to be regulated. I am not saying that it has not. I have my own private opinion as to that. But what I do say is that this Constitutional Convention should provide a means whereby all railroad companies may be controlled.

Why, sir, in the State of Ohio less than ten per cent. of the entire railroad values of the State is owned in the State. You do not know, nor do I know, how soon every railroad in this State may be owned by foreign capitalists—men who have no interest in common with us; possibly not citizens, the most of them; unacquainted with our institutions, uninterested in our people except to bleed them. I should feel that we had neglected a duty if we did not provide for these possibilities. It may be, that while these great railroad enterprises are in the hands of people almost born upon this soil, with every affection and every interest here, they may not interfere with the people's rights as much as foreign capitalists; but when the capital is thrown into foreign hands, as Erie is to-day, and as many other Eastern roads are, I want to know what power of regulation you have unless you provide for it in this Constitution?

The next remedy, sir, which your committee has thought specially important, is found in section nineteen as reported, and that is as to discrimination. Section nineteen reads:

SEC. 19. No discrimination in charges or facilities for transportation shall be made by any railroad or transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any transportation company, or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

There is an objection interposed to that section—interposed by the corporate interests—and that objection I think I have already answered. The objection is that it would interfere with competition; that if they were obliged to charge only two dollars and fifty cents from San Francisco to Sacramento to transport a passengor, and if that did not pay because of there being competition between Sacramento and San Francisco, they could not charge more, they ought to be privileged to charge from some intermediate point a much larger sum. I contend, first, that that argument is not founded in reason. I confess I don't understand the railroad business as these railroad men do, but I confess I cannot understand the reason of this objection. It is admitted even by Colonel Finck, the great railroad man of the nation, and by all of the distinguished and thoughtful men of the country, that competition is impossible, but they say that along certain waters it is possible. But I want to know of you what competition there is between here and San Francisco. There may be two or three stern-wheel boats, but I want you to go and find somebody to travel on them. I want some gentleman to rise in his place and state if he knows of any real competition between here and San Francisco. But the section reads: "Not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station." You can commence at San Francisco, and they can only charge three dollars from San Francisco to Sacramento; from Vallejo to Sacramento, three dollars; from Napa Junction to Sacramento, three dollars; from Davisville to Sacramento, three dollars; or from Dixon to Sacramento, three dollars. They cannot charge more, it is true, to Vallejo or Dixon, or the other intermediate places; they can charge only the same price for a less distance than they do for a greater distance; and even this provision in our report is not new; the committee does not claim the honor of

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inventing this. We find that section—or one of the same purport—in several of the most recent Constitutions adopted by various States in the Union. I find section three of the Pennsylvania Constitution, article seventeen, reads as follows:

"All individuals, associations, and corporations shall have equal right to have persons and property transported over railroads and canals, and no undue or unreasonable discrimination shall be made in charges for, or in facilities for, transportation of freight or passengers within the State, or coming from or going to any other State. Persons or property transported over any railroad shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station; but excursion and commutation tickets may be issued at special rates."

In that Convention were two ex-Governors—ex-Governor Bigler and ex-Governor Curtin. There were a large number of the most distinguished men of Pennsylvania, and that section was carried almost unanimously, not unanimously, but by a large vote. Now, then, in Pennsylvania they have a very great opportunity for studying this question, because the carrying trade of Pennsylvania—I do not now remember the exact amount—but it is, I think, twenty-five times larger than that of California; it is a great many times larger. And hence, the opportunity to ventilate the question before that Convention was better than it possibly can be here.

Again, I find in Missouri, the Constitution which was adopted as late as eighteen hundred and seventy-five, I read section twenty-three, of article twelve, on corporations: "No discrimination in charges or facilities in transportation shall be made between transportation companies and individuals, or in favor of either, by abatement, drawback, or otherwise; and no railroad company, or any lessee, manager, or employé thereof shall make any preference in furnishing cars or motive power."

Again, in Illinois I find almost the same provision. I do not recur to it now, but my recollection is that it is also in the Illinois Constitution; also in Colorado; and in the Ohio Convention the same rule was adopted, but when it was submitted to the people, the Constitution as a whole was defeated. Hence, Mr. Chairman and gentlemen of the Convention, we think that section nineteen is right. Nothing that it is possible for us to imagine causes such a feeling of uncertainty on the part of the producer, as the fact that one man has to pay a larger sum proportionately for the transportation of his freight or his person than another. There is not any doubt in my mind that most of the troubles that have arisen relative to the railroad question between the people and the corporations have arisen from this reason alone. A railroad company, being in possession of a great trust, it is its duty to so conduct its business that it will not oppress the people; that before the law every citizen is equal; that the rights of the many shall not be subverted for the benefit of the few.

On the question of discrimination by railroad companies, I will read from page one hundred and twenty-three of Adams on Railroads, where he says:

"Where goods starting from the same point were to be delivered at different stations on the line of the same road, those forwarding them discovered to their cost that the tariff resembled nothing so much as an undulating line; for a distance of twenty miles more would have to be paid than for a distance of forty miles. Those living between competing points were rigidly excluded from the benefits of competition. To such an outrageous extent was this carried that it became the common practice where an entire car-load of merchandise, destined to some way station on the line of a railroad, was paid through to a competing point far beyond on that line, to make a large extra charge for not hauling it to that point, but dropping it at its ultimate destination in the first place. It was exactly as if a traveler was to buy a through ticket from Albany to Buffalo, and the railroad company were to insist not only on taking up his ticket, but charging him a dollar extra if he left the train at Syracuse." And that is a fair illustration made by the author.

"Remonstrances against this absurd anomaly were treated by the officials of the railroad companies as if they were too unreasonable for a patient hearing. This was much more the case in the West than at the East, but even in Massachusetts, when the State Railroad Commissioners on one occasieon urged upon a corporation the injustice of charging some twenty dollars extra on each car-load of wheat, which had been paid for on a through bill of lading to the further end of its line, if they left it at its point of destination, one hundred miles short of that end, thus making a charge of twenty dollars for not hauling the loaded car one hundred miles; in this case their representations were met with the counter proposal that, if the consignees preferred, the company would haul his goods by his door to the point to which they were billed and then back, charging both ways." Comforting, indeed. "He might pay the through rate forward and the local rate back, or submit to the extra charge, just as he chose. Besides all this, however, competition led to favoritism of the grossest character. Men or business firms, whose shipments by rail were large, could command their own terms, as compared with those whose shipments were small. The most irritating as well as wrongful inequalities were thus made common all over the road. Every local settlement and every secluded farmer saw other settlements and other farmers more fortunately placed, whose consequent prosperity seemed to make their own ruin a question of time. Place to place, or man to man, they might compete; but when the weight of the railroad was flung into one scale, it was strange indeed if the other did not kick the beam." It is because of this kicking the beam that this committee has reported this section. And it is indorsed by the strongest minds everywhere over the country. I took occasion the other day, in this State, to ask an eminent railroad engineer where there was anything wrong about it. Without wishing to be quoted, he said: "While in some instances it might hurt the companies, in the main it is right and ought to be done."

The very word "discrimination," the very fact that one man—one man's dollar is not as good as another's—that because he lives off from some line of travel, or in some country place where the railroad passes him: and because he cannot walk, or send his grain, to market, except in one way—I want to know why they should charge him for living at that place? This is not mileage rates. I recognize what the English Board of Transportation Commissioners said in their report of eighteen hundred and seventy-two: that mileage rates in all instances would not be just. This is not mileage rates, because they can charge just as much for ten miles as they do for one hundred miles. Mileage rates would mean that they could not charge but one tenth as much, or that they could not charge any more. And if there is any injustice, even in this section, the injustice is against the shipper—against the man who travels—and not against the railroad company. In eighteen hundred and seventy-six—to show you how little freight is transported by any means except by rail—right through Central New York, with a great canal following the same course, eighty-three per cent. of the entire freight went by rail—eighty-three per cent! You will see that in this fast age people cannot wait; they must thrust their grain into market. They rush it with lightning speed. They do not object to paying a reasonable price—a fair price.

I would not impose any terms that would make any railroad company, or anybody, the loser; but I would say that one man's dollar should be as good as another's, so that when we ship our grain we feel that if we had to pay five dollars a ton, that our neighbor Jones, or Smith, or whoever he may be, pays the same price for the same class of freight, in the same direction, to the same point.

And, again, these corporations are recognized by many of the authorities of the country as public highways. I do not say they are. We follow the decisions of the Supreme Court of the United States, and they say they are common carriers and subject to legislative control. Still, I believe the Pennsylvania, Ohio, Illinois, Missouri, and other of the Constitutions, all declared that they were public highways in the broadest terms. I will refer to Angel on Highways, page twelve, section eighteen: "A railroad, established and existing under an Act or charter or incorporation, like a turnpike or a plank road, is a public highway, but only to be used in a different mode."

It is true everybody cannot go on it. Everybody cannot take possession of it, but what the authority means is that the railroad, in its relations with the people, is a public highway. Here is a large number of authorities referred to sustaining that view. On page four hundred and sixty-four of the same book, section three hundred and seventy, the author says: "Public railroads, like turnpike roads and canals, are the creatures of statutes, and, as with turnpike roads and canals, the rights and duties of their proprietors, and of the public, flow directly from these statutes, and from the mutual relations thereby created between them. They are open to the travel of the entire public, upon the payment of the prescribed rate of toll. And, as in the case of turnpike roads and canals, if there be any ambiguity in the language of the Acts, by which the right or the rate of toll is granted, that construction is to be adopted which is most favorable to the public, as against the grantee." There is the authority, a recognized authority upon that question. Now, then, upon this point, Mr. Chairman and gentlemen, I maintain that some sort of regulation should be made, and that the Commission is the best power to do it. That discrimination is wrong, and that we ought to provide against it. That what ought to be done can be done, and I am sure that members of the Convention will recognize the fact that this ought to be done. The whole people gave these companies the right to build their roads; the whole people are entitled to equal protection. The existence of the railroads depends upon the people, and the prosperity of people depends upon the fairness with which the railroads control their property. But for the people themselves these roads would not have existed. But for the roads we could not transport our grain, our freight, and our persons. We are entitled to that mutual relation occupied by persons holding great trusts, whereby they put money into an enterprise in which the public are interested. We say that the creature shall not by any act of ours become greater than its creator. We say the creature made by the statute, created by the law, shall not under any state of circumstances be more potent, more powerful to control its affairs, than the State itself. Why, the railroads of the East, says Simon Stern, are the real government. They have, says that author, all the substantial elements of power without any of the responsibilities. Aye, it is perpetual with them, while public officers are fluctuating and pass away. If railroads cannot be regulated the railroads will control the internal commerce of the country; they do control it.

It is true the Constitution of the United States prescribes that Congress shall have the right to regulate commerce between the States; and our organic law has always assumed that the State should regulate its own internal commerce; but, unless we take this thing in hand, we cannot regulate any longer, for the commerce as between the citizens of the State is now controlled entirely by the railroads of the country. This Constitution can only protect the people from evils which, at the time of its enactment, are experienced or in sight; we cannot anticipate what is in the remote future. The regulation of freights and fares is not new. For many years, in New York, it has been a law that no railroad company shall pay more than ten per cent. dividends; but the Legislature made this mistake: it did not make any provision against companies watering their stock, which we have provided against in this article. The result was that the New York Central accumulated a large amount of money, and one morning the people woke up and found that that company had increased its capital stock by the sum of thirty million dollars—a quick way of making money—it was done in an hour, and then they could pay dividends on this additional stock. And let me say here, also, that ever since the organization of the New York Central there has been a mileage rate for passengers—two cents per

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mile—so there is nothing unique in giving these powers to the Commissioners. Similar provisions to that in this article will be found in the Constitutions of Pennsylvania, Missouri, and Illinois. We are not experimenting, except so far as it is an experiment to provide for a Commission in a Constitution. That far it may be an experiment, but we think it is an experiment we are entitled to make. The personal responsibility imposed on these men will cause the people to select such persons as are eminently qualified for the place.

The interest of the railroads of right ought to be protected; the rights of the people must be maintained. The railroads expect too much, the people receive too little. The future of the railroad problem, like the future of our country, is yet a mystery; but judging the future by the past, if we would perpetuate the one we must control the other. If railroads, with all their benefits, bring in their train corruption; if the eternal rock of purity and justice shall be rent asunder; if public station depends on the will of the few rather than the wish of the many; then indeed may we echo the sentiment of the Irish poet:

"Ill fares the land, to hastening ills a prey,
Where wealth accumulates and men decay."

I recognize the magnitude of the question before us. I appreciate the difficulty of our position, but there is no man who is not deaf but has heard the demand of the people for justice. They hope to obtain it through this Convention. I hope their wishes may be heeded.

An old Roman author once said: "Justice is the unchanging, everlasting will to give each man his right." If this was deemed true then, here and now may we not secure that right? For the glory of American legislation is its justice, and the splendor of our history is the records of the liberty of the people regulated by law. [Applause.]

MR. HUESTIS. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, report progress, and ask leave to sit again.

The hour having arrived, the Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

CORPORATIONS.

MR. ESTEE. I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The article on Corporations other than Municipal is under consideration. The Secretary will read section one.

THE SECRETARY read:

SECTION 1. Corporations may be formed under general laws, but shall not be created by special Act. All laws passed pursuant to this section may be altered from time to time, or repealed.

MR. LAINE. Mr. Chairman: I offered an amendment this morning, and I will send it up. I desire to read it first. It will be noticed that the second clause of the first section provides that all laws passed pursuant to this section may be altered from time to time, or repealed. If we should adopt a new Constitution, with this provision as it stands, of course the old Constitution would be wiped out, and the laws that have already been passed, and are on the statute books, would be null and void. To avoid any such construction I propose this amendment:

"All laws now in force in this State, concerning corporations, and all that may hereafter be passed, pursuant to this section, may be altered from time to time, or repealed."

THE SECRETARY read:

"Amend the second clause of section one of the article on corporations, as reported by the committee, so as to read as follows: 'All laws now in force in this State concerning corporations, and all that may hereafter be passed, pursuant to this section, may be altered from time to time, or repealed.'"

THE CHAIRMAN. The question is on the amendment proposed by the gentlemen from Santa Clara.

The amendment was adopted.

THE CHAIRMAN. If there are no further amendments to section one the Secretary will read section two.

THE SECRETARY read:

SEC. 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

THE CHAIRMAN. Any amendments to this section?

MR. WILSON, of First District. Mr. Chairman: I would like to ask the Chairman of the committee why the words "except for municipal purposes" were omitted from section one, as it stood in the old Constitution; whether it will be provided for by the Committee on Municipal Corporations. The old Constitution reads: "Corporations may be formed under general laws, but shall not be treated by special Act, except for municipal purposes." I do not suppose it is the intention to prevent municipal corporations from being formed by special Act, as such Consolidation Acts as that of the City and County of San Francisco.

MR. ESTEE. Mr. Chairman: I will state that it was understood by the committee that the Committee on Town and City Government had that under consideration, and that they propose to make it a system of itself, and the Committee on Corporations other than Municipal did not feel that they had the power to deal with that question. I understood that the other committee would consider that in due time.

MR. HAGER. Mr. Chairman: I will state that the Committee on City, County, and Township Organization had that matter under consideration, have passed upon it, in fact, and will report a proposition that will cover that question.

MR. VAN DYKE. I would suggest an amendment: to insert after the word "corporations" the words "other than municipal."

MR. ESTEE. There is a whole article to be formulated on that subject. I can see no objection to it, however.

MR. VAN DYKE. I offer that as an amendment; insert the words "other than municipal," between the words "corporations" and "may," in line one of section one, so as to read: "Corporations, other than municipal, may be formed under general laws," etc.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I do not think it would be proper to place that amendment in the section, for the simple reason that I believe it is the universal sentiment of the Committee on City, County, and Township Organization, and perhaps it will be of the Convention, that the provision of the old Constitution allowing municipal corporations shall be done away with, and only allow them to be created by general Act. Therefore I think it would be improper to make that exception here. That would be a contradiction of terms. Here we say that "corporations may be formed under general laws, but shall not be created by special Act, except for municipal purposes;" and then afterwards another provision will provide that not even municipal corporations can be created by special Act. I do not think it would be harmonious, and I think it would be better to leave it as it is.

REMARKS OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I do not see any difficulty, such as has been suggested. It seems to me that if there is a proper caption to that article on corporations in the Constitution, that it would do away with all difficulty. If the caption is "relative to corporations other than municipal," as it is here, it would not suggest any difficulty of the kind, because it would be confined to corporations other than municipal, and very often State Constitutions have headings of that kind. I can see no difficulty in the matter.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: As I understand the amendment, it is to make the section read: "Corporations, other than municipal, may be formed under general laws." That would undo the work that is being done by the Committee on Municipal Corporations, because we have decided to recommend to the Convention that municipal corporations shall only be formed under general laws, and this amendment, if adopted, would be equivalent to a prohibition of any provision such as I have mentioned. I think the amendment ought not to prevail. If this amendment is adopted, our committee will have to go over the work again when we come into Convention. If it should be adopted at this time it will undo the work already done before the committee has a chance to make a report.

MR. VAN DYKE. With that explanation I withdraw the amendment.

THE CHAIRMAN. Are there any amendments to section two?

MR. ESTEE. That is from the old Constitution; it is section thirty-two of the old Constitution.

THE CHAIRMAN. If there is no amendment, the Secretary will read section three.

THE SECRETARY read:

SEC. 3. Each stockholder of a corporation, or joint stock association, shall be individually and personally liable for his proportion of all its debts and liabilities.

MR. WEBSTER. I wish to offer a substitute for the section.

THE SECRETARY read:

"Each stockholder of a corporation or joint stock association shall be individually personally liable for his proportion of all its debts and liabilities contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association, and also for a further sum at least equal in amount to the par value of his stock, any contract or agreement to the contrary notwithstanding."

THE CHAIRMAN. The question is on the amendment.

SPEECH OF MR. WEBSTER.

MR. WEBSTER. Mr. Chairman: The objects I have in offering this substitute are several: First, the section as reported by the committee being the same as in the present Constitution, is defective, for the reason that it has never been fully understood, consequently it is inoperative. So defective in fact that it has had to be superseded by legislative enactment. This position is fully carried out, it seems to me, in the decision of the Supreme Court, reported in the 24 Cal., 451, French vs. Teschemaker et al. It says:

"At common law no individual liability is imposed upon the members of a corporation, and there is therefore no department of the common law to which we can look for such a rule, except that which relates to partnership or associations formed for trading purposes. Upon examination it will be found that that fountain fails to supply the needed element. By the law of partnership each member, as to third persons, is jointly and severally liable for the full amount of the liabilities of the firm. As between themselves, each one's proportion of liability may or may not be regulated by private agreement. In the absence of any such agreement they are bound to share the burden equally, and the right to contribution exists. It will not do, therefore, to say that the section in question has adopted the common law rule of partnership

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liability and extended it to stockholders of a corporation, because that proves too much, and carries us beyond the express terms of the section. Whatever be the extent of the liability, and by whatever rule it is to be ascertained, it is clear, from the terms used, that it was not the intention of the framers of the Constitution to impose upon the stockholders of a corporation a liability coextensive with that of copartners of common law. The liability is not joint and several, but is individual and personal without any right to contribution, and is not for the whole amount of the debt, but is for some indeterminate proportion. So much is clear from the language itself without foreign aid. From what has been said, it would seem that the thirty-sixth section does not contain a complete and obviously perfect rule of liabiltty, and cannot therefore be held to be self executing; and it would further seem that the missing quantities, necessary to make it such, cannot be drawn from the common law.

"From what has been said, it results that the thirty-sixth section of the Constitution, even when aided by the rules of law and mathematics, does not make a complete rule broad enough in its terms to embrace and definitely settle all the conditions upon which the liability of the stockholder must rest; and, as a corollary, it further results that legislation is necessary to give it a reasonable and practicable operation. And such seems to have been the conclusion to which the Legislature has arrived.

"The thirty-second section of the Act concerning corporations, passed in eighteen hundred and fifty (Woods' Digest, 115), provides that "each stockholder of any corporation shall be individually and personally liable for a portion of all its debts and liabilities proportioned to the amount of stock owned by him." Here the word "proportion," as used in the Constitution, is to a certain extent defined, and delared to be a mathematical proportion. But this enactment was insufficient to give a reasonable and practicable operation to the thirty-sixth section, as we have already seen. This truth seems to have been discovered by the Legislature, for in eighteen hundred and fifty-three they passed another Act concerning incorporations, in which we find the following section:

"SEC. 16. Each stockholder shall be individually and personally liable for his proportion of all the debts and liabilities of the company, *contracted or incurred during the time that he was a stockholder*. For the recovery of which joint or several actions may be instituted and prosecuted.

"It is true that the Legislature, in supplying what was needed and omitted from the Act of eighteen hundred and fifty, left out the provision of that Act which defines the word "proportion;" yet, although neither by itself affords a perfect rule, the two combined contain what is omitted in the thirty-sixth section of the Constitution, and is needed to give it a practical operation.

"If we read the thirty-sixth section in the manner suggested it is made to harmonize with the thirty-second, and each is made to serve a useful purpose, and neither is allowed to sacrifice the other."

Now, sir, with that view in mind, the Legislature has, from year to year, amended and revised the statute on the subject, until, in the year eighteen hundred and seventy-five and six, in the amendments to the Civil Code, approved March fifteenth, eighteen hundred and seventy-six, we find this, which now governs and controls the liability of stockholders of corporations in this State. Section three hundred and twenty-two of the Civil Code was amended so as to read as follows:

"SEC. 322. Each stockholder of a corporation is individually and personally liable for such proportion of its debts and liabilities as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation, and for a like proportion only of each debt or claim against the corporation. Any creditor of the corporation may institute joint or several actions against any of its stockholders for the proportion of his claim, payable by each, and in such action the Court must ascertain the proportion of the claim or debt for which each defendant is liable, and a several judgment must be rendered against each, in conformity therewith. If any stockholder pays his proportion of any debt due from the corporation, incurred while he was such stockholder, he is relieved from any further personal liability for such debt; and if an action has been brought against him upon such debt, it shall be dismissed as to him, upon his paying the costs, or such proportion thereof as may be properly chargeable against him. The liability of each stockholder is determined by the amount of stock or shares owned by him at the time the debt or liability was incurred; and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, shall apply not only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appear on the books in the name of another, and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also, to every guardian, or other trustee, who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable, under the provisions of this section, by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by trustee, or in any other representative capacity, does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with any proportion of the debts or liabilities of the corporation; but the pledger, or person, or estate represented, is to be deemed the stockholder as respects such liability. In corporations having no capital stock, each member is individually and personally liable for his proportion of its debts and liabilities, and similar actions may be brought against him, either alone or jointly with other members, to enforce such liability as by this section may be brought against one or more stockholders, and similar judgments may be rendered. The liability of each stockholder of a corporation formed under the laws of any other State or Territory of the United States, or of any foreign country, and doing business within this State, shall be the same as the liability of a stockholder of a corporation created under the Constitution and laws of this State."

This substitute I have offered, sir, embodies all the points that is contained in the decision of the Supreme Court, and it embodies the identical points contained in the statutory provisions which control the liability of stockholders at the present time. Therefore, so far, there can be no question of the validity and utility of this amendment, for it makes the liability of the stockholders perfectly clear, and will leave no adjudication.

This additional clause I have used here, "and also for a further sum at least equal in amount to the par value of his stock, any contract or agreement to the contrary notwithstanding," the object of my offering that is this: The operation of the law as it is, on the liabilities of stockholders, in the event of the failure of any corporation or association, the first thing which is done is to realize on the assets of the corporation, whatever they may be. That is divided pro rata among the stockholders of the corporation. Then this provision of the Constitution comes in and says in addition to that, each stockholder shall be liable for his proportion of all the debts and liabilities of the corporations. Now, sir, if every stockholder, at the time of such failure, was fully solvent, there would be no loss to the creditor, because each would pay his proportion, and consequently there would be no loss. In experience, in practice, it almost universally occurs that more or less of the stockholders, at the time of such failure, prove to be insolvent—not unusually half of them. Consequently, if there is one single stockholder owns one single share of stock at the time of the failure, his insolvency would prove necessarily a loss to the creditors. And I think, sir, that it is necessary that this should be included in order to cover that discrepancy which always exists. I hold in this particular that our Constitution, and the liability of stockholders under it, is less than that of any other State in the Union, because it is impossible for the association to fail under such a condition of affairs.

Now, sir, I find, in several of the Constitutions, that the liability of stockholders is in excess of their assets, and any assessments not paid on the shares of stock, and in the further sum at least equal to the par value of such stock. This is the case in Ohio, Arkansas, Kansas, and some others. In addition to the assets—in addition to any assessments which may have been levied on the stock—in the further sum equal to the value of such stock. It is true, sir, that there may be cases in which the liability of stockholders under the present Constitution would be greater than the par value of the stock. In cases where the corporation has failed for an amount three or four times the value of its stock, then even if half of the stockholders were not solvent, the pay of the remainder would be greater than the amount due from the stockholders, under the Constitutions of Ohio, Arkansas, and other States. But, sir, I hold that this discrepancy of the law ought to be covered. That, as a rule, sir, in the failure of joint stock associations there is a loss which usually falls upon those least able to bear it. I have no antipathy against corporations. I have considerable stock in two that are solvent, however. I hold, sir, that it will not affect solvent corporations, but would strengthen those who are entitled to strength, by doing away with the competition of those which have no credit and no standing.

It has been said that if this is adopted it will increase the liability of stockholders to such an extent that it will discourage corporations and joint stock companies. I think, sir, from the report of the Secretary of State made here the other day, that we are not likely to have any such result. Now, sir, it has been said that if this amendment is adopted it will have a tendency to contract corporations; that they will incorporate for a smaller amount, and that they will have a reserve fund instead—a sort of general fund in the shape of a reserve fund. I presume that is just about what the people of this State would like to see; then if there is a failure there will be the pleasant surprise of a reserve fund to pay the debts with.

Now, as to the last sentence, "any agreement to the contrary," etc., the object of that is this: it is a notorious fact in this State, and especially among insurance companies, that there is a provision or clause in every policy—there are some few exceptions—I believe, but it is in most all of them—providing that the policy holder waives his right under the law and Constitution to recover anything in excess of the assets of the corporation in case of the failure. It is generally printed in very fine type, and I presume there is not one in twenty that see it, yet it is claimed that it will hold, and in support of that proposition I wish to read a short section from the same decision of the Supreme Court upon the same subject, page five hundred and thirty-seven:

"Corporations have a clear and undoubted right, under the Constitution, to thus limit the liability of their stockholders by express stipulations to that effect in their contracts. A creditor of the corporation, by entering into such a contract, especially waives the benefit of the constitutional provision relating to the liability of the stockholders of a corporation. Section thirty-six of the Constitution, above cited, was intended for the benefit of the creditors of the corporation. Its most enlarged construction is to confer upon the creditor a right which did not exist at common law—that is, a right to resort to the individual and personal responsibility of the stockholders. But the Constitution does not compel the creditor to accept this benefit, or prohibit him from waiving it. It is clearly to be classed among those rights which he may *waive* by agreement, and he will be bound by an agreement to that effect, for a person may waive a constitutional as well as a statutory provision made for his benefit."

Then one other is contained in the twenty-fourth Wendel:

"A party may waive a constitutional as well as a statute provision made for his own benefit. The contrary argument would deprive a criminal of the power to plead guilty, on the ground that the Constitution has secured him a trial by jury."

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Now, sir, it is expressly held in that decision that he may waive it—that the policy holder may waive his right as it stands now. Now, sir, I hold that this additional provision is necessary in order to prevent the stockholder—or, rather, the policy holder, from waiving his right; the trouble of that is this: that it is an advantage taken of the policy holder, an advantage which he has no knowledge of until the failure of the company, and then it is too late. I hold, sir, that we should do something for the protection of the policy holder, in order that he may not be defrauded.

THE CHAIRMAN. The question is on the adoption of the amendment.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I desire to say a few words in opposition to this amendment and in favor of the section which has been reported by the Committee on Corporations other than Municipal. In the greater part I may say I indorse the views presented this morning by the Chairman of that committee, and I admire very much the candid and masterly manner in which the whole subject was presented. The gentleman must certainly have convinced everybody that a large portion of the business of this State is being done, and will hereafter continue to be done, by corporations. That corporations are absolutely necessary I think may be accepted as a fixed principle. We have in the State of California two kinds of corporations, domestic and foreign; that is, we have corporations organized under our own State laws, and we have a large body of corporations that are doing business here which are organized under the laws of other States and countries. We have English, French, and German corporations; we have corporations organized under the laws of New York, Massachusetts, Pennsylvania, Connecticut, and many of the other States, all transacting business in this State, in various branches of business and trade. The business of these foreign corporations is done by virtue of the comity existing between States and nations. We have the inherent right, if we so elect, to drive out foreign corporations and deny them the privilege of transacting business in this State. To do so, however, would be to place us behind the spirit and civilization of the age. No State has undertaken or had the courage so to do; no country, I believe, has yet undertaken so bold a step; therefore we may assume as an established fact, that the transaction of business in this State by foreign corporations not only now exists, but will continue to exist hereafter, and legally and justly exist under the comity existing between the several States and nations. So far as I can learn, and so far as my experience goes, this proposed individual liability is an unjust discrimination against the citizens of California. My own opinion is that it should have no place in the Constitution at all, and I am in favor of striking out the entire clause in reference to individual liability. I am apprehensive that enough members could not be obtained to strike out in toto this individual liability clause, but I will state, nevertheless, that in my opinion, an individual liability clause is an unjust discrimination against Californians, and is largely in favor of foreign corporations. Take, by way of illustration, the London and San Francisco Bank, the Anglo-Californian Bank, or any of these permanent foreign banks (and I believe they are all solvent, respectable institutions) doing business here. They come here from Europe, or perhaps from any of our sister States, and do business in the State of California, without any individual responsibility attached to their stockholders. But our home banks, which we should foster, organized under the laws of this State, are placed under an individual liability law, and the foreign banks are accorded an immense advantage. Take the foreign insurance companies of other States and other countries, all are doing business here with perfect freedom, without any individual liability, while all of our domestic corporations are crippled with the individual liability clause, and thus placed at an unfair advantage for the benefit of foreign capital.

If a great fire occurs, in a large city like San Francisco, or a city like Sacramento, where it sometimes destroys property sufficient to bankrupt a foreign insurance company, the policy holders here might pursue it to the extent of its assets, but they would be obliged to stop when the assets were exhausted. The Chicago fire caused the ruin of a great number of companies. The great Pacific Insurance Company was rendered absolutely insolvent, all its property was taken, and the stockholders were obliged to pay an additional sum in solid cash out of their pockets, to make up the deficit. Here is the discrimination against California. With this individual liability clause in the Constitution, we will be discriminating against ourselves. We, therefore, as law-makers, accepting the condition of things which exists, and knowing that we would be behind the spirit of the age in refusing foreign capital the privilege of transacting business in this State, knowingly and deliberately thus discriminate against our own citizens in favor of foreign corporations and foreign capitalists. Now I ask, is this wise, is it common sense? We are asked not only to continue the liability clause already existing, but proceed several steps further and all the while discriminating against our own citizens. That is the question presented now. If I believed that a proposition abolishing all individual liability could be adopted, I would favor it, and in any event I am firmly opposed to extending individual liability beyond the limit already contained in the Constitution. Now let us see what is the condition of stockholders. A stockholder invests his money, in the first instance in the corporation, and pays up his capital stock in full, as originally subscribed, and the entire capital stock thus paid up by all the stockholders is in the treasury of the corporation. Under our laws, and especially under our insurance laws, it is compulsory that the capital stock should be paid up in full; it always has been done so, but where it has not been paid in full, the capital stock is held in trust in favor of the creditors of the corporation, and the stockholders can always be compelled to pay up the original capital stock as described by them in order to liquidate the debts of the corporation. A citizen of California, who becomes a stockholder in an institution or association of this kind, pays in cash his proportion due on his stock as subscribed by him. In a majority of cases, when disaster comes, the stockholder is innocent and has not participated in the management of the affairs of the institution, and is not to blame for the disaster; the stockholder has not participated in, or had any knowledge of the transactions which lead to the disaster. Take, for example, the case of the French Savings Bank, and undoubtedly the stockholders are all innocent men. They invested their money in that corporation and by misfortune in the management of its officers, subsequently lost it. As a consequence, the stockholder is liable on his stock, for the law compels him to pay up in full, and now comes this proposed amendment and adds a third liability, which compels him to advance still more money. This is an illustration how the innocent stockholder who has his money invested in a corporation may suffer by the mistake or mismanagement of the officers of the institution. Why does not the gentleman make each individual stockholder liable for the entire indebtedness of the corporation, as in the case of a partnership? Why not make each stockholder absolutely liable to the whole extent? The principles that apply to a partnership do not apply to a corporation. It is not policy or common sense to place them on the same footing, for a partnership is essentially different from a corporation. These laws are the outgrowths of the business experience of long years. Law is not absolutely created or carved out of the head of any man. It grew from the customs and usages of merchants long preceding adjudications by the Courts.

Take by way of illustration the rules and regulations of mines. These mining rules and customs grew from necessity, from the progress and industry of the State. The miners made their own rules and regulations, and afterwards the Legislature adopted them and crystallized them into law, and the Courts administered them and proclaimed them law. Take the customs of merchants in all the different branches of trade, and the same thing appears, for all these customs and usages contribute to make the law; and these are but a few illustrations of a thousand that could be made. I say, therefore, the laws and the institutions of the country are growing up and spring from the habits, usages, customs, wants, and necessities of the people. One by one they have been adopted until we have reached our present position. When men enter into a partnership, they recognize individual liability to the fullest extent. Yet even in partnership it has been found useful to create a limited liability. Take the great State of New York, and there we have an illustration of the perfection which usages and custom may attain. There they have a statute limiting the individual liability in cases of partnership, and it was induced by wise statesmanship. For instance, an old retired capitalist weighted down with money is anxious to make a reasonably safe investment, and is favorably disposed towards some young, active, vigorous business man. The rich man of years is willing to advance his money as an equivalent for the ability and enterprise of the young man, but he cannot do it, because the young man might be imprudent or too venturesome or make some unfortunate investment, and the old capitalist would be ruined, and I ask therefore is it wise to permit the old man to hoard his money and retire it from circulation and at the same time deprive the young man full of ability and enterprise of the use of the capital to honorably start himself and his family in life? Unquestionably, no. Create then the principle of limited liability by which the capitalist may contribute his twenty thousand dollars or thirty thousand dollars or even his one hundred thousand dollars against the energy and vigor of the young man, and permit them to embark in any lawful enterprise. Such are the wise laws of the great State of New York, for there they have established the principles of limited liability in partnership, and there the capitalist can contribute whatever amount he desires, publishing to the world that he is a limited partner to the extent of twenty thousand dollars or thirty thousand dollars, or whatever the true amount may be.

There are certain wise precautions thrown around the system in order to guard against fraud, and it is just and right that there should be. That system yet commends itself to the people of New York, and to-day remains in the statutes of that great State. It also prevails in Massachusetts and in many other States, I believe. No one has yet complained of it, and it has so prevailed in other States, and has never produced any injury or aught but good. There a young, active, vigorous man, may address a capitalist and say: "I have vigor and energy and capacity to engage in business, but am without funds; will you join me and contribute your money, ten thousand or twenty thousand dollars, and engage in this enterprise?" The capitalist says: "Yes, if I can be limited to twenty thousand dollars I will contribute that amount against your skill and business capacity." Under the law of New York and other States he is at liberty to do so. He publishes it to the world, and gives notice of the amount of money he contributes, and beyond that sum he will not be responsible. I have yet to learn of any objection that can be urged against this wise system.

Why then is not this system wise in regard to a corporation? Why should not a man be allowed to unite in some great enterprise by notifying the world, by publication or otherwise, that he has contributed five thousand or ten thousand dollars, or any other amount, and that he will not be responsible for any amount beyond the sum of money originally contributed by him? The world is fairly notified of it, and every person who deals with the corporation has notice of the fact. Is it not a wise policy to permit him so to do? For instance, in discussing some business matter which I desire to transact, the manager of a corporation says, very well, transact business with us, but in this case there is a certain limit to the liability of the stockholders, and you must take your risk; you know it and are fully informed, and you know that if the corporation should fail, your recourse is first to the assets of the corporation, and second, to a certain proportion which each stockholder has to bear, and no more.

If this individual liability clause is kept out of the Constitution, creditors must look to the funds and assets of the corporation, and noth-

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ing else. The assets may not be sufficient, but creditors must assume that risk. All the world has had ample notice and dealt with the corporation knowing its status.

In olden times there was no such thing as individual liability of stockholders; it is entirely a matter of modern growth. Now, if we increase this individual liability what is the result? We will drive the capitalists of California out of business and abandon almost all business to these foreign corporations and capitalists, because the California capitalist will say, I cannot invest my money in an institution where I may not only lose my entire original capital contributed, but also all my original stock, and I will therefore have nothing to do with the enterprise. And there is no man in this Convention who would. The result will be that the home corporations cannot exist, and foreign corporations having no individual liability will do all the business. There are thousands of dollars paid in premiums every year to foreign corporations, which go direct to foreign countries and States, and thus immense sums of money are exported from our own State annually. Fires occur but seldom, and thus thousands and thousands of dollars every year are sent out of the State, to pay foreign insurance companies, including English, French, and German insurance companies, and companies in the other States. We have many such foreign companies in the City and County of San Francisco to-day, and we have domestic insurance institutions that have their money circulating here, premiums paid and divided here at home, but we will drive all this business from the domestic corporations into the hands of these foreign corporations, if we thus continue discriminating against our home companies in favor of foreign companies in the manner contemplated by the amendment. What other object is there or can there be in this amendment? A man twenty-one years of age, in the full possession of his faculties, makes a contract, but it is provided here that notwithstanding the fact that a man enters into a contract he shall not be bound by his contract. I never have been in favor, and I never will be in favor, of restricting a man in the exercise of his own faculties, or in entering into such agreements as he may desire, and in my judgment that is the entire proposition involved in the last part of the amendment which the gentleman from Alameda has offered. A man goes into the office of an insurance company, or into a bank, and the manager says: "I now notify you that we will not be responsible, individually, in any transaction you may enter into with this corporation, and you must look to the corporate funds and assets alone of the institution for indemnity in case of loss;" and notwithstanding that the whole matter is perfectly understood by the man, and he then makes an agreement knowing and understanding all the facts, the proposition of the gentleman from Alameda is, that he shall not be bound by his contract. Six, eight, or ten men enter into an agreement to invest twenty thousand dollars apiece in an insurance corporation in any of the towns of this State, and publicly announce that they will agree to insure people in their institution, provided those insured will agree to look to the company's assets alone, and shall not look to them individually in any event for indemnity in case of loss, and a man deals with the corporation on that basis, why should he not be bound by it. What is the objection and where is the wrong? Such a system is in entire harmony with the principle of modern insurance. The proposition contained in the amendment contemplates not only that the stockholder shall be individually liable for his proportion of all the debts and liabilities of the corporation, in proportion to the amount of stock he holds, but also in a further sum equal in amount to the par value of his stock, any contract engagement to the contrary notwithstanding. In other words, this Convention would undertake to say to the merchants and business men of this country, that it prohibits them from entering into a contract which their judgment may approve, and their necessities and inclinations induce them to make. In my judgment the entire proposition is a discrimination against the citizens of California. At present the creditor has recourse to the capital stock of the corporation in the first instance, for the law requires the stockholder to pay up in full, and each stockholder is liable for his proportion of all the debts and liabilities of the corporation, according to the provisions laid down in section seven of the article as reported by the committee. I say, therefore, that even now we have proceeded far enough, for already there is sufficient discrimination against Californian in favor of foreign corporations. But to pass the limit and add the further liability, by which the stockholder must pay the entire capital stock again, in my opinion is going to the utmost extreme, and certainly is not based upon prudent statesmanship, business judgment, or common sense.

I submit that the section as reported by the committee is stringent enough. It is, in my judgment, all that is demanded in the interests of the people, and I shall, therefore, oppose the amendment of the gentleman from Alameda, Mr. Webster.

SPEECH OF MR. HAGER.

MR. HAGER. Mr. Chairman: I was not aware that this proposition was coming up to-day, and I am not prepared to make any extended remarks. But I concur, substantially, in what has been said by my colleague, who has just taken his seat. While he was speaking, I have been consulting other State Constitutions to ascertain their provisions on this subject. I have been unable to find any provisions in other State Constitutions similar to the one contained in our old, and proposed to be placed in our new, Constitution—that is, "that each stockholder of a corporation shall be individually and personally liable for all its debts and liabilities," etc. There may be similar provisions in other State Constitutions, but I have not, in my limited investigation, been able to find any. To continue this provision in the new Constitution is neither good policy nor in the interests of the people. It will not bring capital to our State; it may drive it from us. I know there is a prevailing prejudice against capital and capitalists, and to some extent it has manifested itself in this Convention. Many suppose all stockholders in corporations are capitalists, but such is not the case. The provision applies to all corporations, and yet many of them are created for the purpose of developing industries, and the work and labor of the stockholders may constitute the principal capital. As I have stated, California, as far as my researches extend, stands alone with this provision. The Constitutions of Alabama and Minnesota have provisions "that each stockholder in any corporation shall be liable to the amount of stock held or owned by him." That is, if he holds ten thousand dollars worth of stock, and the corporation fails, he may lose ten thousand dollars, but can lose no more. In that of Nebraska, stockholders in *banking corporations* are made liable to creditors for the amount of their stock, and also to an amount equal to the stock or shares so held. In the Arkansas and some other Constitutions, the provision is substantially the same, and applies to all corporations. In such case, the stockholder having stock to the amount of ten thousand dollars might be liable to a loss of ten thousand dollars additional, if the debts were sufficient to require the entire liability to be paid. The new Constitution of Missouri provides:

"Dues from private corporations shall be secured by such means as may be prescribed by law, but in no case shall any stockholder be individually liable in any amount over or above the amounts of stock owned by him or her."

The Nevada Constitution has this:

"Dues from corporations shall be secured by such means as may be prescribed by law; *provided*, that corporators, in corporations formed under the laws of this State, shall not be individually liable for the debts or liabilities of such corporation."

So in Ohio:

"Dues from corporations shall be secured by such individual liabilities of the stockholders, and other means as may be prescribed by law, but in all cases each stockholder shall be liable, over and above the stock by him or her owned and any amount unpaid thereon, to a further sum at least equal in amount to such stock."

The Oregon Constitution provides:

"The stockholders of all corporations and joint stock companies shall be liable for the indebtedness of said corporation to the amount of their stock subscribed and unpaid and no more."

These are all the specific provisions I have been able to find; but in many of the State Constitutions there are general provisions authorizing liabilities of corporations to be secured as may be prescribed by law; but I have been unable to find another one like that contained in the Constitution of this State, which makes stockholders liable for the debts of corporations to an unlimited amount. The effect of this, as has been remarked, is to discriminate against our own citizens and in favor of foreign corporations doing business in this State. A corporation—an insurance company for instance—of another State where there may be no personal liability beyond the amount of stock paid or subscribed, may do business in this State, or our people may go to their office elsewhere and effect insurance. Will our capitalists invest their money to establish insurance companies here, with unlimited personal liability, when they can take stock in a New York or English company without this liability? The personal liability clause gives no advantage to the home over the foreign company. The rates of insurance for the home company is no higher in consequence of this unlimited personal liability, and yet in the event of a great conflagration it might ruin every stockholder connected with it. Prudent men may be willing to lose the amount of their stock, or double that amount, but not to risk the loss of their entire fortunes. The general result will be only irresponsible persons will be willing to hold stock in insurance companies of this State. For these reasons it is well understood that many persons have declined to have any connection with our home insurance companies, and in many instances irresponsible men establish and hold the stock in such companies in this State. If such be the result, how is California or her citizens benefited? Does it make our State any richer by drawing capital to us, or poorer by driving it from us? Does it give any advantage to the home over the foreign companies of Germany, England, or the Eastern States? Does it increase or lower the rates of insurance? These are questions that address themselves to us for our consideration in the performance of the great work in which we are engaged. I have examined the new Constitution of the great State of Pennsylvania and the Constitution of the great State of New York, containing the two great commercial and manufacturing cities of the Union, but in them we find nothing similar to this proposed unlimited personal liability provision. To adopt such a provision will be unwise, against public policy and the interests of our people. I hope the proposition will be rejected.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I am opposed to the amendment offered by the gentleman from Alameda, Mr. Webster, because, in my opinion, it is neither one thing nor the other. I voted for this provision of the Committee on Corporations, because it was the provision of the old Constitution and had received a great deal of judicial interpretation. I contend that it, tends to make corporations dishonest, because men subscribe—perhaps men of capital—but if they see that the business of the corporation is not going to be prosperous, they sell out their stock, and the creditor of the corporation has no permanency to look to. Now, if the gentleman would move that no corporation should do business until all its stock was paid up, and that he should not be liable beyond the paid-up stock, I think I should be inclined to vote for it, because that would be returning to the ancient English principles of corporations.

I am also opposed to the amendment offered by my friend from Alameda, because it is neither one thing nor the other. I disagree with the proposition that corporations are necessary. I hold, on the contrary, that limited partnerships are altogether sufficient. Now, if the

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gentleman had moved an amendment to that effect, I certainly should have supported the motion. As it is, everybody knows that there is no responsibility, and can be none, in corporations. There is no fund to look to as it is, and no responsibility of the corporator. It was well said by Mr. Burnett, in a letter published by him some time ago, that individual enterprise was destroyed by the godless corporations, and it was time it should be corrected. Now, what do we see here? That there is scarcely any business in the community that is not engrossed by corporations—and by irresponsible corporations in the main part. Why, what is the report of the Secretary of State the other day? That we have in this State over twenty thousand corporations; and they embrace and cover every substantial business of the community, from the manufacture of soap to the operating of railroads and the holding and cultivation of the land. There is a corporation that, I think, originally held one hundred leagues of land. Now that is an abuse; that is an evil; and I am for going back to the old rule, that a man who subscribes to the capital stock of a corporation shall put his money in and be responsible to that extent; and when that is lost, he shall not be pursued further. But I am in favor of abolishing corporations altogether, and substituting limited partnerships. It must be apparent that the present rule has no ancestry to stand upon, and is at variance with the ancient common law procedure. As well stated by the Chairman of the Judiciary Committee, it is a discrimination against the corporations which are located here. The amendment ought not to prevail.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I was not impressed with the proposition of the gentleman from Alameda, Mr. Webster, when it was first offered. I thought the section, as it was presented, was in better shape than the one he proposed to substitute for it. But, sir, the arguments have convinced me—the arguments in the negative, the arguments of the gentlemen who are opposed to this amendment—have convinced me that this amendment is better than I had supposed upon casual inspection, and I now think it ought to be adopted. Not for the reason that the gentlemen who are defending that side of the question have opposed it, but because it seems to me that the argument against it is based upon a fallacious proposition. The idea advanced is that this is a discrimination in favor of foreign capital, and against home capital. Now, let us see if that is so. Is it a fact that the greater security you give to people who deal with corporations, the more you discriminate in favor of foreign capital? Is that so? Will the people deal where they have the least security, or will they deal where they have the best security? That is the proposition. Now, I have always observed that where you give the people ample security, there is the place where they are liable to trade. There is the place where they are most apt to place confidence. Now, if the foreign capitalists do not furnish some kind of security—that kind of safe security which will affect business all around—they are not the persons with whom business will be transacted by the people.

But there is another thing that should, in my opinion, be considered in connection with this question. It is the fact, Mr. Chairman, that this legislation is rather in favor of the people than of the corporations. It will be observed that this provision is somewhat more stringent than provisions that are usually embodied in the Codes and Constitution with reference to their liabilities. I say the foundation upon which the arguments on the other side have been based is fallacious, and I shall proceed to show why. I say that the bare fact that we give to the people greater security is no argument that it is a discrimination in favor of foreign corporations against home corporations. Let us admit for the moment that the home corporations will not be in condition to swindle the people to as great an extent as the foreign corporations. When corporations lose, it is not the corporations upon whom the loss generally falls. The parties whom their representations have convinced are the ones who lose the money, and not the corporators, and it is the people who lose money for whom we come here to legislate, and not the home corporations or the foreign corporations. Not against foreign corporations or in their favor; not against home corporations or in their favor; but for the protection of the people. I say the principle upon which legislation should stand is the interest of the whole people, and not simply the moneyed corporations. Now, let it rest upon that basis, and not upon the proposition of discrimination between home and foreign corporations, and in that view of the case the stringency of the provision cannot be too great. We cannot be too secure; we cannot make these gentlemen furnish us with too much security. I appeal to the report which has been furnished us by the Secretary of State if the nineteen thousand corporations in this State do not bear testimony that the provisions are none too stringent. There need be no fear of driving out corporations. The proposed provision is not so severe as to render them any less secure; not so severe as to drive them out of business. But we have a right and it is our duty to give the people who deal with them a little security, and this is not at the expense of corporations who do a legitimate business. I am going to vote for the amendment.

MR. SMITH, of Fourth District. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Each stockholder or member of any corporation shall be individually and personally liable for such proportion of all its debts and liabilities as the amount of stock or shares owned by him in such corporation bears to the whole subscribed capital stock or shares of the corporation."

THE CHAIRMAN. The question is on the amendment.

SPEECH OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: I would not undertake to enlighten the able and distinguished gentlemen who have preceded my argument on this question. They are certainly men of long experience and great ability, and have brought able arguments to bear on this subject; but, sir, there are matters connected with this subject that force me to dissent from many of the opinions expressed here; and it seems to me that the public opinion expressed on this matter has something to do with this matter. Now, I believe it was generally understood that this clause in the Constitution was intended to fix a proportional liability against the persons holding an interest in corporations. As a proof that this was the intent, I cite you to the Supreme Court, which has expressed that opinion in the case of French vs. Teschemacher et al., in the 24th of Cal., 518, to the effect that the constitutional provision does not mean what it purports to mean. In other words, that that certain proportion is not fixed in the Constitution. I will read that decision:

"Section thirty-six, of article four, of the Constitution, relating to the liability of stockholders of corporations for corporate debts, is not self-executing, nor does it contain within its own terms a rule of conduct broad enough to embrace and definitely settle every question that may arise touching the individual and personal liability which it imposes upon the stockholders."

Now, the Constitution does not say what that proportion shall be—that is left entirely to the Legislature. And what has the Legislature done? Attempted to fix it, and have fixed the rate, and I have put the rate in my amendment. I have simply incorporated this because I believe that the people of this State, free to act in this matter, have expressed themselves, and have had experience in this matter of personal liability.

As to the discrimination against Californians, I don't know how that may be. I believe it is provided otherwise in other places—whether in the Constitution or not, I do not know now—requiring foreign corporations to invest certain sums of money in the State as security; and if this is not sufficient, it seems to me that it should be made sufficient, so as to place the foreign corporations on the same footing with home corporations. I shall be glad to see a proposition that will cure this matter. I am open to conviction in this matter. If the law is as it is now, let us have some remedy, but I do not understand that the aim of this section is to remedy that matter. I have simply incorporated the statute upon this subject, and fixed the liability as it was understood to be fixed, but it seems was not fixed, in the Constitution.

THE CHAIRMAN. The question is on the amendment to the amendment, offered by the gentleman from Kern, Mr. Smith.

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. Chairman: There is one omission—and so far as I have observed, the amendments are very similar—but there is one omission in the amendment of the gentleman, and that is the provision, "contracted or incurred during the time he was a stockholder." That is part of the Code as it stands to-day. His, I believe, does not contain that. That is evidently a very important clause, and I followed the Code exactly in its construction, or rather, the decision of the Supreme Court—this section was based on that, and I have followed it very closely. As the law stands now, it is exactly the same. I will read it again:

"Each stockholder of a corporation or joint stock association shall be individually and personally liable for such proportion of all its debts and liabilities, *contracted or incurred during the time he was a stockholder*, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association; and also for a further sum, at least equal in amount to the par value of his stock, any contract or agreement to the contrary notwithstanding."

A part of this is the law as it stands to-day, and if we propose to change it, it seems to me we cannot do better than to adopt this amendment. I cannot conceive how there can be any reasonable objection to the first part of the section.

MR. SMITH. I withdraw my amendment with that explanation.

THE CHAIRMAN. The gentleman withdraws his amendment.

MR. FREEMAN. Mr. Chairman: I would like to have the amendment read as it now stands.

THE CHAIRMAN. The question is now on the amendment proposed by the gentleman from Alameda, Mr. Webster.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I rise for the purpose of asking for a division of the question. The first part of the proposition:

"Each stockholder of a corporation or joint-stock association shall be individually and personally liable for such proportion of all its debts and liabilities, contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association." That is one proposition. Then the second part as follows: "And also for a further sum, at least equal in amount to the par value of his stock, any contract or agreement to the contrary notwithstanding." I wish to state here that the gentleman from Alameda, Mr. Webster, signed the report of the committee with the express understanding that he should present this proposition to the Convention for its consideration. I state that, because his name appears upon the report. He presented this amendment in the committee, but the majority of the committee didn't agree with him. I now ask for a division of the question.

SPEECH OF MR. CROSS.

MR. CROSS. Mr. Chairman: This question of corporations is one of special interest to the portion of the State which I have the honor to represent, and while it is of special interest to that particular portion of the State, it is also of interest to all portions of the State. I am speaking now especially with reference to corporations, as connected with mining enterprises. Now, sir, I realize the marked ability and influence of the gentleman from San Francisco, Mr. Wilson; but still, sir, I shall not hesitate to attempt to answer one or two propositions which he has

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brought forward. In the first place, one of the propositions he states is this: that is, that corporations, or the stockholders in corporations, should be relieved from all individual responsibility. With this I cannot agree. Twenty men, or one hundred men, associate themselves together for the transaction of business in the shape of a corporation. They associate themselves for one purpose. Not for the public good, as might be supposed, but for the individual benefit and for the profit which they can make by it. If the corporation makes money, is successful, the profits are divided. But if it does not succeed—if there is a loss—then the corporators want to sit down in their offices and be relieved of all responsibility.

Now, as I understand the amendment of the gentleman, it does not propose that there shall be an unlimited responsibility, but a responsibility to this extent: that if I own one share, and the par value is one hundred dollars, in any corporation, in case that corporation fails, or does not fail, I am responsible to the amount of one hundred dollars. Responsible to this extent, that if the stock is not paid up in full, I am still to be required to make it good, and also to pay one hundred dollars. Now, the arguments which he finds from the State of New York, and which Judge Hager also finds, are something like this: that we ought to enact similar provisions. Allow me to say that the State of New York has a provision letter for letter like the provision here reported by the committee, and in that State they then go further, and when a corporation is organized the stock is paid up in full, and then the corporation has some actual stock upon which to work, and represents some responsibility; while here corporations are formed without any paid up capital whatever, in a large number of cases; and if, now, there is no individual responsibility, then there is nothing tangible to look to.

Now, the next proposition is, that if we make corporations liable, it will drive business into the hands of foreign corporations, and discriminate against our home companies. I believe, on the contrary, that if we make individual stockholders liable to some reasonable extent—I am not in favor of any unreasonable requirement—we will by that means, instead of driving business away, draw business to us. I will instance a case: Suppose all the corporations in the State had responsible names as stockholders and incorporators. Suppose it was generally understood that these individuals were responsible for the debts of the corporation; then, sir, a man wants an insurance, he will not go to the foreign corporation, but he will go to a home insurance company, because he is not merely benefiting the home corporation, but he knows that somebody is responsible, and that his money is securely invested. I think the direct result of this will be that the home corporations will have an increased business. Men would much rather patronize them, if the security is good. And all this talk about foreign corporations taking money out of the State. Why, these corporations are organized under laws that require the strictest responsibility—the strictest responsibility on the part of the corporations. Why is it that these foreign insurance men take so much money out of the State? Exactly on account of the individual responsibility of the corporations in that country. The responsibility of the Anglo-Californian Bank is recognized over the whole State, and because of the responsibility attached to it.

Now, there is another argument in favor of this amendment, and a very strong one, and that is this: that as long as there is no individual responsibility on the part of the stockholders, there is no individual interest on the part of the stockholders. As long as there is no individual interest on the part of the stockholders it is not strange that such mistakes have been made in the management of corporations as was the case with Duncan's bank, and kindred associations. It is easy to account for. For instance, some wealthy gentlemen on this floor have an interest in a corporation which is not paying a profit, and there is no such thing as individual responsibility; they would feel very much like letting it go to the dogs, and never looking into it again. But let it be understood by each stockholder that he is individually and personally liable to some reasonable extent, and then, sir, every stockholder will keep an eye on the business and management of the corporation, and will be interested in it to that extent; and then they will take pains to have an honest President, and honest agents, and honest business managers, because upon these things will depend, not merely the profits they will make, but the losses they may be compelled to stand. If this be discrimination against domestic corporations, and in favor of foreign corporations, it seems to me it is a wise discrimination. If any other State in this Union allows corporations to be formed without rating the capital stock as money, and then relieves the stockholders of all individual responsibility, I have no wish to copy from their laws. The State of California deserves a better basis for the operations of corporations.

Another objection urged by the gentleman from San Francisco, Mr. Wilson, is this: that a man should be allowed to make whatever kind of an agreement or contract he chooses. Now the law does guard a man against making improper contracts in certain cases. For instance, if Mr. Wilson should agree to pay ten thousand dollars to a man to murder another, you cannot compel him to pay the money. The law does exercise a guardianship over the contracts a man shall make. And it is specially necessary to have this guardianship in the case of corporations, and the reason for it is seen in a case like this: A man takes a policy of insurance—insurance seems to cut a prominent figure here in this discussion—he takes a policy, and in that policy are many conditions, and it is subject to all these conditions, and one of the conditions which many of these policies contain is this: that there is no individual responsibility on the part of the stockholders in that insurance company. Now, sir, I believe that we should have in this State a provision making the corporations responsible in some limited degree, to some reasonable extent, and there should also be some protection to a man who deals with these corporations, and he should not be compelled to read a lot of fine print in order to find out what the conditions are; the contract should be simple and plain. It is reasonable that these corporations should be responsible, and that the corporation stockholders should be individually responsible to a reasonable extent. And it is equally reasonable that they shall not be permitted to shirk that responsibility.

Now, as to this matter of there being different provisions in different State Constitutions. In some Constitutions the provision is that the corporate stock must be paid in full, either at the time the stock is issued, or at some brief period afterwards. Now, in such cases, this stock, or capital actually paid in, is some guarantee, for this reason: that when a man has paid in one hundred dollars, or one thousand dollars, or ten thousand dollars, into the business, and paid up his capital stock, then he is interested in the welfare of that corporation to the extent of the money he has invested. In this State, where corporations are formed with no rule requiring them to pay up their capital stock, a man has no interest in it unless he is in some way liable for the debts of the corporation. Now men in this State bind themselves together into a corporation by which they inaugurate enterprises which employ laborers; they buy supplies and go into the towns to make something without investing a dollar, with no chance of losing anything individually, and it seems to me that this state of things demands some change, and some change for the better too. And if we are to make a change in this respect let us not make it worse. In our mining counties, corporations that are organized in San Francisco send their agents to the mining regions and undertake to develop a mine, employ fifty or a hundred men to work, and if the mine pays the men get their wages; and if the mine does not pay, why they will have to go down to San Francisco and hunt up the stockholders, and when they find them they will be told that they are not responsible individually. I think the amendment will effectually put a stop to these abuses. It will not hinder corporations that are organized on an honest basis, nor will it in any way retard the development of our great industries.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: The proposition of the gentleman from Nevada is entirely different from the proposition before the committee. The proposition now before the committee does not contemplate making the capital stock alone responsible for the debts of the corporation. It does not contemplate making the corporation itself alone responsible; it does not contemplate making any corporation assets alone responsible, as implied by Mr. Cross; and, therefore, the argument of the gentleman is inapplicable and falls to the ground.

MR. CROSS. That is the very reason why there should be individual responsibility; that is the way I figure it.

MR. WILSON. Mr. Cross takes as an example of the irresponsibility of stockholders, the case of a mining corporation that employs labor and develops a mine. If the enterprise is successful the laborers receive pay for their labor; if not, they receive nothing, because they cannot find a responsible stockholder. Then the gentleman proposes to follow up these stockholders, that are not worth a dollar, and legally proclaim them more responsible than they are in fact. Is that safe reasoning or sound logic?

MR. CROSS. They are irresponsible because the law makes them so.

MR. WILSON. The gentleman proposes to follow up these stockholders and increase the individual liability of the stockholders that are not worth a cent. We do not make them any more responsible by this kind of legislation, nor do we make them any easier to find. Yet that is the gentleman's argument. The proposition is this: Where a corporation has no capital stock (proceeding on the basis that all of its stockholders were thoroughly responsible men, because it is absurd to make men responsible who are not, in fact, responsible), the question then is, how far should the individual stockholder be made liable. There has been considerable discussion about corporations where the stock is not paid up in full. In the first place, our laws are more stringent than the laws of any other State in the Union on that subject. There is no State in the Union where the law is any more strict in relation to paying up the capital stock of a corporation than ours. Many of them cannot commence business until a certain percentage is paid up. That is a mere question of legislation, with which we have nothing to do in the Constitution. The theory upon which a corporation is built, is that all the stockholders are compelled to pay up in full. If they do not, it is the fault of the Legislature in not requiring them to do so. Now, when the corporation has its capital stock paid up in full, how far should the stockholders be individually liable beyond the full paid capital stock? If the capital stock is not paid up in full, then, as I said before, it is the common law of the land that the subscribed amount is in itself a fund in favor of all the creditors, and every stockholder can be compelled to forthwith pay up his original subscription. That is the law, and under the law of corporations it never has been departed from, and never will be. If the stockholders refuse, they can be compelled forthwith to pay up, independent of the Constitution, and independent of any question of individual liability, because that is the original contract of the stockholder, and that is the fund belonging, beyond question, to the creditors. We are now discussing a case of that character where the stockholders have paid up in full. How far shall they be individually liable over and above the amount of their subscription, where the original subscription, paid up, is lost? The stockholder has lost all the money which he paid in originally, and the question arises how far shall the creditor pursue him in order to recover the amount which the corporation is indebted to him? I say when he has lost all the money he put in originally, that is going far enough. The amendment, however, proposes to make him liable to pay two, three, or four times. The amendment of the gentleman, of course, must proceed upon the assumption that the corporation has a full paid up capital stock. The stockholder is liable in proportion to his capital stock paid up in full. But the amendment does not stop there. He is made liable, also, in a further sum proportioned to the amount of his stock. Then he is taxed three times. I do not intend to go over the whole ground again, but simply present this view to the Convention, that the whole question here is, how far shall the stockholder be liable, upon the assumption that the original subscrip-

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tion to the capital stock has been paid up, which he is compelled to pay, as I have shown—how far shall he be liable, I say, beyond the amount paid up by him? I say the old Constitution goes far enough in that respect.

SPEECH OF MR. O'DONNELL.

MR. O'DONNELL. Mr. Chairman: I am in favor of the amendment of Mr. Webster. I think it is an amendment that ought to be adopted. It reads like this:

"Each stockholder of a corporation or joint stock association shall be individually and personally liable for such proportion of all its debts and liabilities, contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association; and also for a further sum, at least equal in amount to the par value of his stock, any contract or agreement to the contrary notwithstanding."

That is the amendment. I am in favor of that amendment. It makes corporations strong. It gives capital more encouragement to invest in corporations. As my friend said, the California Bank would never have resumed business if it was not for this individual responsibility. Now a corporation is defined by Webster to be a body politic, formed and authorized by law to act as a single person; but the true definition of corporations in this State is something like this: "A corrupt combination of individuals formed together for the purpose of escaping individual responsibility for their acts." [Applause.]

Corporations have committed with impunity crimes for which an individual would be sent to the State Prison for life. You all know that to be a fact. [Applause.] Mr. Chairman, I am in favor of this amendment, and I believe every honest man in this hall is in favor of it. [Applause and laughter.]

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: There are two considerations that should affect the solution of this question. I do not suppose that the gentlemen will pretend that this Constitution will make any difference with contracts existing at the time the Constitution goes into force. No Constitution can impair the obligation of a contract existing at the time the Constitution goes into force. These will remain as they are. Now much of the experience of this world has fallen to me, and my experience convinces me of the correctness of the views expressed by the gentleman from San Francisco, that a sound policy requires the entire obliteration of that section of the report of the Committee on Corporations. I think the liability of stockholders should be entirely wiped out. I do not believe it can do any practical good to deal with the subject in this manner. I do not believe it will be of any practical benefit to the people who deal with corporations. It is simply a delusion.

It is said that the law exercises a guardianship over men in certain cases, and my friend from Nevada gives an illustration, that if Mr. Wilson hires a man to murder somebody, and promises to give him ten thousand dollars, that the murderer cannot collect the money. I never knew before that the law was to protect Mr. Wilson, I thought it was to punish the murderer. The law does not protect either party, but it punishes both. It is not such a rule as is contemplated in this section at all.

Now, as regards this amendment, in the first place it is entirely useless. It will amount to nothing at all. In ninety-nine cases out of one hundred you will find the stock standing on the books in the name of John Doe. The stock is responsible for the assessments. The real owner is not responsible. Nobody knows who he is. The trustee, in whose name the stock is issued, is responsible for the assessments, but the stock does not belong to him. Now the creditor should look out and see who is the true stockholder. If it is so and so, he can trust him or let him alone. What reason is there, when a man wants to make a contract, with his eyes open, for not allowing him to do it. Why should he be put under the surveillance of the law, and why should the law step in and examine the agreements to see whether they are proper or not. We all know that no business can be carried on in that way.

Now, in the first place, a man subscribes to the stock of a corporation without paying up. He is to pay so much to the corporation in favor of the creditors of the corporation. If he has not paid up in full, he can be compelled to pay at any time. Now the first proposition is that the stockholder shall pay in the ratio that his stock bears to the whole capital stock, which is the law now. Now I say if the shares are all taken and the stock paid up, or liable to be paid up when called for, that it covers the whole debt, because it is all divided pro rata. Now to go farther than that would be to destroy corporations in this State. Not one in ten of all the great corporate enterprises would have been organized in this State had the prospective profits been the only consideration. I would rather follow my friend Howard, and have no corporations, than to cripple them and kill them off in this manner. If it is the sense of the Convention that corporations of all kinds should be abolished, then it will be far better to vote direct for such a proposition.

Statements have been made as regards the effect of our present laws. Well, I have an insurance policy taken in England or New York, taken by the agent who calls upon me. I do not stop to look at it, but say to him, call upon me when my insurance is out. Well, he sends on to New York, the policy is made out there, the whole thing is closed, and brought to my office, and I give him a check for the amount. Now, the fourteenth section does not cover that case. The transaction is made in New York, and the money was paid in New York. It is a New York transaction, outside of California, and cannot be touched by a thousand Constitutions. The State of California cannot prevent these transactions. If you undertake to say that this man shall not do this business, the Constitution of the United States will step in. He has a right to make the proposition. He has a right to come to you and ask you if he shall write on to New York for a policy for you. And when you can prevent him from writing a letter to New York on business, then you can prevent these transactions, and not before. Now, in regard to these agreements, I don't see for my life why, if any two men in the community want to make a trade, we should stick our noses in between them and say they shall not make it, when it does not lead to a breach of the peace. I do not see why a corporation, with five hundred thousand dollars paid up capital, should not be allowed to make a contract with a man to the effect that he must look to the corporate fund for his money, and not to the individual stockholders, who have already paid this money in. I do not see why the State should constitute herself the dry nurse of every individual citizen in the country, and say to them, you live under a paternal government that will take care of you, and see that you do not make any improper agreement.

MR. WEBSTER. A division of the question was called for.

THE CHAIRMAN. The first question is on the first clause: "Each stockholder of a corporation or joint stock association shall be individually and personally liable for such proportion of all its debts and liabilities, contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock, or shares of the corporation or association."

Division being called for, the committee divided, and the first clause was adopted—ayes, 81; noes, 40.

THE CHAIRMAN. The next question is on the second clause, which the Secretary will read.

THE SECRETARY read:

"And also for a further sum, at least equal in amount to the par value of his stock, any contract or agreement to the contrary notwithstanding."

MR. WEBSTER. I ask for a division on this clause also. Take the first part of it down to the word stock: "And also for a further sum at least equal in amount to the par value of his stock." I would like to have the sense of the Convention on that part first.

THE CHAIRMAN. The question is not capable of further division. The question is on the last clause of the amendment as read:

Division was called, and the amendment was rejected—ayes, 44.

MR. BARBOUR. Mr. Chairman: I offer an amendment to section three.

THE CHAIRMAN. It is not capable of farther amendment. This is a substitute. The Secretary will read section four.

MR. REYNOLDS. Mr. Chairman: I am at a loss to understand why this amendment is not in order. I understand that the committee has just adopted an amendment to section three, and voted down another, that is to say, the amendment which was before the committee was divided, so as to become two amendments. One was adopted and the other rejected. Now, I understand that the gentleman from San Francisco, Mr. Barbour, offers a further amendment to section three, and why it is not in order is a point I am unable to comprehend.

THE CHAIRMAN. For the simple reason that the committee has adopted a substitute for the whole section.

MR. REYNOLDS. Now the gentleman moves to add to the amendment.

THE CHAIRMAN. The gentleman can take an appeal, if he desires it, but he cannot discuss it without appealing.

AN APPEAL.

MR. REYNOLDS. To test the sense of the committee, I most respectfully appeal from the decision of the Chair, that the amendment to the substitute is not in order.

THE CHAIRMAN. Do you wish to discuss it.

MR. REYNOLDS. I desire to have it distinctly understood that the gentleman has offered a substitute to section three, which was adopted, and that the gentleman from San Francisco offers a further amendment to the substitute, which is ruled out of order, and from that ruling I appeal.

MR. BARBOUR. I second the appeal.

MR. MCCALLUM. I second the appeal.

THE CHAIRMAN. The Chair decides the amendment of the gentleman from San Francisco out of order. The gentleman from Alameda, Mr. Webster, offered a substitute to section three, which was adopted by the committee, and it is no longer subject to amendment. From that decision three gentlemen take an appeal. The question is, Shall the decision of the Chair stand as the judgment of the Convention?

MR. HALE. Does the ruling go to the extent that a substitute is not susceptible of amendment?

THE CHAIRMAN. Yes, sir.

MR. HALE. That the committee, having adopted a substitute to the section, the substitute adopted is not open to amendment?

THE CHAIRMAN. Yes, sir.

MR. HALE. With all deference to the Chair, I think the appeal should be sustained. I do not mean that the Chair should be sustained, but that the appeal should be sustained. I understand this to be the rule. A motion is put and prevails to substitute for section three something else. This substitute, therefore, stands in its place, and becomes section three. Now, this ought to be open to amendment the same as section three would have been, had not the substitute been adopted. I know of no rule of law that prevents the Committee of the Whole from curing its own work. It seems to me that we should have the right to go on and perfect the substitute. I, therefore, most respectfully favor the appeal.

MR. VAN DYKE. Mr. Chairman: I understand by our rules that a substitute is a simple amendment, and treated in all respects as such. Now, if that is the case, of course the Chair is right. With all respect to the gentleman from Placer, I think he is wrong. Rule Thirty-two provides as follows:

"A substitute shall be deemed an amendment, and be treated in all respects as such."

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That disposes of the matter. It was subject to amendment while it was before the committee, but when it was adopted as an amendment, that was the end of it.

MR. EDGERTON. Mr. Chairman: I shall sustain the decision of the Chair for the reason suggested, that a substitute is nothing more nor less than an amendment to the proposition before the Convention. Now, sir, when this house passes judgment upon an amendment and adopts it, if we can then go on and add amendment after amendment, where are we going to stop? It seems very plain to me that the ruling is correct. I would suggest to the gentleman from San Francisco, in order to give him an opportunity, if the house should go against him, that he can move a reconsideration of the vote by which the substitute was adopted.

MR. TERRY. The vote was taken on the first part and then on the latter clause.

MR. McCALLUM. Mr. Chairman: I submit that for the very reason that we have no substitutes, that the decision of the Chair cannot be sustained. "A substitute shall be deemed an amendment, and be treated in all respects as such." When an amendment has been adopted, what is the reason another amendment cannot be offered?

MR. EDGERTON. The reason why it is inadmissible is this: that the amendment has already been adopted. If he had offered his amendment before it was adopted, it would have been in order.

MR. McCALLUM. Not necessarily, because it does not yet appear what the amendment is. It may be an amendment to the original report of the committee, and yet not necessarily connected with the proposition of my colleague which has been voted upon. It may be a matter treating upon the matter in the amendment of my colleague. We can't tell till we know what it is.

MR. BARBOUR. The gentleman from Sacramento is extremely kind in offering to show me a way out of this difficulty. I shall not take that course. I propose, if I know myself, to be treated as the other members on this floor are treated, or have it decided at once that I have no such rights on the floor of this Convention. I have sat here, sir, day after day, and heard the President call for more amendments—ask if there were any more amendments—before passing to another section. I have followed the usual course in offering this amendment. This is the first time I have ever seen a section passed without giving members a chance to amend it. The circumstance that there was only one amendment does not affect my right. There was no opportunity to offer my amendment, because the gentleman offered an amendment, and the amendment was divided, and the Chair was not entitled to pass to the next section until he had called for more amendments, in order to permit the Committee of the Whole to perfect the section.

MR. REYNOLDS. Mr. Chairman: I desire to state another reason why the decision of the Chair should not be sustained, and that is this: When the substitute to section three was pending, and before any action was taken upon it by the committee, it was never possible for the gentleman from San Francisco, or any other member, to know whether he desired to amend the section or substitute or not. And it is rendered all the more plain from the fact that just upon the vote being taken the author of the substitute called for a division of the question, and so it happened that a portion of it was adopted and a portion rejected. Now, under these circumstances, how was it possible for any gentleman to know before there was any action taken by the committee whether he desired to offer an amendment or not. That is an overwhelming reason why the amendment should be in order.

MR. HAGER. Mr. Chairman: Technically I think the Chair is right. After an amendment is once adopted you cannot then amend that. Now the confusion here over this matter has risen out of our peculiar rule. We have a rule requiring that a substitute shall be deemed an amendment and treated in all respects as such. I regret, sir, that this rule was ever passed. Ordinarily and generally in legislative bodies, if a substitute should be adopted it takes the place of the original proposition, and that the substitute is open to amendment the same as the original section would have been. But here a substitute is an amendment, and you cannot amend an amendment after it has been adopted. Now I forget just in what manner this amendment came up. If I recollect right, the mover introduced the proposition that each stockholder should be individually and personally liable, etc., and the question was divided. Now let me look at the authority on this. His amendment should have been a motion to strike out and insert, or a motion to add, or a motion to strike out, before the substitute was put to a vote. The Chair is right. The rule is this:

"Whatever is agreed to by the house, either adopting or rejecting a proposed amendment, cannot afterwards be altered or amended. Thus, if a proposition consists of A B, and it is moved to insert C, if the amendment prevails C cannot be afterwards amended, because it has been agreed to in that form, and so if it is moved to leave out B and the amendment is rejected, B cannot afterwards be amended, because a vote against leaving it out is equivalent to a vote agreeing to it as it stands."

Now, in this case, the amendment was called a substitute, to strike out the section and insert what has been adopted. Therefore, it is a vote of the house. You have passed upon it. Now, to go back and revise that leaves us moving in a circle, and we would never come to a conclusion. But, hereafter, when we come into open Convention the amendment can be considered.

MR. BEERSTECHER. Mr. Chairman: This is not a matter where the justice or injustice to the gentleman offering the amendment is to be passed upon. It seems to me that the gentleman should be allowed to present his amendment as a matter of justice. But at the same time, as a matter of law, as a matter of parliamentary law, adopted and established, I shall be obliged to sustain the decision of the Chair, because I think the Chair is correct in his ruling. I call attention to section one hundred and twenty-six, Cushing's Manual, and also to Rule Thirty-two, which says that a substitute shall be deemed an amendment, and be treated in all respects as such. It declares a substitute to be an amendment, and the substitute offered by the gentleman from Alameda, Mr. Webster, was an amendment to strike out and insert. The amendment of the gentleman from San Francisco, Mr. Barbour, should have been a motion to insert, a motion to strike out, or a motion to strike out and insert, before the vote was taken on the substitute. I am obliged in this matter to vote to sustain the decision of the Chair.

MR. WEST. Mr. Chairman: I believe it is universally conceded, according to all parliamentary rules, that a substitute takes the place of the one under consideration. That the substitute may be considered separately, may be added to, may be amended by striking out and inserting, or in other words the friends of the substitute may proceed to perfect it before there is a vote taken upon it. Now, the gentleman from Alameda, Mr. Webster, presented an amendment under our rule. Section three was amended by the propositions of the gentleman from Alameda, Mr. Webster. Part of his amendment was rejected, which left section three before the Convention to add other amendments, and there was no limit to the power of the Convention to amend that section until they passed from the consideration of the section. I think the Chair is in error, and that the amendment ought to be entertained.

MR. TINNIN. Mr. Chairman: It seems to me that many of the delegates here have formed a wrong conception of this matter. Now, it is evident that the presiding officer in a place of this kind is placed in a very peculiar position. Now, as far as this matter is concerned the house has adopted an amendment, or substitute, offered by the gentleman from Alameda, Mr. Webster, completing the Act as far as the house is concerned. It had done all the act it was possible for it to do—completed it—and the Chair was compelled, under the rules we have adopted, to sustain that idea, and rule as he did rule. And consequently the proposed amendment offered by the gentleman from San Francisco was out of order, and could not be entertained by the Chair. I take it that the Chair is right, and I shall sustain him in his position.

Mr. ANDREWS. Mr. Chairman: To a certain extent I agree with the gentleman from Trinity. The act of the committee is complete as far as we have gone. That amendment cannot be diminished, cannot be changed, but it can be added to and perfected. Any other rule would seem to me to be contrary to reason. We could not, under such a rule, perfect our work. We cannot change or alter that which has been adopted, but we can add to it, and that is the rule of all parliamentary law.

MR. ESTEE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

MR. TERRY. I give notice that to-morrow I will move to reconsider the vote by which this substitute was adopted.

THE CHAIRMAN. The motion is, that the committee rise, report progress, and ask leave to sit again.

Lost.

MR. JONES. Mr. Chairman: I wish to ask a question. The amendment offered by Mr. Webster was offered to the Convention, and, before the vote, a demand was made for a division of the question. Upon that demand the question was divided, and the first part was adopted——

[Cries of "Question;" "question."]

If I am wearying the members of this Convention, it will be the first time in a great many days. I am asking for information, and that is a right conceded to every member on the floor. I ask this question: When the question was divided, and the first part adopted, is not the vote upon the second part next in order; or, is it not? Then an amendment can be offered, and is next in order. Then, upon the rejection or adoption of the second branch, all amendments are cut off. I don't undertake to say whether it is or not. I ask for information.

MR. BARBOUR. Mr. Chairman: I rise for the purpose of explaining what the proposition was which I wished to offer. The amendment was, to insert, at the end of the section, a provision making bank directors responsible. I could not offer it before, because, until the other matter was disposed of, I was not able to tell whether I wanted it in the middle or at the end, or whether I wanted it at all. That is exactly the position in which it was put. Now, if that ruling is right, all a man has got to do is to move a thing which he calls a substitute, and have some man call for a division of the question, and the Convention will be tied up. I don't so understand parliamentary law at all. But, to ease the conscience of the gentleman from San Francisco, Mr. Beerstecher, I have stated what the purpose of the amendment was, and I hope he will help get the thieving directors of savings banks out of it. [Applause.]

MR. ESTEE. Mr. Chairman: The gentleman will have no trouble in getting his amendment in in good time. This whole question was discussed when the rules were adopted, and the reason for the rule is this: that when an amendment is adopted, another amendment cannot be considered which will change the judgment of the house, because in that case there would never be an end. I think from what I heard of it that it would be a good provision.

MR. HOWARD. Mr. Chairman: I would like to inquire, after we have gone through with the section, if it would not be in order for the gentleman to offer it as an idependent section?

MR. CHAIRMAN. Yes, sir.

MR. LARKIN. I move the committee rise.

["No;" "no;" "no."]

THE CHAIRMAN. The Chair will state the ground on which he makes the decision. It is a matter of no importance to the Chair. He desires to decide always in accordance with what he understands the law to be. He desires to do justice to every gentleman upon the floor. By the general parliamentary law, when a substitute is offered, the friends of the original measure are at liberty to perfect it by amendment, and get it precisely in the shape they desire, before any vote can be taken

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upon it. Then the question comes on the substitute. Its friends may then amend it and get it into proper shape, and then the question comes on it. If it passes, it takes the place of the original measure and cannot be further amended. Now, this Convention has adopted a rule treating a substitute as an amendment. But it is still a substitute, and when offered, as it was in this case, by way of a substitute, it is an amendment to the entire section, and was open to amendment to any extent, and on any branch of it. It was discussed, but no amendment was offered. The gentleman called for a division of the question. It was divided, and the two propositions disposed of, one after the other. One was adopted and the other rejected. Then the amendment being adopted took the place of the original section, and was no longer capable of amendment. That is the universal proceeding in parliamentary bodies. The question is, Shall the decision of the Chair stand as the judgment of the committee?

Division being called for, the Chair was sustained—ayes, 82; noes, 53.

MR. ESTEE. I move that the committee rise, report progress, and ask leave to sit again.

MR. REYNOLDS. I desire to give notice that I am compelled to give before the committee rises——

MR. TERRY. I have already given notice.

MR. REYNOLDS. I give notice that I will, on to-morrow, move a reconsideration of the vote by which the substitute to section three was adopted.

The CHAIRMAN. The motion is that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen, the Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again. What is the pleasure of the Convention?

ADJOURNMENT.

MR. VAN DYKE. Mr. President: I move that the Convention do now adjourn.

Carried.

And at five o'clock P. M., the Convention stood adjourned.

FORTY-SEVENTH DAY.

SACRAMENTO, Wednesday, November 13th, 1878.

The Convention met in regular session at ten o'clock A. M. President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hale,	O'Donnell,
Ayers,	Hall,	Ohleyer,
Barnes,	Harrison,	O'Sullivan,
Barry,	Harvey,	Overton,
Barton,	Heiskell,	Porter,
Beerstecher,	Herold,	Prouty,
Belcher,	Herrington,	Pulliam,
Bell,	Hilborn,	Reddy,
Blackmer,	Hitchcock,	Reed,
Boggs,	Holmes,	Reynolds,
Boucher,	Howard,	Rhodes,
Brown,	Huestis,	Ringgold,
Burt,	Hughey,	Rolfe,
Caples,	Hunter,	Schell,
Casserly,	Inman,	Schomp,
Chapman,	Johnson,	Shafter,
Charles,	Jones,	Shoemaker,
Condon,	Joyce,	Shurtleff,
Cowden,	Kelley,	Smith, of Santa Clara,
Cross,	Keyes,	Smith, of 4th District,
Crouch,	Kleine,	Smith, of San Francisco,
Davis,	Laine,	Soule,
Dean,	Lampson,	Stedman,
Dowling,	Larkin,	Steele,
Doyle,	Larue,	Stevenson,
Dudley, of San Joaquin,	Lavigne,	Strong,
Dudley, of Solano,	Lindow,	Stuart,
Dunlap,	Mansfield,	Sweasey,
Eagon,	Martin, of Alameda,	Swenson,
Edgerton,	Martin, of Santa Cruz,	Swing,
Estee,	McCallum,	Terry,
Estey,	McComas,	Thompson,
Evey,	McConnell,	Tinnin,
Farrell,	McCoy,	Townsend,
Fawcett,	McFarland,	Tully,
Filcher,	McNutt,	Turner,
Finney,	Miller,	Tuttle,
Freeman,	Mills,	Vacquerel,
Freud,	Moffat,	Van Dyke,
Garvey,	Moreland,	Van Voorhies,
Glascock,	Morse,	Walker, of Marin,
Gorman,	Murphy,	Walker, of Tuolumne,
Grace,	Nason,	Waters,
Graves,	Nelson,	Webster,
Gregg,	Neunaber,	Weller,
Hager,	Noel,	Wellin,
West,	Wilson, of Tehama,	Wyatt,
Wickes,	Wilson, of 1st District,	Mr. President.
White,	Winans,	

ABSENT.

Barbour,	Biggs,	Kenny,
Berry,	Campbell,	Lewis.

THE JOURNAL.

MR. CONDON. I move that the reading of the Journal be dispensed with and the same approved.

Carried.

MEMORIAL.

MR. ESTEE presented the following memorial relative to equal and proportionate representation:

To the Constitutional Convention of the State of California:

The undersigned respectfully presents this petition, requesting the establishment of a more just, equal, proportional, and ample system of representation, and respectfully represents:

1. That the present system does not represent the whole people.
2. That in its practical operations it results in great injustice and inequality.

The Constitution, recognizing equality as the principle of apportionment, requires that representation shall be apportioned according to population (Sec. 14, Art. I), and that an enumeration of the inhabitants shall be taken, under the direction of the Legislature, every ten years, and this enumeration, with the national census, shall serve as the basis of representation in both houses of the Legislature. The number of Assemblymen cannot be less than thirty nor more than eighty (Sec. 29, Art. IV.) The number of Senators not less than one third nor more than one half of the members of the Assembly. (Sec. 6, Art. IV.) The members of Assembly, and one half the Senators, are chosen biennially, at the same time and places, and by the qualified electors of their respective districts (Secs. 3, 5, and 6, Art. IV.) A plurality of votes constitutes a choice (Sec. 20, Art. II.) The Legislature prescribes eighty as the number of Assemblymen, and forty as the number of Senators, and divides the State into forty-eight Assembly Districts and twenty-nine Senatorial Districts. (Statutes 1874-5, page 366, Act of March 16, 1874.)

Thirty-two Assembly Districts elect one Assemblyman each.
Five Assembly Districts elect two Assemblymen each.
Six Assembly Districts elect three Assemblymen each.
Five Assembly Districts elect four Assemblymen each.
Eighteen Senatorial Districts choose one Senator each.
Eleven Senatorial Districts choose two Senators each.

Assembly Districts are composed of one or two counties. Senatorial Districts are composed of one, two, three, four, or five counties. Senatorial Districts consist of one, two, or three Assembly Districts. One Senatorial District is formed of one Assembly District and five Senatorial Districts, or of six Assembly Districts.

San Francisco County is divided into five Senatorial Districts, which are also Assembly Districts. Each Senatorial District having two Senators, biennially chooses one, except three districts, which quadrennially choose two each.

Three Senatorial Districts return one Senator and one Assemblyman each.
Nine Senatorial Districts return one Senator and two Assemblymen each.
Six Senatorial Districts return one Senator and three Assemblymen each.
Four Senatorial Districts return two Senators and three Assemblymen each.
Six Senatorial Districts return two Senators and four Assemblymen each.
One Senatorial District returns two Senators and five Assemblymen each.
Four Assembly Districts return one Assemblyman and one Senator each.
Two Assembly Districts return two Assemblymen and one Senator each.
Three Assembly Districts return three Assemblymen and one Senator each.
Three Assembly Districts return three Assemblymen and two Senators each.
Five Assembly Districts return four Assemblymen and two Senators each.

The Legislature is a representative body. The purposes it is intended to accomplish is to represent the whole people; to lodge the sovereign power of the State in the representatives of the entire constituency, so that the majority of the people may govern. Let us see to what extent our present system accomplishes these purposes. For convenience of illustration, let us assume that there are one hundred and one thousand voters in the State; that the Legislature is composed of one hundred and one members, *elected by the State at large;* and that there are two political parties. Each party nominates one hundred and one representatives. The A party casts fifty-one thousand votes, and secures all the representatives. The B party casts fifty thousand votes, and is excluded from representation. Fifty-one thousand voters have one hundred and one representatives. Fifty thousand voters are disfranchised, and have not a single representative. Is this just or equal? Is it proportional or reasonable? Voters should have equal rights, equal advantages, and equal representation in a representative government. The majority should receive all the representatives to which it is entitled. The minority should have its just share. Here the majority are exclusively represented. The minority are denied the right of representation. The whole people are not represented. Suffrage is not representation. It is the means of representation. It is sometimes urged that the successful candidate, in theory, represents those who agree with and those who differ from him in political opinions. If there is some truth there is a great deal of falsehood in this theory. In all matters involving differences of sentiments or desires, a sincere political antagonist does not and cannot represent his political adversaries. He endeavors to mold the legislation, control the policy, and direct the destinies of the State, in direct opposition to the views of his adversaries. In practical politics he does more. He seeks to exclude his opponents from ever again possessing a representative voice, or having a share or taking a part in the government of their common country, except the useless privilege, or rather burden, of casting ballots which count for nothing. Political antagonism, partisan animosity, and party intolerance are a sorry substitute for true representation.

The object of free government is not to exclude electors from representation, but to represent all. In this instance fifty-one thousand voters are entitled to fifty-one representatives, and the fifty thousand voters to fifty representatives. If that result could be accomplished, the Legislature would justly and equally represent the entire constituency.

In the legislative houses, the majority of the people, by their representatives, ought to have the right of decision, the right to rule and govern, but ought not to have the exclusive and sole right of representation. The right of decision and the right of representation are distinct, and should not be confounded. The exclusive representation of the majority, afforded by the illustration, is a violation of the primary truths of republican government. As one hundred and one is the number of legislators, fifty-one possess the right of decision; that is, a majority of the majority of the people may exercise the sovereign power of the State. A majority of the majority is commonly a minority of the people. Fifty-one representatives enact a law; fifty vote against it. The fifty-one represent twenty-six thousand voters. The fifty represent twenty-five thousand voters, and fifty thousand voters are unrepresented. Thus, by their representatives, twenty-six thousand voters, a minority of the people, will wield the powers of government and subvert the first principles of democracy, which require that the majority of the State shall rule. To the validity of some legislative acts, a two-thirds vote is required by the Constitution; that is, that the representatives of two thirds of the people must assent. All these representatives only represent a trifle over one half of the people.

The division of the State into local subdivisions or districts to elect representatives is a better system than to elect by the State at large. It is better, because the minor-

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ity of the State may be in the majority in some local subdivisions, and thereby obtain some share of representation. This is one of the great advantages of representative districts They generally represent more of the people. Yet the district system sometimes yields similar results, disfranchising voters and enabling the minority to exercise the sovereign power of the community.

The following are some of the instructive examples presented by published returns of elections:

MARYLAND. Governor's vote for 1867—Democratic, 63,602; percentage of total vote, 74.38. Republican, 21,890; percentage of total vote, 25 62. Legislature—Democrats, Senate, 24; House, 86; total, 110. Republicans, Senate, 0; House, 0; total, 0.

DELAWARE. Governor's vote for 1868—Democratic, 10,961; percentage of total vote, 58.94. Republican, 7,636; percentage of total vote, 41 06. Legislature—Democrats, Senate, 9; House, 21; total, 30. Republicans, Senate, 0; House, 0, total, 0.

MARYLAND. Votes for members of Legislature, 1868—Democratic, 62,356; percentage of total vote, 67.20. Republican, 30,442; percentage of total vote, 32 80 Legislature—Democrats, Senate, 24; House, 86; total, 110. Republicans, Senate, 0; House, 0; total, 0.

TENNESSEE. Presidential vote for 1868—Republican, 56,757; percentage of total vote, 68.84. Democratic, 26,311; percentage of total vote, 31.16. Legislature—Republicans, Senate, 25; House, 83; total, 108. Democrats, Senate, 0; House, 0; total, 0.

DELAWARE. Governor's vote for 1870—Democratic, 11,464; percentage of total vote, 55.67. Republican, 9.130; percentage of total vote, 44.33. Legislature—Democrats, Senate, 9; House, 21; total, 30. Republicans, Senate, 0; House, 0; total, 0.

DELAWARE. Presidential vote for 1876—Democratic, 13,381; percentage of total vote, 55.44. Republican, 10,752; percentage of total vote, 44.56. Legislature—Democrats, Senate, 9; House, 21; total, 30. Republicans, Senate, 0; House, 0; total, 0.

VERMONT. Governor's vote for 1865—Republican, 25,586; percentage of total vote, 75.68. Democratic, 8,857; percentage of total vote, 24.29. Legislature—Republicans, Senate, 30; House, 213; total, 243. Democrats, Senate, 0; House, 11; total, 11.

MAINE. Governor's vote for 1865—Republican, 53,444; percentage of total vote, 63.20. Democratic, 31,117; percentage of total vote, 36.80. Legislature—Republicans, Senate, 31; House, 136; total, 167. Democrats, Senate, 0; House, 15; total, 15.

CONNECTICUT. Governor's vote for 1865—Republican, 42,375; percentage of total vote, 57.49. Democratic, 31,339; percentage of total vote, 42.51. Legislature—Republicans, Senate, 21; House, 161; total, 182 Democrats, Senate, 0; House, 76; total, 76.

MAINE. Governor's vote for 1866—Republican, 69,626; percentage of total vote, 62.41. Democratic, 41,939; percentage of total vote, 37.59. Legislature—Republicans, Senate, 31; House, 138; total, 169. Democrats, Senate, 0; House, 13; total, 13.

MASSACHUSETTS. Governor's vote for 1866—Republican, 91,980; percentage of total vote, 77.46. Democratic, 26,671; percentage of total vote, 22.46. Legislature—Republicans, Senate, 40; House, 229; total, 269. Democrats, Senate, 0; House, 11; total, 11.

VERMONT. Governor's vote for 1866—Republican, 34,117; percentage of total vote, 75.13. Democratic, 11,292; percentage of total vote, 14.87. Legislature—Republicans, Senate, 30; House, 224; total, 254. Democrats, Senate, 0; House, 13; total, 13.

TENNESSEE. Governor's vote for 1867—Republican, 74,484; percentage of total vote, 76.76. Democratic, 22,548; percentage of total vote, 23.24. Legislature—Republicans, Senate, 79; House, 25; total 104. Democrats, Senate, 4; House, 0; total, 4.

VERMONT. Governor's vote for 1868—Republican, 42,615; percentage of total vote, 73.60. Democratic, 15,280; percentage of total vote, 26.40. Legislature—Republicans, Senate, 30; House, 224; total, 254. Democrats, Senate, 0; House, 15; total, 15.

VERMONT. Governor's vote for 1869—Republican, 31,834; percentage of total vote, 73.54. Democratic, 11,455; percentage of total vote, 26.64. Legislature—Republicans, Senate, 30; House, 211; total, 241. Democrats, Senate, 0; House, 14; total, 14.

MAINE. Governor's vote for 1872—Republican, 71,917; percentage of total vote, 56 80. Democratic, 54,701; percentage of total vote, 43.20. Legislature—Republicans, Senate, 30; House, 128; total, 158. Democrats, Senate, 0; House, 23; total, 23.

VERMONT. Governor's vote for 1872—Republican, 41,946; percentage of total vote, 71.63. Democratic, 16,613; percentage of total vote, 28 37. Legislature—Republicans, Senate, 30; House, 216; total, 246. Democrats, Senate, 0; House, 32; total, 32.

MAINE. Governor's vote for 1873—Republican, 45,674; percentage of total vote, 58.56. Democratic, 32,316; percentage of total vote, 41.44. Legislature—Republicans, Senate, 30; House, 106; total, 136. Democrats, Senate, 0; House, 41; Independents, House, 3; Reformers, House, 1; total, 45.

DELAWARE. Governor's vote for 1874—Democratic, 12,488; percentage of total vote, 52.58. Republican, 11,259; percentage of total vote, 47.42. Legislature—Democrats, Senate, 8; House, 21; total, 29 Republicans, Senate, 1; House, 0; total, 1.

VERMONT. Governor's vote for 1876—Republican, 41,723; percentage of total vote, 68.06. Democratic, 20,988; percentage of total vote, 31 94. Legislature, Republicans, Senate, 30; House, 205; total, 235. Democrats, Senate, 0; House, 31; total, 31.

ALABAMA. Governor's vote for 1876—Democratic, 99,255; percentage of total vote, 64.10. Republican, 55,582; percentage of total vote, 35.90. Legislature—Democrats, Senate, 33; House, 80; total, 113 Republicans, Senate, 0; House, 20; total, 20.

MASSACHUSETTS. Governor's vote for 1865—Republican, 69,912; percentage of total vote, 76.57. Democratic, 21,245; percentage of total vote, 23.26. Legislature—Republicans, Senate, 39; House, 221; total, 260. Democrats, Senate, 1; House, 19; total, 20.

VERMONT. Governor's vote for 1867—Republican, 31,694; percentage of total vote, 73.32. Democratic, 11,510; percentage of total vote, 26.63. Legislature—Republicans, Senate, 20; House, 213; total, 242. Democrats, Senate, 1; House, 15; total, 16.

KANSAS. Governor's vote for 1868—Republican, 29,795; percentage of total vote, 66.00. Democratic, 13,809; percentage of total vote, 34.00. Legislature—Republicans, Senate, 24; House, 84; total, 108. Democrats, Senate, 1; House, 6; total, 7.

MASSACHUSETTS Governor's vote for 1872—Republican, 133,900; percentage of total vote, 69.19. Democratic, 59,626; percentage of total vote, 30.81. Legislature—Republicans, Senate, 39; House, 212; total, 251. Democrats, Senate, 1; House, 28; total, 29.

MICHIGAN. Governor's vote for 1872—Republican, 138,968; percentage of total vote, 69.92. Democratic, 81,880; percentage of total vote, 30.08. Legislature—Republicans, Senate, 31; House, 95; total, 126. Democrats, Senate, 1; House, 5; total, 6.

MICHIGAN. Governor's vote for 1866—Republican, 96,746; percentage of total vote, 58.83. Democratic, 67,708; percentage of total vote, 41.17. Legislature—Republicans, Senate, 30; House, 85; total, 115. Democrats, Senate, 2; House, 5; total, 7.

MAINE. Governor's vote for 1868—Republican, 75,834; percentage of total vote, 57.71. Democratic, 55,431; percentage of total vote, 42.29. Legislature—Republicans, Senate, 29; House, 119; total, 148. Democrats, Senate, 2; House, 30; total, 32.

MASSACHUSETTS. Governor's vote for 1868—Republican, 132,121; percentage of total vote, 67.62. Democratic, 63,266; percentage of total vote, 32.28. Legislature—Republicans, Senate, 38; House, 224; total, 262. Democrats, Senate, 2; House, 16; total, 18.

VERMONT. Governor's vote for 1870—Republican, 33,367; percentage of total vote, 73.46. Democratic, 12,058; percentage of total vote, 26.54. Legislature—Republicans, Senate, 28; House, 206; total, 234. Democrats, Senate, 2; House, 29; total, 31.

MAINE. Governor's vote for 1876—Republican, 75,867; percentage of total vote, 55.44 Democratic, 60,423; percentage of total vote, 44 16. Legislature—Republicans, Senate, 29; House, 120; total, 149. Democrats, Senate, 2; House, 31; total, 33.

Ordinarily in an extended and fair election of representatives, not less than forty per cent. of the voters are unrepresented, and it may amount to nearly one half. Two of every five, forty of every one hundred voters, are disfranchised. These unrepresented voters are the aggregate of the minorities, irrespective of politics, in the different districts. In State elections, the numbers rise into thousands, and in congressional elections throughout the Union, into millions. The following percentage of the total vote cast, received by candidates for President, fairly shows how near equally the voters commonly divide:

CANDIDATE.	Percentage.	CANDIDATE.	Percentage.
1828.		1852.	
Andrew Jackson	55.97	Franklin Pierce	50 93
John Q. Adams	44.03	Winfield Scott	44.10
1832.		John P. Hale	4.97
Andrew Jackson	54.96	1856.	
Henry Clay	42.39	James Buchanan	45.34
John Floyd, William Wirt	2.65	J. C. Fremont	33.09
1836.		Millard Fillmore	21.57
Martin Van Buren	50.83	1860.	
W. H. Harrison and others	49.17	Abraham Lincoln	39 91
1840.		J. C. Breckenridge	18.08
W. H. Harrison	52.89	John Bell	12.61
Martin Van Buren	46.82	Stephen A. Douglass	29.40
James G. Birney	.29	1864.	
1844		Abraham Lincoln	55.06
James K. Polk	49 55	George B. McClellan	44 94
Henry Clay	48.14	1868.	
James G. Birney	2.31	U. S. Grant	52.67
1848.		Horatio Seymour	47.33
Zachary Taylor	47.36	1872.	
Lewis Cass	42.50	U. S. Grant	55 63
Martin Van Buren	10.14	Horace Greeley	43.83
		Charles O. O'Connor	.45
		J R. Black	.09

The total popular vote at the Presidential election of eighteen hundred and seventy-six was eight million four hundred and twelve thousand seven hundred and thirty-three. In Congress and in the Legislatures the unrepresented voters, or forty per cent. of this vote, is three million three hundred and sixty-five thousand and ninety-three. The population of our country at the commencement of the Revolutionary War in seventeen hundred and seventy-six is frequently estimated in round numbers at three millions. The census of seventeen hundred and ninety shows three million nine hundred and twenty-nine thousand two hundred and fourteen; of this population, the women, children, and non-voters, at the lowest reasonable estimate, must have composed two thirds of it. Our Declaration of Independence asserts that the people's right of representation in the Legislature is "a right inestimable to them, and formidable to tyrants only"

The vice of our present method of election denies more people the right of representation than could have been deprived of that right by the tyranny of the British King.

In the election of legislators in representative districts the results are unjust, unequal, and a denial of representation to a large part of the electors of the district. It excessively over-represents majorities, and thereby an unsafe and undue proportion of power is accumulated in their hands. Let us assume that representation is apportioned equally according to voters.

The district returning one legislator has one thousand voters.
The district returning two legislators has two thousand voters.
The district returning three legislators has three thousand voters.
The district returning four legislators has four thousand voters.
The district returning five legislators has five thousand voters.
The district returning six legislators has six thousand voters.
The following may be the result of an election:

Five hundred and fifty voters secure one representative. Four hundred and fifty voters have no representation.

One thousand and fifty voters secure two representatives. Nine hundred and fifty voters have no representation.

One thousand five hundred and fifty voters secure three representatives. One thousand four hundred and fifty voters have no representation.

Two thousand and fifty voters secure four representatives. One thousand nine hundred and fifty voters have no representation.

Two thousand five hundred and fifty voters secure five representatives. Two thousand four hundred and fifty voters have no representation.

Three thousand and fifty voters secure six representatives. Two thousand nine hundred and fifty voters have no representation.

The ratio of representation in this instance is one thousand voters; and when the minority consists of one thousand or more voters, it is reasonable and equitable that the minority should receive some representation. Three thousand and fifty voters have six representatives; two thousand nine hundred and fifty not one. The two thousand nine hundred and fifty voters are interested, as well as the three thousand and fifty voters, in the happiness of free government, and can any good reason be assigned, consistent with justice and equality, why they should not have some representation, for the general welfare and their own security. The majority of a district should not be exclusively represented, unless it is substantially the entire people of the district.

When the minority is so large as to constitute a substantial part of the district constituency, it is entitled to some representation.

From these considerations, it seems obvious, that to substantially represent the whole people, they must be represented in parts, and that every substantial part must be represented. To accomplish these results, some additional provision seems necessary to represent large minorities, irrespective of politics in legislative districts. It requires but little application of thought to satisfy the mind of the difficulties inherent in the very nature of the subject, and which in practice obstruct the application of the principles of justice and equality. If a perfect system cannot be devised, let us have representation as substantial and as equal as practical politics will permit.

In this State, when the Election Board of a precinct, consisting of an Inspector and two Judges, was chosen by the people, a voter was not permitted to vote for the three. He could vote for the Inspector and only one Judge, and the three highest in votes were elected. By this method the majority and the minority of a precinct secured representation in the Board. It was more just to have both parties represented, and more useful to secure fairness and purity, than to have the majority elect all because it was the majority. This mode of electing such Boards exists in other States. The Act of March, eighteen hundred and sixty-seven, of New York, regulating the election of delegates to a Constitutional Convention, provides for district delegates, and also thirty-two delegates to be chosen by the State at large, and that no elector shall vote for more than sixteen of the delegates at large.

An amendment of eighteen hundred and sixty-nine, to the Constitution of New York, provided for the election of seven Judges of the Court of Appeals, and that every elector may vote for the chief and only four of the associate Judges.

The Act of April, eighteen hundred and seventy-two, of Pennsylvania, for the election of delegates to a Constitutional Convention, provides for the election of twenty-eight delegates by the State at large, and that an elector shall vote for not more than fourteen; that twenty-eight districts shall elect three delegates each, and

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no elector shall vote for more than two; that one district shall elect nine, and no elector shall vote for more than six; that one district shall elect six, and no elector shall vote for more than four; and that the City of Philadelphia shall elect at large six additional delegates, and no elector shall vote for more than three.

In England, in the election of members of the House of Commons, in a constituency which returns three members, an elector can only vote for two, and in a district which returns four members, an elector can only vote for three. Other means have been suggested and other modes adopted to lessen the imperfections of the present system. Of these may be mentioned the "cumulative vote" in the election of legislators in Illinois, and in town elections in Pennsylvania. In February, eighteen hundred and seventy-eight, in this State, our Civil Code, section three hundred and seven, was amended, authorizing the "cumulative vote" in the selection of directors of private corporations.

Your petitioner respectfully submits the following as embodying a plan which seems to your petitioner will secure better results than the existing method:

SECTION 1. The Legislature shall apportion the State every ten years, beginning with the year ——, by dividing the qualified electors of the State by the number of Assemblymen, and the quotient shall be the ratio of representation in the Assembly. The State shall be divided into a number of Assembly Districts, each of which shall contain, as nearly as practicable, three times the ratio of electors, and shall consist of contiguous and compact territory. Three members of the Assembly shall be elected in each Assembly District at each general legislative election.

SEC. 2. In the election of three members of the Assembly in an Assembly District, each qualified elector of the Assembly District may vote for three persons, as follows: two persons shall be designated and voted for as "Assemblymen," and one person shall be designated and voted for as "Third Assemblyman." The three candidates highest in votes who have been designated and voted for as "Assemblymen" (excluding in this case those candidates designated and voted for as "Third Assemblymen"), shall be declared elected in the event that each of said highest candidates receives a number of votes equal to or more than one third of the ballots cast. In all other cases, in determining the result of the election all the candidates shall be included, and the three candidates highest in votes shall be declared elected. In the case of an equality of votes preventing an election, the Assembly of which the successful candidates will be members shall, in open public session, select from those candidates whose equal votes prevent an election the candidate or candidates who shall be declared elected.

SEC. 3. Each Senatorial District shall be formed of contiguous and compact territory, and shall consist of two Assembly Districts, and shall elect three Senators. The Senatorial Districts shall be numbered in regular order, commencing with one at one end of the State and ending at the other. The Senators shall be divided into two classes, so that one class shall be elected at each general legislative election Those elected in districts bearing odd numbers shall constitute a class, and those elected in districts bearing even numbers shall constitute a class. In the election of three members of the Senate in a Senatorial District, each qualified elector of the Senatorial District may vote for three persons, as follows. two persons shall be designated and voted for as "Senators," and one person shall be designated and voted for as "Third Senator" The same principles shall be applied in the election of three Senators in a Senatorial District, as prevails in the election of three members of the Assembly in an Assembly District, and the result of the election shall be determined in the same manner. In case of an equality of votes preventing an election, the Senate shall select the candidate or candidates to be declared elected in the same manner as the Assembly.

Ordinarily the minor part of a district forms from one third to nearly one half of the voters. Three representatives are selected for a district so that this one third may equal the ratio of representation, and therefore be clearly, in justice, entitled to a representative. Assuming there are three thousand voters in a district, the minority will elect one representative when it consists of one thousand voters or more; that is, from one thousand to one thousand four hundred and ninety-nine voters. When there is one or two vacancies to be filled in a district, the present system prevails.

There are only two novelties in this plan, and they are simple, easily understood, and practicable. The first is the provision that the minority shall not be represented unless it constitutes a substantial part—one third—of the electors. If a minority of one or an insignificant or inconsiderable number of men had a representative, it would be unequal and unjust to the majority. There is another consideration which may be deemed entitled to some weight. In case no limitation is imposed requiring the minority to consist of a certain proportion of the electors to obtain a representative, the majority, when great, confident of its strength, and willing to risk the result on a division of its strength, may divide and secure all the representatives. For example, in the event of a minority of six hundred voters, two thousand four hundred voters may form in two divisions of one thousand two hundred voters, and each division vote for two different sets of candidates, and thereby the three candidates highest in votes would be the candidates of the majority, and the majority would elect all the representatives. This provision avoids any necessity of thus dividing.

The second is the provision that in the event that the minority is not entitled to a representative, the majority elects all.

Of the treasures of human experience, those political truths are of the greatest intrinsic value which teach mankind that the division of power and checks are the wisest expedients for the attainment of good government. This is illustrated in the division of the sovereign power into executive, legislative, and judiciary departments; the division of the legislative power into two houses, each constituting a check and balance to the other; the requirement of executive approval of the acts of legislation, and a two-thirds vote to overrule the veto, and the numerous divisions of power in the State The plan herein submitted applies these principles. It divides power and distributes it among the people throughout the State, upon the principles of justice and equality, and supplies additional checks in the structure of the Legislature itself against its abuse of power. It is a common practice in both houses to refer proposed local legislation to the local delegation, which sometimes consists of one member. One-man power is necessary and useful in a great many public trusts, but one-man power in legislation is dangerous. If the delegation is composed of three we gain the advantages of the investigation of the subject by three independent minds, and secure the benefits and wisdom of deliberation and counsel. If one of the delegation represents the minority we have an additional check against abuse.

To represent fully the people, both houses of the Legislature should consist of ample numbers. They should not be so large as to suffer from the confusion, passions, and disadvantages of a multitude, nor so small as to be the mere skeleton of representation. The proper numbers to be designated for any particular State is a subject admitting of great diversities of opinion. The House of Representatives of Massachusetts consists of two hundred and forty members; our national House of Representatives, of two hundred and ninety-two; and the English House of Commons of six hundred and fifty-eight. Under our present Constitution the Assembly may consist of not less than thirty nor more than eighty members, and the Senate, of not less than ten nor more than forty members.

The abuses of legislative power, in regard to the general welfare, are principally for two purposes, that is: to secure the passage of *injurious* legislation, and to prevent the enactment of *beneficial* legislation. To accomplish the first, both houses must be controlled. To accomplish the second, one house only need be controlled. If our Senate consisted of ten members, six could control it. As it now consists of forty members, twenty-one can rule it. Now it is easier to corrupt the integrity of six or twenty-one men than of two hundred men. This observation evinces the resistance which numbers present to corruption. The larger the numbers, the greater the opportunities of disclosure, and the more powerful the fear of detection. Small bodies offer great temptations, solicit intrigue, and invite the bribes of unscrupulous greed and shameless ambition. When the inconveniences of a multitude are avoided, as we diminish the numbers we destroy the substance, and approach the shadow of representation—we desert safety and approach insecurity.

There is no desire to cast reproach upon any representative body for the unfaithful administration of its high trust, but candor obliges us to admit that the lessons of experience afforded by the history of our State, instructs us that both branches of the Legislature are too deficient in numbers for purity or sound government. As these vile and infamous practices are evils to which small bodies are heirs, it would seem to be the part of wise patriotism in the organization of our legislative department to apply the principle that numbers constitute a salutary check and barrier to these vices, and construct both houses of ample numbers. It is true that increased numbers will augment the expenses of this department. A well constructed Legislature is a matter of the first magnitude to society; its importance is so transcendant to the guardianship of the interests, the maintenance of the rights, the redress of the grievances, and the promotion of the welfare of the community, that the increased expense of additional representatives is a consideration entitled to little weight.

It would be preferable to lessen the compensation of legislators, or to permit the honor and services to one's country to be the reward, than to have the houses too small.

It would be worse than folly to disregard the admonitions of experience and permit the impulses of political parsimony to form legislative houses with such limited numbers as to be unsafe depositaries of the interests of the people—houses so deficient as to be the prey of ringsters and corruptionists—the scourge and disgrace of the commonwealth. Large numbers more fully represent the different interests, general or local, of the entire constituency, and have more sympathy for the public welfare.

Your petitioner believes that the subject has just claims to your attention, and respectfully requests its consideration by the Convention, so that some plan may be devised to remedy or lessen the injustice, inequalities, and vices of the present system.

DAVIS LOUDERBACK.

Referred to Committee on Legislative Department.

REPORTS.

MR. WILSON, of San Francisco, presented the following report from the Committee on Judiciary and Judicial Departmemt:

MR. PRESIDENT: Your Committee on Judiciary and Judicial Department, to whom were referred resolutions, amendments, proposals, etc., numbers three, nine, ten (twice), twelve, fifteen, twenty-one, twenty-seven, thirty, thirty-one, forty-two, fifty-seven, sixty-five, seventy-six, eighty-five, eighty-nine, one hundred and fifty-six, one hundred and seventy-four, one hundred and eighty, one hundred and eighty-three, one hundred and eighty-nine, one hundred and ninety, one hundred and ninety-four, two hundred and eight, two hundred and twenty-two, two hundred and forty-five, two hundred and forty-six, two hundred and forty-nine, two hundred and sixty-two, two hundred and sixty-three, two hundred and seventy-two, two hundred and seventy-four, two hundred and seventy five, two hundred and ninety-one, three hundred and ten, three hundred and forty-eight, three hundred and sixty-five, three hundred and sixty-seven, three hundred and eighty-six, three hundred and ninety-nine, four hundred and four, four hundred and twenty-six, four hundred and forty-two, four hundred and fifty-five, and four hundred and fifty-seven, beg leave to report that they have considered the same, and recommend that they be not adopted.

So much of such proposed amendments as your committee have approved are, in a modified form, contained in the judiciary system which accompanies this report.

We have the honor to submit and recommend its adoption as article six of the Constitution and the judicial department.

S. M. WILSON, Chairman.

November 12th, 1878.

ARTICLE VI.

JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, in a Supreme Court, Superior Courts, Justices of the Peace, and such inferior Courts as the Legislature may establish in any incorporated city or town, or city and county.

SEC. 2. The Supreme Court shall consist of a Chief Justice and six Associate Justices. The Court may sit in departments and in bank, and shall always be open for the transaction of business. There shall be two departments, denominated, respectively, Department One and Department Two. The Chief Justice shall assign three of the Associate Justices to each department, and such assignment may be changed by him from time to time. The Associate Justices shall be competent to sit in either department, and may interchange with each other by agreement among themselves or as ordered by the Chief Justice. Each of the departments shall have the power to hear and determine causes and all questions arising therein, subject to the provisions hereinafter contained in relation to the Court in bank. The presence of three Justices shall be necessary to transact any business in either of the departments, except such as may be done at chambers, and the concurrence of three Justices shall be necessary to pronounce a judgment. The Chief Justice shall apportion the business to the departments, and may, in his discretion, order any cause pending before the Court to be heard and decided by the Court in bank. The order may be made before or after judgment pronounced by a department; but where a cause has been allotted to one of the departments, and a judgment pronounced thereon, the order must be made within thirty days after such judgment, and concurred in by two Associate Justices, and if so made it shall have the effect to vacate and set aside the judgment. If the order be not made within the time above limited, the judgment shall be final. No judgment by a department shall become final until the expiration of the period of thirty days aforesaid, unless approved by the Chief Justice, in writing, with the concurrence of two Associate Justices. The Chief Justice may convene the Court in bank at any time, and shall be the presiding Justice of the Court when so convened. The concurrence of four Justices present at the argument shall be necessary to pronounce a judgment in bank; but if four Justices, so present, do not concur in a judgment, then all the Justices qualified to sit in the cause shall hear the argument; but to render a judgment a concurrence of four Judges shall be necessary. In the determination of causes, all decisions of the Court in bank or in departments shall be given in writing, and the grounds of the decision shall be stated. The Chief Justice may sit in either department, and shall preside when so sitting, but the Justices assigned to each department shall select one of their number as presiding Justice. All sessions of the Court, whether in bank or in departments, shall be held at the Capital of the State. In case of the absence of the Chief Justice from the place

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at which the Court is held, or his inability to act, the Associate Justices shall select one of their own number to perform the duties and exercise the powers of the Chief Justice during such absence or inability to act.

SEC. 3. The Chief Justice and the Associate Justices shall be elected by the qualified electors of the State at large, at the general State elections, at the times and places that State officers are elected; and the term of office shall be twelve years, from and after the first Monday of January next succeeding their election; *provided*, that the six Associate Justices elected at the first election shall, at their first meeting, so classify themselves by lot, that two of them shall go out of office at the end of four years, two of them at the end of eight years, and two of them at the end of twelve years, and an entry of such classification shall be made in the minutes of the Court in bank, signed by them, and a duplicate thereof shall be filed in the office of the Secretary of State. If a vacancy occur in the office of a Justice, the Governor shall appoint a person to hold the office until the election and qualification of a Justice to fill the vacancy, which election shall take place at the next succeeding general election, and the Justice so elected shall hold the office for the remainder of the unexpired term. The first election of the Justices shall be at the first general election after the adoption and ratification of this Constitution.

SEC. 4. The Supreme Court shall have appellate jurisdiction in all cases in equity; also in all cases at law which involve the title or possession of real estate, or the legality of any tax, impost, assessment, toll, or municipal fine, or in which the demand, exclusive of interest, or the value of the property in controversy, amounts to three hundred dollars; also in cases of forcible entry and detainer, and in all such probate matters as may be provided by law; also in all criminal cases amounting to felony, on questions of law alone. The Court shall also have power to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and also all writs necessary or proper to the complete exercise of its appellate jurisdiction. Each of the Justices shall have power to issue writs of habeas corpus to any part of the State, upon petition by or on behalf of any person held in actual custody, and may make such writs returnable before himself, or the Supreme Court, or before any Superior Court in the State, or before any Judge thereof.

SEC. 5. The Superior Courts shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to three hundred dollars, and in all criminal cases amounting to felony, and cases of misdemeanor not otherwise provided for; also, in actions of forcible entry and detainer, of proceedings in insolvency, of actions to prevent or abate a nuisance; also, of all matters of probate, and, also, of divorce and for annulment of marriage, and all such special cases and proceedings as are not otherwise provided for. And said Courts shall have the power of naturalization, and to issue papers therefor. They shall have appellate jurisdiction in such cases arising in Justices' and other inferior Courts in their respective counties as may be prescribed by law. Said Courts shall be always open (legal holidays and non-judicial days excepted), and their original jurisdiction shall extend to all parts of the State. Said Courts, and their Judges, shall have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus, on petition by or on behalf of any person in actual custody, in their respective counties.

SEC. 6. There shall be in each of the organized counties, or cities and counties, of the State, a Superior Court, for each of which at least one Judge shall be elected by the qualified electors of the county, or city and county, at the general State election; *provided*, that in the City and County of San Francisco there shall be elected twelve Judges of the Superior Court, any one or more of whom may hold Court. There may be as many sessions of said Court, at the same time, as there are Judges thereof. The said Judges shall choose from their own number a presiding Judge, who may be removed at their pleasure. He shall distribute the business of the Court among the Judges thereof, and prescribe the order of business. The judgments, orders, and proceedings of any session of the Superior Court, held by any one or more of the Judges of said Courts, respectively, shall be equally effectual as if all the Judges of said respective Courts presided at such session. In each of the Counties of Sacramento, Los Angeles, and Alameda, there shall be elected two such Judges. The term of office of Judges of the Superior Courts shall be six years, from and after the first Monday of January next succeeding their election; *provided*, that the twelve Judges of the Superior Court, elected in the City and County of San Francisco at the first election held under this Constitution, shall, at their first meeting, so classify themselves, by lot, that four of them shall go out of office at the end of two years, and four of them shall go out of office at the end of four years, and four of them shall go out of office at the end of six years, and an entry of such classification shall be made in the minutes of the Court, signed by them, and a duplicate thereof filed in the office of the Secretary of State. The first election of Judges of the Superior Courts shall take place at the first general election held after the adoption and ratification of this Constitution. If a vacancy occur in the office of Judge of a Superior Court, the Governor shall appoint a person to hold the office until the election and qualification of a Judge to fill the vacancy, which election shall take place at the next succeeding general election, and the Judge so elected shall hold office for the remainder of the unexpired term.

SEC. 7. In any county, or city and county, other than the City and County of San Francisco, in which there shall be more than one Judge of the Superior Court, the Judges of such Court may hold as many sessions of said Court at the same time as there are Judges thereof, and shall apportion the business among themselves as equally as may be.

SEC. 8. A Judge of any Superior Court may hold a Superior Court in any county, at the request of a Judge of the Superior Court thereof, and upon the request of the Governor it shall be his duty so to do.

SEC. 9. The Legislature shall have no power to grant leave of absence to any judicial officer; and any such officer who shall absent himself from the State for more than sixty consecutive days shall be deemed to have forfeited his office. The Legislature of the State may at any time, two thirds of the members of the Senate and two thirds of the members of the Assembly voting therefor, increase or diminish the number of Judges of the Superior Court in any county, or city and county, in the State; *provided*, that no such reduction shall affect any Judge who has been elected.

SEC. 10. Justices of the Supreme Court, and Judges of the Superior Courts, may be removed by concurrent resolution of both houses of the Legislature, adopted by a two-third vote of each house. All other judicial officers, except Justices of the Peace, may be removed by the Senate on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof be entered on the Journal, or unless the party complained of has been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the Journal.

SEC. 11. There shall be one Justice of the Peace elected in each township in the State, and the Legislature shall determine the number of Justices of the Peace to be elected in each incorporated city and town, or city and county, and shall fix by law the powers, duties, and responsibilities of Justices of the Peace; *provided*, such powers shall not in any case trench upon the jurisdiction of the several Courts of record, except that said Justices shall have concurrent jurisdiction with the Superior Courts in cases of forcible entry and detainer, where the rental value does not exceed twenty-five dollars per month, and where the whole amount of damages claimed does not exceed two hundred dollars.

SEC. 12. The Supreme Court, the Superior Courts, and such other Courts as the Legislature shall prescribe, shall be Courts of record.

SEC. 13. The Legislature shall fix by law the jurisdiction of any inferior Courts which may be established in pursuance of section one of this article, and shall fix by law the powers, duties, and responsibilities of the Judges thereof.

SEC. 14. The Legislature shall provide for the election of a Clerk of the Supreme Court, County Clerks, District Attorneys, Sheriffs, and other necessary officers, and shall fix by law their duties and compensation. County Clerks shall be ex officio Clerks of the Courts of record in and for their respective counties, or cities and counties. The Legislature may also provide for the appointment by the several Superior Courts of one or more Commissioners in their respective counties, or cities and counties, with authority to perform chamber business of the Judges of the Superior Courts, to take depositions, and perform such other business connected with the administration of justice as may be prescribed by law.

SEC. 15. No judicial officer, except Justices of the Peace and Court Commissioners, shall receive to his own use any fees or perquisites of office.

SEC. 16. The Legislature shall provide for the speedy publication of such opinions of the Supreme Court as it may deem expedient, and all opinions shall be free for publication by any person.

SEC. 17. The Justices of the Supreme Court and Judges of the Superior Courts shall severally, at stated times during their continuance in office, receive from the State treasury, for their services, a compensation which shall not be increased or diminished during the term for which they shall have been elected. During the term of the first Judges elected under this Constitution, the annual salaries of the Justices of the Supreme Court shall be six thousand dollars each. The Superior Judges shall be divided into four classes: those of the City and County of San Francisco, and of the Counties of Alameda, San Joaquin, Los Angeles, Santa Clara, Sacramento, and Sonoma, shall constitute the first class, and shall each receive an annual salary of five thousand dollars, payable quarterly; those of the Counties of Butte, El Dorado, Amador, Colusa, Contra Costa, Humboldt, Mendocino, Monterey, Napa, Nevada, Placer, Santa Cruz, Solano, Tulare, Yolo, Kern, Yuba, and San Bernardino, shall constitute the second class, and shall receive an annual salary of four thousand dollars each, payable quarterly; those of the Counties of Calaveras, Fresno, Lake, Marin, Merced, Plumas, San Benito, San Diego, San Luis Obispo, San Mateo, Santa Barbara, Sierra, Shasta, Siskiyou, Stanislaus, Sutter, Tehama, Tuolumne, and Ventura, shall constitute the third class, and receive an annual salary of three thousand dollars each, payable quarterly; and those of all other counties of the State, not above enumerated, shall constitute the fourth class, and receive an annual salary of two thousand dollars each, payable quarterly.

SEC. 18. The Justices of the Supreme Court, and the Judges of the Superior Courts, shall be ineligible to any other office than a judicial office during the term for which they shall have been elected.

SEC. 19. Judges shall not charge juries with respect to matters of fact, but may state the testimony and declare the law.

SEC. 20. The style of all process shall be, "The People of the State of California," and all prosecutions shall be conducted in their name and by their authority.

SEC. 21. The Justices shall appoint a Reporter of the decisions of the Supreme Court, who shall hold his office and be removable at their pleasure. He shall receive an annual salary of twenty-five hundred dollars, payable quarterly.

SEC. 22. The Judges and Justices of the Peace shall not practice law in any Court of the State during their continuance in office.

SEC. 23. A Grand Jury shall be composed of twelve jurors, and a concurrence of nine shall be necessary to the making of a presentment or the finding of an indictment.

SEC. 24. No one shall be eligible to the office of Justice of the Supreme Court unless he be at least thirty-five years of age, and shall have been admitted to practice before the Supreme Court of the State;

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and no one shall be eligible to the office of Judge of a Superior Court unless he be at least thirty years of age, and shall have been admitted to practice before the Supreme Court of the State.

MR. BELCHER. Mr. President: That article is a long one, and I move that the reading of it be dispensed with.

THE PRESIDENT. Under Rule Fifty-three the report must be read.

MR. BELCHER. I move that the rule be suspended.

THE PRESIDENT. The rule cannot be suspended. It must be read.

MR. ROLFE. Mr. President: I think it could be dispensed with by the unanimous consent of the Convention. Any rule, I think, can be suspended by unanimous consent.

[Cries of "Read," "read."]

THE SECRETARY read the entire report, as above.

MR. CROSS. Mr. President: On account of the importance of this report, and the interest which a large number of men throughout the State take in it, I move that double the usual number of copies be printed, and five copies be placed upon the desk of each member.

Carried, by an affirmative vote of eighty-seven, on a division.

RIGHT OF SUFFRAGE.

MR. EAGON, from the Committee on the Right of Suffrage, made the following report:

MR. PRESIDENT: Your Committee on the Right of Suffrage, to whom were referred proposed amendments numbers twenty, twenty-six, thirty nine, forty-two, forty-six, sixty-two, eighty, ninety seven, ninety-eight, one hundred and eight, one hundred and forty-five, one hundred and sixty-one, one hundred and sixty-three, one hundred and eighty-six, one hundred and ninety-six, one hundred and ninety-nine, two hundred, two hundred and seventy-seven, two hundred and ninety-five, three hundred and six, three hundred and thirty-one, three hundred and forty-three, three hundred and fifty-eight, and four hundred and seventy-three, and resolutions numbers thirteen and twenty, have had the same under consideration, and report them back, and recommend that the Convention take no further action on the same.

The committee herewith submit a draft for article two of the Constitution, on the right of suffrage, and recommend its adoption. All the changes proposed will be found in section one. The word "white," in the present Constitution, is omitted, as are also the words, "and every white male citizen of Mexico who shall have elected to become a citizen of the United States under the treaty of peace exchanged and ratified at Queretaro, on the thirteenth day of May, eighteen hundred and forty-eight."

The following words are also omitted: "*Provided*, that nothing herein contained shall be construed to prevent the Legislature, by a two-thirds concurrent vote, from admitting to the right of suffrage Indians, or the descendants of Indians, in such special cases as such a proportion of the legislative body may deem just and proper."

A clause has been inserted requiring naturalized citizens to procure their naturalization papers ninety days prior to an election before they can vote. All citizens are required to be residents of the State one year, instead of six months, as at present in the Constitution, and must reside in an election district ninety days, instead of thirty days, preceding an election before they can vote.

Section five of the present Constitution has been incorporated in section one of the draft herewith submitted. A provision has also been inserted to give the Legislature the power to remove all disabilities to exercise the elective franchise on account of sex.

The remaining sections proposed are the same as in the present Constitution.

JOHN A. EAGON,
N. G. WYATT,
C. W. CROSS,
W. J. SWEASEY,
J. B. GARVEY,
B. B. GLASCOCK,
F. O. TOWNSEND,
J. G. McCALLUM.

ARTICLE II.

RIGHT OF SUFFRAGE.

SECTION 1. Every native male citizen of the United States, and every naturalized citizen thereof, who shall have become such ninety days prior to any election, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the election district in which he claims his vote ninety days, shall be entitled to vote at all elections which are now or may hereafter be authorized by law; *provided*, that no idiot, insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector; *provided*, that the Legislature may by law remove in whole, or in part, the disabilities to exercise the elective franchise on account of sex.

SEC. 2. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest on the days of election, during their attendance at such election, going to and returning therefrom.

SEC. 3. No elector shall be obliged to perform militia duty on the day of election, except in time of war or public danger.

SEC. 4. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State or of the United States, or of the high seas; nor while a student at any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

SEC. 5. All elections by the people shall be by ballot.

MR. CAPLES. Mr. President: As a member of the Committee on Right of Suffrage I desire to present a minority report, and ask that the report of the majority lie upon the table until the minority report is presented, that both may be printed together.

Carried.

LABOR AND CAPITAL.

MR. BELCHER, from the Committee on Labor and Capital, made the following report:

MR. PRESIDENT: The Committee on Labor and Capital respectfully report that they have had under consideration resolution number seven, introduced by Mr. Condon, and propositions number one hundred and twenty-eight, introduced by Mr. Joyce; number two hundred and thirty two, introduced by Mr. Wellin; number three hundred and ninety-six, introduced by Mr. Condon, and number four hundred and seventy-one, introduced by Mr. Howard, and they herewith report the same back, and recommend that they be not adopted.

They have also had under consideration proposition number ninety-nine, introduced by Mr. Farrell, and herewith report the same back, and recommend that it be referred to the Committee on Legislative Department.

I. S. BELCHER, Chairman.

November 13th, 1878.

MR. ESTEE. I move that the Convention resolve itself into Committee of the Whole for the purpose of further considering the report of the Committee on Corporations.

MR. REYNOLDS. I hope the gentleman will withdraw the motion for one moment. I have a proposition that I desire to have referred and printed.

MR. ESTEE. I withdraw the motion temporarily.

MR. REYNOLDS. As the Convention will probably go into Committee of the Whole for some time, I ask general consent to introduce an amendment and have it referred and printed.

There being no objection, Mr. Reynolds introduced the following proposed amendment to the Constitution, concerning

GAS AND WATER COMPANIES.

SECTION 1. In any city where there are no public works owned and controlled by the municipality for supplying the same with artificial light and water, any company duly incorporated by the laws of this State shall, under the direction of the Superintendent of Streets of said city, have the privilege of disturbing and using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and of making connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes, for which the same or either may be used, upon the conditions following: Such company shall make good all damages to such streets and thoroughfares, except necessarily occasioned by the reasonable use thereof, and be liable to such city and its inhabitants therefor. Such company introducing and supplying gaslight or other light, and fresh water, or either, shall furnish the same, so far as necessary and required, free and without charge, to all public buildings, institutions, and school houses belonging to such city and used for municipal purposes; and such company introducing and supplying water shall also furnish the same, free and without charge, to the Fire Department, and for the extinguishment of fires. Each company, its property and franchise, shall be liable to such city and its inhabitants for the performance of these conditions.

Referred to the Committee on City, County, and Township Organizations.

CLASSIFYING LAND FOR ASSESSMENT.

MR. SMITH, of Santa Clara, introduced the following proposed amendment to the Constitution, relative to the classification of land for assessments:

SECTION 1. For the purpose of defraying the charges and expenses incident to the administration of government, the inhabitants and property within the State shall be assessed and taxed according to its uniform and equal rates. Property shall be taxed according to its value, to be ascertained in the manner herein prescribed. The objects of taxation shall be lands, tenements, and hereditaments, capital invested in corporations or associations, franchises, stocks in trade, moneys deposited or loaned at interest, valid debts of all kinds, personal property of every kind, auctioneers, brokers, peddlers, retailers of spirituous or other liquors, commission merchants, and male inhabitants over twenty-one and not exceeding sixty years.

SEC. 2. The lands subject to taxation shall be divided into not less than five classes, upon each of which a valuation shall be fixed by law, the minimum whereof shall not be less than one dollar and twenty-five cents per acre. The lands in the several counties shall be assessed and apportioned according to its productive quality and situation, by persons appointed for that purpose, once in every four years, and the value thereof shall be set down and classed separately, and said lands shall be taxed for the succeeding four years according to the said valuation. But no tax shall ever be levied upon growing crops of any kind.

SEC. 3. City, town, and village lots with improvements thereon shall form a separate class of taxable property, and shall be valued annually. Capital invested in corporations, franchises, stock in trade, money, or money loaned at interest, or valid debts, and personal property, shall each form a separate class, and shall be valued annually. Auctioneers, peddlers, brokers, commission merchants, retailers of spirituous or other liquors, shall be taxed as the Legislature may direct.

SEC. 4. Every male inhabitant over twenty-one and not exceeding sixty years shall pay an annual tax not exceeding ——.

Referred to the Committee on Revenue and Taxation.

REPORTS OF THE PROCEEDINGS.

MR. McCALLUM. Mr. President: Before we go into Committee of the Whole, I desire to make a motion, and I make it at the request of a number of gentlemen who voted to lay a certain report upon the table. They desired me to make the motion to take it from the table. I move that the report of the Committee on Mileage and Contingent Expenses, relative to inquiring into the expediency of procuring an official report of the proceedings of this Convention, be taken from the table and referred to the Committee on Reporting and Printing, to report thereon. That involves no discussion, and I ask to make this motion at the request of a number of gentlemen who voted to lay the report upon the table.

MR. CROSS. I second the motion.

MR. HILBORN. Is that report on the table? Was not the report of the Committee on Mileage and Contingent Expenses adopted?

MR. McCALLUM. It was laid on the table.

MR. HILBORN. My recollection is otherwise; but if I am wrong, I am wrong.

THE PRESIDENT. The resolution in relation to phonographic

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reporting was laid on the table. The question is on the motion of the gentleman from Alameda, Mr. McCallum.

MR. McCALLUM. Mr. President: I wish to say a word upon this subject. Some time since a resolution was offered here, which it will be found is substantially to this effect: that if the reporting could be obtained on terms satisfactory to the Convention, that there should be an official report of the proceedings of this Convention; and further, that that be referred to the Committee on Reporting and Printing, to ascertain upon what terms such reporting could be had. That was referred to the Committee on Mileage and Contingent Expenses. They reported to the Convention, and the Convention laid the report from that committee on the table. This is not a resolution to employ an official reporter, but a resolution that the Committee on Reporting and Printing will report upon certain points which they had neglected, or failed to report upon before. Also, what it would cost to transcribe and print, and to lay the printed copies upon the desks of members every morning. I have become impressed very seriously with a fact that has no doubt impressed a good many other members of this Convention, and that is, that in order that our work may appear fairly before the public, it is necessary that there should be an official report of what is said here in the debates. It is no secret to this Convention how this thing is being done now. The only report of the proceedings which goes forth is that published in one paper, and I do not know that it is improper to state the fact that those speeches are reported and printed in full, which are paid for at so much per column. The others are not so reported. Rich men in this Convention can have their speeches reported and go forth to the public; but those who cannot afford to pay for it, cannot have their speeches reported. That is the position the question occupies to-day. It may be, as some say, that the paper so reporting is not so generally taken as some others, but it is true that it is the only paper which does purport to give anything like correct reports of the proceedings. That sends forth to the people of this State the reasons for what is done here, and the reasons will go forth upon one side, and none of the reasons upon the other, except so far as the other side may be able to pay for transcribing them and printing them. I say that it affects the whole work of this Convention. People are looking to what is done here, and to the reasons for it, and from what they read they judge of it. The newspapers throughout the State take ideas of what is done here from the same reports I have alluded to. They are not a mirror of what transpires here, but a representation of what transpires on one side. I am satisfied—and I make no reflection upon the gentlemen who can afford to pay for their speeches—for I believe that they have voted for official reporters from the beginning; but I say to the others, who cannot afford it, as this is to go to the people of the State in some shape, I propose, at any rate, that the Committee on Reporting and Printing shall have an opportunity to say upon what terms we can have these reports. The Committee on Judiciary have said that this expense does not even come out of the appropriation of one hundred and fifty thousand dollars for the expenses of the Convention. If our Committee on Judiciary are right it does not affect this appropriation at all, and even if they are wrong, it does not affect the percentage but a little more on the script which will be paid to members after perhaps a few weeks more, than otherwise would be the case. My point is well illustrated in a very recent publication. In this morning's paper one speech is printed in full and none of the others. We may expect the newspapers to print just such portions of the debates as they see fit. They will do it, and they have got the right to do it. In any other case gentlemen can pay for it, as I suppose this has been done this morning. At least I understand that is the rule. Now, I want to know whether this is the manner in which our proceedings are to go forth to the public. I ask for a full vote upon the question. I hope that gentlemen will vote one way or the other.

MR. OVERTON. Mr. President: I voted against the proposition of the gentleman, and I expect to continue to vote against it. My reasons are these: This Convention has spent three or four days in discussing the proposition of reporting the proceedings of this Convention, when it was up before the house. They arrived at nothing. The matter is now dead, and so far as I am concerned, I propose letting it remain dead by leaving it on the table. If the gentlemen here in this Convention want their speeches reported, they have my permission to pay for them. One reason why I should vote against an official report of the proceedings now, if the matter was again before me, is that I have ascertained that there are gentlemen who speak so long and so often that I am opposed to paying for their speeches. It would not be fair at all to have it come out of the fund that is appropriated to pay the expenses of this Convention. There are some of us that do not speak any, who would have to pay the expense of the other gentlemen's speeches.

MR. TERRY. I suggest that the members have twenty dollars apiece for speeches.

The motion was lost on a division, by a vote of 44 ayes to 91 noes.

CIVIL SERVICE REFORM.

MR. FREUD introduced the following proposed amendment to the Constitution relative to civil service reform:

"No assessment for political purposes on officers or subordinates in any department of the State should be allowed, and no subordinate should ever be removed from office for political reasons."

Referred to the Committee on Miscellaneous Subjects.

TAXATION OF LAND.

MR. VACQUEREL introduced the following proposed amendment to the Constitution, entitled a resolution to facilitate the taxation of lands, and to prevent any fraud by the collector of such taxes:

"All lands in the State of California shall hereafter be divided into four sections, as follows: First, agricultural lands, either improved or unimproved; second, pastural lands; third, timber lands; fourth, unproductive lands.

"It shall be the duty of each County Surveyor to survey, inspect, and classify in said sections, all the lands in his county, and report to the Surveyor-General, specifying the number of acres of each class of land in said county.

"Whenever any land, classified under any of the preceding sections, shall, either by improvements, or by the will of its owner, be used for other purposes than the one specified in the surveyor's report, it will then be subject to be classified in any other section to which it will then properly belong. The Surveyor-General will then make a report of all counties, and forward it to the Legislature; and it shall be the duty of the Legislature, after the reception of said report, to enact a law, taxing uniformly through the State, all lands of the same classification, and no land to be exempted from taxation unless it belongs to the State, or to the United States Government. The collector of taxes in each county shall furnish sufficient bonds or securities, before he can perform any of his duties, for the amount of money that taxes upon land should bring according to the pro rata established by the Legislature.

"Said collector will furnish semi-annually a statement of all lands taxed in the county, their rate of taxation, and the total sum paid until date, and if the receipt does not balance with the amount due by the taxpayers, he shall be held personally accountable and responsible for all sums less than said amount, according to the number of acres, in their relative sections, subject to taxation in the county.

"Whenever any State or Government land shall become the possession of any individual or corporation, said land shall be surveyed, classified, and subject to the rates of taxation asserted by the Legislature, and the Tax Collector shall have power to collect such taxes without any special legislation.

"Non-payment of taxes on land for a certain length of time, to be specified by the Legislature, shall be a forfeiture of said land in favor of the State."

Referred to Committee on Revenue and Taxation.

AMENDMENT TO RULE.

MR. STEDMAN. Mr. President: I desire to give notice that as soon as occasion offers, after to-day, I shall move to amend Rules Twenty-one and Thirty-two. I send up the amendment.

THE SECRETARY read:

"Amend Rule Twenty-one: Strike out all after the word 'deemed,' in the third line, and add the following: 'divisible; and a motion to strike out on a division being negatived, or a motion to insert being decided in the affirmative, shall be equivalent to agreeing to the matter in that form, but shall not preclude further amendment; *provided*, that substitutes for pending propositions shall, for the purposes of amendment, be treated as original propositions.'

"Amend Rule Thirty-two to read as follows: 'Substitutes for pending propositions shall be in order, and for the purposes of amendment, be treated as original propositions.'"

MOTION TO RECONSIDER.

MR. CONDON. On Monday, sir, I gave notice that I would move to reconsider the motion whereby Rule Fifty-six was amended by striking out the words, "and that the previous question can be moved." My reasons were, Mr. Chairman——

MR. TINNIN. I rise to a point of order. The point is that Rule Thirty-seven says, that "on the day succeeding that on which a final vote on any proposition, or resolution, concerning the Constitution, or other resolution, has been taken, said vote may be reconsidered on motion of any member, provided notice of intention," etc. Now, that was done day before yesterday. The point of order is that the gentleman cannot make this motion to-day.

MR. CONDON. Mr. President: You will remember, sir, that yesterday there was a resolution passed that the report of the Committee on Corporations should be considered immediately after the reading of the Journal, consequently there was no room for me to get my motion in at that time. I think it is nothing more than right that the motion should be entertained now. There is a division of sentiment in reference to that matter, and on that day a number of the members were absent. Not more than two thirds of the Convention were present. I think it is only just and fair that these gentlemen should have an opportunity of expressing their opinion on this matter. I move that the motion be reconsidered.

MR. STEDMAN. Mr. President: I second the motion, and in doing so I will say that I understand the purposes of the Committee of the Whole are to give freedom in debate. As I understand it, Mr. President, the main question is never put in Committee of the Whole. We have no main question. The amendment to that rule places the Chairman in the position of asking the committee, "Shall the main question be put?" when we have no main question. It is ludicrous. The previous question in Committee of the Whole! I second the motion, and I hope the committee will adopt it. And, Mr. President, I gave notice the other day to amend Rule Fifty-six, and at the proper time I desire to make that motion, and if the amendment is adopted it will obviate all necessity for the present provision. My amendment will make the last clause read: "but the Convention at any time may decide, by a majority vote, when debates or any report or pending amendment shall close." As I understand it, this amendment was offered on the ground of economy of time. I do not believe that any gentleman desires to cut another off with the previous question, and if the amendment to the rule is adopted, which I shall offer then, we could close the debate at any time without resorting to the previous question. For instance, we could say that the debate on the report of the Committee on Corporations should close on Friday. Then at that time the discus-

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sion would have to cease. That would obviate the necessity of the previous question. I hope the motion will prevail.

MR. TINNIN. Mr. President: I have no desire to debate this question, but as the position of the case seems to call for something, I desire to read the latter part of Rule Thirty-seven: "Such motion of reconsideration shall have precedence over every other motion, except a motion to adjourn." The gentleman could at any time have rose and made the motion, and the Chair would have entertained it.

MR. STEDMAN. I will state, and Mr. Filcher will bear me out, that he attempted at one time to bring up his motion to amend a rule, and the Chair decided that it could not be brought up at that time.

MR. ROLFE. Mr. President: The last argument of the gentleman is not a good one. If the Chair made a mistake in one instance, it is no reason why we should follow up the mistake.

THE PRESIDENT. There was no such ruling.

MR. ROLFE. Even if there was it proves nothing more than a mistake.

THE PRESIDENT. Rule Thirty-seven seems to be very positive that the motion to reconsider must be made on the day succeeding that on which the final vote has been taken, and the rule also gives preference to that motion over every other motion. The Chair is compelled, under that rule, to sustain the point of order made by the gentleman from Trinity.

NOTICE.

MR. NOEL. I desire to give notice that I will move to amend Rule One, by striking out the words "ten o'clock," and inserting the words "nine o'clock." Also to amend Rule Two, by striking out the words "two o'clock," and inserting the words "half-past one o'clock."

MR. ESTEE. I move that the Convention resolve itself into Committee of the Whole.

REPORT.

MR. HILBORN. Mr. President: The Committee on Mileage and Contingent Expenses report back the following resolution, and recommend its adoption:

Resolved, That the Committee on the Right of Suffrage be allowed to employ a clerk for two (2) days only, at a compensation of five (5) dollars per day.

The report was concurred in.

THE CHINESE QUESTION.

MR. WICKES. Mr. President: I desire to offer a resolution.

THE SECRETARY read:

Resolved, That this Convention authorize the electors of the State, in their vote upon the ratification of the Constitution, first Wednesday of May, eighteen hundred and seventy-nine, to vote for or against Chinese immigration, that the National Government may know the true temper of the people of this State toward such immigration, to the silence of misrepresentation.

MR. McCOMAS. Mr. President: That is certainly out of order, because the law providing for the election says that nothing else shall be submitted to the people at that time.

THE PRESIDENT. The point of order is well taken, upon two grounds. We have not reached that order of business, and the gentleman from San Francisco has moved that the Convention go into Committee of the Whole.

MR. WICKES. I move that it be referred to the Committee on Judiciary.

THE PRESIDENT. If there be no objection it will be so ordered.

No objection was made.

NOTICE.

MR. STEDMAN. I desire to give notice of a motion to amend Rule Fifty-six.

THE SECRETARY read:

"To amend Rule Fifty-six, by striking out the word 'but' after the word 'taken,' in the fourth line; also the word 'may,' in the fourth line, after the word 'question,' in the fourth line, and inserting in place of 'may' the words 'shall not;' and in place of the word 'but,' the words 'shall not,' and adding to the end of the rule, after the word 'moved,' 'but the Convention, at any time, may decide by a majority vote when debate on any report or pending amendment shall close,' so that the rule will be as follows:

"RULE FIFTY-SIX.

"The rules of the Convention shall be observed in Committee of the Whole, so far as they may be applicable, except for limiting the time of speaking, and except that the ayes and noes shall not be taken, and that the previous question shall not be moved; but the Convention at any time may decide, by a majority vote, when debates on any report or pending amendment shall close."

CORPORATIONS.

MR. ESTEE. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

MR. TERRY. Mr. Chairman: I move that the vote by which the substitute offered by the gentleman from Alameda, Mr. Webster, to section three was adopted, be reconsidered. I make this motion for the purpose of permitting parties to propose amendments, who voted for the substitute under the impression that they would be allowed to offer amendments to it.

The motion prevailed.

MR. NOEL. I would like to hear the amendment read as adopted.

THE CHAIRMAN. The Secretary will read the amendment as it stands.

THE SECRETARY read:

"Each stockholder of a corporation, or joint stock association, shall be individually and personally liable for such proportion of all its debts and liabilities, contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association."

MR. TERRY. I propose the following amendment, to be added to the section as it stands.

THE SECRETARY read:

"The directors or trustees of corporations and joint stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint stock association during the term of office of such director or trustee."

MR. WHITE. Mr. Chairman: I am entirely satisfied with that amendment. It covers the ground on which I was going to offer an amendment. I trust the Convention will accept it. The object is to protect the deposits in savings banks from a misappropriation of the money by the directors, who really have no stock in the institution. If something is not done to protect the depositors in this way, they are left almost at the mercy of the directors. Although they may be very honest men, and sometimes may not be criminal, yet they may loan the money to their friends, and otherwise misappropriate it.

MR. ESTEE. Mr. Chairman: I move to strike out the word "misappropriated," because that seems to me to be too general a term. A misappropriation might be on account of an error of judgment, but embezzlement carries with it a moral delinquency.

THE CHAIRMAN. The gentleman is aware that that cannot be done. There is an amendment to an amendment already.

MR. McFARLAND. Mr. Chairman: I understand that this amendment offered by the gentleman from San Joaquin, Mr. Terry, makes every stockholder that happens to be a director or trustee personally responsible for the embezzlement or misapplication of money by any officer of the corporation. That is to say, if I should happen to be a director of a banking corporation and the cashier should embezzle money I would be personally liable. It is not that I may be liable for money embezzled by myself, but if I am a director I am liable to the full extent for any money embezzled or misappropriated by any officer of the corporation. It seems to me that that is not a correct rule.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: I desire to say a few words in explanation of that amendment and the reasons why it was offered. The whole business of these corporations or banks are under the control and management of the directors. The subordinate officers are elected or appointed by the directors, and there is no unfairness in making them sureties for the persons they have in their employment. They have the power to exact bonds to indemnify themselves. The only object is, so far as the stockholders of a corporation are concerned, to make these men who appoint the cashiers, tellers, and clerks, responsible for the faithful discharge of their duties. They can take a bond if they desire it. Under the laws it is the duty of these directors to exercise a supervision over the officers of these institutions. I know instances, and they are very common, in banks, where thousands of dollars of money are being used daily that these directors have failed for months and years to exercise the supervision which the law requires them to do, and why should not they be held responsible? I know one case where the by-laws of a bank required that the directors should once every month examine the books, count the money in the vaults and examine into the business generally, and it came out in evidence that they had not performed that duty one time in three years. This is for the mere purpose of preventing such neglect of duty. If these men understand that they are sureties for the officers appointed by them they will examine the books and the affairs of the bank. We know, too, that these robberies are not accomplished in a day or at one time. It is a systematic peculation running through years, which, when discovered, amounts to a very large steal. If these officers will attend to their duty these peculations cannot occur, because they will discover them before they have fairly started.

The case of the French Bank, in San Francisco, is one where the directors never did perform their duty. The whole matter was left in the hands of the President, and the consequence was, that after a series of disastrous speculations in stocks he left the world by means of suicide. I say these men have the appointment of these officers, and if need be, they can take a bond for their own indemnity.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: In a small private business, where the proprietor has absolute supervision almost of every transaction that occurs, this rule might work; but it is impossible in the case of a director of a corporation. Many of these directors are men who receive no pay for it. They are gentlemen employed in other business, and it seems to me that it would be a very hard measure to say that if a man consents to be a director of a bank, he must be personally responsible to the utmost farthing, for an embezzlement made by an employé. Under that rule, it would be impossible to get any of our business men to take the position of a director. I suppose the object is to drive the corporations out of existence as much as possible, but if that is to be done, if the gentlemen desire to abolish corporations, they ought to put that matter directly before us, and vote on it. I understand that the people throughout the State in many kinds of business, take part in corporations, and, sir, it would be pushing things to an extreme to make a man who consented to be a director personally responsible for any delinquency on the part of any employé.

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REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I shall support that amendment because I believe it will meet a necessity called for for years. The Dime Savings Bank robbed the orphans, children, and women of this State of thousands of dollars because the directors published in connection with that bank were not the real directors. That money was deposited on acconnt of some gentlemen (supposed to be) connected with the bank. They were not connected with it. The money deposits of these savings banks rest upon the honor of the directors. Because there are directors named who have high standing in the community, people put their money in the bank and deem it safe. Every person who deposits money, every child, woman, and laborer of the country, has a right to expect that these men will examine into the affairs of the bank. The directors are the men who should be responsible for every dollar that is put there if they do not see that it is properly taken care of by the officers of the bank. It would protect the people of this State from the robbery that has been done.

REMARKS OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: I think the amendment proposed by the gentleman from San Joaquin, Mr. Terry, meets a want which has developed in the history of every day affairs. Now, whoever undertakes these trusts of a public nature, ought to undertake them under such circumstances as would make him responsible to the people who trust him. Now, what is the ordinary history, for instance, of a savings bank? Why, persons desiring to start out, go to men of good financial repute in the community, and obtain their names as directors. After that, every person in the community who has a little saving, deposits it in the bank because he believes that it is in the hands of certain men, and because he confides in these men to attend to the business which they have voluntarily assumed to manage. Now, usually about three quarters of them neglect that business. At the end of a few years, it is found that a large proportion of these earnings are absolutely stolen, and these men say, "I knew nothing about it; I had nothing to do with it." I say that if they place themselves into that position and decoy people, they should be responsible. We have a little bank here which failed a short time ago, and when its matters came to be investigated, it was found that the President, of his own account, had drawn out, in violation of the laws, I think, one hundred and twenty-four thousand dollars, and yet every director said he knew nothing about it. They all said they knew nothing about it and were not responsible for it. I would rather strike out the word "embezzlement" than to strike out the words "or misappropriation."

SPEECH OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope the amendment, in all its length and its breadth, will be adopted; and if it could be made broader I am in favor of adopting it with the broader platform, the broader sweep, the broader range. If it was possible I would like this clause to strike these rich gentlemen who act as decoy ducks in order to rob the widows and orphan children of this State—and that now seems to be one of the favorite styles of raising money, when they cannot do it through the Stock Board gambling in San Francisco. If women and children are to be robbed in this State, if that is to be one of the many arts of government to be practiced here, I am in favor of its being set up on the personal responsibility of the parties who practice it, without having the indorsement of the State for that purpose. I can conceive of a State doing a great many things that are wrong, that are not statesmanlike; that do not come within the practical purview of the administration of the laws for the benefit of the community at large; but I could not conceive, until it has become common in practice in the State of California, to incorporate institutions under the general laws of this State for the purposes for which they have been applied and prostituted, to wit: robbing widows, orphan children, and the unsuspecting community, of their hard earned dollars. And I propose, now, to draw a line of distinction very clearly between what shall be incorporated and what shall not be incorporated, and I propose to offer, when we reach section four, an amendment that corporations shall be authorized only when, by the laws of the State, they are authorized to exercise the right of eminent domain. At the present time the law is so broad in regard to corporations that you can incorporate for the purpose of gathering swill in the streets to feed pigs, or building henneries and hatching chickens; you can incorporate for the purpose of buying land and speculating in land; you can incorporate for every conceivable private object that the wish of man can conceive of. This is done, not for the purpose of legitimately carrying on large concerns, but it is done for the purpose of making a flaming show upon paper. After that show has been properly made upon paper by probably some parties who are not able to buy a square meal at a hotel, then it is that they go round and seek the indorsement of men whom they have probably served in a servile capacity of ward politician, they get his name to indorse it as director, or as the man who stands godfather and responsible for the iniquitous machine. Then it is they start their drummers round and strive to induce every washerwoman—if there are any washerwoman left since the Chinese pestilence—and they recommend it to her as the place to deposit money. Then it is that the drummers go about and get the money of the orphan children and the widows in the community, and of the unsuspecting in the community, that can be imposed upon. Then it is that the State of California is invoked as the proper party upon which to rest this swindle and keep it before the people. It is incorporated under the laws of the State; it has a President and Secretary and all the paraphernalia which belongs to such institutions, to parade it in the grandest style imaginable or possible. When it has succeeded by these means in getting the very last dimes there are in the community in this steal, then it is that, when you come to investigate it, you find that it has gone where the woodbine twineth; you find that it has vanished into thin air, and that it was but a myth; that it has faded away before the light of examination, just like mists of the morning fade away before the rising sun. There is nothing of it. When you ask for any responsibility, why, the President was never responsible for a square meal at a hotel in his life. The director is not responsible, because he has simply loaned his name; he knew nothing of the institution; all he has done is to assist this irresponsible man in swindling the community; that is all he has to do with it. If you can find anybody else that has any connection with it, he is either wholly irresponsible, or else he had no such legal connection with it that you can't fasten any responsibility upon him. He is like the Irishman's flea—when you put your finger upon him he is not there.

Mr. President, we were sent here for the purpose, if possible, of correcting this great wrong. That was what the voters who sent me here expected us to do. The men who own the banks, the men who run the banks, are not the men who voted for me; they had three other candidates in the field against me [applause]; the men who voted for me are the men who have been swindled, are the men who have felt and do feel the great wrongs of this evil of irresponsibility in these corporation managers, and they with their votes asked me to come here and do what I could to remedy this evil of irresponsible corporation management, and for one I am here to do it, and right now. I shall vote for the amendment, and will vote for any proposition which will tend directly or indirectly to increase the responsibility of corporation officers, managers, or decoy ducks, and I am in favor of drawing the line of demarkation upon the subject of corporations. Let us not lend the dignity of the State of California to an incorporation organized for the purpose of gathering swill in the street and feeding pigs; let us not lend the dignity of the State to an incorporation for the purpose of establishing henneries to hatch chickens; but if we do make corporations, if we must have corporations for some purposes, and combined capital, then let it be for a purpose for which we can lend the dignity and the authority of the State to exercise the right of eminent domain, and let the right of eminent domain go hand in hand with corporations who are authorized to exercise these great powers of the State. Some things need that backing up, some things must have that, in order that the civilization of the present day may be carried forward as it should be carried forward. But feeding pigs or hatching chickens does not need that indorsement. Men who say they are conducting savings banks don't need that indorsement.

The whole discussion is: what can we do to make these people more responsible—these shams, these paper affairs? What can we do? Why, what you can do is this: Just say to them, "You can go upon your own responsibility, as every man in the community ought to do. If you have wealth enough, if you have intelligence enough, if you have integrity enough, if you have lived long enough in this community to have the confidence of the people, just put up your sign and say, 'I propose to establish a dime savings bank in this community.' If people will come and deposit with you, well and good; better for both you and the community that you stand upon that platform. You understand that you are responsible for all that your clerks do; you are responsible for all embezzlement that is done; you are responsible for all misappropriation that is permitted; you are responsible for the money that you receive to the persons from whom you receive it. In other words, like all other businesses you become responsible in everything you have for the conduct of the business." Then it is that honesty and faithfulness is imparted to the business.

All business can be conducted by partnerships except those which require the right of eminent domain, that is, for the purpose of taking other men's property for certain purposes which you could not take unless the State authorized you to take it. That is the rule in regard to incorporations which we should establish under this Constitution. We see, already, from the personal experience that we have all over this State—when twenty-one thousand corporations are piled up before you by the Secretary of State as was done in this Convention the other day—there is enough, it seems to me, to give every reasonable man warning that we have already traveled too far on the road of corporations. Nothing can be done by individuals, every conceivable enterprise that is to be entered into must be incorporated. A man goes to establish a lumber yard, it must be incorporated. If he goes to establish a mill, it must be incorporated. If he wants to hunt for quartz, he must incorporate. Men almost marry their wives and conduct their family affairs by corporation at this day [laughter], and will soon do so unless the incorporation idea is stopped. Corporations! You cannot move, you cannot travel, you cannot go backwards or forwards but what you run against one or step on to one.

I propose now that we enter into the business of disincorporating, and we should disincorporate largely. We will start out as God Almighty started out man in the first place, with the idea of each fellow taking care of himself for awhile. [Applause.] It was stated in the debate here yesterday that this Government was getting too paternal; that the Government ought not to become so paternal that they would not be permitted to make contracts of their own. In other words, we ought not to become so paternal, that incorporations should have a right to relieve themselves of all the obligations that were supposed to be placed upon them by this Constitution and the law; that, if we said that they were to be responsible, as insurance companies, so and so, yet they might relieve themselves from that liability, and that they ought not to be prevented from doing so, and that the State ought not to take the part of ignorant and unsuspecting people who dealt with them. I say that we are already too paternal as regards corporations and not enough as regards the people. We have already corporation after corporation in this State under the paternal laws of the State. Everything is owned by some impersonal somebody with no responsibility attaching to it, and hence it is that everybody is seeking to incorporate, in order to make money fast, escaping any responsibility, and holding it perfectly proper to

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swindle anybody that may come within their clutches. Because, the main proposition seems to be now, to get money.

It is like the advice of the old Dutchman to his son. He said to him, "You must get money; get it honestly if you can, John, but get money;" and the whole money and banking corporations of the State of California have got imbued with the old Dutchman's advice in some shape or other, especially the latter clause of the advice. Now, the reason that we ought to disincorporate up to the line I speak of, is this: Take the history of the Bank of California. That is an institution that was and is known and seen of all men in the State of California, and nearly of all men upon the earth in a financial point of view, and I think clearly illustrates the necessity of personal responsibility, and the greater the better. That bank, by the extravagance of its officers three or four years ago, wasted the vast sums at its disposal, found itself three or four or five millions of dollars in debt to its creditors. The result of it was this, that four or five or six men owned that bank or owned ninety per cent of its capital. These owners were very rich men and they were in great danger—absolute danger as it appeared—if they undertook to shirk the reponsibility, that they could and would be held responsible under the laws making them responsible for the amount of stock that they owned, and they were responsible for it all because they owned it all. It resulted then that they thought it was cheaper for them to keep the framework of that institution good, to hold its credit throughout the world, to pay the indebtedness, rather than let the bank go down. But that is an exception and about the only exception that can be mentioned. Most of these corporations have no rich stockholders, they have straw stockholders; most of these incorporations have no rich directors, they have straw directors; most of those corporations have no wealth connected with them in any shape, but they are erected for the purpose of dragging in wealth. Corporations are not creators of wealth; corporations do not go out and work. A corporation is a seine that runs around the State and seines in the hard earned money of those who do work. We could live without corporations in the State of California, and, with nine tenths of them wiped from existence we would be much better off than we are now. I hope that the amendment will be adopted in all of its length and breadth. [Applause.]

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I wish to say one word on behalf of the committee relative to this amendment. So far as I am concerned, I believe in this amendment except the word "misappropriated." I do not believe that it is a proper word to put in there. I believe that every business man makes mistakes in his ordinary affairs of business and makes mistakes honestly. I do not believe that a man who makes an honest mistake in the ordinary transaction of business should be held to a criminal responsibility, and that is what this means. But any term, however strong, for any moral delinquency, like embezzlement or larceny, or any act of that kind, I think this body should adopt. I am opposed for one to loading down this article so that by and by there will not be anything of it.

I want the committee to understand also that this amendment was not voted down by the Committee on Corporations. It appears in the minority report, and that would convey the idea that we voted on it and voted it down. That amendment never came before that committee at all. Never in the world. For one, I wish to say that I do not believe that word "misappropriated" ought to be there. Any other term, showing moral delinquency, can be put there, but to say that a person, acting in the capacity of a director of a company, so long as you permit them to exist, shall be held criminally responsible for any mistake, is wrong, in my judgment.

I hope that the gentleman from San Joaquin, Judge Terry, will strike out the word "misappropriated." I presume it may pass as it is, but I wish to take this occasion to warn this Convention against so loading down this article by amendments that will meet individual wrongs—instances that may come to the mind of every member who may want to reach all of these individual instances of wrong upon the people—that you will make it so heavy that it will fall of its own weight. You cannot meet all the wrongs that are committed. This Convention cannot so frame this Constitution that it will be impossible for some men to do wrong. What we want to do is to have the whole measure so framed as to meet the ordinary wants of the people, so as to protect them in the ordinary affairs of business; but if we attempt to put in individual instances here and there, and by the wording in this direction in this institution, and the wording in that direction in the other, to meet all the little wrongs that have come to our notice, we will so load down this article that it will fall by its own weight. I hope that an amendment, embodying the idea that the directors or officers of corporations shall be responsible for any embezzlement or moral delinquency, will be adopted. For one, I would most certainly indorse such an amendment.

REMARKS OF MR. BARNES.

MR. BARNES. Mr. Chairman: I merely rise to make a single suggestion: that such a provision as is proposed here by the gentleman from San Joaquin, Judge Terry, is not entitled to a patent on this provision as for some original proposition that is going all of a sudden to change the color of things on the face of this earth and to accomplish the result sought for by the gentleman. It is certainly surprising to one who will take the Codes and read them, and the laws of other States from which they have been compiled, to see how, as has been stated half a dozen times, the difficulty is not with the Constitution of the State at all. It is with the administration of the law. Now there is not a single case that has been cited here but bears out this statement. The gentleman from Sacramento, Mr. Freeman, alluded to the case of a savings bank in this city. Other gentlemen have alluded to the case of the Dime Savings Bank and other kindred swindles. The difficulty is not with the law; it is with the administration of it.

The Civil Code as it stands provides for a means of reaching the directors and officers of savings banks and banking institutions of all sorts. The Penal Code of this State has a system of laws which are equally fit to be engrafted upon the Constitution of the State, and more than the suggestion made by the gentleman from San Joaquin. You take the Penal Code from section five hundred and fifty-seven to section five hundred and seventy-two, without going over it in detail, and every delegate will see that all this species and character of frauds that have been alluded to here are provided for. They have been made the foundation, as I believe, for much unnecessary declamation. Men get up here and say that all the men who were opposed to them or who voted for other men were in favor of bank-smashing. I do not think that kind of argument is fit to be entertained by this body. Nor do I think it is the object of this body to regulate all the affairs of this State.

Sir, the Legislatures of this State have been alive to these evils long before this Convention was thought of, and will be long after it shall be forgotten, and the wisdom and majesty that sits here has gone—the mortal part to the grave and the immortal part to the judgment seat, upon which some of them expect to sit as Associate Justices. [Laughter.] I tell you I am sick and tired of it. We should not take up the time of this Convention in undertaking to put into the organic law of this State provisions that properly belong in the Civil Code and the Penal Code of the State. Without reading the provisions in the Penal Code, I will——

MR. LINDOW. Read it; read it.

MR. BARNES. Well, for your benefit, I will read some of them.

"SEC. 557. Every person who signs the name of a fictitious person to any subscription for or agreement to take stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that such person has not means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of such subscription or agreement are not to be complied with or enforced, is guilty of a misdemeanor.

"SEC. 558. Every officer, agent, or clerk of any corporation, or of any persons proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence to any public officer or Board authorized by law to examine the organization of such corporation, or to investigate its affairs, or to be allowed an increase of its capital, with intent to deceive such officer or Board in respect thereto, is punishable by imprisonment in the State Prison not less than three nor more than ten years.

"SEC. 559. Every person who, without being authorized so to do, subscribes the name of another to or inserts the name of another in any prospectus, circular, or other advertisement, or announcement of any corporation or joint stock association, existing or intended to be formed, with intent to permit the same to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such corporation or association, is guilty of misdemeanor.

"SEC. 560. Every director of any stock corporation who concurs in any vote or act of the director of such corporation, or any of them, by which it is intended, either:

"1. To make any dividend, except from the surplus profits arising from business of the corporation, and in the cases and manner allowed by law; or,

"2. To divide, withdraw, or in any manner, except as provided by law, pay to the stockholders, or any of them, any part of the capital stock of the corporation; or,

"3. To discount or receive any note or other evidence of debt in payment of any installment actually called in and required to be paid, or with the intent to provide the means of making such payment; or,

"4. To receive or discount any note or other evidence of debt with the intent to enable any stockholder to withdraw any part of the money paid in by him, or his stock; or,

"5. To receive from any other stock corporation, in exchange for the shares, notes, bonds, or other evidences of debt of their own corporation, shares of the capital stock of such other corporation, or notes, bonds, or other evidences of debt issued by such other corporation;—

Is guilty of a misdemeanor.

"SEC. 561. Every officer, agent, teller, or clerk of any savings bank, who knowingly overdraws his account with such bank, and thereby wrongfully obtains the money, note, or funds of such bank, is guilty of misdemeanor.

"SEC. 562. Every officer, agent, teller, or clerk of any bank, and every individual banker or agent, teller, or clerk of any individual, who receives any deposits, knowing that such bank, or association, or banker is insolvent, is guilty of a misdemeanor.

"SEC. 563. Every director, officer, or agent of any corporation or joint stock association, who knowingly receives or possesses himself of any property of such corporation or association otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of such corporation or association, and every director, officer, agent, or member of any corporation or joint stock association, who, with intent to defraud, destroys, alters, mutilates, or falsifies any of the books, papers, writings, or securities, belonging to such corporation or association, or makes, or concurs in making, any false entries, or omits, or concurs in omitting to make any material entry in any book of accounts, or other record or document kept by such corporation or association, is punishable by imprisonment in the State Prison not less than three, nor more than ten years, or by imprisonment in a county jail not exceeding one year, and a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

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"SEC. 564. Every director, officer, or agent of any corporation or joint stock association, who knowingly concurs in making, publishing, or posting any written report, exhibit, or statement of its affairs or pecuniary condition, or book, or notice containing any material statement which is false, or refuses to make any book or post any notice required by law, in the manner required by law, other than such as are mentioned in this chapter, is guilty of a felony.

"SEC. 568. Every director of a corporation or joint stock association is deemed to possess such a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors, is a violation of this chapter."

MR. REYNOLDS. I move that the further reading of the gentleman's speech be dispensed with, and that it be printed.

MR. BARNES. It was only for the information of the gentleman's colleague from San Francisco that I was reading.

MR. LINDOW. Will the gentleman from San Francisco give way just one second? So far as he read the statute of law I have not seen yet that he came to the point where we can catch the directors and President and make them pay the money back to the people that they stole already. [Applause and laughter.] There is the gentlemen can go and steal. They are responsible for what they have been taking.

MR. BARNES. What I was undertaking to do was to show that this provision in the Constitution is no more protection to the stockholders and creditors of these swindles to which I have alluded than the provisions of the Penal Code. I did not propose to read them, but the gentleman from San Francisco, Mr. Lindow, requested me to do so, as he desired to find out something about the law. I was trying to accommodate him until his colleague from San Francisco was kind enough to move to have it printed.

MR. LINDOW. I know the French Savings Bank. I have been robbed out of my money because the director cut his throat; nothing else. The Constitution don't give me my money back.

MR. BARNES. Well, then, we ought to have a provision in the Constitution that directors shall not cut their throats. I suppose that would be desirable too. Now, Mr. Chairman, the Civil Code provides for these cases also. I merely mention this by way of illustration, for I believe that they should be held responsible for everything to which they are a party. That is the law now, that every director of a corporation is personally responsible for the acts of the corporation in any unlawful administration of the funds, and he is deemed to know what he might have known. The one object I had in rising to address the committee was simply to call attention to the fact that we can accomplish all these things by general declarations, and leave the balance to the Legislature. We are doing too much, or trying to do too much, with the Constitution. You may as well enact the Civil Code on this subject. I refer to sections three hundred and nine and three hundred and ten of the Civil Code, without reading them. Section three hundred and sixteen says:

"Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable."

These provisions go farther than the provisions suggested by the gentleman from San Joaquin. They furnish the people a complete remedy for all these mischiefs. The difficulty is not in the law, and it is not going to be remedied by any Constitution we can make, because we have got the law already. Let the law be administered and it is enough. There is an ample remedy provided for all those cases. Though I am perfectly willing to vote for it, though it ought to be the law and it is the law to-day; if it is the opinion that the people are going to be protected any better against swindling corporations, or the swindling officers of swindling corporations, I think it is a mistake. I do not think it is needed in the Constitution at all, and I do not think that any gentleman on this floor is entitled to a patent for the discovery.

MR. ESTEE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, report progress, and ask leave to sit again.

The hour having arrived, the Convention took the usual recess until two P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair. Roll called, and a quorum present.

RESOLUTION.

MR. DUNLAP. Mr. President: I wish to send up a resolution.

THE SECRETARY read:

Resolved, That the Sergeant-at-Arms be and he is hereby directed to deposit with the State Librarian two copies of the daily proceedings of the Convention, and of each committee report which has been or may hereafter be printed by order of this Convention.

THE PRESIDENT. The question is on the adoption of the resolution.

Adopted.

AMENDING THE RULES.

MR. CONDON. I gave notice that I should move to amend Rule Fifty-two, by striking therefrom the words, "by title," so as to read that propositions in reference to amending the Constitution shall be read by the Secretary. You will remember that a resolution has been adopted which prohibits the further printing of these resolutions. Now, it becomes necessary that the Convention should have some knowledge of the matter, and I think it is just that the same should be read when presented. I move now to strike out the word, "title," or "by title."

MR. MCCALLUM. I have no objection, if we avoid one thing. That is one of the rules that cannot be suspended, under Rule Sixty. The gentleman will remember that they will have to be read in full. I suggest that he add the words, "unless by a two-thirds vote the reading is dispensed with." It is one of those rules that cannot be dispensed with, not even by a unanimous vote. There is no suspending that rule.

MR. CONDON. I accept that amendment, unless the reading is dispensed with.

MR. ESTEE. I hope this will not pass. There are now six propositions before this Convention to amend these different rules, and the result will be that they will be so changed that none of us will know anything about them. If we cannot know what the rules are, we cannot abide by them. I hope the Convention will permit the rules to remain as they are.

MR. ROLFE. Mr. President: I hope this rule will not be changed. If the rule is changed, every amendment and proposition that comes before the Convention will have to be read in full, and it will occupy half the time of the Convention in listening to them, and then we will know nothing about the contents. Let them go to the proper committee, and that is sufficient. Two thirds of the propositions which I desired to get into the Constitution I have taken direct to the committees, and have not brought them here at all, and every other gentleman can do the same. I do not think it is necessary to print any more propositions. In fact, if there is any proposition to amend the Constitution that members desire to have read, they can ask for the reading, and the Convention can, by a vote, order them read. I hope that the rule will stand as it is.

THE PRESIDENT. The question is on the proposed amendment to Rule Fifty-two.

Lost.

CORPORATIONS—LIABILITY OF DIRECTORS.

MR. FREEMAN. Mr. Chairman: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is upon the amendment to section three.

SPEECH OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I approve of this last amendment in the main. I approve of its object. I do not know as that is any particular reason why anybody else should approve of it; but I merely state the fact. I wish to say that the section of the old Constitution met my approval, though I voted for the amendment of the gentleman from Alameda, Mr. Webster, as far as adopted, which simply made it more explicit as to the liability of stockholders. I do think that the stockholders themselves should have some protection; and it seems to me that this very amendment affords protection to the stockholders, and makes the officers of these corporations more responsible. There is where I think a great deal of the responsibility should lay—with the officers. Now, it certainly would be a hardship for a person who innocently becomes an owner of a few shares of stock, in the management of which he has had nothing to do except to vote at the annual election for President and directors, that he—in case the corporation should fail through the bad management of the Board of Directors—should lose, not only the value of his stock, but an additional amount. And we certainly know that this would fall upon innocent creditors, where it would be a greater hardship. This affords relief. This amendment provides that the directors or trustees shall be liable to the creditors and stockholders; therefore, when an innocent stockholder loses the value of his stock, and an additional amount through the bad management of the officers, he has somebody to look to to make his loss good. But there is one mistake in this amendment which the gentleman probably overlooked. It is this: it is too general in one respect. I do not agree with my friend from Monterey when he says he would like to have it more broad than it is. I think it is too broad, or else I am laboring under a mistake myself. "The directors or trustees"—it don't say that the directors or trustees of corporations shall be jointly and severally liable to the creditors for all moneys embezzled or misappropriated, etc. Now, my objection is that this is for all time. A corporation may be in existence for many years. The officers of a corporation may embezzle a hundred thousand dollars, and the fact may not be ascertained for two or three years afterwards, when a new Board came in. The new Board would be entirely innocent, and yet they would be liable, because there is no limitation upon this language. Under this clause the directors that come in long after these embezzlements occur, are to be held responsible. Why, the corporations may go on for years misappropriating money, and years afterwards, when an honest Board comes into office and unearths these frauds and embezzlements, the very Board that does it, and who are honest and innocent themselves, will be held responsible for it under this very provision as it is now worded. I know that no gentleman here will insist on such a thing being put into the Constitution; and I am afraid this language will bear just that construction. I think the same language should be used here in reference to directors that is used in the other amendment in reference to the stockholders—that is, confine it to the directors of a corporation during the administration where these misappropriations and embezzlements occur.

MR. TERRY. I do not understand that the language can bear any

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such interpretation as the gentleman puts upon it. But if there is any doubt upon it, I am perfectly willing to put in an amendment to cover the point.

MR. ROLFE. The Courts may hold so, if you leave it to implication. I have prepared an amendment which I will read, which the gentleman says he will accept, using the same language as in the other part of the section: "During the term of office of such directors or trustees," to be added to the amendment.

MR. BARNES. I think the point sought by the gentleman will be covered by adding to the clause the words, "through collusion, neglect, or omission of duty of such directors or trustees."

MR. TERRY. I do not want to throw the burden upon the stockholders and upon the creditors of proving neglect. The proposition is to make them direct sureties, the same as other sureties.

MR. ESTEE. Allow me to ask a question: Suppose there are seven directors of a corporation regularly elected, three of them honest and four of them dishonest; three of them doing their very best to protect the stockholders and creditors and attempting to bring the other four to justice; I ask the gentleman if, under his amendment, the three innocent men will not suffer?

MR. TERRY. There is no such case where one director or three directors cannot interfere and prevent fraud.

MR. ROLFE. Where a thief comes in and breaks open the safe and carries off the funds of the corporation, I do not understand that this amendment holds anybody responsible in a case of that kind, except the thief himself.

THE CHAIRMAN. The Secretary will read the amendment.

THE SECRETARY read:

"Add the words, 'during the term of office of such directors or trustees.'"

SPEECH OF MR. O'DONNELL.

MR. O'DONNELL. Mr. Chairman: I hope that Judge Terry will stick to this amendment and not allow the word, as Mr. Barnes recommends, "misappropriation," stricken out from the amendment. As it reads now, "Directors and trustees of corporations and joint stock associations shall be jointly and severely liable." [Laughter and applause.] I'll give you something to laugh at directly. [Renewed laughter and continued applause.] Now, Mr. President, to remove that word "misappropriation" I think kills the entire effect of the section. They might just as well remove the word "embezzlement." These lawyers [laughter] they think they are addressing a jury of Hoosiers. [Laughter and confusion.] They made the majority of this Convention believe that we are not officers of the State. And now they are trying to make us believe that black is white. They did make the majority believe that this was no office, that we are not officers of the State, but I hope that my fellow delegates will not allow themselves to believe, by removing this word "misappropriation," it will not affect this amendment to section three. It is really necessary that this amendment should be attached to the section in order to make it any ways binding on these directors and trustees. I hope that this amendment will prevail just as it is, without any alteration whatever. I think my friend from Stockton introduced this amendment in good faith. And it is a good amendment. It covers everything. But my friend Estee says he wants the word "misappropriation" removed from the section. Why, sir, that's the best word in the section. [Laughter.] It makes up the whole effect of the section, and I hope that my friend Judge Terry will not allow it to be removed from the section. If it should not prevail, my intention is to try and get an independent section to that effect. I hope this will prevail without any alteration. It covers everything. I thank you kindly for your attention. [Laughter.]

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: The propositions involved in the amendment offered by the gentleman from San Joaquin involve a question of principle and of business which should not be disposed of by an indignation meeting nor by way of sentiment. It is a question of cold reason and good common sense; and I desire, in the few remarks that I shall make, to address the Convention in that aspect, and not endeavor to obtain a little cheap reputation for myself by fierce denunciation and talk about possible abuses which everybody freely admits may exist. The question presented is one of remedy, and its consideration demands the exercise of hard common sense and business judgment. The proposition is this: Should the directors or trustees of a corporation be severally and individually liable to the creditors and stockholders for moneys embezzled or misappropriated by the officers of the corporation? The question involves no principle of constitutional law—as my friend on the right has well said—and therefore ought not to be in the Constitution. It is a question that should properly be regulated by the Codes and general statute law. But independent of that, it is wrong in principle; it is wrong as a business proposition, and ought not to be in the Code, much less in the Constitution. That is my judgment. In the first place, a corporation cannot exist without a Board of Directors, for its business is managed by a Board of Directors. That is one of the essential characteristics of a corporation; and, second, let us inquire who is an officer. We may say, technically speaking, that a trustee is an officer; but whether he is or not in fact makes no difference, for the amendment undoubtedly seeks to hold them responsible for the acts of all officers, including the directors themselves, although it is vague in respect to whether the term officers includes the directors or not. I assume that it is the intention of the author that the word "officers" should include the directors themselves; otherwise this is an important omission in the proposition, because it would make the directors responsible for the acts of a cashier in a bank, and not responsible for the acts of the Board of Trustees themselves. I apprehend that the term "officers" is supposed to embrace trustees as well as the other working executive officers of the corporation. It is an essential element in the existence of a corporation that it should have a Board of Trustees, and executive officers besides, who are usually elected by the Board of Directors; and therefore, being absolutely essential, ought the Board of Directors whose members are honest, capable, efficient, free from neglect, free from omission of duty, free from every fault in the world—I ask, ought they to be liable for the acts of the officers? That is precisely the proposition before us. In other words, the very moment a man becomes a director of a corporation he becomes the insurer of the creditors and stockholders for the faithful conduct of all of the officers of the corporation, independently of any misconduct on his own part. I say the principle is wrong, and ought never to exist either in the Constitution or even in the Codes. If the amendment had gone to this extent, that the directors should be responsible for any neglect or omission of duty by means of which the officers embezzled any money, or any loss accrued to the institution, there would be no objection to it. But they are already responsible to the full extent to which they should be responsible. The stockholders elect the directors. They are thus clothed with the corporate powers, and they then meet and elect the necessary executive and other officers required by the by-laws and otherwise. This amendment would make one of these directors responsible for the acts of all the other directors, in whose election he took no part. A, one of the directors, must assume a legal responsibility for the conduct of B, another director, whom he did not select, but who is selected by the stockholders, over whom he has had no control, and whose personal or official conduct he cannot in any manner control. There is no principle, or reason, or sense, in such a proposition. The stockholders meet and select a Board of Trustees, entire, and then the amendment would hold one of that number, who is entirely innocent, responsible for the misconduct of the other directors, over whom he has no control. A director may watch his co-directors, and even degenerate into and act the spy, in his zeal to protect the stockholders, and yet, notwithstanding all this care; notwithstanding all his zeal and caution; notwithstanding his own good faith, and his own earnest efforts to guard the interests of the corporation and its stockholders, he is held responsible for the misdeeds of every other man who may happen to be a director, and over whom he has had no control, and in whose election he had no voice. If that is a principle which should be embodied in the law of the land or in the Constitution; if that commends itself to the good sense and judgment of business men—then I am indeed incapable of judging right from wrong. In the next place, aside from being responsible for the acts of a director over whom he has no control, the director is also to be made responsible for the acts of all of the officers.

Suppose the directors select as an officer a man of known fidelity, who has passed through years of temptation and always proved honest, a man of exalted reputation, and in whose integrity the entire community has confidence, and yet, notwithstanding all the care and all the guards that the directors may have thrown around him, notwithstanding his previous high character, he yields to temptation and willfully embezzles the funds of the corporation—ought these innocent directors to suffer? What have they done that they should be compelled to forfeit their property, when they themselves are utterly innocent and free from all blame in the matter? If the amendment had said they should be responsible in case of omission of duty, in any case of collusion, in any case of misfeasance of the directors, there would have been some justice, some right in holding them responsible—but the amendment goes beyond this limit. It is conceded that, in such cases as I have just referred to, according to the established principles of common law, the directors or trustees are responsible to the stockholders and to the creditors. But we are now asked to proceed further and make the directors the guarantors and insurers of the good conduct of each other, and of the honesty and good conduct of every officer connected with the institution without exception. I say it is not practicable. The directors of corporations will be compelled to establish the practice of requiring bonds of every officer connected with the institution. We therefore exclude the poor man from employment by corporations, because they will be unable to furnish the enormous bonds that may be required of them under a provision of this character. There will be a monopoly of this kind of employment in favor of rich men's sons in such an event, and the result will exclude from banks and other corporations a large class of deserving men. The bonds will not be of much consequence after all, for in nine cases out of ten recovery is doubtful. I say it is not a sound business principle to make directors of an institution responsible for the acts of the officers under all circumstances, independent of the collusion of such directors, or of their omissions of duty, or of their own misfeasance in office, and as a business man I desire to be placed upon the record as opposing it; as a man of common sense I wish to appear upon the record as resisting it, and, finally, as a man claiming to have some knowledge of the practical business working of corporations, I wish to be placed squarely upon the record as opposing this amendment.

Arguing from the standpoint of the Convention itself, an innocent man, who has committed no fault and against whose integrity and character no man can speak a word or find wherein he has failed in the performance of his duty, is sought to be held responsible for the misdeeds of another. For instance, the cashier of a bank is ingenious and skillful enough to rob the bank in the night, through collusion with the porter and others. He obtains the combination of the safe, and at night, with the porter and others, proceeds to rob the bank. Should the trustees and directors be responsible for that embezzlement? Upon what principles of law or justice should they be responsible? In the first place, the corporation must have a cashier. In the second place, it must have porters. In the third place, it must have combinations on the safes, and some employé or officer must be in possession of the secret combination, for the business of corporations can only be transacted and carried on through agents, and it cannot be done in any other way, and these agents must be trusted by the directors. Take a banking institu-

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tion in which, notwithstanding all the care and attention that the directors have bestowed upon it, and notwithstanding they have counted the money of the bank and locked it up in the safe and the combination preserved in the hands of the cashier or secretary, in whom they and the community have implicit confidence, and the cashier, through collusion, if you please, with the porter, effects an entrance into the safe and robs it in the night and absconds with the money of the bank. Should the directors be held personally responsible for that act?

MR. TERRY. Suppose you deposit money with a private merchant and somebody breaks in and steals it, isn't he responsible to you for the money? Why should a corporation be more favored than a private individual? [Applause.]

MR. WILSON. I will explain that in a moment, for there is a different principle involved in the proposition. The gentleman says if a man deposits money with a merchant, and his clerk steals it, the principal is responsible. That depends entirely upon circumstances, and it depends also upon the character of the deposit. Let my learned friend consult the law, and he will learn that if the man with whom he deposited the money has exercised due care and caution, he is not responsible. The gentleman is utterly mistaken in his law on that subject.

MR. TERRY. He is responsible.

MR. BEERSTECHER. If the gentleman from San Francisco will allow me——

MR. WILSON. I suppose I am a law catechism—What is the chief end of man? Proceed. [Laughter.]

MR. BEERSTECHER. I ask the gentleman if there is not a difference in the cases he mentioned, whether embezzlement would not mean money abstracted from depositors in the course of business and not money taken from the safe outside of the regular course of business?

MR. WILSON. I am now answering the illustration of the gentleman from San Joaquin, Mr. Terry, and I say his illustration is utterly wrong for another reason. Let us take a case where money is deposited with a merchant who has two clerks—one innocent and the other guilty—and the principle he invokes would make the innocent clerk pay for the default of the guilty clerk, and he cannot escape that conclusion, and that is his proposition. The merchant who has lost his money by the defalcation of a dishonest clerk, compels the honest clerk to pay that loss. That is the principle of this amendment, and the innocent man must suffer for the dishonesty of another.

Let us regard this in another light, and not permit this matter to go by default. When a bank loses its money by embezzlement of an employé, or otherwise, the creditor, of course, has a just claim against the bank for his money, according to the contract; but, because the money has been stolen from the bank, that fact does not release the bank from liability to the creditors. The money is there on deposit in the bank, according to law, and the stealing of the money does not release the bank from responsibility. This is not a question involving the liability of the bank to the creditors; it is not a question involving the liability of the bank to the stockholders; it is not a question as between the bank and the stockholders and the creditors. There is no such question before us, and I am not going to permit this amendment to pass by default, because I know I am right, and I desire to impress upon the good common sense and sound business judgment of the members the correctness of my views on this subject. The directors are not the principals of the institution, but are merely agents, and the question is, how far shall the directors be held responsible for the acts of persons other than themselves in a case in which they are altogether free from fault, and it is upon that proposition alone that this Convention must solemnly record its vote.

If you establish the proposition that it is impossible for money to be embezzled, and that it is impossible for money to be misappropriated, except by the default of the directors, then the amendment is right, because it is only upon such a theory that the directors have committed a wrong. I concede the proposition, that whenever directors are caught doing wrong they should be held responsible to the fullest extent.

Assuming that it is impossible that there can be any embezzlement or misappropriation of money except through the default of the directors and trustees, of course they should be held responsible; but the proposition proceeds upon a false assumption. I am willing, so far as I am concerned, to accept this amendment by adding at the end the words, "through collusion, through neglect, or omission of duty of the trustees or directors." But the gentleman would go to the extent of making the directors absolutely guarantors and insurers against all accidents, against all treachery of employés, and loss of every kind to the corporation. In other words, the directors of a bank, as I have said, may count the money in the evening, lock it up in the safe and go home, and yet if any one of the large number of men connected with that bank, and having opportunities to commit fraud, steals the bank's money and commits robbery that night, the directors are made personally responsible for the loss by this amendment. There is no Constitution or code of laws in the world that can actually prevent a man from committing fraud, and we cannot prevent it. We cannot make a man honest. Fraud will be perpetrated from now until the end of time, as it has been from the beginning of time down to the present. We can hold a man responsible who commits wrong. We can hold a man responsible who, through his own neglect of duty, affords an opportunity for others to commit wrong.

When we have so ordered we should proceed no further, for that is the place to stop. That is the point where judgment and wisdom tell us to stop. When we pass this prudent limit and hold a man responsible for the acts of another, where there is no fault attached to him, I say it is thoroughly wrong in principle and unjust in the extreme. Consider this matter a little and take for example Wells, Fargo & Co. That corporation transacts business all over the Union. It has an office and an agent in every village in this State. These agents receive money throughout the interior of California. Where are the directors? Where do they reside? The Board of Directors are in San Francisco, the principal place of business of Wells, Fargo & Co. Bullion is placed in charge of Wells, Fargo & Co., in the interior, beyond the control of the Board of Directors, and the agent steals it, of course the corporation is responsible, but the Board of Directors, personally and individually should not be responsible in such an event. What have they done to render themselves responsible? What great constitutional principles require that they shall be personally responsible for the embezzlement of a clerk or agent at one of these branch offices a thousand miles in the interior? The convenience of the public demands the maintenance of these various agencies, and its business is largely carried on in that way. It has an office in every village in the State for the benefit of the public, and large sums of money coming in and going out daily, and these agents must of necessity be trusted. The Board of Directors cannot personally and individually supervise all these officers; and yet the principle announced by the gentleman makes these directors and trustees personally responsible for the embezzlement of every agent and employé who handles the money of Wells, Fargo & Co. in the State of California, and in fact throughout the Union. If there is any sound principle in such a proposition, I have yet to learn it. There are numerous other institutions that have agencies which were established and are now maintained by and with the consent of the stockholders. The Bank of California has agencies in different places, in Virginia City, and other portions of the country.

The Board of Directors uses its best judgment in the management of the institution and its acts are approved by the stockholders. The Board of Directors must remain in San Francisco and cannot be present at these various agencies, and know personally what is transpiring, and no matter how much caution it may exercise, embezzlement may be committed by some of the officers in these various places. Now, what sense is there in holding them responsible for what they, together with all the stockholders, could not possibly prevent? In all corporations men must be trusted to transact the lawful business of the institution. A man occupies a position of trust in one of these banks, and checks come in from other banks, or through the Clearing House, and he collects the money on the checks and never returns to the bank, but absconds on the steamer and departs from the State; should the directors be personally responsible for his act? Men must be trusted. Somebody must have confidence reposed in them. Somebody must transact the business and perform these duties for corporations. And as I have said, an officer is sent out to collect forty thousand dollars from a bank in a large city where business is transacted and largely facilitated by an interchange of checks. The officer collects thirty thousand dollars, never returns to the bank, but starts off on the steamer, or by some other mode of transit escapes from the State. And yet the institution of which he was an employé observed the greatest caution at all times, and the employé enjoyed the confidence and esteem of all the directors and stockholders; should the directors be held personally responsible under such circumstances? Frauds have been committed, although encircled with caution, and will be to the end of time. The Courts of law and equity have never yet been willing to specify any exact definition of what fraud is. The only definition we have is clothed in general terms. These are but a few of the many instances where such a provision would work injustice and wrong. I claim that it is wrong in a business point of view; wrong in any and every aspect; it is wrong upon principles of law and equity, and wrong in point of constitutional principles. Take, as a further example, the case of a director who is absent. He is called from the city on important business, and an embezzlement takes place in his absence by one of the officers connected with the bank; should he be held responsible? Take a case of sickness, in which a bank director is lying at the point of death in his bed at home. He left the bank under circumstances that assured him all was safe, and during his illness a robbery has been committed by an employé. When he is convalescent and recovers his consciousness, he finds that the law has made him responsible for a wrong which he did not commit, and of which he had no knowledge, and which did not occur by reason of any neglect or omission of duty on his part. That is just the principle involved in this amendment of the gentleman from San Joaquin, Judge Terry; and innumerable instances might be presented and multiplied, of the extreme harshness and absolute injustice of this amendment, for its counterpart cannot be found in the heavens above or in the earth beneath. If the amendment had a provision at the end to the effect that "directors or trustees of corporations and joint stock associations shall be liable for moneys embezzled or misappropriated by the officers through neglect or collusion or omission of duty on the part of the directors or trustees," I would interpose no objection to voting for it as a law to take its place in the Civil Code; but it should not be in the Constitution under any circumstances. In my judgment, the place for such an amendment is in the Code, and not in the Constitution, which must stand as the organic law of the land.

SPEECH OF MR. DOWLING.

MR. DOWLING. Mr. Chairman: I don't expect to speak in the interest of capital. I am not in the interest of capital, but, sir, the intention of this amendment it seems to me is very explicit. In fact, it is almost what I want, and I hope it will pass. The intention of the amendment is simply to preclude the possibility of any irresponsible corporation or company robbing persons out of their money. It puts a halter on money corporations, and gives to the laborer that which he has earned. I know an institution over in Idaho, that shut down their works, and they never paid a cent to their laborers, and the miners remained up there for over a year, and the stockholders are now in San Francisco feasting on that which they have stolen. But, Mr. Chairman, it takes radical remedies for contagious diseases. It is very well understood that the pain is only felt where the shoe pinches. If the corporations and monopolies suffered as much from the oppressions of the

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poor, as the poor unfortunate people of this country have suffered from the oppressions of corporations, why, sir, this house would have been torn down long ago. The corporations of California appear to me to be like an immense boa constrictor, having the whole State gripped within its coils, squeezing faster and faster all the time, until the whole State trembles with agitation and bleeds from every pore.

Now, sir, the gentleman from San Francisco wants to know who is accountable for money paid into a bank. Why, who is accountable for the directors? Who is accountable for the trustees? Who is accountable for the corporation? How will you make them accountable? Are you going to make them accountable in the same way, in the same amount that Duncan was made accountable? Are you going to leave the depositors in the same fix that the depositors in the Dime Savings Bank were left? Are you going to continue to leave the depositors at the mercy of the wolves? Why, gentlemen, it is absurd. Why, sir, go over into the State of Nevada, and you will find hundreds and hundreds of corporations, in every part of the State, incorporated with two hundred and fifty thousand dollars, capital stock, and from that up to ten millions. Go to work for them, and how will you work? I have been the victim of one of them, and when I came down to San Francisco to collect my wages, why, sir, the only money I could get was a certificate of stock. No matter how rich the directors—no matter how much property they had—all you could get was a certificate of stock.

Why, sir, the amendment covers the whole ground. This amendment recommends itself to every honest man. Just look, for instance, at the history of corporations in California for the last five years. It has been truly said here by one of the eloquent gentlemen from San Francisco, that in the early history of corporations in this State the people received them in ecstasy of delight and manifestations of joy. Admit it. That no matter who came and proposed a railroad, to incorporate a company, they stretched forth the hand of fellowship to them. Why? Because they were away from civilization and remote from the great centers of trade. Millions and millions of acres of land lay waiting cultivation, untrod by any human. There it lay. They offered any kind of inducements. It is no wonder they mortgaged their farms—no wonder they mortgaged their horses and cattle and land. No wonder, sir, that they went out to meet the iron horse with bands of music. It is no wonder they clasped hands and sang songs of hallelujah to Stanford and others who came to take them out of bondage.

But, sir, I am in favor of that resolution—though I see a little void in it that should be filled up—my intention is not to leave any opening at all, because, as I said here a long time ago, a railroad corporation can steer a steamboat through a knot-hole. Now, sir, there is one thing very peculiar, very remarkable, and that is this: that the advocates of corporations and monopolies are to be found principally among the lawyers. You hear one of them speak on the floor—why, he floats in the air, clothed in garments of immaculate white as the driven snow, pleading in tones so piteous and beauteous for the innocence of corporations. [Applause.] But, sir, in tricks that are vain, and ways that are mysterious, they are pretty well educated. But these corporations must be controlled. Mr. Wilson is an eloquent gentleman, and you have heard his argument on that side of the question. But he cannot speak, as I speak, who have been a victim of these monstrous monopolies, and seen their increased growth and power in this State. I tell you it will not do to listen to anything that most of them say. What we have to do is to be guided by common sense and reason, and put in a section here in this Constitution that will defend the interests of the people for awhile. We don't want anything ambiguous about it, we want something that can't be got around, something that will stand the test of the Courts. As a matter of course, the English language is always more or less fallible. It can be construed in a great many senses. We want no doubtful words in this matter. We must be very careful about the words we put into the Constitution.

Now, Mr. Chairman, money is a good thing when properly used. It can be used for good or for evil. When money is employed to rob the liberties of the people; when money is employed to defeat justice; then it becomes an instrument of hell. There is no intrinsic value in it. Look what these thieving corporations have done in San Francisco. Look at the misery and death and suicides that they are responsible for. If we had such a clause as this in the old Constitution, I am of the opinion that to-day there would not be many thieving stock sharps, bank sharps, and malefactors generally. We want to attack these corporations, and these monster monopolies, that are to-day the great burden of the people. If it was not for these monopolies California to-day would boast of a population of ten millions of people. Instead of California keeping up with the times; instead of California keeping march with the progress of the East; she is going behind, and sinking deeper and deeper every day, until we have soup houses in the City of San Francisco to-day to feed the hungry poor. Why? It can be traced to nothing but the monopolies. It is monopoly here and monopoly there, and monopoly all over the State, until finally there will be a monopoly of the very air we breathe. Everything is taken by the monopolies, except the air, and here we hear them pleading, O, so beautiful, that they don't ask anything from the people. Why, the freemen of the land are being crushed down into the lowest depths of despair to-day by the iron heel of these monster monopolies. We can hear their piteous wails even here in Sacramento. All the eyes of the State are turned toward us, and unless we do something for their relief we might just as well say that popular government is a failure. We might as well shut up shop at once, and declare that we can no longer govern ourselves. Because, we don't put a check on these monster monopolies, and bring them down within the control of the people, and give them to understand that we are the sovereign and they the servants. We must take a step in the right direction. Let us give them to understand that we are here solid as a rock, not as Workingmen, not as Non-partisans, not as Democrats, not as Republicans, but we are here, solid as a rock, to do justice to the people, as well as to the corporations. Justice between man and man demands that this should go into the Constitution.

Now, Mr. President, one word more. The French Government is a most prosperous country. That is admitted. It is the most prosperous of all the nations upon the face of the globe to-day; and why? Because, sir, every corporation is now controlled by the Government, and there is no railroad line allowed to run in that country unless there is a Government engineer there to show where the line is drawn. There is no banking institution there that is not responsible to the fullest extent. If Duncan had been in France, he would never have had a chance to commit the frauds which he has here. Again, sir, in the British Government it is the same way. There is no bank in Great Britain but comes directly under the supervision of the Government, and if a cent of the capital is stolen the managers are not only responsible, but they are sent to State's Prison for life.

Now there is one other thing I want to call particular attention to, and that is about the stockholders. Now, what is a stockholder? A stockholder is any man who holds stock in a company or corporation. He is a stockholder. Well, that man is responsible for his pro rata of the just debts of the institution. Well, now, suppose John Smith is a trustee and he owns ten thousand dollars shares of stock, and the corporation is in debt. Well, suppose John Smith gives his stock away to several gentlemen. Well, they don't know that the company is in debt at all, and they don't know anything about who are trustees or who are stockholders. Now, then, I will change that so that no stockholder shall be responsible for the debts of the corporation unless his name appears on the books of the company, with the amount of stock he owns opposite his name, and then, sir, a man will know who to go for. Therefore I offer this amendment. Insert after the word "stockholder" the following: "And credited to him on the book of the corporation or association."

THE CHAIRMAN. It is not in order at present. There is an amendment to an amendment pending.

MR. DOWLING. Now, sir, before I forget it, I want to have my name put on record in favor of this amendment, which, I believe, will in a great measure help to rid the State of these monopolies that are like barnacles clinging to the body of the people. These men never work for a living, and never will work. They are as big a nuisance as Chinatown, and render the poor man a slave. [Applause.]

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. President: This is a representative government, and I do not object to members from San Francisco representing their constituency. It is said by a member here that the State is in decadence, and that we are going down hill. I think we are illustrating the truth of that proposition in this Convention. It is said, also, that the eyes of the world are upon us, and I hope their noses will not be turned from us when we get through. I was at first in favor of this amendment, but looking over the whole thing, and hearing the arguments, I have abandoned the idea, and shall go against it. The proposition, as has been stated by the gentleman from San Francisco, Mr. Wilson, is to make innocent parties responsible for the acts of others, and I consider that to be a correct statement of the effect of the proposition, and wonder that anybody can doubt it. But while reason and common sense are against the amendment, I have no doubt certain gentlemen will vote in favor of it, notwithstanding. But as for myself, I am going to make my vote follow my reason and my judgment. So great has been the desire on the part of the Legislature to make directors responsible for the wrong acts of the Board, that the statute now declares that when the trustees or directors of a corporation issue bonds beyond their capital stock, or contract debts beyond the amount of capital stock actually subscribed and paid in, they shall be personally responsible for the amount. That is the statute on corporations, that if they issue bonds or contract debts beyond their authority, they are held personally responsible. The proposition is here, it is said, to protect the stockholders from all loss by making the directors personally responsible. The proposition has been stated here, by Mr. Estee, that supposing a Board of Directors consisting of seven, and four of the seven vote to issue bonds, or contract debts beyond their authority, under the statute, or to misappropriate, or vote for the misappropriation of the funds, and the three other directors stand up and oppose it, and vote against it, yet under this constitutional provision, or this provision which is sought to be engrafted into this Constitution, it makes the three directors, in express terms, responsible as much as the four who voted to misappropriate the funds, or issue bonds, or incur debts beyond their authority under the law. There is no getting out of it. There is no possibility of avoiding it. They cannot evade it. "The directors or trustees of a corporation or joint stock association shall be jointly and severally liable," etc. There is no exception made in favor of the innocent man. There is no exception made in favor of the directors who stood there and protested against the act of the majority; but they, notwithstanding the fact that they stood against the perpetration of the wrong act and sought to protect the stockholders, are held equally liable to the stockholders who elected the seven directors with those who voted for the misappropriations. Here, then, are seven directors, and four of them vote to commit a wrong, and the three innocent ones have to pay over to the very stockholders part of the money lost or misappropriated by the majority against the votes and protest of the minority. It is impossible to avoid it.

Further, I would like to know what would be the definition of offices in this amendment. Here is an illustration that covers the whole ground. The Bank of California, for instance, you go in there and you will see a couple of Chinamen with twenty thousand, or thirty thousand, or fifty thousand trade dollars in their possession, handling them, weighing them, testing them by feeling with their fingers, throwing them one way and another, and choosing the good from the counterfeit with such wonderful facility and skill, as is certainly extraordinary and

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astonishing to the beholder. Are they *officers* of the bank? Are they included in the list for whose acts the directors are to be made responsible? There is a man who drives a dray and hauls the money to and from the bank. He drives through an alley, and drops off a box or two, or a bar of bullion, in collusion with some confederate; is he an officer of the bank? Is it the cashier, the note teller, the bookkeeper, or regular officers alone that this provision is intended to apply to? Are these servants, clerks, porters, etc., *officers* of the bank in the meaning of that term? I do not understand that they are officers. Men are hired and kept in there to do this work, but it does not follow that they are officers of the bank. Not at all. And further, the statute now allows the trustees or directors of a corporation to elect a Secretary or a Treasurer. The Constitution does not fix it, it is fixed by statute. Now suppose the statute is changed, after this section is fixed in the Constitution, and instead of allowing these officials to be elected as they are now, by the directors, allows them to be elected by the stockholders direct. It is in the power of the Legislature at any time to change the relations between directors and the lower officials or employés of a corporation. Now, suppose the law is changed, and they are shoved in there by the stockholders themselves? They go in against the will of the directors perhaps, are put in there for the purpose of administering the affairs of the stockholders, as their servants, agents, or employés. And yet we want to make the directors responsible for any misdeeds or crimes committed by the men that have been appointed by the stockholders themselves, and with whose election or appointment the directors had nothing to do. Well, that may be a very good rule of business. You come and say to me you shall have this man for your clerk; he shall take care of your funds; shall have the right to collect moneys and draw checks, and preside over your business. And then, if you should trust any of your money in the hands of that clerk, and he runs away with your money as well as mine, you hold me responsible for the acts of the very man you forced upon me against my wishes. That is the logical conclusion. You force him into that position as an agent, authorizing his appointment contrary to all law of propriety and judgment, and then make an innocent party suffer for your crime.

I am for making these men responsible if they do that which they should not do, or if they fail to do that which they should do. I am in favor of making them exercise due vigilance in business. That the Codes have done. They have done all that there is any necessity for. They have provided that the money in bank shall be counted at stated periods, and that the accounts must be examined; and have taken all the precaution that can be taken to prevent defalcation. The general principle of this amendment is undoubtedly a correct one, but it should be confined to neglect of duty, and should not apply to anything else. Now, take the case of a special deposit cited by one of the gentlemen here: A friend comes to me and says, you keep a safe (which I do in my office); put this money of mine in there to-night. I tell him I don't always do it, but sometimes, if I happen to have a little change left that I cannot carry around in my pocket, I put it in the safe. The safe is not very strong, and I don't keep much money in it, but I will put your money in there if you wish me to. I do so. In the night along comes a cracksman, and the whole thing is carried away. Now, the question is, was that business conducted with ordinary prudence? Was the deposit of that man cared for with the common, ordinary prudence with which a man takes care of his own property of like character? That very case has come up over and over again where a man even goes so far as to mix his own money with that of another; and the Courts have said, you shall not be careless with your neighbor's property, but you shall exercise proper and due precaution and due vigilance, such as men of ordinary prudence would. Whether it would be due diligence in a man to deposit money in a safe that could be split open in five minutes is a question for a jury. Take a bank in the ordinary course of business. They take the money on special deposit, put it in the safe where they keep two, or three, or four millions of dollars in gold, perhaps, and a cracksman comes along in the night and carries it away. Or, perhaps some one of the officers, a man who has proved his integrity by long years of faithful service, who may have become embarrassed by an expensive family, or investing a little in stocks, losing, and losing, going down, and down, and finally in an evil moment, breaks open the safe and goes off with the funds. The directors had taken all the precaution they could have taken. The combination was carefully guarded, the doors were locked, and every precaution taken. In fact, the directors are perfectly innocent of crime. Now, this matter is properly regulated in the Code. This amendment is but one single detail of the many provisions in the Code. If we are going to put in this provision, why not put in the whole of them? There is a provision that if these officers contract a debt over and above their capital stock, they shall be personally responsible for it. If they issue bonds beyond the amount of capital stock actually paid in, they shall be personally responsible for it. Some of these companies may have made over-issues of stock, why not put that clause in the Constitution? Simply because they have no business in the Constitution. Simply because, as one gentleman has well stated, they are not proper provisions for a Constitution. They are not proper parts of a constitutional law. They should be left to the Legislature alone. The Constitution should be confined to those general declarations of principles which it has been the custom, hitherto at least, to insert in such instruments. If there are any exceptional cases which cannot be covered by general enactment, then let them go into the Constitution.

SPEECH OF MR. FAWCETT.

MR. FAWCETT. Mr. Chairman: There are reasons why I am obliged to vote against this amendment which I have not heard assigned by any of the learned gentlemen on this floor. I do not rise for the purpose of making a speech on this question, but for the purpose of a brief explanation of the reasons which induce me to vote against this amendment. In the first place, this proposition undertakes to make each and every director of a corporation the bondsmen of all the officers employed by the institution to which he belongs. The director is responsible for the defalcation of each and every officer, and for the embezzlement or misappropriation of funds by all the directors as well as the bank officials, and the President. Now, it is said by the gentleman from San Joaquin, Judge Terry, that the principle is eminently just, because the tendency will be to make directors careful in the selection of their agents and employés. Now, if they fail to exercise care in such selection, and a defalcation or misappropriation results therefrom, they ought to be responsible to those who lose thereby. That proposition is all right when it is applied to those who are guilty of neglect or wrong; but, as pointed out by the gentleman from San Francisco, Mr. Wilson, what becomes of the innocent directors? Suppose, as a proposition, that a banking corporation appoints Jones as Cashier. The majority of the directors, for some reason, perhaps for the very purpose of aiding them in a scheme to misappropriate the funds of the bank, propose that Jones shall be Cashier. The minority, however, knowing that the proposed officer is incompetent, or that he is dishonest, oppose the selection of that officer, and to the best of their ability contest his appointment—do all they can to prevent it; discharge their duty faithfully and fearlessly toward the stockholders and toward the public. But they are in a minority. The majority of the Board select this person, and he is installed as the Cashier. From the very time that such appointment is made, and the official inducted into office, the minority of this Board of Directors, who protested against this appointment, did all they could to prevent it, become responsible to the whole extent of their fortunes for the acts of that officer. Is that a correct principle? Is that the result you are striving for? Does that commend itself to the reason and judgment of men? How can this responsibility be escaped? I would ask the gentleman from San Joaquin how he is going to escape from it? Perhaps he will say—and it is the only answer that can be given—that the minority may resign their trust. But is it a wise provision which compels an honest director to give up his trust in order to save his own fortune? He is there for the purpose of protecting the interests of the stockholders, of whom he is one, and the interest of the public. And because he is overruled, is he to be made responsible, or be compelled to resign his trust, and get out of his office? That certainly is not wise. He may be a man that the public are interested in keeping there, that the stockholders are desirous of keeping there. Why, sir, that very step might be taken by a majority of a Board of Directors who have sinister purposes in view against the property of the corporation, to force out a troublesome minority from the Board of Directors. One or two honest men, so long as they stand firmly in the discharge of their duty, can prevent the majority from carrying out their schemes of plunder, and the majority may undertake some such measure for the very purpose of forcing out the minority, and leaving the field clear. That would be the result of it inevitably. The minority would be powerless to help themselves in any other way than by getting out of the Board as soon as they could.

If this amendment prevails, let me ask the gentleman, what is to become of section twelve of this same report, which provides for minority representation in a Board of Directors? Section twelve reads as follows:

"SEC. 12. The Legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit, and such directors or managers shall not be elected in any other manner."

Who is there, sir, that would be willing to serve in the minority of a Board of Directors under these circumstances? If that amendment prevails—and my voice admonishes me that I cannot speak longer—section twelve might as well be stricken out of this report when we come to it. No person would be willing to represent the minority under those circumstances. I am to cumulate my votes upon a minority director, who at any moment, by the will of the majority, may be forced to resign his office by the selection of some agent that he could not approve, and for whom he would not be willing to stand as bondsman. The minority director, under this amendment, would be as much responsible for the faithful performance of his duties by that officer as any other director on the Board. Then what is the use of your minority representation? This measure may be taken advantage of for the very purpose of forcing him out of the Board, and it no doubt would be. Now, I am willing to support any reasonable measure which will tend to correct the evil which this amendment strikes at. But this amendment cannot receive my vote.

MR. VAN DYKE. I would like to read an amendment, and see if the gentleman from San Joaquin will not accept it. Insert after the word officers, "appointed or selected by such directors or trustees." I offer that as an amendment, and ask the gentleman to accept it.

MR. TERRY. No, sir, I will not accept it.

SPEECH OF MR. TERRY.

MR. TERRY. Mr. Chairman: I did not expect, when I introduced this amendment, that such a clamor would be raised. It looked to me very proper, and very innocent, and very harmless, as an amendment only intended to make the trustees and directors of corporations more careful in the management of their business; make them become sureties for the good conduct of those in whose custody they place the funds of the institution. I had not thought the Constitution an improper place to put such a clause. The Convention of eighteen hundred and forty-nine, which framed the present Constitution of California, thought proper to put into the Constitution a clause defining the liability of stockholders in a corporation. For twenty-nine years it has been there, and

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to-day I propose to renew the clause, and add to it what is made necessary by the new order of things. Why should it be left to legislative enactment?

When this Convention assembled it was deemed proper by a committee composed of experienced legislators, who are members of this Convention, to have a Committee on Corporations; a committee that should put into the Constitution which we are here to frame, certain clauses and articles respecting corporations, defining their powers, and fixing the liability of stockholders. They made a report in which these things were embodied. I thought if it was proper and right that the Constitution should fix the responsibility of the stockholders of a corporation, that it would not be improper or wrong, in the same connection, to fix the liability of those who control the property of the stockholders. And therefore I offered this amendment to fix, by a constitutional provision, the responsibility of the directors and managers, making them responsible for the conduct of those whose duty it is, under the law, to transact the business of the corporations, and to compel them to see that no money is embezzled or misappropriated. They are required, under the law, to oversee and investigate all the business of the corporations; to examine the accounts, and count the money. And it is their business to see that those officers who are under their control, subject to be dismissed by them at a moment's notice, perform their duty properly, and neither embezzle the money nor misapply the funds intrusted to their custody. I do not see anything wrong, anything unjust, in such a proposition, saying to these three men: I place my money in your keeping and you shall be responsible to me for it; for the honesty of the persons in your employ. There is no wrong in that, nothing unjust, nothing that is not equitable. That is the effect of this amendment—simply to make these directors or trustees—by whatever name they are known—the sureties upon the bonds of the Cashier and Teller; that they will perform their duty properly; placing them on the same plane as other sureties. Suppose a case of a State Treasurer, or a County Treasurer. It is no excuse if I go on the bond of the State Treasurer or of a County Treasurer, and he misappropriates the money. It is no excuse, I say, that I am innocent, and didn't know he was going to do it; that I thought he was honest; that I ought not to pay the bond, as the gentleman from San Francisco, Mr. Wilson, said. No, I went on his bond with my eyes open, and I am required to pay. I do not pay because of any misconduct of my own, or any wrong of my own. It is my option to go on the bond or to withdraw, but while I remain on his bond I am responsible for his official acts.

Now, where is the wrong or hardship of requiring these men who appoint the Cashier, or who control the actions of the Cashier—those men who have the power of appointing and discharging—to be responsible for any misappropriation of money, or any misconduct which will diminish the funds of the corporation and entail a loss upon the stockholders.

And then again, another effect of it: if this amendment is adopted as a part of the Constitution which is to be submitted to the people of this State, the gentleman from Marin need be in no fears that the provision will weigh down the Constitution. You will have no more respectable men allowing themselves to be made decoy ducks of. You will have no more figure-heads, in the shape of Boards of Directors who never go near the institution from one end of the year to another. You put the responsibility upon them, and you will force them to do their duty. That is the only way you can force them. You say to these men, you must be responsible for the acts of those men you put in there to manage and conduct the business. You can take security from them if you like, but we hold you responsible. But gentlemen got up and talked about this being a great outrage, and got very indignant over it. There is nothing that would give grounds for any such talk. It struck me as a provision which should go into the Constitution in connection with the other provision making stockholders liable. It struck me as a provision, the need of which I have seen in this State many times, and it would prove a safeguard to the people and to the stockholders. It would prevent a repetition of the too common abuses of the past, without doing injustice to any honest men. I do not know who was alluded to when it was said by a gentleman on this floor, that perhaps some of the members at the great judgment day would expect to sit alongside of the Supreme Judges, or Associate Justices. When that day comes, if come it does, when we are wafted across to the other shore, I shall not be surprised at that very moment to see the immaculate Chairman of the Military Committee of this Convention, the Eminent Commander of the ceremonies there. [Laughter.]

Now I think the sense of this Convention is that something should be done to prevent the robberies of the public by corporations, and it occurs to me that this is about the most effectual means of preventing it. It occurs to me that the Constitution is the place to put it, where it cannot be amended or repealed at any time by a hasty Legislature. I do not approve of the amendment offered by the gentleman from Alameda, Mr. Van Dyke, and would not accept it, because if I did I fear that some time in the future the law which now makes these officers appointed by the Directors would be changed, and thus the provision of the Constitution would be evaded and defeated. They might thus defeat the action of this Convention. That is the reason I do not approve of it. I propose to put it hese as a safeguard to the people. I propose to put it here where it cannot be amended or repealed, and let it stand for all time as a protection to the people of this State against the robberies which are committed by the officers of these corporations. [Applause.] Gentlemen need not be afraid that this will weight down the Constitution. Put that provision in there and it will, like charity, cover a multitude of bad provisions when it comes to go before the people for ratification. [Applause.]

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I do not intend to make any extended remarks on the question, but I believe if the amendment of the gentleman from San Joaquin should be adopted, as it now reads, and made part of the Constitution, that before we get through we will find it too heavy a load to carry. The great mass of men have an instinctive idea of what is right and what is wrong. Honest men everywhere are repelled with the idea of punishing an innocent man for the faults and crimes of the guilty. And if this Convention should, in its wisdom, or in its folly—I think in its folly—adopt this amendment, it would change the rule which has hitherto been recognized by all civilized people, that an innocent man should not be punished for the crimes of the guilty. I cannot see, sir, why a man who faithfully performs his duty as an agent of a corporation should be held responsible for the offenses of one who is not true to his trust. Now what are the facts? Under our statutes a certain number of men can be elected directors of the corporation, a certain number, from five to twelve. Say five are elected directors. There are fifty thousand shares say of the corporation stock, and the five directors get the whole vote of all the stockholders. Two of them are well known business men in the community, and three of them are strangers to the other two. But the stockholders put them there, and they say to the two that are well known, we know these three gentlemen, and we make them our agents, and we have given them the controlling vote in the affairs of the corporation. At the first meeting a resolution is presented contrary to the law, declaring a dividend, when there are no funds in the treasury, when the money will have to be borrowed to pay the dividend. Two of them enter a solemn protest against it, as a violation of section three hundred and nine of the Civil Code, and enter a protest dissenting from the action of the majority, because, they say, you are robbing the stockholders, and because you are going contrary to the statutes. But three of them, notwithstanding the statutes that prescribes that they shall not make any such dividend, vote for it. Now if this amendment means anything, it means that the minority are responsible for the acts of every officer of the corporation.

Now, let me pursue it one moment further. My friend, Mr. Dowling, is a director in a corporation, is one of the minority. He is a sworn officer, and he comes in at the meeting of the directors and enters a solemn protest against this illegal act. He protests against the robbery of the stockholders, and against this violation of the law in any such manner. He is there defending the interests of the stockholders and the public. But what is the result? Why, Mr. Dowling, who has done everything that it was possible for an honest man to do in order to prevent the consummation of this unlawful act, is made to pay for the crimes of the men who voted for that resolution. The innocent and the guilty are alike punished. I want to know if this Convention will indorse that proposition. I cannot believe they will. The law by which this Convention was organized allows members to enter their protest on the record against the adoption of any measure they may object to; and for one, when the occasion comes, and this takes the proper shape, I am willing that my protest shall stand the test before the people of this State. It is not honest; you must know it is not. We all know it. We all know the country is full to overflowing with these corporations which are robbing the people. You are seeking to remedy the evils, but you are going the wrong way, using the wrong remedy. You are trying to load down this article on corporations that meets our approval. I ask you not to weigh down this article with that class of legislation that will destroy its usefulness.

Sir, some questions rise which are too serious to be treated thoughtlessly. Applause falls faintly upon the ear when that applause follows the advocacy of principles which will lead to the destruction of some of the great institutions of the country. We are here for the purpose of building up an organic law that shall survive after we are gone, and if that law, and every section of it, is not founded on the eternal principles of justice, it will not be accepted by the people, and should not be. How will we make the innocent directors of corporations liable for every embezzlement done by the other officers of the corporation. I suppose the gentleman means civilly liable. If they are liable at all, why not make them criminally liable and send them to the penitentiary, because it is one and the same proposition—a dereliction of duty—and whenever an embezzlement occurs there is a crime committed. And the directors are responsible for that crime. Why not go the whole length and say they shall be civilly and criminally liable. That is the logical deduction of the argument as I understand it. I know the gentleman is trying to reach and remedy an evil. And I would be willing to vote for almost any measure that would rid the State of these institutions that have so long robbed the people. But let us do it in a way that will be just and right and creditable to us as representatives of the people.

Follow the illustration one step farther. Suppose at the first meeting of these directors three of them decide to elect a well-known scoundrel—a man of notoriously bad reputation in the county—as Treasurer. Two of them vote against him and say, we will not stand this outrage; it is not right, and we will utter our protest in the records, as the statute says they can do, and vindicate our character before the community. They can do no more. Then this notoriously bad man takes hold of the funds and that night absconds with them. According to this amendment, these men who have done everything they could do to save the capital of the stockholders and creditors of that corporation, will the next morning have to pay the amount of money that this Treasurer has robbed the company of. The thing should not be thought of for a moment. It should not receive serious consideration. Again, sir, I enter my protest against loading down this article with amendments that can do no good, and may accomplish great harm; and I say to you, gentlemen of the Convention, leave something to your committee that has been selected to take charge of this question; that has given it thoughtful inquiry and careful consideration. The committee took the old Constitution and saw how the old section read, and they examined the discussions of our Courts and saw that it had passed through and survived twenty-nine years of the history of the old Constitution; they

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saw that whatever wrong had been committed, sir, had been committed, not by reason of the weakness of this section of the old Constitution, but, as my friend from San Francisco says, by reason of the corruption of the officers who have been connected with these institutions. They saw, too, that only last Winter, and two Winters before, the people of this State, through the Legislature, attempted to remedy these evils. Last Winter, sir, your Legislature created the minority representation referred to by the gentleman from Santa Barbara, whereby the majority of the stockholders of a corporation should be represented upon the Board. So this great reform, following in the wake of the old section, your committee concluded to let that section stand. It has been amended already by the gentleman from Alameda. And now, after all this experience, we are called upon to attach to this section an untried, questionable provision—a more than doubtful provision. And where there is doubt as to the wisdom of a constitutional provision, it ought to be rejected. I think we owe it to ourselves and to the people to vote against this amendment. I have said this much because I felt it was due to the committee; I felt that it was due to the people; and I felt that if this amendment, as drawn by the gentleman, should be adopted, it would have a very marked effect in loading down this article on corporations, which I look upon as one of the most important to the people of any in the proposed Constitution.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I am exceedingly gratified at the position of affairs, at the determination which is manifested here to maintain the integrity of the provisions attempted to be placed in the Constitution on behalf of the people. The question has been fairly presented by the gentleman from San Francisco, Mr. Wilson. He has placed it on a fair basis for our consideration. Taking the arguments that have been presented by the learned gentleman, I think it presents the strongest reasons why this provision should be adopted. I say that we are in possession now of the fort, and it devolves upon us to hold the fort. I say the position is well taken, and the arguments are all on the side of this amendment. How easy it is for these distinguished gentlemen, when this provision is engrafted into the Constitution, to say that no appropriation shall be made except by a majority vote of the directors. The difficulty is at once avoided. How easy it is to say that no man shall be installed in office except he give a good and sufficient bond for the faithful discharge of his duty and the faithful discharge of the trust imposed upon him. Is he in any worse condition than an officer of the State, when he is put in charge of an office and a bond required from him? Why, it is nothing but a little government—*imperium in imperio*. Why, these officers do not hesitate because they have to give bonds. If these directors are so blind as not to see their own interests let them suffer according to the provisions of the Constitution. In God's name let the people be protected for once.

Now, where is the difficulty? Show me a plainer proposition. I see no difficulty about it. It is as plain as a sunbeam. It is a contest for once where the people are in possession of the fort, and it should be held forever. [Applause.] It is not a question between the innocent and the guilty in the light the gentleman has stated it. It is a question in one sense as to whether the innocent shall suffer for the acts of the guilty; but who are the innocent? The people are the innocent parties, and it is a question as to whether they shall suffer. It will not affect honest corporations, except to strengthen them. If they cannot be honest, if these corporations are sinks of iniquity, then, I say, let them go down, and God speed them in perdition. [Applause.] The people have suffered long enough. I feel in earnest on this question. The whole land has been groaning for years under the burden; the people have stood it long enough. I say if the wealthy corporations cannot protect themselves and exist under such a provision let them go down too. Is not there a healthy condition without them? Cannot we get along without them? Why, if every corporation should leave the country, or disincorporate, the country would be just as well off. Just as well off. I believe, however, in the protection of corporations. If a corporation, like an individual, is honest and square, it need have no fear of the law. The law has no terrors for any but the wrongdoer. If they cannot trust their subordinates let them require bonds. If they who appoint them, and control, and direct them, cannot trust them, how can it be expected that the people and the stockholders can trust them? There is no difficulty about it in the world. No man should be permitted to hold a responsible position unless he can give bonds. Let the directors choose men who are responsible. The stockholders will not permit a director to retain his position very long unless he sees to it that the officers appointed are trustworthy.

Now I say that the business of a corporation should be conducted with just as much care as the government of the State of California is conducted. The great trouble is, that the great interest of the people is lost sight of, and the interests of the stockholders too often lost sight of and forgotten. The whole course of legislation has been in that channel. There has been too little attention paid to the management, too little responsibility attached to those who are in office and control and manage the affairs of these institutions, and I submit that for once there should be some regulation—some legislation for the protection of the stockholders as well as those who deal with corporations. Let it be put in the Constitution. This is a good provision, and the Constitution is a good place to put it. It is a strong provision, and a just one. It compels these corporations to conduct their business honestly. It will bring about a healthy condition of things. There is nothing in it but what is right. Let the corporations do business, and be responsible as individuals do. If they cannot do business because we compel them to deal justly; if they cannot do business without robbing the people and the stockholders; then the sooner they go down and are wiped out of existence the better it will be for the country. These are the reasons why I favor the amendment.

MR. HOWARD. Mr. Chairman: I would inquire if the proposition is still open to amendment.

THE CHAIRMAN. No, sir. There is an amendment to an amendment pending.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: For the purpose of information, I wish to read an amendment which I shall offer when it is in order. In the fourth line, after the word "liable," I shall move to insert "in all cases of negligence." I approve of the proposition of the gentleman from San Joaquin, to a certain extent, but I think it goes too far—farther than he intends—farther than his explanation indicates was his intention. Now, it was decided by the Supreme Court of the United States, in a very early case, that society had not all power; that society could not take property away from A and give it to B. And society can not declare an innocent man guilty. I hold that is the law. Now, you are going to hold A civilly liable for the criminal act of B, and they say that is good law. I deny it, because this Convention can do no such thing. My judgment is, that if this should be inserted in the Constitution, any enlightened tribunal would pronounce it void, for the reason that one man cannot be held liable, civilly or criminally, for the crime of another. This provision proposes to do so. Therefore, unless my friend accepts this amendment, I cannot vote for the proposition.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. Chairman: I am in hopes the gentleman from San Joaquin will not accept any amendments. I am in favor of this amendment as it stands now, and I do not see how honorable delegates can get up here and raise such a cry against a measure which is as just as this. I don't see how they can say that innocent men are to be held responsible for the acts of corrupt men. I want these corporations made responsible. I want them to make persons give bonds and security, so that when depositors take money and deposit with banking corporations, or transact any other kind of business with them, they will be secured. Now, if the directors are not to be responsible, I don't know who is. Somebody has got to pocket the losses when losses occur, and if the officials are not to be responsible, then the loss must fall upon the depositors. Here the hard-fisted yeoman, the working men, and the working women of the country have to stand the loss of their little savings in order that the innocent director may go free. They say we must not make a law that will punish an innocent director. The innocent must not suffer for the acts of the guilty, they say. Well, sir, if somebody is not made responsible, these robberies will continue. Which is better, that an innocent director should suffer, or that innocent men and women who have worked hard for their money should suffer? The director is in a position to help himself, the people are powerless. I say these robberies must stop. When a man puts his money in the bank in the morning, he don't know whether he is going to get it out at night or not. The Constitution is the place for this provision, notwithstanding the opinions of all the corporation lawyers in the State or here.

SPEECH OF MR. FREEMAN.

MR. FREEMAN. Mr. Chairman: The arguments against the proposition of the gentleman from San Joaquin, so far as I have been able to understand them, seem to consist of three propositions. The first was that the existing laws were sufficient. The second is that the liability imposed is too great, and the third is that the power of the corporations of this State may be so great as to overwhelm us if we insert the provisions in our Constitution.

The first branch of the argument, namely, that the present remedy is sufficient, is not good argument, because the people are demanding a provision that will protect them and enable them to get their money. I say they have already suffered much, and you cannot put them away by simply telling them that you can employ counsel and bring the criminals to prosecution. Their reply will be that they have lost their all, or at least, that they have lost all that they can afford to lose, and that the indemnity they want is something that will reinstate them in their lost possessions. But, turning to the Penal Code—but first, attention has been called to the Civil Code by gentlemen of recognized ability as lawyers, and I assume that the provisions to which attention was called, are the only provisions upon this subject. Section three hundred and nine of the Civil Code is as follows:

"SEC. 309. The directors of corporations must not make dividends except from the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must create debts beyond their subscribed capital stock, or reduce or increase the capital, except as hereinafter specially provided. For a violation of the provisions of this section, the directors under whose administration the same may have happened (except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors, at the time, or where not present when the same did happen), are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any suit against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation, which remains after the payment of all debts, upon its dissolution or the expiration of its term of existence."

Now, that has reference to the single instance of the withdrawal of money from the funds of the corporation for the purpose of paying too great dividends; and in that case only provides for the liability of those officers where persons enter their protest. This provision does not affect the matter under consideration. That imposes no liability of the kind set out in this amendment. Now, the second section of the Civil Code

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referred to by gentlemen upon the other side is section three hundred and sixteen. It reads as follows:

"SEC. 316. Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice, or entry in any of the records or books of the corporation, concerning the corporation or its business, which is false in any material representation, shall be liable for all the damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable."

It is plain that that section is not a remedy, for it only refers to the making of false reports, etc. It is equally plain that if these provisions did cover the subject, they are not in the constitutional law—they are not a part of the unalterable law of the land, where the history of the country points as the proper place to put them.

Now, turn to the question of liability, and I say it seems strange that gentlemen will argue in favor of liability for the people who do business, and yet want no liability attached to them when they embark in corporate enterprises. Why, sir, if there is to be no liability in our case, there would scarcely be any liability at all. If I have a partner in my business, and he acts without my knowledge or consent, am I not liable? It is true I am innocent. But I have placed myself in a position where public policy and the law demands that I should be liable. Now, a common carrier is engaged in carrying money, and the money is lost or stolen, is not the common carrier liable? And yet the common carrier may be perfectly innocent. But public policy and law has required it. If I send a boy in my office out to collect a sum of money, and he misappropriates it, am I not liable, however innocent? Public policy and the law exacts the liability. The logical conclusion of the arguments on the other side is that the officers shall not be responsible for anything.

MR. WILSON. If the gentleman will allow me. Suppose you have two boys in your office, and you send them out to collect money, and one of them steals the money and leaves, are you going to make the other boy pay the loss—hold him responsible?

MR. FREEMAN. I have to pay it.

MR. WILSON. But who should pay you? It is your money—one of them steals it—and according to this amendment you might hold the other boy responsible.

MR. BARNES. I desire to call the attention of the gentleman to what I endeavored to say. I know he would not desire to misinterpret me, but from the fact that he is so far removed from me he probably did not understand me clearly. I said that if it was even desirable to have such a provision as this, it did not appear to me that it should be put in the Constitution, but that it belonged in the Code, and I called attention to the Civil Code and Penal Code, and showed that the Legislature had been acting upon this and kindred subjects, and had got so far as to put these various provisions in the Code; and then I said if this provision was deserving of a place in the Constitution the others were just as good, and much more specific, and ought to go in too. That is the way in which I alluded to it. That we ought not to undertake to legislate upon it, but that we ought to make a general declaration of principles. In that respect I do not think the gentleman fairly stated the argument.

MR. FREEMAN. I may have misunderstood the object of the argument. I know the distinguished gentleman spoke of the impropriety of inserting the whole Penal Code in the Constitution. I understood him to refer to the Penal Code and the Civil Code.

MR. BARNES. I quoted the Code to show that they had been legislating upon this subject, and that if one of the provisions was entitled to go in, they all ought to go in. That is the only point I had in alluding to it.

MR. FREEMAN. I may be unfortunate in my understanding. I only repeated it according to my understanding; I do not want to enter into any question of memory. But to return to the question of liability. We have had a provision in our Constitution which looked to the liability of the stockholders for the debt and liabilities of the corporation. For many years, at least, we have had those statutory enactments necessary to give life and vitality to that provision. Now, each Legislature has maintained the proposition that the stockholders of a corporation ought to be liable for such proportion of its debts and liabilities as their stock bore to the whole capital stock of the corporation or association. Upon the sympathetic arguments presented here, that is all wrong. Now, are not the stockholders upon the question of innocence, at least, more likely to be innocent than a director. They have the election of directors, and the directors assume and have the sole right to manage the affairs of the corporation. It is the Board of Directors, acting as a body, that authorize the making of contracts, and the employment of men to manage the business. They have far greater opportunities to make themselves conversant with the workings of the corporation than the stockholders have, and I say every reason which has impelled us, every reason which impelled the Legislature, to vote for the liability of the stockholders, would impel us to vote for the liability of the directors.

Now, in regard to the question of public policy, this is the condition of affairs that has been developed in the history of this State: that a Board of Trustees are elected; that they assume the management of the affairs of the corporation, and thereupon they proceed to bleed the public and the stockholders in every way possible. And that condition of affairs has arrived when it is incumbent upon this Convention to do everything it can possibly do to discourage these evil acts on the part of the Board of Directors. Now, in regard to liability. In the first place, it is assumed no man need assume a position of that kind, unless he is willing to bear the responsibility. He has the opportunity to know what is going on. Now, in respect to embezzlements taking place, it has already been explained that the directors may relieve themselves of all responsibility or liability, by requiring bonds of the officers of the corporation. Now, in regard to misappropriation of money. It necessarily assumes an illegal act. It necessarily assumes some act which the body had no right to do. Now you say that the minority director is liable for this act, even though he protests against it—if he votes against it and protests against it. He does not perform his whole duty when he contents himself with voting against it and entering his protest. If it is an unlawful act, the law provides some means of preventing it, and it is his duty to take such legal proceedings as will prevent the consummation of the act. And it is because men have not done this that the people have suffered. It is because these men have not stood up and done their duty that abuses have existed, and this provision is to compel them to do their duty. And I say farther that it is not a sufficient answer to the proposition to show that such contingencies may occasionally occur, because the question on every law, and every proposition, is not, is it wholly right or is it wholly wrong; but upon the whole, is there more of right in it than there is of wrong. And I say the fact that some innocent director should, at some almost impossible contingency, suffer, does not stop us from inserting the clause that will protect those who are uniformly innocent, the people who have become victims to our present corporate system. The eloquent gentlemen on the other side have waxed eloquent in sympathetic appeals for the innocent director. Let them give their sympathies to the widows and orphans who have been robbed by the present system. If I see that I must do a wrong here I will do that wrong to the director, who is capable, who has the means of information to protect himself, rather than that the wrong shall be against the public who stand outside and have no opportunity of knowing what the secret working of the institution is. Nor is it true that directors are mere agents in the ordinary sense of the word. Ordinarily an agent obeys a superior. He does what the superior tells him to do. But the directors of corporations are not agents in that sense of the term; they meet as a Board; they vote; they dispose of the business and disburse the funds of the institution. They ask no superior what they shall do, therefore in that view they partake more of the character of principals than agents.

Now, sir, the Chairman of the Committee on Corporations rose early in the day, and undertook to explain that this matter was voted down in the Committee on Corporations. As I listened to his speech I came to the conclusion that he was for this proposition; as I listened further I came to the conclusion that he was against the proposition; and finally I came to the conclusion that he was on all sides of the proposition. [Laughter.]

MR. ESTEE. Did you ever hear me say a word on this floor in favor of this amendment.

MR. FREEMAN. If I had heard you say explicitly you were either one way or the other, I would have known where you were.

MR. ESTEE. I wish to ask the gentleman if my statement to this house was not this: that I was in favor of a proposition that would hold the parties who do the wrong to a strict accountability for that wrong.

MR. FREEMAN. My understanding was that the gentleman was on both sides of the question. My understanding was in the second place, that he was willing to vote for this amendment if the word "misappropriation" was stricken out, and that he took it to be a most infamous thing that the corporation officers should be responsible for the embezzlement of its agents.

Now one word more in reference to the threats that have been heard here about loading down the Constitution. I do say this: that if the Constitution we shall propose, cannot be adopted without the consent of the corporation power of this State, I hope it will be defeated. [Applause.]

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: It must be borne in mind that this provision, if adopted, will be prospective only in its operations. It is not retroactive. It does not impose any liability for the past. It is a rule for the future; and it says, in effect, that when this Constitution shall have been adopted and become operative, that such and such liabilities on the part of directors or trustees shall be hereafter incurred by them as part of the organic law of this State. They will take their offices under it, knowing the law, and realizing their responsibility under it. In this there is no hardship, no injustice.

It is true, there is no general law that may not in special and exceptional cases work apparent wrong. However uniform the law may be, there will be some instances where it appears to work injustice. But, sir, we have started out here by proclaiming in the Constitution that all our laws shall be uniform; and why insert such a proposition as that? Manifestly because it is right; because it commends itself to the judgment and common sense of every man in the State. It should be our boast that we are to live and prosper under the equal laws. They should be as uniform as the dew which descends upon the valleys. This proposition applies to all corporations. We are seeking to incorporate this provision in the Constitution, also, because it is founded upon the great principles of honesty and fair dealing.

In founding a fundamental law for the government of the people, to which these laws shall conform, this should be the permeating idea. Let us look, then, closely at this proposition and the construction legitimately to be placed upon it. "The directors or trustees of corporations and joint stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporations or joint stock associations."

It is the directors or trustees who are to be liable, and liable for what? For embezzlement or misappropriation. Gentlemen opposing this proposition are instancing cases of theft and robbery. That has nothing to do with this amendment. It is not incorporated in it. It says embezzlement, and what is embezzlement? An unlawful conversion of the property of another when the person converting is in the lawful possession of it. The gist of the crime in a bailee is the unlawful conversion of property in his possession which belongs to another. In the case of larceny, the guilty party has not possession of the property at the time of the commission of the offense. The liability sought to be enforced is limited to cases only of embezzlement or misappropriation.

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Well, sir, if these bank directors stand, and wish to stand before the public, assuming an attitude of superior honesty, saying, in effect, that they will take charge of the money of the people if they will intrust it to them, then there should be a corresponding obligation on their part to select proper employés, and to make good any loss incurred by their appointment, from embezzlement or misappropriation. With this sword of Damocles hanging over them, they will select their best men. They will select those men who are above reproach and without fear of reproach. They will select them with a view to their own liability, and also to the responsibility of the persons so chosen. For their own protection they may require bonds from their appointees, if they so desire.

Besides, sir, the directors are not forced to occupy that position. It is voluntary on their part to sustain that relationship to the corporation. Their interests are the interests of the stockholders, and the interests of the stockholders are theirs. The effect of incorporating this proposition into the Constitution will be not only to throw additional safeguards around the public, but to inspire confidence in our banks and bank officers.

I believe it will commend itself to the people of this State; and, inasmuch as other gentlemen have said they desired themselves on record on this question, I, too, wish my name to appear on the record as voting in favor of this eminently just provision. While these are my views at present, I am frank to say that I am always ready to be convinced; and, if in the course of any debate on this proposition which may occur now or hereafter, it shall appear that its adoption will be injurious to the public interests, I shall be governed not by my present impressions, but by the public interests. With a slight change in the phraseology, I can adopt the sentiment of Horace, in his Epistle to Marcenus: "Bound to swear to the *ipse dixit* of no master, whither my judgment carries me thither I am borne a welcome guest."

REMARKS OF MR. OVERTON.

MR. OVERTON. Mr. Chairman: I expect at the conclusion of the Convention to go home to my people. I expect to see them. I am not afraid to go on the record on this proposition. On this particular point I want them to know just how I stand. I regard it as a matter of very great importance—vital importance—to the interests of the people of this State. Now, sirs, if the gentlemen here who seem to have a hostility and prejudice against corporations—and there are some—if they wish to insert in the Constitution that we are about to frame for the people of this State a clause against them—opposed to them—I can't say what my position may be. If they wish to do away with all banking institutions, let them come direct to the point at once. But, sir, I don't desire to have an article inserted in this Constitution that in effect does that, or will cause a great many banks to disincorporate. Now, sir, I belong to the directorship of a bank, and it is with difficulty we can get good men to act as directors of this institution. We have a little county, and represent some five or six persons. I know that it is a position not sought after. I have the honor to occupy a position as director of one bank, and I have never sought it myself—would rather not have it—but somebody has got to assume these duties. Now, in our bank, speaking for myself as well as others, if this personal liability clause is adopted, such as seems to be designed by this amendment, I do not think there is many of our banks in our county that could get a Board of Directors. There is no pay in it. Gentlemen say they may take a bond. That might be—I can't say. What kind of a bond? What amount of bond would they take? That would be according to the amount of money that passes through the hands of the officers of the bank. That amount of money that men have in their custody would be so large that they would not be able to give bonds enough to cover it. It would come to this, that nobody could get to be Cashier in any bank in this State but those who are immensely rich. This would work an inconvenience, for the deserving poor men of the country who are capable of occupying such positions would be shut out entirely. The men we have in our banks are not generally rich men, and I must say here that there has been no defaults up in any of the banks in the county which I live in, and they are all safe and sound. And I fear that because one or two banks in this State have acted a little scaly and gentlemen have lost by it, that they imagine every bank to be on the same footing. Gentlemen might as well say that if one County Treasurer in the State is a defaulter, every other County Treasurer should be looked on with suspicion. There is no reason in it. They do good. It is true that occasionally, like everything else, there may be some bad men engaged in banking, but it is no reason why we should all be pursued. The banks of this State are useful in many ways. We cannot get along without them. I know that if this provision goes into the Constitution, it will have the effect of crippling the banks of this State, and I don't believe the gentlemen have been authorized by their constituency to do any such thing. I do not believe my constituent would sanction any measure that would endanger and cripple all the banks in this State. It is true, I am willing to see them guard against such institutions as they have had down in San Francisco and some other parts of the State, who have really acted wrongfully towards the people of the State, but I am not in favor of crippling honest institutions who are doing a legitimate business all over the State. I do not believe there is any law in the country that will justify us in holding the directors of a bank responsible for the acts of the officers of the bank. It has not been done anywhere in the United States, it has never been done in this State. There is no place you can find where it goes to the extent that this amendment does. The director is responsible for the good behavior of the officers of the bank. He gets the best man he can find. In case he should be deceived in his judgment, he is liable to lose all he is worth in the world. Under those circumstances no man is going to take a position as director, because it is a dangerous matter, and he is liable to wake up any morning and find his entire fortune demolished by the wrongful acts of one of the officers. If the gentlemen want to kill the banks, let them come direct to the point. I don't know as it would make any difference to me if they did disincorporate, but I don't believe we are authorized to come here and insert any such provision as that. I think we are going too far. I don't know that I have much more to say. I wish my constituents to know just exactly how I stand in this proposition. I may be wrong, but those are my views. I don't think they ever sent me here to incorporate something into the organic law of the State that would trammel the whole banks of the State.

MR. VAN DYKE. I move that the committee rise, report progress, and ask leave to sit again.

Carried—ayes, 79; noes, 53.

IN CONVENTION.

THE PRESIDENT. Gentlemen, the Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again. What is the pleasure of the Convention?

ADJOURNMENT.

MR. O'DONNELL. I move we go into night sessions.

MR. HOWARD. I move we now adjourn.

MR. GRACE. I move to adjourn until seven o'clock.

THE PRESIDENT. Not in order. The motion is to adjourn.

Division being called, the motion prevailed—ayes, 82; and at five o'clock and five minutes P. M., the Convention adjourned.

FORTY-EIGHTH DAY.

SACRAMENTO, Thursday, November 14th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hall,	Porter,
Ayers,	Harrison,	Prouty,
Barbour,	Harvey,	Pulliam,
Barnes,	Heiskell,	Reddy,
Barry,	Herold,	Reed,
Barton,	Herrington,	Reynolds,
Beerstecher,	Hilborn,	Rhodes,
Belcher,	Hitchcock,	Ringgold,
Bell,	Holmes,	Rolfe,
Blackmer,	Howard,	Schell,
Boggs,	Huestis,	Schomp,
Boucher,	Hughey,	Shafter,
Brown,	Hunter,	Shoemaker,
Burt,	Inman,	Shurtleff,
Caples,	Johnson,	Smith, of Santa Clara,
Casserly,	Jones,	Smith, of 4th District,
Chapman,	Joyce,	Smith, of San Francisco,
Charles,	Kelley,	Soule,
Condon,	Keyes,	Stedman,
Cowden,	Kleine,	Steele,
Cross,	Laine,	Stevenson,
Crouch,	Lampson,	Sweasey,
Davis,	Larkin,	Swenson,
Dean,	Larue,	Swing,
Dowling,	Lavigne,	Terry,
Doyle,	Lindow,	Thompson,
Dudley, of San Joaquin,	Mansfield,	Tinnin,
Dudley, of Solano,	Martin, of Alameda,	Townsend,
Dunlap,	Martin, of Santa Cruz,	Tully,
Eagon,	McCallum,	Turner,
Edgerton,	McComas,	Tuttle,
Estee,	McConnell,	Vacquerel,
Estey,	McCoy,	Van Dyke,
Evey,	McFarland,	Van Voorhies,
Farrell,	McNutt,	Walker, of Tuolumne,
Fawcett,	Mills,	Waters,
Filcher,	Moffat,	Webster,
Finney,	Moreland,	Weller,
Freeman,	Morse,	Wellin,
Freud,	Murphy,	West,
Garvey,	Nason,	Wickes,
Glascock,	Nelson,	White,
Gorman,	Neunaber,	Wilson, of Tehama,
Grace,	Noel,	Wilson, of 1st District,
Graves,	O'Donnell,	Winans,
Gregg,	Ohleyer,	Wyatt,
Hager,	O'Sullivan,	Mr. President.
Hale,	Overton,	

ABSENT.

Berry,	Kenny,	Strong,
Biggs,	Lewis,	Stuart,
Campbell,	Miller,	Walker, of Marin.

LEAVE OF ABSENCE.

Indefinite leave of absence was granted to Mr. Strong, on account of sickness; to Mr. Walker, of Marin, for three days.

MR. FREUD. I move that the reading of the Journal be dispensed with.

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THE PRESIDENT. There being no objection, the reading of the Journal will be dispensed with, and the same approved.

PETITIONS AND MEMORIALS.

MR. AYERS. Mr. President: At the request of the Grand Lodge I. O. G. T., I have the honor to present the following petition and memorial in favor of a section in the Constitution relative to local option, and move its reference to the Committee on Miscellaneous Subjects:

To the honorable the Constitutional Convention of the State of California:

We, the undersigned, respectfully petition your honorable body to insert in the new Constitution of this State, a clause similar to that now in force in the State of Texas, to wit:

SECTION —. The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, voting precinct, town, or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.

Following is the memorial which accompanied the petition:

To the President and Members of the Constitutional Convention:

On behalf of the petition accompanying this memorial, transmitted herewith, your memorialists would respectfully represent that the proposition embodied in the prayer of your petitioners, to wit: "The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, voting precinct, town, or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits," is identical with a clause presented by the Constitutional Convention of the State of Texas, and ratified by the people of that great commonwealth.

The proposition presented raises but a single issue before your honorable body, to wit: the expediency of the local prohibition of the traffic in intoxicating liquors. In this statement we assume that the inherent right of the people to regulate or to prohibit by law the said traffic will not be denied. The principle which commends the proposition brought before you by this petition, is that it refers the question of expediency of prohibiting the traffic in intoxicating liquors to the people. This principle is in consonance with the very genius of republican institutions. The people of separate localities should have the right to determine for themselves as to whether the sale of intoxicating drink is inimical to the best interests of their respective communities. This application of the principle of local sovereignty is not new, but extends already to other questions of local character. We assume that those citizens interested in the sale of intoxicating beverages cannot reasonably object to the adoption of this proposition. No good citizen will demand protection in the right to engage in a business which, in the judgment of a majority of his neighbors, is demoralizing to the neighborhood; and if the traffic in liquors is not destructive of the morals and good order of a community, these separate communities may safely be trusted with such determination of the question as the facts warrant. In the opinion of your memorialists any opposition to the proposition on the part of those engaged in the traffic in liquors must be based upon the ground that, should the proposition be incorporated into the Constitution, many communities would decide against the continuation of the traffic. This is, in effect, an admission that in all such communities the traffic is now carried on against the enlightened judgment and moral conscience of a majority of the people resident in such communities. The proposition herewith presented, if adopted, would relegate the whole question to the arbitration of the ballot box; and representing those who entertain the opinion that the traffic in intoxicating drinks is destructive of the best and highest interests of the commonwealth, we cheerfully submit the grave question involved to this high arbitrament. To deny the prayer of this petition will, in the opinion of your petitioners, be in effect a denial of a sacred right. The right to determine what is necessary and appropriate to accomplish the ends of government, establish order, and promote the general welfare of society, resides in the people, and all we ask is, that this right shall be recognized in the determination of the issues arising out of contending opinions concerning the character and moral tendencies of the unrestricted traffic in intoxicating liquors. The nature of the proposition herewith presented is such as to absolve us from the necessity of presenting any considerations or arguments tending to establish the expediency of prohibiting the liquor traffic. We have no data upon which to found the assumption that in practice the proposition presented would result in such prohibition; the result would be dependent upon the will of the majority of the voters in the local subdivisions named. But it is obvious that the perpetuity or prohibition of the traffic will depend upon the verdict of the people, in whom resides the right to determine the necessity or reasonableness of all prohibitory laws.

And, as in duty bound, your petitioners will ever pray.

Referred to the Committee on Miscellaneous Subjects.

MR. KELLEY, of Yolo, presented the following petition, signed by several thousand citizens of California, requesting the insertion of a clause in the Constitution providing for a local option law, or civil damage law, or both. Following is the memorial:

To the honorable gentlemen, the members of the Constitutional Convention now assembled:

We, the residents and taxpayers of the State of California, fully realizing the importance of this session, and the arduous duties and responsibilities that necessarily rest upon each individual member of said body, in the exercise of the powers vested in him; and realizing that many grave questions will present themselves to any body of men who shall assemble to consider such great facts as must necessarily arise in the framing of a Constitution to govern and direct the people of any country, State, or district, and especially our own loved and endeared State of California, where Nature has been so lavish and Providence so wise.

And yet, with all our boasted advantages of climate, productions, mineral wealth, scenery, etc., we have observed, with sorrow and pain, the rapid and constant increase of crime, and the alarming tendency toward idleness, with all its attendant elements of misery, wretchedness, and want; and in vain do we try to blind ourselves to the frequent necessity of enlarging our State Prisons and lunatic asylums, for even now they are crowded to their utmost capacity. And believing that no greater question can present itself to your honorable body than the education and protection of society, and while we cheerfully submit to and pay the taxes levied upon us for education and other purposes, we believe that it is unwise and inexpedient to spend millions of dollars for education, and then admit of the manufacture and traffic of that which destroys the mental faculties and poisons and destroys the mind. While we have explicit confidence in the judgment and integrity of those we have chosen to represent us, and believing that it will be their highest aim to carry out the will of the people they represent, when such will is made known, therefore we would petition your honorable body:

That you will insert in the Constitution a clause granting to the people the right to say whether they will allow the sale of intoxicating liquors in their midst or not (better known as local option), or a civil damage law, or both.

And your petitioners will ever pray.

Referred to Committee on Miscellaneous Subjects.

MINORITY REPORT OF COMMITTEE ON SUFFRAGE.

MR. CAPLES. Mr. President: At my request the report of the majority of the Committee on Right of Suffrage was ordered to lie on the table until the minority report was received. I now present the minority report, and ask that it be printed with the other.

Following is the minority report:

Honorable Joseph P. Hoge:

The undersigned, a minority of your Committee on Right of Suffrage, while concurring in most of the conclusions of the majority, most earnestly dissents from their recommendations providing that the Legislature shall have power to extend the elective franchise.

Under our form of government the original, supreme, paramount authority is in the people—that is to say, in those holding the ballot; and limitation or extension of the ballot is an act affecting original authority, and can be legitimately performed only by the sovereign people, exercising the right of a principal to ratify or reject the act of the agent; but, waiving the legal principle involved, and considering the question from the standpoint of reason and common sense, the first reflection is that the right to vote carries with it the co-relative obligation of citizenship. But a little reflection will convince all candid minds that the discharge of such obligations is utterly incompatible with the moral, social, and physical conditions of women in civilized society.

Another and serious objection to the proposition is that it would surround the Legislature by a lobby influence detrimental and injurious to all just and wise legislation.

This radical innovation upon our electoral system is not demanded by the sober, conservative people, but by a few professional agitators and schismatic propagandists, whose stock in trade would be indefinitely replenished by the adoption of the recommendation of the majority of your committee. And the future legislative hall would be but another name for a beleaguered fortress, behind whose paper ramparts your statesmen and law-makers would vainly seek shelter from the attacks of crinoline and silk sophistry, and blandishments, smiles, and tears.

Graceful styles, and winning wiles,
Charms replete, your hero greet;
In dulcet strains, the siren reigns.

But we present our objection to the whole scheme of female suffrage, an objection as broad as humanity, as deep as human affection, and as comprehensive as human aspirations, viz.: that it would slowly, but surely, necessarily, and inevitably, drag woman down from the lofty sphere which is her birthright, and her realm by the patent eternal of Nature and Nature's God. When we attempt to reverse Nature's laws, we only violate them, and speedily and surely reap the penalty of that violation; and when woman leaves the domain which is her's by divine right, and comes down—down into the political arena—and paddles her own canoe in the historic pool, runs for Constable, is elected Alderman, and finally goes to the Legislature to warm a contested seat, will anybody ask: are her garments as white as of yore, when she proudly sat upon her legitimate throne, commanding our reverence and loving devotion?

Let us not desecrate the temple wherein man's noblest, highest, holiest aspirations are crystallized in that sweetest word of human tongue—home.

JAMES CAPLES.

THE PRESIDENT. The report will be printed, together with the majority report, and the proposed article on suffrage.

THE HOUR OF MEETING.

MR. ESTEE. Mr. President: I ask that the matter introduced by Mr. Noel, relative to the change in the rule, be taken from the table.

Carried.

THE SECRETARY read the proposed amendment to Rule One:

"RULE 1. The Convention shall meet each day of sitting at nine o'clock A. M., unless it shall adjourn to some other hour."

MR. NOEL. Mr. President: The amendment to the rule which I propose will save about one third to the working time of the Convention. I hope it will be adopted.

MR. GRACE. I move to lay it on the table.

THE PRESIDENT. The motion is not in order. Mr. Noell had the floor.

MR. NOELL. It seems to me, Mr. President, that we should do something to expedite business. In the earlier days of the Convention it was a correct rule to meet at ten o'clock in the morning, because then most of the work was being done by the committees. Now, however, the committees have reported, and there is no reason why we should not perform an honest day's labor for our money.

MR. GRACE. Is my motion now in order?

THE PRESIDENT. Yes, sir.

MR. GRACE. Mr. President: It is pretty hard for the members to get here at ten o'clock, and I move that it be laid on the table.

THE PRESIDENT. The question is on the motion of the gentleman from San Francisco, to lay the motion on the table.

The Convention divided, and the motion was lost—ayes, 50; noes, 91.

MR. BLACKMER. I move to amend, by making it nine thirty, instead of nine o'clock.

MR. O'SULLIVAN. I move to make it seven o'clock in the morning.

MR. REYNOLDS. Mr. President: I hope the amendment to the rule will be voted down. There is such a thing as making haste slowly, and I, for one, do not wish to be driven through this Convention at a railroad or race-horse speed. This body has been as industrious as any body of men that ever convened in the State of California. We have been hustled from breakfast into the committee rooms, and then called into Convention at ten o'clock in the morning, and into the committees again at twelve o'clock, and back into Convention at two o'clock, with scarcely time for our lunch, and then into committees again at seven o'clock in the evening, and so on every day from the very commencement of this Convention. There has been nothing done but work, work, from the very beginning, without time for thought or digestion. Now, sir, the work of the committees is well advanced, and we have got into Committee of the Whole, where we are endeavoring to shape our business, and I hope we shall proceed with the business. We will accomplish our work as rapidly, and as well, if we take time to think as well as talk. We come into Convention, and it is nothing but talk, talk. And now, sir, if gentlemen, instead of coming here at nine o'clock to commence talking, will spend the time in boiling down what they have to say, they will improve themselves, and advance our interests, and the interests of the State. We shall succeed in doing the work better, and get through quicker, than we will to come here at an early hour in the morning and sit until a late hour in the evening and do nothing but talk. I am not opposed to talk, but it should be talk that is the result of thought, and to some purpose, and not mere idle chatter. Let it be done, but let it be preceded by some thought, some study; and give us

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time for that thought. I am not afraid that one hundred days will run out, or that one hundred and fifty days will run out. The Constitution that is made in less than six months is not worth the paper it is written on. I am not afraid because the time may run out, or that the appropriation will be exhausted. I came here to stay till the work is done. No matter if the hundred days run out, no matter if the appropriation runs out, no matter if it takes six months, I shall stay till the work is done; and I do not want to be hurried. That is the reason why I shall vote against all these amendments. Eight hours here in Convention is enough.

MR. GRACE. Is an amendment in order?

THE PRESIDENT. No, sir.

MR. GRACE. When it is, I shall offer an amendment.

MR. INMAN. I hope the amendment will pass. I am sorry the Workingman should be broken of his rest in the morning. I hope the Convention shall go to work at nine o'clock. I don't see any difficulty about it—between the hours of four in the evening and nine in the morning. The gentleman talks about talk, talk, talk. I think he does his proportion of it. Now, I hope this amendment will pass.

MR. HOWARD. Mr. President: I call for the previous question.

MR. WYATT. I second the motion.

THE PRESIDENT. The question is: Shall the main question be now put?

Carried.

THE PRESIDENT. The main question has been ordered. The first question is on the amendment offered by the gentleman from San Diego, Mr. Blackmer, to meet at nine o'clock and thirty minutes.

Division being called, the amendment was lost—ayes, 49; noes, 89.

THE PRESIDENT. The question is on the motion of the gentleman from Lake, Mr. Noel, to meet at nine o'clock.

MR. GRACE. Is an amendment in order?

THE PRESIDENT. No, sir; the previous question cuts off all amendments.

MR. CONDON. I want to call for the ayes and noes on the question offered by the gentleman from Lake.

MR. McFARLAND. I call for the names of those demanding the ayes and noes.

MR. LARKIN. Ayes and noes.

MR. SMITH, of Santa Clara. Ayes and noes.

MR. NOEL. Ayes and noes.

MR. LARUE. Ayes and noes.

THE PRESIDENT. The ayes and noes have been demanded by the requisite number. The Secretary will call the roll.

THE SECRETARY called the roll.

MR. O'DONNELL, when his name was called, declined to vote.

MR. McFARLAND. I move that the gentleman be excused from voting.

MR. TULLY. It is very important that the gentleman should vote.

MR. WELLIN. I insist upon his answering to his name.

THE PRESIDENT announced the result as follows:

AYES.

Ayers,	Gorman,	Ohleyer,
Barbour,	Graves,	Prouty,
Barry,	Hale,	Rhodes,
Barton,	Harrison,	Rolfe,
Bell,	Harvey,	Schomp,
Boggs,	Heiskell,	Shafter,
Boucher,	Herrington,	Shurtleff,
Brown,	Hitchcock,	Smith, of Santa Clara,
Burt,	Howard,	Smith, of 4th District,
Caples,	Huestis,	Smith, of San Francisco,
Chapman,	Hunter,	Soule,
Charles,	Inman,	Stedman,
Condon,	Johnson,	Steele,
Cowden,	Joyce,	Terry,
Cross,	Keyes,	Thompson,
Crouch,	Laine,	Turner,
Davis,	Larkin,	Tuttle,
Dean,	Larue,	Van Dyke,
Dowling,	McCallum,	Van Voorhies,
Doyle,	McComas,	Walker, of Tuolumne,
Dudley, of Solano,	McConnell,	Waters,
Estee,	McCoy,	Webster,
Estey,	McNutt,	Weller,
Evey,	Moffat,	Wellin,
Farrell,	Moreland,	West,
Fawcett,	Morse,	Wickes,
Filcher,	Nason,	White,
Finney,	Neunaber,	Wilson, of Tehama—86.
Freud,	Noel,	

NOES.

Andrews,	Hager,	McFarland,
Barnes,	Hall,	Mills,
Beerstecher,	Herold,	Nelson,
Belcher,	Holmes,	O'Sullivan,
Blackmer,	Hughey,	Overton,
Casserly,	Jones,	Porter,
Dudley, of San Joaquin,	Kelley,	Pulliam,
Dunlap,	Kleine,	Reddy,
Eagon,	Lampson,	Reynolds,
Edgerton,	Lavigne,	Ringgold,
Garvey,	Lindow,	Schell,
Glascock,	Mansfield,	Shoemaker,
Grace,	Martin, of 2d District,	Stevenson,
Gregg,	Martin, of Santa Cruz,	Sweasey,
Swing,	Tully,	Winans,
Tinnin,	Vacquerel,	Wyatt,
Townsend,	Wilson, of 1st District,	Mr. President—51.

THE PRESIDENT. It requires a two-thirds vote, and the amendment to the rule is rejected. [Applause.]

MR. ESTEE. I wish to embrace this opportunity, Mr. President—though the matter does not embrace any great question—to enter my protest against any demonstration following any vote of this Convention. As far as my experience goes, it is contrary to every principle adopted in legislative bodies, and while this question is one of no very great importance, I wish to say that from this on I shall insist on the enforcement of the rule, and protest against any demonstrations of any kind whatever, either applause or disapprobation.

THE PRESIDENT. I will take this occasion to make a statement in regard to this matter. It is the universal rule of legislative bodies that no tokens of approbation or disapprobation shall be allowed. Owing to certain circumstances, the Chair has heretofore declined to interfere when demonstrations of approval have been made. I think now we should. It should cease, and that the rule should be enforced, and no tokens of approbation or disapprobation allowed. If you permit one, very soon we will have to endure the other, and hereafter the Chair will enforce the rule that no applause or signs of disapprobation will be permitted upon the merits of any vote, and I shall expect the Convention to sustain the Chair.

TIME OF RECESS.

THE PRESIDENT. There is a second amendment offered by the gentleman, to amend Rule Two. The Secretary will read.

THE SECRETARY read:

"RULE 2. The Convention shall take a recess each day, from twelve o'clock M. to half-past one o'clock P. M."

THE PRESIDENT. The question is on the adoption of this amendment to the rule.

MR. CONDON. I move to strike out "half-past one," and insert "one."

MR. TINNIN. I move to lay the whole subject-matter on the table.

The motion prevailed, and the whole matter went to the table.

MR. ESTEE. I move that the Convention now resolve itself into Committee of the Whole to further consider the report of the Committee on Corporations other than Municipal.

MR. STEDMAN. Mr. President: I think I was entitled to the floor, with due deference to the gentleman.

THE PRESIDENT. I intended to recognize the gentleman from San Francisco, Mr. Stedman.

MR. ESTEE. I withdraw the motion.

AMENDING RULES TWENTY-ONE AND THIRTY-TWO.

MR. STEDMAN. Mr. President: I desire now to call up my notice to amend Rules Twenty-one and Thirty-two. I know that the Chairman of the Committee on Rules yesterday deprecated the practice of amending rules constantly; but, Mr. President, where a necessity exists, I think the rules should be amended. With due deference to the Committee on Rules, I think this Convention has found that Rule Twenty-one is not the rule we want. The amendment to Rule Twenty-one is this:

"Strike out all after the word 'deemed' in the third line, and add the following: 'divisible; and a motion to strike out on a division being negatived, or a motion to insert being decided in the affirmative, shall be equivalent to agreeing to the matter in that form, but shall not preclude further amendment; *provided*, that substitutes for pending propositions shall, for the purposes of amendment, be treated as original propositions.'"

MR. TINNIN. I move that the whole subject-matter be laid on the table.

THE PRESIDENT. The question is on the motion of the gentleman from Trinity, Mr. Tinnin.

Carried.

LIABILITY OF DIRECTORS AND TRUSTEES.

MR. ESTEE. Mr. President: I now move that the Convention resolve itself into a Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The pending amendments to section three are before the committee. The first question is on the amendment offered by the gentleman from San Joaquin, Judge Terry, to the amendment of the gentleman from Alameda, Mr. Webster.

SPEECH OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: I cannot support the proposition introduced by the gentleman from San Joaquin, Judge Terry. While I do not wish to consume the valuable time of this body, still I do not desire to see such a proposition as this adopted without entering my protest against it. Now, sir, I am at a loss to know upon what principle the amendment can be sustained, unless it is upon this: that the subordinate officers of a corporation are the mere creatures of the President and trustees of the corporation, subject entirely to their control, removable at their pleasure. As I understood the distinguished author of the amendment yesterday, he bases the proposition entirely upon that ground. Now, sir, as I understand it, that is an entire misconception of the law governing corporations in this State. I call attention to sections three hundred and one and three hundred and three, of the Civil Code, governing the organization of corporations, the appointment and election of these officers, and the duties of those officers, as well as the

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tenure of their offices. Section three hundred and one provides as follows:

"SEC. 301. Every corporation formed under this title must, within one month after filing articles of incorporation, adopt a code of by-laws for its government not inconsistent with the Constitution and laws of this State. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members, if there be no capital, stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in the event of such meeting being called, two weeks notice of the same by advertisement in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a paper published in an adjoining county, must be given by order of the acting President. The written assent of the holders of two thirds of the stock, or of two thirds of the members, if there be no capital, shall be effectual to adopt a code of by-laws without a meeting for that purpose."

"SEC. 303. A corporation may, by its by-laws, where no other provision is specially made, provide for:

"1. The time, place, and manner of calling and conducting its meetings;

"2. The number of stockholders or members constituting a quorum;

"3. The mode of voting by proxy;

"4. The time of the annual election for directors, and the mode and manner of giving notice thereof;

"5. The compensation and duties of officers;

"6. The manner of election and the tenure of office of all officers other than the directors; and,

"7. Suitable penalties for violation of by-laws, not exceeding, in any case, one hundred dollars for any one offense."

Now, the manner of the election is dictated by the stockholders, and the tenure of office is dictated by the stockholders, and it is the stockholders who delegate this power to the directors. They say to them: "You shall exercise this power," and when they do exercise it, they are in the exercise of a mere delegated power from the stockholders, merely executing the will of the stockholders; merely doing what they direct them to do. And I say, sir, when they have honestly and faithfully discharged the trust reposed in them, that they are no longer responsible to the stockholders for the mode in which they performed it, because the directors or trustees cannot, by their own act, independent of the action of the stockholders, remove these men from office, because the tenure of office is fixed by the stockholders themselves. It seems to me we might as well attempt to put the responsibility upon the President of the United States for the defalcation of the Secretary of the Treasury. You might as well charge the defalcation of the Treasurer of this State upon the Governor of the State. And beyond all this, it is not practical. Why, sir, in many cases, these officers are elected by a direct vote of the stockholders, and the tenure of office fixed in the by-laws. Certainly it would be an outrage to provide that these directors should be responsible to the stockholders, out of their own private fortunes, for moneys embezzled by the officers that the stockholders had chosen, by a direct vote, and installed in office. They are not subject to removal by the directors. The stockholders say: "You are chosen for such a length of time." Now, I say it would be a most unjust provision to compel the directors to answer for the crimes of these officers. I know of only one precedent for a thing of this kind, and that is found in the Chinese government, where the family of an embezzler is held responsible for his acts. But this is a civilized nation, or supposed to be, and this amendment should have no place in our Constitution.

MR. CASSERLY. The result of that is, whenever a crime is committed the officer runs away, so as not to be thrown into prison.

MR. EDGERTON. It seems to me it is a dangerous proposition, and the weight of the load which this Constitution will have to carry ought to be considered. It can have no other effect than to load down the Constitution, and I am opposed to it. The Constitution will have load enough to carry without adding this last straw that will surely break its back.

SPEECH OF MR. MORELAND.

MR. MORELAND. Mr. Chairman: Two of the delegates from Sonoma have been heard from, wishing to be placed on the record, and a third one from that county is now about to be heard from, and he, too, wants to be placed upon the record. It seems to me, sir, that the proposition of the gentleman from San Joaquin meets an absolute, positive requirement in the history of bank management in this State. It is unnecessary for me to recapitulate that history before this committee; it has already been ably and fully done. But it is a matter of fact, sir, well known to all, that the bank management in this State during the past three or four years been has simply an outrage upon honesty, upon commercial honor, and upon civilization itself. Instead of the best, and safest, and most reliable men of the State, and of the community, having been intrusted with the care of these institutions, they seem to have passed into the hands and under the control of the most vicious men of the country. Instead of being, as they ought to be, corporate institutions where the funds and savings of the poor are deposited and saved, and allowed to accumulate, they have become in many instances instruments of robbery and plunder. The people have lost confidence in them. They have come to look upon them pretty much in the same light that they look upon the gambling hells, and the very air is rife with suspicion and distrust toward these institutions, and the good banks are becoming tabooed because of the evils and abuses practiced by the bad. It seems to me that we owe it to the people of this State; it seems to me that we owe it to these banks which stand on a safe and solid foundation; and more than all we owe it to that class whom my friends on the right would denominate "thieving bank-smashers," to incorporate in the organic law some such provision as that proposed by the gentleman from San Joaquin. If this Committee of the Whole shall vote down this amendment, I hope when we get into Convention, where the ayes and noes may be called, that some member will have the hardihood to reintroduce this proposition, so that every member may get on the record to his heart's content. I hope the amendment will be adopted.

SPEECH OF MR. FREUD.

MR. FREUD. Mr. Chairman: I have listened with much pleasure and attention to the many able arguments that have been presented upon both sides of this question, and, sir, I think they may all be summed up and resolved into one simple question. Admit that a great calamity has occurred to a public incorporated institution, who shall suffer the consequences—he who innocently and in good faith placed reliance on the declarations of the managers of that institution, or he whose duty, whose business it was to guard that institution and prevent that calamity? Any man, I hold, who lends his name to another man, or to an irresponsible corporation, commits a crime in the face of the law. Any man, I hold, who, by lending his name, decoys the people, commits a crime in the face of justice. Any man, I hold, who, by reason of his widespread fame, and for a paltry gain, drives honest men to suicide, weak women to despair, and poor orphans into misery, is guilty of the blackest murder. Let this amendment pass as a protecting shield to the weak, and honest, and industrious. Let this amendment pass as a standing menace to the strong, and corrupt, and treacherous.

SPEECH OF MR. BELCHER.

MR. BELCHER. I have no objection now, or at any other time, when questions of importance are before the Convention, to putting myself on record, and letting the people of this State know what views I have in reference to it. While I do not desire to occupy the time of this Convention at any great length, I do desire, briefly, to say that I am opposed to the proposition here, and I shall vote against it in its present form, now, and at all times, whenever it comes up. Sir, what is the proposition here? It is that the directors or trustees of all corporations in this State shall be personally and severally liable for all moneys embezzled or misappropriated by any of the officers of such corporation or association. Now, we have heard a great deal of talk about banks, but I would remind gentlemen that banks are not the only corporations in this State, nor are they the most important corporations in the State. We have heard a good deal about tellers and clerks, and the importance of protecting the depositors against the stealing and misappropriation of clerks, etc. But who are the officers of the corporation? Who is a trustee, and who are the directors and trustees responsible for? Each individual? These directors, in pursuance of the by-laws, make one of their number President. They may permit the selection of some other person as Treasurer or Secretary. They elect these officers, whoever they are, and whatever they do they do in pursuance of the law, and in pursuance of the by-laws made by the stockholders themselves. Now, if they select one of their number President, he is selected in pursuance of the by-laws which the stockholders themselves have made. Suppose, now, that the Board of Trustees select one of their number, having been selected by the stockholders for that purpose, to act as President of the Board. The doctrine here is that if he shall misappropriate or embezzle any of the funds of the corporation, then each member of the Board is individually responsible for all that the President has done. If the President is selected, not by themselves, but by the stockholders direct, still each member of the Board is personally responsible to the extent of his fortune for every misappropriation or embezzlement of the President. So with the Treasurer. He may be selected by the trustees or he may be selected by the stockholders themselves. But whether selected in one way or the other, this amendment will make these directors personally and individually responsible for all his shortcomings, without the possibility of controlling him in any way, without fixing the term of office, without having put him in the place he occupies. I say it is radically wrong. There is nothing right, nothing just, nothing proper in any such proposition.

But it goes farther than that. Each director is individually and personally liable for the shortcomings of the associate directors. He becomes the bondsman for the directors who are selected by the stockholders themselves. Now, as I said before, banking corporations are not the only corporations in the State, nor are they the only ones that need protection. There are many corporations, organized for many purposes. I happen myself to be a stockholder in a corporation for the manufacture of woolen goods. The corporation has been a successful one. The Superintendent and President have been elected direct by the stockholders. The whole success of the concern is due to the efforts of the management. The Superintendent conducts the works and manages the workings. Suppose now, he having the whole charge, he is guilty of any shortcomings, and suppose you adopt this rule, and he embezzles or misappropriates the funds of the institution. The stockholders themselves have selected him and installed him in office; and suppose he embezzles the funds without his associate directors knowing anything about it. They are to be held responsible to the stockholders to the extent of their private fortunes. Would it be right? Must the others, who are not entitled to control the affairs of the institution, who had nothing to do with his appointment, be held responsible for his acts? Now you say that some of these banks have come short, have done wrong, have swindled the people and the stockholders out of their money. True, and banks and all other institutions are liable to come short, and it always will happen so long as the world lasts. But I undertake to say there has been as little bad management here as in any other part. I happen to know that there are savings banks in this State that have managed their business well. I happen to have something to do with a bank that has been in existence for ten years, and has done very great service to the community. Suppose now a mutual concern, where the depositors elect all the directors. There is no capital stock. They meet and select the directors. One of the direc-

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tors has been for years President of the Board and President of the bank, and has been chosen every year for that position for the very purpose of making him President of the bank. He is voted for to be President, expected to be President, and nobody could run against him, because the depositors and stockholders have wanted him to be President and manager. Suppose now that he should embezzle the money, should the other directors, who have no control over him, should they be held responsible for his embezzlement? Would it be just, or right, or reasonable? I say not. Now why should this amendment be adopted? They say they want to stop some of these thieving concerns in San Francisco. Do you accomplish that end in this way, by any such provision as this? Can you succeed in doing it in this way? No. You will cripple all the honest institutions and prevent them from doing what they have been doing, but you will not stop the thieves. They will ply their trade still. These honest institutions, the ones that the people need, the ones that should be encouraged, are the ones you will strike with this provision. If you say that these directors shall be responsible for the misdeeds of others, you say that there shall be no honest business, no honest corporations in the State. You will stop the corporations that are engaged in the business of manufacturing. Now they talk about the tellers and bookkeepers of banks stealing and embezzling money. The teller is not an officer of the bank, and does not come within the meaning of this provision at all. As well might you talk of the engineer of a railroad, or the conductor, being officers of the company. He is an employé, and not an officer at all. Who are officers of a corporation? They are the trustees, the Treasurer, Secretary, and Superintendent. These others are employés, and not officers. Yet for all those whom the stockholders select the directors are made responsible. I protest against it in the interest of business, in the interest of common honesty, in the interest of the State. It is wrong in principle and wrong in practice.

SPEECH OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. President: I have listened very attentively to the able arguments of the gentlemen against the amendment proposed by Judge Terry, and it seems to me that I have heard no argument, as yet, that has convinced me that they are right Now, this is a very important matter, and it is possible that mistakes may be made, and I, for one, have thought somewhat seriously of this matter. Not only as to whether it is just, as to whether it is politic. but as to whether it is policy for this Convention to undertake to carry through this matter in the face of the opposition of the power of capital. With all these considerations, I am forced to the belief that we should adopt this amendment.

Now, these are troublous times, and the cause of it is as much in the bad management of banks, and the abuses of corporations, and in the abuses of the principal corporations, as anything else. Now, there is a disposition in this country to organize for everything, and the organization faculty has been abused. Organization is a good thing. Incorporations, to a certain extent, are beneficial. But, sir, it has been carried in this State to abuse in organization. Why is it that in every business transaction, every business department, incorporation is resorted to? Because, with incorporations, there is a chance for abuse, a chance for public deception, and they have been bled over and over again throughout the State, perhaps here worse than in any other State in the world. Now, I say, if there should be a mistake made here, it would be a mistake in favor of the people. I do not think, at all events, that it is possible for the people of California to endanger the corporations in any way. I think we have got to a position in this State where something should be done, because if there is anything that controls in this State, it is centralized capital in the shape of corporations, and it will be a question to be tested in this Convention, whether the people, through the organized mediums, shall control the government of the State, or whether it is to be controlled by the organized money powers of the State. Now, Mr. Chairman, the question seems to me to center right here. It is absolutely essential that there should be an unfailing responsibility placed somewhere on these corporations. Is it possible to place that responsibility, and if so, where shall it be placed? I answer yes, it is possible, and here is the place for it. Make these directors individually and personally responsible, and what will the result be? Why, no man will take a place of that kind under these corporations unless the stockholders will stand by him and back him up, and be responsible for him. The result will be that this responsibility placed here, will reach throughout all the branches of the corporation down to the stockholders themselves, and make them responsible throughout. Therefore, I say this is a good place to put the responsibility.

Now, it is possible that the directors can be secured. It is a business proposition. The stockholders, as it is now, are individually responsible for all the losses that occur in the business of the corporation. This only adds the matter of embezzlement and misappropriation. We have tried the old Constitution, and it has not proved sufficiently strong. It has been stronger than in any other State, and yet it has not been found sufficient. It then shows that there is something lacking, and that something stronger is wanted, and I say, it seems to me that this is an amendment that will meet the want, and cure some, if not all of the flagrant abuses which for so many years have been a blot on the name of our fair State, and I shall give it my hearty support.

SPEECH OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: I have no wish to prolong this debate, but it seems to me there are one or two points that have not been made, which I wish to touch upon, and I would like to give a few of the reasons why I shall vote for the amendment. This debate has been one of surprises. I was surprised when the gentleman from Sacramento, Mr. McFarland, openly opposed it, and stated that he was opposed to making trustees liable, opposed to making trustees responsible for the due execution of the trust they have undertaken. I was surprised that any gentleman should take such a position. I was not surprised when the Chairman of the Committee on Corporations, early in the debate, got astraddle of the amendment, and, as with a corkscrew, tried to pull out the objectionable word "misappropriated," that he might gulp down the remaining contents. But I was surprised further on, when he flung away his corkscrew and declared he wouldn't take the medicine at all, but was opposed to the whole villainous compound. I was surprised to see the gentleman take a position at all on anything. He is no doubt surprised at himself, as he has astonished all his friends. I was likewise surprised at the gentleman from San Francisco, Chairman of the Committee on Military Affairs. In fact, Mr. Chairman, the gentleman is a perennial surprise to me. I never know which most to admire, his ingenuity and skill or his eloquence. He always excels in whatever he undertakes; and whether it is when he puts up a dumb bell the size of a beer barrel, or delights an elite and fashionable metropolitan audience, I stand in awe of his transcendent abilities. I only wish to notice in this connection his attempt at pleasantry towards the mover of this amendment, suggesting that the gentleman had no patent right for his amendment—no patent right for the proposition—and that it was found in all the Codes, found in the Penal Code and in the Civil Code, and he proceeded to read the various sections, but he did not read any provision in the Civil Code, or in any other Code, that covers this amendment, or which makes trustees of a corporation responsible for the misappropriation or embezzlement of the funds of an institution over which they have control. He forgot to find that place, and for a very good reason—it is not there. But I will tell you what we do find in the Civil Code. I find the tracks of the same corporation trustees in the same section the gentleman read:

"The trustees of a corporation must not make dividends, except from the surplus profits arising from the business thereof; nor must they divide, withdraw, or pay to the stockholders, or any of them, any part of the capital stock; nor must they create debts beyond their subscribed capital stock, except as hereinafter specially provided," and so on.

They are provisions, all of them, coming right up to the very verge of responsibility for the misappropriation of funds by others than themselves, but the responsibility does not reach to those over whom they exercise control, and whom they choose to execute the trusts which they assume. I fancy, sir, while I am reading these lines, I hear the corporate coin jingle in the committee rooms of the Legislature which passed this Code. I fancy I can read between the lines where large amounts of capital stock of corporations have been issued and charged to account for "India rubber." And while on this Civil Code business, let me allude to what the gentleman from Sacramento, Mr. Edgerton, says. He says it will be such an unkind thing to make these innocent directors responsible for the execution of a trust by persons over whom they have no control, or their co-agents, and he cites sections three hundred and one and three hundred and three of the Civil Code. Let us see. Even supposing the case he cites to be true, and it is not true in one case in a thousand, where these very Cashiers and bookkeepers, and those sub-agents are not chosen by the directors themselves. Now, there is a section of the Code the gentleman did not read—I am sorry he is not in his seat—which is as follows:

"The corporate powers, business, and property of all corporations formed under this title must be exercised, conducted, and controlled by a Board of not less than five nor more than eleven directors, to be elected from among the holders of stock."

That is mandatory. That is the trust they assume when they assume the responsibility of trustees or directors. To control the *business* and *property* of corporations is the trust they assume. The property and the business and the powers shall be under the control of these trustees, and it is that control which they assume.

Mr. Chairman, this question has become narrowed down to a single point. The arguments all center upon that wonderful individual, that imaginary personage, the innocent director. Why, one would imagine from hearing the arguments of these gentlemen that Mark Twain's Innocents from the Holy Land were all turned loose here and made trustees and directors of banks. Mr. Chairman, there is no such thing in fact as an innocent director. He is an impossibility and a myth. He cannot exist. The case was cited here that a minority of a Board might possibly stand out and protest against the misappropriation of the money, and yet be unable to prevent its consummation, and then how unjust and cruel it would be to punish these innocent men for the acts of the majority. Why should the gentlemen use such arguments as that, or make such statements? I cannot imagine. Why, an innocent minority should know everything that is going on, and they have their remedy—publicity, law, injunction, resignation if need be, all these they can use to put a stop to it at any time. There is no such thing as an innocent trustee. And suppose there were; admit that there could be. We have adopted, almost without opposition from the other side of the house, a provision that the innocent stockholder shall be held liable for the trust which he assumes, and he has but one chance to exercise any control whatever, and that is when he drops his vote in the ballot box for trustee once a year, and yet he is liable to the entire extent of his interest in the corporation. And if that stockholder shall be held liable, not knowing anything about what the trustees are doing, nor having any control of their actions, how much more should the trustees be held liable? Why in the name of common sense, law, and of justice, shall we not hold the directors responsible—those who have assumed the responsibility of personally taking care of the corporate powers, and business, and property of the corporation? There has been no attempt to answer that, but simply an evasive talk about the innocence of directors, and all that sort of thing. It was said by the gentleman from Marin that it is against the moral sense of mankind to hold the innocent responsible for the acts of the guilty. Let us see whether it is or not. The substitute which we have adopted contradicts this. Innocent men are held responsible—they are held responsible every day—and in a variety

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of ways. We hold the innocent stockholder responsible for the debts and liabilities of the corporation. Why, sir, there are instances where the stockholder holds himself responsible, though the law does not; and I am told that not many months ago, in one of the interior counties, a bank became insolvent, and a portion of the Board of Directors, a minority I believe, though not bound legally by the action of their co-agents, assumed the responsibility, and gave as a reason that they were morally, if not legally, bound to make good the trust which had been imposed upon them, and they did it out of their own private fortunes. Why, sir, it is not against the moral sense of mankind to hold the innocent responsible in the sense in which it is applied in this case. On the contrary, you must make everybody responsible who assumes a trust, whether he is innocent or becomes guilty. It is time, sir, to fix on these trustees some responsibility, and to require of them sureties for the due execution of their trusts. They have sold the people and robbed them of their substance, and when called to account pleaded innocence, already too long. I say, sold them, and in saying so I but repeat the current news of the day. And here, Mr. Chairman, to show you how history repeats itself, and how the affairs of men in different times and places, run in parallels, I beg to allude to Edmund Burke's arraignment of the English corporations, in the great debate on Mr. Fox's East India bill, in the House of Commons. With regard to the abuse of the trust on the part of the trustees of corporations, he says:

"First, I say, that from Mount Imaus, where it touches us in latitude 29°, to Cape Comorin, in the latitude of 8°, there is not a single prince, State, or potentate, great or small, in India, with whom they come in contact, whom they have not sold. I say sold—though sometimes they have not been able to deliver, according to their bargain. Secondly, I say, that there is not a single treaty they have ever made which they have not broken. Thirdly, I say, that there is not a single prince or State who ever put any trust in the company, who is not utterly ruined."

And I say, Mr. Chairman, that there is no agent of the people or any officer of this State, or any division thereof, great or small, high or low, from the utmost boundary on the north to the south, from the Sierras to the sea, with whom they have come in contact, whom they have not bought and sold. There is not a single promise they have made, or trust they have undertaken, but they have broken or betrayed. There is not a single depositor or stockholder whom they have not either swindled or utterly ruined.

Ralston and his Board of Trustees sold his stockholders and depositors for a gamble in Spring Valley. Duncan and his Board of Trustees sold the depositors of the Pioneer Bank to the Shylocks and mortgage wreckers of Montgomery and California streets—and I have in mind some very *respectable* gentlemen of business who helped him to make the delivery. Burr and his trustees sold his very respectable bank, as well as himself, to Pinney and his pals. So with the Odd Fellows' Bank. Gustave Mahe and his "innocent" directors sold their confiding depositors to squander the proceeds in gambling and riotous living. Time is too short for me to recount these unblushing swindles—too limited even to name a list of the wrecks of savings banks that strew the past; aye, that fill the present moment with distress, starvation, and despair. But the parallel goes further. Mr. Burke continues:

"The first potentate sold by the company for money was the Great Mogul, the descendant of Tamerlane. This high personage, as high as human veneration can look at, is by every account amiable in his manners, respectable for his piety according to his mode, and accomplished in all the Oriental literature. All this, and the title derived under his charter, to all that we hold in India, could not save him from the general sale. Money is coined in his name; in his name justice is administered; he is prayed for in every temple through the countries we possess. But he was sold."

Substitute our banks and other corporation trustees for the Indian Princes and the parallel is complete. These, too, are high personages as human veneration can look at; amiable in their manners and respectable for their piety, etc. And I have no doubt the whole respectable brood are the ones to whom the gentleman from Marin alluded when he told us yesterday that he feared some people would "turn up their noses" at this Constitution, or at us who make it—I could not exactly understand which.

Sir, there are some of these "respectable" persons wearing striped clothes at San Quentin, and some others of the Sunday school persuasion "turning up their noses" from behind prison bars at the county jails. And I have no doubt the "respectable voter," alluded to by the Chairman of the committee the other day, might be found among the number.

This is one branch of the argument that bank Presidents and corporation trustees, being "respectable gentlemen," must not be held responsible for stealing the orphan's patrimony and the widow's mite. They must be permitted by indiscretion to rob the vulgar herd, the common people who earn money, and are not "respectable," without let or hindrance, or they will not condescend to become bank trustees. They will vote down our Constitution, and then, adding insult to injury, will "turn up their noses at us."

There is one other argument, so called, and that is, that we should not load down this Constitution with provisions that would sink, as the gentleman from San Francisco says, the Constitution under a deluge of indignant votes. Well, it so happens that this is an argument that can be used on one side as well as the other—it fits every position in every case. I can assume, just as well, that if we put this provision in the Constitution that the people will buoy it up with a myriad of unanimous votes. And, when sifted down, that is the reason these gentlemen fear that if they put this provision to hold trustees responsible for their trusts, the people will adopt it. That is what they fear—hence these tears. It is a mistake, sir, that the people will reject this Constitution with this amendment in it. Why, sir, the paper that this amendment is written on would float in a political sea a ton of railroad iron. Put that into the Constitution and all the corporations in the State cannot sink it. It will carry a multitude of other objectionable provisions. You can safely put that into the Constitution, adopt the balance of the old one, and adjourn and go home, and the people will pronounce this Convention a magnificent success. I have but one further remark to make, which is this: I challenge the gentlemen on the other side, that if they can show me one good reason why a director or trustee of a corporation should not be held responsible, as well as a private individual when he assumes to act as a trustee, and then delegates away his power, I will face about and vote against this amendment.

SPEECH OF MR. EAGON.

MR. EAGON. Mr. Chairman: It seems to me, sir, that the advocates of this measure place themselves in this position: that in order to correct an occasional evil, they would inflict a perpetual wrong. There can be no other position taken as to this matter. I would not, sir, detain this house one moment were it not that gentlemen have spoken in regard to the record. Now, I desire to be placed on record as well as the gentlemen on the other side. I wish to go on the record as opposed to this amendment. Records amount to nothing, except to scare men into voting in accordance with popular clamor. I am not one of that class who can be frightened into supporting a measure which my judgment and sense tells me is not right, simply by having the "record" flaunted in my face. I am not afraid to place myself on the record according to what my judgment tells me is right. Now, sir, it has been held out here that the people are being driven to the wall; that the widow and the orphan are to suffer in consequence of this amendment not being adopted. Appeals have been made to the passions. Such arguments as have been made here ought not to be listened to. There is no sound argument in them. This is a question, sir, whether you will do a wrong—a perpetual wrong—a wrong that shall last as long as the Constitution lasts—in order to prevent an occasional evil that is supposed to exist. Why, sir, the arguments advanced here do not reach the foundation of this question. I cannot take my seat without alluding to the illustrations made here by the able gentleman who introduced this amendment. He instanced a case that all the gentlemen upon that side seemed to think an unanswerable argument, but there is nothing in it. He supposed a case where a thousand dollars were placed in his hands, and he takes that thousand dollars and loans it to some responsible person. Is there a sane man in the world who would not say he was responsible for it? Everybody knows it. He does it of his own volition, and nobody compels him to do it, and consequently he is bound to return that money; and if he does not, he can be compelled to do it. The man looks to him, and not to the perhaps irresponsible party he loaned it to.

Take another proposition: Suppose you go to him and two other gentlemen and say, here is a thousand dollars that I give to you to keep for me. The majority of you can loan it, or do what you please with it, and two of them vote to do this, and he opposes it. He goes and tells the man that the other two gentlemen have voted to loan it, and have lost it—would it be right to hold him responsible, and make him pay for it, when these other two voted it away in spite of his protest and opposition? It would not be right, and that is the ground upon which we oppose this amendment. It is wrong, sir. It will drive many of the corporations out of the State, and many, too, that are beneficial to the interests of the State. Because one or two or three savings banks have turned out disastrously, and some have suffered by trusting their funds in the bank, is no reason why every honest man should be driven out of business in this State. There are banks outside of San Francisco, sir, banks that are sound and solvent. Banks in all the interior counties of the State, from which the farmers and others derive great benefits. And if there are certain persons employed in these banks who occasionally turn out dishonest, I think it would be an outrage to say that these men should be responsible for something over which they have no control. There is no pay attached to the position of director, and it is wrong to hold them responsible. I hope this amendment will be voted down, and that the common sense of this Convention will let it stand as it is.

SPEECH OF MR. LINDOW.

MR. LINDOW. Mr. President and fellow delegates of the Convention: I am not prepared for taking up the Convention three minutes. I have not come here to make any speeches at all whatever; and I see that the gentlemen are anxious to get on the record. I tell him that my record is this: I am only coming here to watch the Convention. If I watch good, I can't talk very much. But I have to make a few remarks to the gentleman what just spoke last. He said that he would give a thousand dollars to these men. I never have that idea. When I go into a savings bank, I tell the directors I want to deposit this money, and you have to take charge of it, save it, and keep it. I never give him the money to keep it; I put it there to save it, so I can have it whenever I call for it. But the banks at this present day do not do that way at all. You can't trust a man with nothing; he won't save nothing. You better not trust him. That's the great difficulty, you can't do it. You can't trust anybody with nothing at all. For that reason I want to leave my record, that I am going to vote for this proposition, because I know that three quarters are in sympathy with this amendment. I don't want to say nothing against the one quarter, but if this amendment is put not in the Constitution there will be a good deal of widows and orphans robbed. If the bank is well managed there can be no trouble, and we will never want a lawyer or a policeman. We only want an honest man to take charge. If things go smooth, I never want a lawyer. If we put this in, three fourths of the people will vote for the Constitution, and the corporations can't break it down. [Laughter.]

SPEECH OF MR. BROWN.

MR. BROWN. Mr. Chairman: The ground has been so completely

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gone over in the wide range of discussion here it cannot be expected that any one commencing at this late day can produce any ideas for which he could obtain a patent. But it has been pretty well established before this body, that the amendment which is before us embraces certain good principles. Now, it appears to me that if public sentiment prevails in a certain way, and gives expression to certain views as the belief of the people of the State of California, and this sentiment is truly and fearlessly expressed by the people, for a series of years, that this is fear of public clamor that is influencing members. I am fully impressed with the opinion that we should not be unduly influenced by sudden impulses. But, Mr. Chairman, when we hear it said in this body that certain things will occur; that the Code has tried to reach these things; that legislative action has tried to reach and control these corporations, and that we need not expect to reach such matters more effectually than they have been reached. Now, Mr. Chairman, had it not been said by the citizens of this great State of California that certain things should be reached, and that certain principles should be engrafted into the Constitution which will protect, not the banks in particular, not the corporations in particular, but the great mass of the people of the State, we would not be here to cast a vote on this question. It was for just such things as this that this Convention was called. We are here at the bidding of the people, to correct abuses which they no longer wish to bear. The Legislature may, it is true, reach the evil, but we are here to lay down certain fundamental principles, and that object must not be lost sight of. I believe that this amendment will accomplish what it is designed to accomplish. I believe it will be a protection to the public, and yet be no detriment to those corporations who conduct business honestly. I am convinced that if we adopt this amendment it will be one of the best acts of the Convention.

MR. TERRY. I move the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress, and ask leave to sit again. The hour for recess having arrived, the Convention will take a recess until two o'clock.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and a quorum present.

MR. HUESTIS. Mr. President: Firmly impressed with the conviction that this discussion has already been protracted to too great a length, in some cases resulting in mere idle and useless repetition; that ample time has been afforded in the two days that have been consumed, and sufficient light has been shed upon the subject to enable each and every delegate to vote understandingly upon the question, I now give notice that at three o'clock this afternoon, or as soon thereafter as I can obtain the floor, I will avail myself of the privilege accorded under amended Rule Number Fifty-six, of moving the previous question.

MR. STEDMAN. I rise to a point of order, that the previous question cannot be moved in Committee of the Whole. There is no such thing as the main question in Committee of the whole.

THE PRESIDENT. There is no question before the Convention.

CORPORATIONS—LIABILITY OF DIRECTORS.

MR. ESTEE. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of continuing the consideration of the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

MR. GREGG. Mr. Chairman: I am opposed to the amendment offered by the gentleman from San Joaquin, and will state my reasons very briefly. I think that the rule it would call into existence is without foundation, either at the present time, in the history of the common law, of the ecclesiastical law, or of the civil law. It was never intended by human reason to make persons liable for that in which they took no part. The proposition here proposes to make minorities who cannot control liable for the acts of officers brought into existence by a majority. Now then the rule is hardly satisfactory in other cases. If a man dies and appoints in his will three executors, either with or without bonds, a majority may control the estate, and whoever heard it said, or who can find a case where the third party, who took no part in the administration of the estate, was held responsible for the acts of these executors. He files his independent and separate bond, and where the majority act without the third one, there is no authority for saying that the third one should be responsible in the light of reason. Simply upon that proposition alone, in the light of the authorities, I am opposing the proposition to make minorities responsible for majorities. This is not the rule in close fiduciary relations, and it should not be here.

There is nothing in history to match this proposition; nothing since the action of Herod in destroying all the male children in order to reach the infant Savior, and of Pharaoh in destroying the Hebrew children in order to destroy Moses. Tyranny in the abstract is all that it is. Then again I have another objection to the amendment as here tacked on to the original proposition. The original proposition, as suggested by Mr. Webster, is as follows:

"Each stockholder of a corporation, or joint stock association, shall be individually and personally liable for such proportion of all its debts and liabilities, contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association."

Then this:

"The directors or trustees of corporations and joint stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint stock association."

Now, when does that liability commence? Is it before insolvency or afterwards? Is it when these corporations are controlling one or two hundred thousand dollars or fifty thousand dollars? Is it then that any one can step in and sue the stockholder and maintain an action simply because he urges misappropriation or embezzlement? Is it then that the stockholder can maintain his action against the trustee? Or when is it? Do you have to wait until the insolvency is determined? And then, when the insolvency is determined, an outsider may sue the stockholder and recover a portion, if he sees fit, either jointly or severally, then he can go for the surplus upon the trustees, or he can sue the directors jointly, and thus waive the liability of the stockholder. It is simply a muddle and a contradiction, the stockholder of a bank being in one instance entitled to recover against the director, and in the other an outsider against the stockholder.

Now, take it this way. We have banks in this State that the farmers have organized. One man lives in Sacramento County that may be a director of a San Francisco bank. He goes down there at stated times and carries out the by-laws and regulations as far as he can. He has helped to organize that bank for the good of the people of the State, or the farmers. Now, when he is at his home, some one of the officers embezzles the funds of the bank. The very man on the outside whom he is attempting to aid, by giving his two, three, or four thousand dollars and his services, comes in and holds him liable for the officers of that institution, when it was organized for the very good of the same class as himself. It is wrong in principle. I hope the committee will not adopt it.

REMARKS OF MR. WELLIN.

MR. WELLIN. Mr. Chairman: When I come into this Convention some time ago, the cry was that the majority of the delegates were lawyers, but it appears that the majority have turned into bank directors, and they are becoming somewhat alarmed. We have seen banks rise in the City of San Francisco from almost nothing. We have seen men rise from the whisky counter to the position of trustees and directors of banks—and by what claim? Sir, it has been through the loose system of incorporation in this State. It is time that something be done to change the system at once, and give some protection to the honest people. We find that notwithstanding all the law that these gentlemen have been reading, there is no answer to the question as to where the stockholders and people are to get their money back from. They have read us law, page after page, and they tell us that we have no protection whatever, only just that which they choose to give us. It is time that the working, industrial classes of California, the man who toils upon the farm, the man who works down in the mine, the men who build the homes of the State, had some protection for their honest earnings. We are willing to meet them upon that proposition, and at least I insist upon keeping this proposition before the people.

They tell us of the awful condition that the honest trustee will find himself in. How will these honest trustees get into the trouble that they tell us about? They say he is appointed. Is he obliged to go with the majority in robbing the stockholders and depositors? They tell me that four out of seven may make a loan, or use the funds of the bank or incorporated company, and they say that these three who would not consent to the transaction are going to be held if the business proves a failure. Why, these men have laws enough to protect themselves. What is to prevent these men, if they examine the security and find it not good, from withdrawing? If it is insecure it is their duty to the people to protest against that loan being made, or the funds of the people being given to irresponsible people. Their rights are just such as if they were dealing for themselves. They would very soon find a means of stopping it if they were dealing for themselves, but because it is public money the case is different.

We have seen banks rise and fall, and we have seen the people robbed of their earnings; and when they searched to find who were the responsible parties, they were pointed to this, that, and the other one, and when the people wanted their money back there was no one responsible for it. It is time there was somebody hedged about and made responsible. I have known a corporation to start on the market with shares said to be worth twenty millions of dollars, and yet the five men who managed it owned twenty-five shares between them. Five shares each was sufficient for them to qualify; and these men managed that business for their own individual interests, and they met with disasters; but, sir, the profits came back to themselves. The gentlemen say, "How are you to do anything better?" Why, make these men responsible for their mismanagement, and, I might almost say, their dishonesty. We have known where men having large interests in mining speculations and stock of incorporated companies, have transferred that property to the hands of others. I know among my acquaintances of a certain gentleman who owns three hundred and fifty thousand dollars worth of property of this kind, and yet his home is not worth five thousand dollars, and that is covered by homestead exemption. Now, I want to know, who are you to look to for the money that is placed in their hands? It is time something was done, and something shall be done, and whether this Convention will do it or not, somebody will do it. The people have been driven to despair.

As other gentlemen have supposed cases, now let me suppose one. Suppose a man working up here in the mountains chopping wood or working on a farm has a few hundred dollars, and seeks a place to deposit that money where it will draw some interest. He looks around

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at the various enterprises, and finally purchases a few shares of bank stock, thinking that is the best and safest of all. Supposing that this man should come here to the City of Sacramento or San Francisco, and he puts his few hundred dollars into the stock of one of these banks, and goes back to the farm. Through the management of the directors, he loses all of it. He, trusting to their honesty, they lose the whole of the money. He finds that the majority of these directors never attended a meeting. They never looked after the money they were intrusted with, and I hold that they were the robbers. These men who failed to perform their duty should be held responsible for those they engaged to do it for them, and nobody else. The gentleman from Marin makes one of the most singular remarks, which I was surprised at, from his well known ability. He says there is a man who drives a dray and hauls the money to and from the bank; and he asks us if this man should carry off some of this money, who would be responsible. Why, sir, those who employed him. If the directors put dishonest men in such a place, they should be responsible, and nobody else. He carries the question further. He asks, supposing a teamster bringing a lot of coin to the door, should in carrying it in through the alleyway lose a box of that coin, who is responsible? I say again, those who employed him. I am surprised that this position should be assumed for a moment by the gentleman from Marin. What protection would the stockholder or the depositor have?

Suppose we take the idea that the director is not responsible, because the teamster loses it or disposes of it. Supposing that he gets a wagon load of coin, and instead of losing it he should drive to the house of one of these honest directors and divide with him, who would be responsible then? Suppose he should take it anywhere else? I maintain that under that rule no one would be responsible. I say that it is time such fallacies were swept away. It is time that the people had some protection, and when you give the people that protection, then you will have honest energy and industry prosper in this country, and not the constant dishonesty that is now here. One gentleman says it is better to let ninety-nine guilty men escape than to punish one innocent man. Here are ninety-nine guilty men escaping, and there is no security whatever.

REMARKS OF MR. FINNEY.

MR. FINNEY. Mr. Chairman: I shall have to support this amendment, and, in a few words, I wish to explain why. Through corporations our law provides a way by which individuals may evade a just and reasonable responsibility. In other words, the power of the law—the power of the State—is exercised to protect a designing few at the expense and to the danger of the many. To this extent have the proper functions of the law been perverted. I say our corporation laws are made to evade a just responsibility. I will not argue the question, only give an illustration of it, and I will eliminate from my supposed case every one of the terrible dangers and evils that swarm in the track of corporations in California—a case as fair and as honest as such a thing in its nature can be. A and B have a certain amount of money, and with it go into banking. Nobody denies their full responsibility for each and for every employé, or any one doing business with them. This responsibility is heavy, and becomes irksome. It is so much nicer to do the same business and make the same money and not have the same anxiety and chances of loss. They incorporate, and the firm of A & B, bankers, in the scratch of a pen becomes the People's Savings Bank of Blankville. With what a sigh of relief do their heads sink into their downy pillows that night. The weight is removed. They are no longer individuals engaged in business. They are only stockholders and directors in the bank. They are really doing the same business, precisely and exactly in the same way, in the same place, and with the same persons, but they have shuffled off the major part of the responsibility attaching to it—and that all through the action of law, which ought not to render easy the evasion of liability on the part of those who assume to act in a trust capacity. If, then, the fairest case that can be supposed thus teems with danger or injustice patent to every eye, what must be the case when cunning, extortion, fraud, robbery, and all the legion of devils that the command of the law ought to cast out of the land, stream in at the door of corporations, thrown wide open by the law.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I would like to be informed of the effect the previous question would have upon sections proposed, for I have an amendment I desire to offer. Would the effect of the previous question be to cut off amendments?

THE CHAIRMAN. The previous question, if it be sustained, would bring the committee to a direct vote, and cut off all other amendments.

MR. BARBOUR. I suppose I cannot offer the amendment now.

THE CHAIRMAN. There is an amendment to an amendment pending already.

MR. BARBOUR. Mr. Chairman: The proposition is substantially the one which I offered in the minority report of the Committee on Corporations. I was not present, but I was informed some complaint was made that the matter was never brought before the Committee on Corporations, or as if some advantage had been taken of the committee in bringing it in. That is not correct. I brought the matter to the attention of the committee, and read it to the Chairman of the committee, and instead of calling a meeting he went to San Francisco, and we were compelled to bring in our minority report on that and other propositions upon which we had given notice, and which were disputed points.

I am content that the proposition should be extended to all corporations, although, of course, its effect would be upon only those that have trust funds. I understand that the objections to the principle involved in this proposition proceed upon two grounds, and are really aimed at because they never have been known to exist. The corporate power, sir, is manfully contended for whenever it becomes a question of power, and a question of benefit, and a question of the exercise of the attributes of sovereignty which the State confers upon corporations. But the moment you talk of liability, the corporate principle is immediately abandoned. Then gentlemen fall back upon the statutes, and they tell us that the Code abundantly provides for all these abuses, and that the only difficulty has been in a failure in the administration of the law. I, sir, had a little experience in introducing the Codes in this chamber to illustrate the idea of the law-making powers on the subject of libel, and the Convention immediately proceeded to vote the other way. The Codes pointed out that the law concerning libel continued to confer upon the jury the right to determine the law and the fact. Having found that, the Convention immediately proceeded to go against the proposition. Now, I hope that the same effect will be produced by referring to the Codes in regard to the responsibility of directors and trustees of corporations.

I maintain that the Codes do not furnish a remedy, and it is competent to show that they do not, for the reason that with the corporate liability extending to each and every individual composing the corporation, the corporate liability is abandoned. The moment you proceed to the private security, they immediately face about and deny that corporate and individual liability. The result all over the State demonstrates the correctness of my proposition.

You talk about the innocent minority. No man ever saw it. No man ever heard of such a thing. I never heard of an innocent minority. Here are one hundred and fifty-two men, and I warrant that they never saw, not one of them, the innocent minority or the guilty majority. Not they, sir. How does it work? How would it work? And how has it always worked? Do you mean to say that you can get the protection by means of the statutes concerning the liability of corporators? Will they not put up figure-heads just as they always have done? Why not? Five directors constitute a Board, under the law. Two of these directors are the responsible men. Two of these are the directors who induce the investment. The three are put there to carry out the plan. They take all the responsibility, while the two responsible men escape, under your Code, and that is how it is done. The three figure-heads made the trouble, and the two responsible men say they opposed it. Where is the responsibility? They are the ones whose private fortunes induced the deposit, but the three figure-heads are the ones who put up the sculduggery. This always happens in reference to these corporations, the figure-heads go to Europe or Mexico, and the innocent minority remain. That, sir, has always been the case, and it can happen in spite of the Code. Whilst death, ruin, and devastation stalk the streets, the scapegoat is abroad, luxuriating, and the dividend-receiving partners—the innocent minorities—remain at home. Then we say, Mr. Chairman, after the thing occurs, and it is the invariable result, that something is wrong, and we know that the remedy must be applied. Now, has anybody ever heard of the responsibility being brought home to any one of these directors whose responsibility, whose financial position, and whose private fortune has been the great inducing cause of the confidence of the community and the trust of the depositors? Has it ever been heard of, sir?

Take the case of the Clay Street Savings Bank in San Francisco. There a quarter of a million of the funds of the depositors were drawn out on worthless security. Known to be such! Known to every director of the institution to be such! Mere certificates, signed by a Navy Pay Inspector and his clerk, unaccompanied by a single voucher of any officer of the navy of the United States. Now, a school boy ought to have known that that was worthless security; but a quarter of a million of dollars was drawn from the bank by means of that good-for-nothing security. Now, upon investigation, it was shown that five per cent. commission was received by the President of the institution for allowing the funds to go upon that trifling security. That would be nearly twenty-five thousand dollars. Now, I maintain this proposition. In the first place, that security was no security at all. There was nothing back of it. The money was gone from the assets of the bank—eternally gone. I challenge the gentlemen to find a syllable in the Code by which these bank directors can be made responsible for that plain and bold misappropriation of the funds of that bank. Not one syllable. And thus they crawled out in their innocence, on their ignorance of the transaction.

Now, sir, what I ask to do, and what we are going to do, is to say that either you know these things, or you have got to know them; either that they shall be punished for their stupidity, or for their knavery, and I do not care which. But I understand that the officer has been retained. The chances are that they were like Abraham Lincoln's jury when he was defending a hog thief—they had all got some of the pork. [Laughter.]

Now, sir, it always works one way, unless it is once in a while when the directors themselves do what we want them all to do, as in the case of the Bank of California, where the directors came forward themselves and made good the deposits. That was right. That was a just and honorable action. But it was, after all, nothing but their plain duty. They had permitted, month after month, and year after year, the misappropriation of the funds of the institution in doubtful or illegitimate speculations. It had gone ——

MR. REYNOLDS. I wish to correct the gentleman's remarks. They called on the stockholders to make it good.

MR. BARBOUR. Mr. Chairman: Their capital was made good at any rate. The principle is the same. It ought to be done in all cases. The question is, where we see one continuous result, is there a remedy, and if so, are we willing to apply it? It never has been but that the depositor has suffered. It never has been known that the director has been made to suffer. Our British friends are far in advance of us. Here but a few days ago a great financial crash occurred in the City of Glasgow, and ruin and destruction was spread all around. Now the whole directory are grinning behind prison bars, and their stockholders are rustling to make good the deficiency. I suppose that they were

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all but one or two innocent, but I believe that the laws there do not recognize any innocent minority.

In our country, the laws in regard to corporations have operated like that famous knife of that wicked queen of antiquity. Her mind was continually dwelling upon devising means of compassing death, and she tried first one thing and then another. Finally she contrived a knife. One side of it was impregnated with deadly poison and the other side was not. All that was cut from one side of the knife produced death; all that was cut from the other side was healthful. Those that were invited to her banquets, and on whom she meditated her evil design, received food from the poisoned side of the knife, whilst hers was taken from the healthful side of the knife. She finally got the knife turned wrong, and took her own food from the poisoned side and killed herself. So it has been with these corporations. So it has been with these directors. The public, the people, the community have always been fed from the poisoned side of the knife, and they have taken enough of it. They have always suffered all the loss. Now, sir, I want to turn the knife a little and distribute the poison so that there shall be some on both sides of the knife. [Applause.]

THE CHAIRMAN. The Convention will come to order.

SPEECH OF MR. WEBSTER.

MR. WEBSTER. Mr. Chairman: I have simply a few words to say. Every one appears to be desirous of getting upon the record in this matter. I think, sir, that it cannot be charged that I have been disposed, in my action in this Convention, to favor any mismanagement of corporations. My honest endeavor has ever been to protect the innocent. While I am in favor of anything that is reasonable, that is equitable, that is just, in the control and government of all corporations, I cannot indorse the amendment as offered by the gentleman from San Joaquin, Mr. Terry. I can indorse a portion of it. I believe that in the present status of corporations that it might be expedient to increase the liability or responsibility of directors and trustees. I believe, sir, that there would be nothing very unreasonable about holding directors and trustees for the disposition of the funds which were placed in their hands, so far as their employés were concerned. I believe that they should be held to a stricter account in this particular. I believe that the trustees should be responsible, in a measure at least, for their employés. I believe, so far, that the proposition of the gentleman from San Joaquin is measurably correct; that if I am a director of a corporation, and I, with my associates, select employés, that we should be measurably responsible for their action. If the law provides that we shall be, then, sir, we will protect ourselves, by requiring bonds of our employés. That is all right. So far, sir, I go. But when you say, sir, that I must stand responsible for every associate in that corporation; that it makes no difference what my own action has been, however perfect, however guarded in the interest of the stockholders or creditors of that institution, that I should be responsible to the entire extent, individually and personally, I think it is going beyond reason.

It has been said that there can be nothing like an innocent trustee or director. Let us see, sir; there is nothing that brings us so closely to our reason as a matter that directly concerns ourselves. Now, sir, each member of this Convention was elected to this Convention, independent of the action of any other member, only so far as his individual vote is concerned. Each is independent of the other, so far as his action is concerned here, and he cannot be held responsible for the action of his associates. Now, let us take an example which will bring this matter directly before us. We are here in the capacity of delegates to this Convention. A law of this State has placed at our disposal a fund of one hundred and fifty thousand dollars. It is absolutely at the disposal of this Convention. Therefore, the members of this Convention are the trustees of this fund. Will that be denied? They have absolute control over it. Now, sir, any misappropriation of that kind, according to the argument of the gentleman on the opposite side, each individual member should be responsible for.

Now, let us see if there has not been some misappropriation. In my estimation there has. There were allowances made to employés that were not authorized by law, neither by a vote of this Convention. Employés that were not employed by the Convention, neither employed by the Chair. According to my conception there is a misappropriation of a part of the fund of this Convention. In my estimation, the printing of all these propositions that have been introduced here, was a misappropriation of funds. Further, sir, there was a rule established here by this Convention, that each member of this Convention should be allowed stationery to the amount of ten dollars and no more. Members have drawn in excess of that. We found that they were doing it and we brought up a resolution to the effect that any drawn in excess should be refunded. That resolution was defeated. Now, sir, under our very action I hold that every dollar in excess of ten dollars was misappropriated, and that the trustees are bound to make it good, according to the argument of the gentlemen on the other side. Suppose that the State Treasurer should come up here and say: "Webster, you are a member of this Convention. There has been a misappropriation of these funds. You are placed here as one of the trustees over that fund. It has been misappropriated and you have got to make it good." I say: "Mr. Treasurer, I am only one. I am one in one hundred and fifty-two. I have only one vote. Will you hold me responsible for the acts of the one hundred and fifty-one others?" He says: "Yes. You are a trustee over that fund, and you must make it good. It has been misappropriated and you must make it good." Now, is there any reason or justice in that? Take our friend from San Francisco, Mr. Beerstecher. He has drawn nine dollars and eighteen cents in excess of his appropriation. Take our friend Mr. Smith, from Kern, he has drawn fourteen dollars and two cents in excess of his. The Treasurer says: "Webster, there is a couple of your associates that have drawn in excess of their right under this rule. You have got to make it good, sir." I say: "No sir. Go to Mr. Beerstecher; go to Mr. Smith"——

MR. BEERSTECHER. Mr. Chairman: I would like to correct his statement. I would state, sir, that whatever stationery I drew was drawn out before the ten dollar rule went into effect, and if I had known of a ten dollar rule, I certainly would not have violated it.

MR. WEBSTER. I do not want to be personal. It was only an illustration. As I was saying, the Treasurer says to me: "You must make this good." I say: "No; go to Mr. Beerstecher and Mr. Smith." He says: "No; they are not responsible. You are the first responsible man I have met [laughter], and, sir, you have got to pay it." That is the result; that is absolutely the application of this rule. I say that it is wrong. I say that I stand responsible for my own acts. If I say that I will be responsible as a director for my employés—if you say I shall—I am satisfied with that, because I will require of my employés bonds to secure me. But when you say that I must be responsible for the one hundred and fifty-one members here, I think you are going too far. [Laughter.]

REMARKS OF MR. TULLY.

MR. TULLY. Mr. Chairman: As it seems to be a desire of the gentlemen to put themselves on the record in this matter, I, too, wish to go upon the record as being emphatically in favor of the amendment as offered by Judge Terry, from San Joaquin. This is the beginning of a great contest in this Convention; a contest upon which gentlemen honestly differ. There is one class of gentlemen here, as I take it, who honestly believe that the passing of these restrictive measures, making these moneyed institutions, corporations, and great banks, amenable to the law, is to restrict and shackle the industries of the country. That I understand to be the position of my learned friend, Mr. Wilson, of San Francisco, a gentleman who combines qualities that are very rare. He possesses both genius and good sense, and makes all there is in his case.

Now I think that the best interests of California, the best interests of society, demand that these restrictive measures should be passed. Now, gentlemen make a great fuss and throw up their hands in holy horror over the imaginary sufferings of some innocent director. Why, sir, in the transactions of life everywhere, more than one man is associated. In every-day business, men sign for the acts of others. Take partnerships; don't the majority control? Don't the minority often have to pay for measures which they are opposed to? I think so. Now, take one of these banking institutions. You find a number of gentlemen incorporating and electing directors. They tell you that these directors are honorable men and responsible. You go to any one of the directors and he tells you that the other is a gentleman and you can rely on him. Then the banking commences. Why not make that responsible banking? I certainly am in favor of the proposition.

Now these gentlemen tell you that if you pass these measures that you will drive out of the country all of these corporations. Capital will box itself up and leave the country. Now, there is no danger of any such thing. There is no danger that these corporations will not multiply with sufficient rapidity, shackle them as you will. But I simply rose for the purpose of putting myself upon the record as in favor of the amendment.

REMARKS OF MR. BARTON.

MR. BARTON. Mr. Chairman: I desire to say a very few words, and I shall be very brief about it. I have not long at any one time, and no considerable number of times, occupied the attention of this Convention. But, sir, as it has been remarked that every individual member upon the floor of this Convention desires to get upon the record, I, too, have the same desire. I want it distinctly understood that this is just exactly what the people of this State are demanding. A record made by every member of this Convention for weal or for woe, and when that record is made, I will guarantee to you, Mr. Chairman, that the people of this State over its breadth and its length will reopen that record, and hold it up to the light of day. When I came into this Convention, I fancied I was a very good judge of human nature; but I am sadly mistaken. I thought I would be able to read every man's face, but, sir, I am sadly mistaken. I did not read in the face of any of the gentlemen who are entitled to seats upon this floor, that they were defenders of bank directors, or Presidents, or anything of that character, but I am very sorry I have failed to reckon correctly. We find here, Mr. Chairman, a very formidable, but young and prosperous and growing Western Development Company. We find upon the floor of this house, men that are able to appear as the advocates of the corporations, and I am glad to say that there are men here who are appearing as the advocates of the people of this State.

I say to you, gentlemen of the Convention, cast your votes in favor of the people on this occasion; go upon the record once for all in favor of the people of this State, and I will guarantee that the people will shout one loud and long shout throughout the State—"Well done, thou good and faithful servant." Let the bankers take care of themselves. I will guarantee that they will neither go to China with their coin, nor to Egypt, but they will stay right here and employ their money in these banks. If they are not responsible for our deposits, let them fall to the ground. Down with these upstart aristocrats! Cast them aside and let the wealthy men of the nation become the bankers of the State and of the nation. Just hear my voice, gentlemen of the Convention. I shall vote for every jot and title that is contained in the amendment.

REMARKS OF MR. REDDY

MR. REDDY. Mr. Chairman: As all the gentlemen seem to be very anxious to make a record here, I presume it has come my turn now to get myself upon the record. Notwithstanding the implied threats contained in the speech of the gentleman who last had the floor, I intend to vote against any measure which does not discriminate between the guilty and the innocent. The people can shout as loud and as long as

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they please, but so long as I occupy a position upon this floor I will shout back to them that I shall never record my vote in favor of a measure that makes no distinction between the innocent and the guilty, but consign all to one common fate. Let those who are carried away by the shout of the people vote as they will, but I shall never vote in that manner. Let the record then be raised. Let it be exposed to the light of day. I am not afraid of such a record.

It has been said that the people of this State have suffered from these banking institutions until it has become unendurable. Admit it. Does the remedy lie in wrong and injustice? I think not.

It has been said here that there are no innocent minorities, as much as to say that there can be no innocent man engaged in this banking business. I deny that.

It has been said here that the lawyers here are to be suspected; that the bankers of the State are to be suspected; that all engaged in corporate business are to be suspected, and every one that is said to be respectable is to be suspected. I pity the man who entertains such opinions as these. No honest man ever yet suspected all of his fellows. If we take out the bankers, those engaged in corporate business, and lawyers, there are not many honest people left in the State—not enough to execute the laws. I do not believe in this wholesale abuse of any class. I believe that there are honest men among the bankers, among those engaged in corporate business, and even among the lawyers; and I believe there are rogues in the Workingmen's party. [Laughter.] I believe that there are rogues in all parties.

According to the view that has been expressed here there is only one way, and that is to adopt the method adopted by Herod, that in order to reach the guilty the innocent must suffer. All must go in order that one must be reached. That is not a just principle of government. It needs no argument to show it. It would be folly for me to attempt to argue this question after the able gentlemen who have spoken upon the question have dealt with it, and therefore I rose simply to place myself upon the record.

It is said that the people of this State are laboring under great excitement in consequence of the wrong that they are suffering. If a man were to come from the remotest part of Africa, and could read, and read this amendment, he would need no further evidence of the fact, because no man that has a keen sense of justice and of right can read that amendment and subscribe to it. It is simply the result of an excitement. Nothing else could have produced such a law. I desire to say nothing further, as there is a gentleman already on the floor.

MR. DOWLING. Are you not a director or a trustee of a mining corporation?

MR. REDDY. No, sir. But I say this, since the gentleman has asked the question, that there are many gentlemen of my acquaintance who are trustees of mining corporations, and I would not compare them in any way, shape, or form, either in point of integrity, or in physical or moral courage, with the gentleman who has asked the question—for fear that it might injure him.

MR. DOWLING. With the gentleman's permission I want it distinctly understood that I would not be placed on a par with some of his friends.

MR. REDDY. If I was a trustee of a mining corporation, that would not necessarily impair my integrity or my standing, as I understand this matter. I ask the gentleman himself, have you ever been a trustee of a mining corporation?

MR. DOWLING. Yes.

MR. REDDY. Well, if there are no other questions of that character to be put, I leave the field.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I do not rise for the purpose of making a record. When the opportunity shall offer, which will occur in a few moments, my vote will be my record. I desire, however, to state one or two facts which have not been stated, and which possibly may be deemed worthy of consideration upon the question which has excited, very naturally, a great deal of interest in this Convention. As to what we say here, Mr. President, it may perhaps be truly said, in the style if not in the very language, what was said upon a very memorable occasion by one now no more on earth, at Gettysburg, that the world will little heed but long remember what we say here. But our State, Mr. President, at any rate, will never forget what we do here.

It has been said very truly, and it is a just argument, that the Committee on Corporations, which had the matter in charge, did not recommend this amendment. Without availing myself of the liberty of the Committee of the Whole to express my views generally upon the report of that committee, I may at least say this: that while that committee has done a portion of its work well, in my humble judgment, it has left a portion of it wholly undone. This is a question upon which, in my judgment, that committee at least ought to have formally passed. If I correctly understand it, it did not pass upon this very important question at all, and this Convention is now without the action of the committee upon this very important question. It has been thought that among our numerous committees that two committees sometimes act upon the same matter, and if gentlemen will notice they will find that section thirty-one of article four of the Constitution, under the head of Legislative Department, is where our Constitution refers to the subject of corporations. There is where the Committee on Corporations very naturally commenced. Now, if gentlemen will turn to the report of the Legislative Committee, and look at section thirty-three, they will find that this identical question was passed upon by the Legislative Committee. And it is no more than proper to say that it was not hastily passed, but after considerable discussion. I do not remember what member of the committee first suggested it—it will be found substantially the same as the amendment—but I will say that so many of us took part in its formulation that the whole fifteen members may be candidates for that position. Section thirty-three, the latter clause, is the amendment now pending without a substantial difference. Here it is:

"The trustees or directors of such corporation or association, and each of them, shall be responsible, individually, for the misappropriation by the officers thereof of the funds or deposits of such corporation or association."

The word embezzlement is not there used, and it is because the word "misappropriation" was thought to include that. I do not think it does any harm in the amendment, but it does no particular good. It is not worth discussing. So, Mr. President, as to the action of the committee, I say that deliberate action has been had upon this very question, and more than that, I believe that there was not a dissenting voice upon the Legislative Committee, numbering fifteen.

Now, Mr. President, I pass on to one or two other considerations, for I know that this Committee of the Whole desire to take a vote. The main point, undoubtedly, made here, and that which is apt to produce the most effect, is with reference to what are called innocent minorities. Corporations are different from partnerships, but in this particular it is the proposition to some extent to make the liability of trustees the same as the liability of partners under similar circumstances. If the trustees were partners they would be liable on the case proposed in the amendment. Being trustees it is proposed to make them liable to the same extent as specified.

Now, Mr. Chairman, I have no war against corporations; I admit the great benefit that some of them have rendered to the country. My judgment is that they are a necessity to civilization, and that so far as the great railroad corporations of the world are concerned that they are the great civilizers of the world. And yet, when the further question comes up, as to the right of the public to control them, and the expediency of asserting that control, I will put this foot of mine as far as he who goes furthest. There are a great many corporations which are not of any beneficial character, and if it should happen that of our corporations, numbering over twenty thousand, some of them could not stand under an amendment like this, there will be no great loss to the public. There are some of them which were organized—many of them—for swindling purposes and for no other, and the sooner they go down the better for the public at large.

Mr. Edgerton, this morning—I beg to be excused for referring to the gentleman by name—referred to a case where the Treasurer was elected by the stockholders themselves. I have only one answer to that, and that is, that under section three hundred and eight of the Civil Code, the Treasurer can be elected only by the directors, and if a Treasurer ever was elected by the stockholders it was in disregard of law, and he was not legally the Treasurer of the company. The law provides that by-laws may be made, it is true. But by-laws cannot be made in contravention of the laws of the land. These officers referred to in the amendment are officers elected by the directors themselves. Suppose a case where there are five directors, or three. Who compels anybody to be a director and associate with the other two? There is an old saying that if you lay down with dogs you must expect to rise up with fleas. They are no more compelled to be directors than they are to go into partnerships where they would be individually responsible.

I do not believe, however, Mr. President, in the doctrine that these minorities are innocent. Suppose the case of a misappropriation where two directors against three—if there may be a Board of only five in some cases—vote against the misappropriation, there is nothing to prevent these two from preventing any mischief under that vote by injunction in the Courts. No man ought to accept the position unless he expects to perform the duties of it. The director, as the statute calls it now—it was formerly called a trustee—it means the same thing. What are they? They are persons who hold the property of others in trust. They are therefore trustees, and if three against two vote one way, the two others can proceed immediately to stop any further mischief.

But, Mr. President, coming to the conclusion of this matter, I understand the argument to be presented, that this is not proper matter for a Constitution. It ought to be left to the Legislature. Now I am opposed to putting any unnecessary legislation into the Constitution, but when I hear the gentleman from Los Angeles argue that it would not have force even put into the Constitution itself, it occurred to me that we certainly could not reach it by legislation. I prefer in that view taking the middle ground between these extreme views of legal gentlemen—between the gentleman from San Francisco, who says that it is unnecessary because the Legislature can reach it, and the gentleman from Los Angeles, who holds that it is such an immense power that even the Constitution could not reach it. I prefer to take the middle ground between them, that in the exercise of the highest legislative power in the way of government that it can be reached through the Constitution.

I have but one word further, Mr. President. I have voted for this matter in committee. I support it here because I believe it is right; because I believe it is of so much consequence that our people should be protected as well on this as on the other side of the corporation question; the evils of the twenty odd thousand corporations of the State. I would vote for it even if I thought it might impair the prospects of the adoption of the Constitution by the people next May. I shall go upon this principle in all matters of such magnitude as this, and vote right and do right according to my judgment, though the Constitution itself which we propose should fail.

SPEECH OF MR. INMAN.

MR. INMAN. Mr. Chairman: I do not propose to make any set speech. Enough has been said already. But as gentlemen seem to be desirous of getting upon the record I might as well do likewise. I want to say emphatically that I am opposed to the amendment offered by the gentleman from San Joaquin. I am opposed to it from the fact, Mr. Chairman, that I believe it will do more injury than it can possibly do good. I take it for granted that there are to-day fifty or one hundred small associations or corporations throughout the State that have been

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gotten up directly in the interest of the farmers. I know of a great many of them. They are gotten up in the interest of the poor man, not in the interest of the rich man. I cannot to-day, and the gentleman cannot, call to mind one instance where any individual has lost one dollar by these small associations.

Mr. President, if you pass this amendment proposed by the gentleman from San Joaquin, my honest opinion is that you will drive every responsible man out of the banking business, and out of these associations. You will leave only the irresponsible. Do you suppose that any man who has a private fortune of one hundred thousand dollars or two hundred thousand dollars is going to risk all when he has nothing whatever to do with selecting his associates? This man he may not like, but there is a majority against him. He can enter his protest and withdraw. That may be just what they want them to do. The result is that the responsible men draw out and leave only the irresponsible. It seems to be the death blow to bankers. I believe that I am about the only farmer that has spoken to-day. I have seen the benefit of these small banks I have referred to. Farmers may need a small amount to harvest their crops. If they cannot get it their business must suffer. The grain would stand in the field unreaped, or if they should succeed in reaping it, what is the result? Why they are forced to rush it into the market when the price is low. I know what the difficulty in procuring money has been in times gone by. I know in Mr. Friedlander's time how he would shut up the bank, and force men to sell their grain at his figures. But to-day we can go to these banks and get all the money we want by giving security. And I say where one dollar has been lost to the depositors in the banks of this State there has been hundreds benefited by them.

Now, Mr. President, one would suppose that there never had been any good derived from banks; that we were almost bankrupt from the failure of two or three banks; that men were suffering throughout the State from it. Why, sir, we are the happiest and most prosperous State in the Union. This is not all the evil there is. I find gentlemen favoring this who are opposing in committees measures that have a tendency to relieve the poor men, if they will only carry them out, and those are measures to shut up the whisky mills. There is your curse. It is not your banks. It is your whisky mills; it is extravagance; it is gambling. Now, I know something of this banking business. Men run to these banks that pay a high rate of interest. That was the way with the Dime Savings Bank. They went there for one per cent.

I have never found any great evil to come from banking. The farmers and the merchants have been benefited thousands of dollars where there has been one lost in banking. Because one bank has failed, the whole system should not be denounced. If a man commits a crime will you have every innocent man arrested? Now, the gentleman says I am voting for corporations. I am as free from the taint of them as he, or any gentleman on this floor. I have always been opposed to the corporations when they try to take from the people their just rights, but I am not here to kill any legitimate enterprise. I have no war to make upon any corporation that does its duty well. But if you wish to pass a law to hang me for the acts of another man, I will not fasten the noose around my own neck. I am not Bones. [Laughter.] My constituents can think of me as they please. I never cater to public opinion when I believe it is wrong. What is public opinion? It is simply the aggregate opinion of individuals. An individual can be wrong, and so can public opinion. Now, many gentlemen, like myself, want to get upon the record, and I give way.

ARGUMENT OF MR. HALE.

MR. HALE. Mr. Chairman: I am not anxious to go upon the record. I do not care particularly about that, one way or the other. I am only anxious for the results of the labors of this Convention. If they are satisfactory, I shall be satisfied; if not, no one has a right to be satisfied. Mr. Chairman, I would not say anything upon this question at this late hour, when this committee is tired, having spent two days upon this subject, but for one or two considerations. It does seem to me that a misapprehension—I doubt not in all candor—has been entertained or evinced by this discussion. That we may know exactly what the point is, I read the pending amendment:

"The directors or trustees of corporations and joint stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint stock association."

Now, in discussing this question with members of this Convention privately, I find that a doubt seems to have crept in as to the effect of the language of this amendment. Two or three gentlemen waxed eloquent against this sort of wrong, that if there be a Board of Directors, consisting of seven, of a corporation or association, and four, being a majority, took some step which resulted in an embezzlement or misappropriation of funds, and three protested against it with all their power to resist it, yet they would be held responsible. I was a little amused to hear gentlemen grow eloquent over the denunciation of such a wrong and outrage as this. Now, gentlemen of the committee, no such result is contemplated by the mover of this amendment, and I apprehend that no such result can follow. That conclusion is based upon an assumption, false in fact, that the officers shall consist, among others, of the directors. The language is, the directors shall be liable, etc., for the embezzlement or misapplication of moneys by the officers. Now, the officers are not the directors at all; neither the four, nor the three, nor the seven. So far as the directors are concerned, if they are guilty of embezzlement or misapplication of the funds, they are liable to the stockholders and creditors without any provision of this kind. It needs no amendment to the Constitution or the Code. They are liable under principles of law as old as the civil law. But what is intended to be reached—the evil to be remedied—is to hold them responsible for the acts of their subordinates.

Then, again, I will say this. I believe I have the authority of the mover of this amendment to say—and I allude to Judge Terry—that if there be a serious doubt entertained as to the proper construction of this language, he has no objection to a change of the phraseology, so as to place it beyond any doubt. But this question does not come up here, I think. Now, in the Committee on Legislative Department, of which Judge Terry is Chairman, and several others, myself included, are members, we have made this as a part of our report:

"And the trustees or directors of such corporation or association, and each of them, shall be responsible, individually, for the misappropriation by the officers thereof of the funds or deposits of such corporation or association."

The idea precisely that is embodied in this, and I am informed he simply used that language because he did not have this draft before him.

MR. TERRY. I could not get it at the clerk's desk.

MR. HALE. Precisely; I do not know that they all united in the report, but I thought so at the time. I think there was no objection. I am assured by two members that there was none. Now, sir, what are we aiming at? This: whenever a law is made, there is some object to be obtained—some end in view, which the legislator should always have in mind. What is it here? We have, as shown by the report of the Secretary of State, twenty thousand corporations in this State. Think of it, Mr. Chairman; twenty thousand corporations in a State with about one hundred and fifty thousand electors! Why, sir, if you divide this up among the electors of the State—and these corporations may be formed with the number of incorporators from seven to nine, I believe, according to the Codes—and if every elector of the State were a corporator in only one corporation, there would not be enough electors to go round and make up these corporations. Business is done more largely through corporations than anything else. We conduct all our mines, our manufactories, our commerce, our railroads, by corporations; and, gentlemen, we have dealt more largely in corporations than anything else.

Some gentlemen on this floor have sought to array a sentiment against this amendment, for fear it would work the extinction of some of these corporations. In the name of God above I hope it may! I shall rejoice with all my heart. I am tired of feeling that there is no influence in this State, no power in this State, except corporations. I am tired of it. But we do not propose this amendment for the purpose of extinguishing any corporation. It is to hold corporations to their just responsibility. God made man, and man made corporations. God alone could give us soul, and a spirit, and a conscience, but man has never given conscience, nor soul, nor moral honesty to a corporation yet, and never will. As the law creates it, so it has got no conscience. It has no rule of right, except that which is made by the letter of the Constitution and the statutes. The purpose then, sir, is this, that we should lay down a rule here with our twenty thousand corporations, by which the people shall be protected in the future against the thieving and knavery and highway robbery that has been practiced wholesale for twenty years upon the people of this State.

We are told that this thing is all wrong. One gentleman from San Francisco, the Chairman of the Judiciary Committee, waxed eloquent, and told us that it was without precedent in the laws of civil countries; nothing like it above, upon, or beneath the earth. Why, Mr. Chairman, the gentleman has forgotten, or seems oblivious to, the good, plain facts about him. What is the objection? What does he see? He says that here is a Board of Directors that may act honestly, and somebody in their employ may be guilty of an embezzlement, or misapplication of funds, and then he tells us that it would be a high outrage, and without precedent, to hold this director responsible. He points us to the case of Wells, Fargo & Company, and says that these directors cannot be expected to keep track of each and every one of these men in their employ, and guard the company, and the creditors, and the stockholders against their embezzlement. Now, Mr. Chairman, with all due deference to the gentleman, I differ with him.

Take Wells, Fargo & Company as a case for illustration. Who knows who compose the company known as Wells, Fargo & Company? Where, sir, is the security to their patrons? Nowhere to be seen. They take their boxes upon the stage lines, but they own not the stage lines. They convey their express on the railroad trains, but they own not the railroad trains. They have a few offices here and there in the State, but you know nothing of the assets of Wells, Fargo & Co. But when you come to talk about Leland Stanford, Mark Hopkins, E. F. Miller, and Charles Crocker, and these men are the directors, the men who manage this concern, you know something about the responsibility of the concern. Now, he says we object to holding them responsible. If they are not responsible nobody can be responsible. In other words, if the creditors and the stockholders cannot hold them responsible, then there is no remedy. Why should they not be responsible? Who appoints these agents? Why, these directors. It is their business to make wise and safe selections. The public trust Wells, Fargo & Co., because of the responsibility and supposed business discretion and wisdom of these men. That is the reason they are trusted, because they are expected to exercise that wise supervision which leads to the correction of abuses, the greatest safety and economy.

We are told that there are no precedents for this in history. Why, what do these gentlemen mean? These directors not only have the power of selecting their own agents, but they can put them in or they can put them out as they please. They can take bonds from them if they require them. They can take any kind of protection until they are finally discharged.

Now, let us take another case. Here is the State Treasurer. Under the law he is made the custodian of the public moneys belonging to the State of California. We are all interested in them. But, sir, before he can take that office, before he can handle one dollar of the State money,

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he must give immense bonds. What does he do? Why, he must go around to A, B, C, and D, responsible men of the State, men capable of responding and who are able to make oath of their responsibility, to go upon his bonds. The Treasurer don't go to these gentlemen and say, "Come and look and see whether I am acting correctly as Treasurer." They have no power to do it. Now, if he is guilty of embezzlement or misapplication of funds they are made liable. There is a case where the surety upon the bonds has no interest in the salary or the emoluments of the Treasurer; has no power of supervising his work; and yet the law exacts this penalty, that they shall make good the defalcation as sureties.

Again, sir, take all the other officers, with the exception of the judicial, in the State; your Sheriff, your Tax Collector, and all the subordinate officers of the State. Every Sheriff is required to give a bond, and they are in the same position. These sureties have no power to watch the Sheriff. The law gives them no power to examine the Sheriff's books, to advise him or to control him. But he is acting in a fiduciary capacity, and the law requires that they shall make good anything which results from his wrongful act. This system runs through every department of our government from the Treasurer of State and other State officers to every county officer, except a judicial officer. Every constable and every administrator has to give bonds. These principles are as old as the civil law, and we adopted it.

Now, is not the reason as cogent why some responsibility should be imposed upon these directors. I suggest, sir, that the people, with their experience of the wrong and the robbery which has resulted from the peculations, embezzlements, and misapplication of the funds of corporations under the direction of these directors, should have at least the responsibility of the private fortunes of these men who assume to exercise that trust. And if it results in weeding out some of these too numerous corporations, all the better. We shall have no more such experience as this State has witnessed in the last three years.

THE PREVIOUS QUESTION.

MR. HUESTIS. Mr. Chairman: I now, in accordance with previous notice, move the previous question.

MR. AYERS. I second the motion.

MR. EVEY. So do I.

MR. REYNOLDS. Mr. Chairman: I rise to a point of order. My point of order is that it is not competent for a Committee of the Whole, the rule to the contrary notwithstanding, to vote for the previous question. There is no such thing known, the wide world over, in parliamentary law, as the previous question in Committee of the Whole. It will only be necessary for me to refer to one authority. It will be recognized at once. Section three hundred and three of Cushing's Manual says:

"The previous question cannot be moved in a Committee of the Whole. The only means of avoiding an improper discussion is to move that the committee rise; and, if it is apprehended that the same discussion will be attempted on returning again into committee, the assembly can discharge the committee, and proceed itself with the business, keeping down any improper discussion by means of the previous question."

THE CHAIRMAN. The gentleman from San Francisco quotes the parliamentary law very correctly, but this Convention adopted a different rule. It is provided, in Rule Fifty-six, that the previous question may be moved in Committee of the Whole. The Chair, therefore, is compelled to overrule the point of order.

MR. HERRINGTON. Mr. Chairman: I rise to another point of order: that it is not in the power of the Convention to delegate its authority to the committee to pass upon the main question.

THE CHAIRMAN. The point of order is also overruled. The question is, Shall the main question be now put?

The main question was ordered, on a division, by an affirmative vote of 123.

THE AMENDMENTS.

THE CHAIRMAN. The committee orders the main question to be now put. The Secretary will first read the amendment offered by Mr. Webster.

THE SECRETARY read:

"Each stockholder of a corporation, or joint stock association, shall be individually and personally liable for such proportion of all its debts and liabilities, contracted or incurred during the time he was a stockholder, as the amount of stock or shares owned by him bears to the whole of the subscribed capital stock or shares of the corporation or association."

THE CHAIRMAN. The gentleman from San Joaquin, Mr. Terry, moves to amend the amendment by adding what the Secretary will read.

THE SECRETARY read:

"The directors or trustees of corporations and joint stock associations shall be jointly and severally liable to the creditors and stockholders for all moneys embezzled or misappropriated by the officers of such corporation or joint stock association."

MR. ROLFE. There is more to that—"during the term of office of such director or trustee."

MR. TERRY. I accepted that amendment when it was offered.

MR. PROUTY. I would like to offer an amendment that will change simply one word.

THE CHAIRMAN. No amendment can be received.

MR. CASSERLY. Mr. Chairman: I would like to ask a question upon the amendment, both of Mr. Terry and Mr. Webster.

THE CHAIRMAN. The Chair will state that the main question has been ordered.

MR. CASSERLY. Upon examination of these amendments, I imagine that they have gone far beyond anything which either of these gentlemen suppose. To my best judgment, each and both of them covers the case.

MR. TERRY. I object to his making a speech.

THE CHAIRMAN. The gentleman will state what his question is.

MR. CASSERLY. May I be allowed to ask the mover of the amendment to which I particularly refer, Judge Terry, whether he understands it to include charitable, benevolent, and religious associations?"

MR. TERRY. I deem it includes all corporations. I do not think a charitable or religious corporation has any better right to steal money than a lay corporation.

THE CHAIRMAN. The question is on the amendment to the amendment offered by the gentleman from San Joaquin.

A division was called for.

THE CHAIRMAN. Ayes, 95. The amendment to the amendment is adopted. [Applause.]

THE CHAIRMAN. Order! order!

MR. ESTEE. Mr. Chairman: I see gentlemen in the lobby who are applauding, and the next time it occurs, I shall move that the lobby be cleared.

MR. HEISKELL. I hope the gentleman will not be particular. This is the first victory for the people that has occurred in four years.

MR. MILLS. Mr. Chairman: I give notice of a motion to reconsider the vote by which the amendment was adopted.

MR. SHAFTER. Mr. Chairman: I have another proposition to offer in connection with this amendment that has just been adopted.

THE CHAIRMAN. It will not be in order. The question is on the amendment offered by the gentleman from Alameda, Mr. Webster, as amended.

The amendment, as amended, was adopted, on a division, by an affirmative vote of 88.

MR. SHAFTER. Mr. Chairman: I now offer another amendment as a section to follow this.

MR. BARBOUR. I rise to a point of order.

THE CHAIRMAN. The Chair has not yet heard what the proposition is.

MR. BARBOUR. My proposition is that no amendment ——

THE CHAIRMAN. The Chair has not yet heard what the proposition is. The Secretary will read it.

THE SECRETARY read:

"At all elections of trustees, directors, or other officers, a list of all the votes shall be kept and recorded, and the owners of all stock voted for, the officers elected, and all persons voting the same, whether as owner, proxy, or trustee, shall be jointly or severally liable to all stockholders not so voting, and to all creditors of the corporation for all losses of such corporation from the misconduct or negligence of such officers."

THE CHAIRMAN. It is not in order at present. It cannot be offered until the whole report has been gone through.

MR. SHAFTER. Can I not move to strike out a section and insert this?

THE CHAIRMAN. No, sir.

MR. SHAFTER. Then it is news to me. That is all I have got to say about that.

MR. STEDMAN. I move that the committee rise, report progress, and ask leave to sit again.

Lost.

THE TERM CORPORATIONS.

THE CHAIRMAN. The Secretary will read section four.

THE SECRETARY read:

SEC. 4. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue and shall be subject to be sued, in all Courts, in like cases as natural persons.

MR. WYATT. Mr. Chairman: I desire to offer an amendment to that section.

THE SECRETARY read:

"Amend section four, as reported by the Committee on Corporations other than Municipal, by striking out the section as reported and insert the following:

"SEC. 4. The term corporation, as used in this article, shall be construed to include all associations and joint stock companies as shall be authorized to exercise the right of eminent domain under the laws of this State; and corporations shall have the right to sue and shall be subject to be sued in all Courts in all cases as natural persons."

THE CHAIRMAN. The question is on the adoption of the amendment.

MR. BARNES. Mr. Chairman: I would most respectfully request that the rules of this body with regard to order and decorum be maintained by the President. Owing to the conversation taking place in the rear it is almost impossible to hear anything that is going on. It is more like a bear garden, I respectfully suggest, than it is like a deliberative body. I ask that the rules be enforced, that we may be able to understand, once in a while, something that is going forward.

SPEECH OF MR. WYATT.

MR. WYATT. Mr. Chairman: As I stated on yesterday, I offer this amendment for the purpose of restricting the scope in which corporate powers can be authorized by the Legislature of the State under the present Constitution, and as is proposed to be engrafted in the new Constitution, the powers and objects and purposes of corporations really have no restrictions whatever. They can be applied and used for every conceivable object of trade or business. It does appear to me that it is not necessary that so wide a range should be authorized by the Constitution and laws of the State, and that it would be better for the people of the State if it was restricted. Corporations are only desirable in very few

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of the cases; when they enable individuals to do something by virtue of the corporate power which they could not as individuals do. I do not conceive that they are desirable in the administration of the government when they do simply what individuals are authorized to do. Corporations which are authorized to exercise the power of eminent domain in the State ought to be authorized for certain beneficial purposes. Probably chief among these in the minds of the people is that of railroads. Also for the digging of canals and the reclamation of swamp land districts; for the bringing of water from the mountains down over the plains for irrigating purposes, and of furnishing water to cities. The right of eminent domain must accompany corporations of this character, for otherwise they are unable to carry out the purposes of the corporations or the purposes of society in creating or building up interests of this character. But I do not conceive, as I said on yesterday, that it is necessary to incorporate under the laws of this State, or that it is wise for the laws to authorize an incorporation in this State for the purpose of gathering swill and feeding pigs; or that it is wise to authorize an incorporation for the purpose of establishing a hennery for hatching and raising chickens; or that it is wise in many other cases of like character.

I think I do not overstate the very ludicrous objects for which the power of incorporation is invoked in this State, when I have referred to the gathering of swill and the raising of pigs, or the establishment of henneries, and the hatching and raising of chickens, for it seems from the report of the Secretary of State, which was made to this Convention October twenty-sixth, in obedience to a resolution of this honorable body, that we incorporate "hotel companies, cloth companies, sugar companies, iron companies, quicksilver companies, soda water companies, oil companies, peat companies, lead companies, fertilizing companies, theater companies, liquor companies, boat clubs, river companies"—and wouldn't it now tax the wit and ingenuity of any member of this Convention, even our friend Col. Barnes, to tell what is meant by a river company? [Laughter.] Then also gas companies—and as regards gas companies, I would desire to make an exception in that case, because me and the Colonel together would want the use of a little gas. [Laughter.] "Jockey club companies, laundries"—in which the Chinamen are supposed to clean the dirty linen of the State—"poultry companies, hack and cab companies, dredging companies, brewing companies," and then you can go on here to the extent of twenty-one thousand companies, and the best part of them have like purposes as those read.

Now, I ask the members of this Convention, do you think it is necessary to loan the aid of the State for the purpose of conducting the business which is referred to under the heads of these companies? Do you not believe that this business would be conducted in the State, and conducted better without the corporate principle, than in a corporate capacity? Don't you believe it would be better not to loan the dignity of the State and the common seal of the State to them? A corporation is defined by the old writers to be "a body corporate, having a common seal." What do you want of it, for the purpose of raising chickens and fertilizing land? What common seal would they need in prosecuting business of that kind? The only effect that I can see in creating so large a number of corporations, is the impersonality that it makes in the State; the irresponsibility that it makes in the State. If men want to enter into any conceivable business in this State, the first question is, can they raise funds enough to incorporate? If they can get their articles of incorporation filed with the Secretary of State, then they are an incorporated body for the multifarious business of the State, or some one of them. That enables them then to go forth with the name of a corporation, high-sounding as they can possibly get it, and as attractive as possible. Then it is that the high-sounding title which they give the corporation is dressed up in all the attraction that the ingenuities of the projectors can dress it, in glowing types and inks; then it is that they start it out before the unwary, and if they can succeed in bringing in any money in that shape, that is so much gain. No capital has been paid in. No showing has been made. No supervising provision is instituted by the State to be held over these men. They are simply authorized to take out a patent under the laws of the State of California, for the purpose of using the name and dignity of the State to go forth in every conceivable private enterprise that the ingenuity of man can conceive of.

Is it wise to loan the State for the purposes of these delusions, and for the purpose of enabling these parties to take advantage of the unwary—those not so well posted—to take advantage of the ignorant of the State, and those who need protection?

Corporations of the present day seem to stand in the same relationship to the people that the religious institutions of five hundred years ago in Europe stood. Then it was there that the religious institutions pillaged the people; that all the property of the country was drank up and absorbed in the religious corporations of the day. There it was that property shirked its due responsibility of taxation. There it was that property shirked its responsibility of coming out into the commercial resources of the country. There it was that it was tied up and became stagnant. And civil corporations—you have only to change the word from religious to civil—and the civil corporations of this day, in my opinion, are taking the same place, and it should not be encouraged. Men should be encouraged to rely upon their individual resources; be thrown upon their own resources, and compelled to exercise them, and not become an impersonal somebody and sink the personnel of everybody in corporations. As Judge Hale has aptly remarked, twenty thousand corporations in this State, and, at the outside, one hundred and fifty thousand voters. That would make seven men and one half to each corporation in this State, or one corporation to every seven men and one half in the State. The very statement of the amount shows its abuse; the very statement of the amount shows that it should be limited.

If these twenty thousand corporations are a blessing, we are the most blessed people on the face of the earth. If these twenty thousand corporations will make a rich, and prosperous, and growing community, we are rich, and prosperous, and growing beyond any community upon the face of the earth. But do they do it? Has it done it? In other words, does not the property of this State now hide itself behind corporations? Do we find ourselves as individuals the most prosperous? Do we find ourselves as individuals the richest people? Not by any means. Do we find ourselves as individuals with a proper distribution of money among us; with the capability of maintaining ourselves? We find many corporations here that are immensely rich, and own money by the millions and millions of dollars. We find the community, upon the contrary, the individual man, a tramp, as it were, upon the public highway.

I then, gentlemen of the Convention, am in favor of restricting corporations to those purposes in which they have to invoke the power of the State to assist them in carrying on the operations or objects of the corporation.

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was lost, on a division, by a vote of 57 ayes to 59 noes.

MR. HALE. I move that the committee now rise, report progress, and ask leave to sit again.

The motion prevailed, on a division, by a vote of 64 ayes to 52 noes.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again.

MR. GRACE. I move that we adjourn.

A division was called for, and the motion prevailed by a vote of 74 ayes to 36 noes.

The Convention, at four o'clock and thirty minutes P. M., stood adjourned until to-morrow morning at ten o'clock.

FORTY-NINTH DAY.

SACRAMENTO, Friday, November 15th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hall,	Porter,
Ayers,	Harrison,	Prouty,
Barbour,	Harvey,	Pulliam,
Barnes,	Heiskell,	Reddy,
Barry,	Herold,	Reed,
Barton,	Herrington,	Reynolds,
Beerstecher,	Hilborn,	Rhodes,
Belcher,	Hitchcock,	Ringgold,
Bell,	Holmes,	Rolfe,
Blackmer,	Howard,	Schell,
Boggs,	Huestis,	Schomp,
Boucher,	Hughey,	Shafter,
Brown,	Hunter,	Shoemaker,
Burt,	Inman,	Shurtleff,
Campbell,	Johnson,	Smith, of Santa Clara,
Caples,	Jones,	Smith, of 4th District,
Casserly,	Joyce,	Smith, of San Francisco,
Chapman,	Kelley,	Soule,
Charles,	Keyes,	Stedman,
Condon,	Kleine,	Steele,
Cowden,	Laine,	Stevenson,
Cross,	Lampson,	Sweasey,
Crouch,	Larkin,	Swenson,
Davis,	Larue,	Swing,
Dean,	Lavigne,	Terry,
Dowling,	Lewis,	Thompson,
Doyle,	Lindow,	Tinnin,
Dudley, of San Joaquin,	Mansfield,	Townsend,
Dudley, of Solano,	Martin, of Alameda,	Tully,
Dunlap,	Martin, of Santa Cruz,	Turner,
Eagon,	McCallum,	Tuttle,
Edgerton,	McComas,	Vacquerel,
Estee,	McConnell,	Van Dyke,
Estey,	McCoy,	Van Voorhies,
Evey,	McFarland,	Walker, of Marin,
Farrell,	McNutt,	Walker, of Tuolumne,
Fawcett,	Mills,	Waters,
Filcher,	Moffat,	Webster,
Finney,	Moreland,	Weller,
Freeman,	Morse,	Wellin,
Freud,	Murphy,	West,
Garvey,	Nason,	Wickes,
Glascock,	Nelson,	White,
Gorman,	Neunaber,	Wilson, of Tehama,
Grace,	Noel,	Wilson, of 1st District,
Graves,	O'Donnell,	Winans,
Gregg,	Ohleyer,	Wyatt,
Hager,	O'Sullivan,	Mr. President.
Hale,	Overton,	

ABSENT.

Berry,	Kenny,	Strong,
Biggs,	Miller,	Stuart.

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THE JOURNAL.

MR. CAPLES. I move that the reading of the Journal be dispensed with.

Carried.

MR. HILBORN. I have a resolution I desire to offer.

THE SECRETARY read:

Resolved, That five hundred copies of the Journal be printed and bound in book form, together with an appendix, both to be properly indexed; also, that two hundred and fifty copies of the daily Journal be printed and placed on the desks of the members.

MR. HILBORN. Mr. President: I take this method of calling to the attention of the Convention a matter which was hastily adopted on the thirtieth of October, and which probably was not properly considered. I refer to the matter of printing the Journal. The Convention will remember that a resolution was presented here, which was referred to the Committee on Reporting and Printing, asking them to examine into the advisability or practicability of printing the Journal. They made a report, and made an estimate of the cost of printing the Journal. Among the items of cost was the binding of volumes, the appendix, and indexing. They urged the advisability of placing on the desks of the members a copy of the daily Journal. It was put to a vote of the house and the recommendation of the committee concurred in. I apprehend that the majority of the members of the Convention when voting supposed that they were merely voting to have printed these slips which daily appear on our desks. It has, however, been construed at the printing office that it carried also with it the intention and purpose to have printed five hundred copies of the Journal and the appendix, and that they should be bound and indexed.

Now it places the President in a peculiar situation, and we have now got to place some construction upon our action. I send up this resolution in order that the Convention may express an opinion upon that question. As it is now I apprehend that the Chair would hardly audit any bill that may be presented for printing anything that would go into these bound volumes.

I would state another thing, that it becomes necessary for us to know this now, because the Committee on Contingent Expenses have before them a request on the part of the Journal Clerk that he be furnished with an additional clerk, in order that the minutes may be written up to be sent to the printing office, so that the back numbers of the Journal may be printed. Now then, if the house has not authorized the back numbers of the Journal to be printed, then that clerk would not be necessary. If they have, then we want to know it, in order that we may report upon that question.

MR. AYERS. Mr. President: I think it was perfectly understood at the time that this Convention required that the Journal of each day's proceedings should be placed on the table of each member. There is a misapprehension perhaps among some of the members with reference to the cost of printing these Journals. In the items tabulated and presented by the Committee on Reporting and Printing the cost of printing and laying the daily Journal on each table is placed at two hundred dollars, but that two hundred dollars implies that the Journal is to be printed in book form so that it can be bound, otherwise you could not have these slips at the rate of two hundred dollars, because the great bulk of the expense is in the composition. The reason that you can have these slips at that price is that the same type is used and the only extra expense is a little paper, ink, and presswork. They are printed from the same forms that are used to print the five hundred copies that are to be bound. It would cost you nearly as much, except the binding, to have these slips placed upon your desks, as it would to have the entire work done as proposed by the committee. The items set forth that for the entire work of providing for this Convention five hundred copies of the bound Journal, the cost will be one thousand and thirty-nine dollars. It was supposed that an appendix would be inserted to this Journal which would make two hundred and fifty more pages, to contain the reports, etc. That appendix would cost five hundred and nineteen dollars and fifty cents, as reported by the committee, and the probable cost of indexing, as reported by the committee, would be one hundred and fifty dollars. Then the cost of the slips, which is the mere cost of striking them off, as you have the type set and the matter prepared for striking off the copies for the bound volume, would only be an extra amount of two hundred dollars. The Chairman of the Committee on Contingent Expenses says that there are certain members who so misapprehend that report as to conceive that for the sum of two hundred dollars you could have these slips laid on the table. That would be very wide of the mark. The entire cost of all this business will be one thousand nine hundred and eight dollars and fifty cents. That includes five hundred bound copies of the Journal, consisting of seven hundred and fifty pages, more pages, I believe, than are contained in the Senate Journal. Of course if the Convention does not wish the appendix—does not wish the reports added to the Journal—there will be a saving of five hundred and nineteen dollars and fifty cents. The committee considered when they sent in their report that this was clearly illustrated in their report, and under a motion which I made, that the Journal should be printed, I considered that the entire report—that the entire sum represented in the report—would be authorized by this Convention.

MR. HILBORN. Mr. President: The resolution I have offered does not express my sentiments or my wishes. I merely put it in as a construction of the Convention's former action. I believe that this will cost us from two thousand dollars to two thousand five hundred dollars. It is true that these Journals will be very nice things to have to take home and file away, but I reckon they are hardly worth two thousand five hundred dollars. I believe that we can have the Journals printed every day and laid on our desks for a much less sum of money, and that we ought to leave it for future Legislatures to have this Journal bound, and that we should not take this present appropriation for that purpose.

MR. REYNOLDS. I should like to ask the Chairman of the Committee what the appendix is to contain.

MR. HILBORN. Reports of State officers, etc., that do not emanate properly from the Convention. When we send out an inquiry in regard to the amount of stationery each member has drawn, for instance.

MR. REYNOLDS. Are not these reports spread upon the Journal itself? Why, then, is it necessary to have any appendix?

MR. CROSS. I see that this daily Journal was commenced on the thirtieth of October. Now, if we are going to have any use for this at all, we want the whole Journal from the twenty-eighth day of September. There is no use of having this half of a Journal. I want the whole thing.

MR. O'SULLIVAN. As I conceive, the printing of this Journal has been ordered already, the printing of it complete, bound copies and everything else. I do not see that Mr. Hilborn's resolution is wanted now. I think this Convention has ordered the printing done already, and it is a small matter of economy to stop the printing now. We certainly will want the Journal printed in full, and bound copies also. If we had gone into economy in voting down bills that should not have been paid here, we would have done better.

MR. AYERS. I will state that, according to the figures that we have from the State Printer, the only saving that would be made by refusing to have the Journals printed in book form, would be the cost of binding five hundred copies, which would be three hundred and twenty-five dollars, and the cost of paper and presswork, which would be one hundred and five dollars and sixty cents. There is the entire amount of saving that there would be in the matter.

MR. HILBORN. Let me suggest that there is another item, an extra clerk.

MR. AYERS. That is separate from the printing business. That is to assist the Journal Clerk.

MR. HILBORN. Yes. But it won't be necessary unless the back numbers are written up.

MR. AYERS. You will only require a clerk for a short time to bring up the work. The minutes of the Minute Clerk can be used by the compositors in the setting up of the matter. It is a mere trifle.

MR. REYNOLDS. Mr. President: In the back part of the house we are so unfortunately situated that it is impossible to hear what is going on at the desk, or anywhere within range of the gentlemen who compose this committee. [Cries of "louder."] Well, gentlemen are in the same fix there now as we are all the time. I have been unable yet to understand whether there has been any number of copies of the Journal ordered to be bound, or whether this resolution is for that purpose. Let the Chairman answer.

MR. HILBORN. Only by adopting the report of the Committee on Reporting and Printing, and it was doubtful whether that did or not. The President didn't know how to construe that action of the Convention. I offer the resolution to know whether they did order the binding or not.

MR. REYNOLDS. Then, this resolution of the gentleman is to do the work twice over.

THE PRESIDENT. The Chair will state to the gentleman the position of the matter. We find on the second page of the Journal for the thirtieth of October, the report of the Committee on Reporting and Printing. That report you will see on page three was received, and on motion of Mr. Ayers, the Journal was ordered printed as recommended by the committee. The Chair was in doubt whether they intended to print and bind all these copies, or whether the Convention only intended to print slips to lay on the desks every morning. I declined for the time to order the binding, etc., and to settle that doubt, the Chairman of the Committee on Contingent Expenses presents this resolution—simply to give a construction to the former action of this Convention.

MR. REYNOLDS. That is right then. The resolution ought to pass.

MR. HILBORN. I suppose they all know that the result of the adoption of the resolution will be to incur this expense of two thousand or two thousand five hundred dollars, while a rejection of it would leave us just as we are now, with the slips on our desks and the other matter undisposed of.

MR. AYERS. I would like to ask the Chairman of the Committee on Contingent Expenses how he swells one thousand nine hundred and eight dollars and fifty cents up to three thousand dollars?

MR. HILBORN. I said two thousand five hundred dollars.

MR. AYERS. Well, two thousand five hundred dollars? Is this extra clerk going to be paid five hundred dollars for a few days work?

MR. GORMAN. I would like to ask what this will cost to lay the slips on our tables without any copies being bound—from the beginning.

MR. AYERS. It would cost about the same amount, less the cost of binding, three hundred and twenty-five dollars; less the cost of paper, one hundred and five dollars and sixty cents; and less the presswork, thirty-eight dollars and forty cents.

MR. GORMAN. That would be four hundred and sixty-nine dollars.

THE PRESIDENT. Deducted from one thousand nine hundred and eight dollars and fifty cents.

MR. GORMAN. It would cost us one thousand five hundred dollars to print these slips alone.

MR. AYERS. Yes.

MR. REYNOLDS. This committee seems to be endowed with the faculty of making ambiguous reports. I move that it be laid on the table until we have an opportunity to find out what it is.

MR. AYERS. I call for the reading of the report. Let us see whether it is ambiguous or not.

MR. REYNOLDS. I am more than ever opposed to voting upon the resolution until I know better what it is. I insist upon the motion to lay on the table.

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MR. AYERS. I will suggest that there is a mode of economy here. That would be to leave out the appendix. The cost then would be within the range of one thousand dollars.

MR. HILBORN. I wish to ask if the matter that will go into the appendix is not already printed and standing in type now?

MR. AYERS. I think that there are a great number of the reports that were in type at one time, but I think they have been distributed.

MR. HILBORN. I am convinced that these estimates will be overrun in almost every particular. Now, I will say that the Journal Clerk is endeavoring to do his duty. He is working hard and well, comparing the minutes and reading proof, etc. All that he will ask is that we furnish him a clerk during the period when they may be printing the back numbers of the Journal—for the twenty-four days prior to the commencement of the printing.

MR. BARRY. I second the motion to lay on the table. It is not debatable.

THE PRESIDENT. The question is on the motion of the gentleman from San Francisco, to lay the resolution on the table.

The motion prevailed.

NOTICE.

MR. INMAN. I have a notice I desire to give.

THE SECRETARY read:

"Mr. President: I give notice that I will move, to-morrow, to amend Rule Fifty-six, as follows: Strike out, in lines two and three, the words, 'for limiting the times of speaking,' and insert, 'that no member shall speak more than ten minutes on any one proposition, without leave of the Convention.'"

CORPORATIONS.

MR. ESTEE. Mr. Chairman: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of continuing the consideration of the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section four was under consideration when the committee rose. The Secretary will read it.

THE SECRETARY read:

SEC. 4. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and shall be subject to be sued, in all Courts, in like cases as natural persons

BANKING CORPORATIONS.

THE CHAIRMAN. If there are no further amendments to section four the Secretary will read section five.

THE SECRETARY read:

SEC. 5. The Legislature shall have no power to pass any Act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws; but no corporation or association shall make, issue, or put in circulation, any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money in this State, except the lawful money of the United States.

MR. DUDLEY, of San Joaquin. Mr. Chairman: I move to amend section five by striking out the word "special," in line two. I do not see the object of using that word, and I am informed by the Chairman of the committee that it is a mistake. The section in the present Constitution is section thirty-four of article four. It reads as follows:

"The Legislature shall have no power to pass any Act granting any charter for banking purposes, but associations may be formed under general laws for the deposit of gold and silver; but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money."

The word "special" is not used there, but it is in the section proposed by the Committee on Corporations other than Municipal.

MR. ESTEE. Mr. Chairman: It does not strike me that it is necessary there. It was intended that that part of the section should be the same as found in the old Constitution. I see no objection to striking the word out, whereas I would see objections to leaving it in.

MR. VAN DYKE. Mr. Chairman: I would call attention to the fact that the whole of the fore part of that section, down to the word "no," in line three, is wholly unnecessary, because the Legislature cannot grant any corporation directly any charter for any purpose. That part of the section would not accomplish any good. I move to strike out all of that section down to and including the word "no," in the third line. The other part is entirely useless, as any member can see. Corporations cannot be created by special Act, and therefore is not necessary.

MR. ESTEE. I accept the amendment to strike out the word "special."

MR. VAN DYKE. What is the objection to striking out the other?

MR. ESTEE. We take it as it was in the old Constitution, and I see no special reason for striking it out. There being no special reason for striking it out, there may be special reasons for keeping it in.

MR. VAN DYKE. I would inquire if under any other sections the Legislature can grant any charter?

MR. ESTEE. No.

MR. HAGER. Mr. Chairman: The intention is that the Legislature shall not have power to grant any special charter for any purpose, either to a corporation or an individual. It is not intended to apply merely to corporations, but to apply to individuals, therefore the provision should stand as it is. In regard to the word "special," it is immaterial whether it is in or out; but the amendment offered by the gentleman from Alameda would destroy one of the purposes of the provision.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I am under the impression that the first part of section five should not be stricken out. There is a principle contained in it which, if we will examine it, we will clearly see. And it is this: that the Legislature shall have no power to pass any Act granting any special charter for banking purposes. This forbids the Legislature having this power, and there is evidently a principle contained in it.

MR. FILCHER. Mr. Chairman: As I understand it, the first amendment is to strike out the word "special," and the next is to strike out all of the section down to the word "no." What I wish to know is, which proposition is before the Convention. Some gentlemen are discussing one, and some the other.

THE CHAIRMAN. The gentleman is in order to discuss it in any way he thinks proper.

MR. BROWN. Mr. Chairman: I do not propose to say anything very lengthy upon the subject. I am satisfied that the members care very little about the word "special," for it does not change the effect materially. But with regard to the Legislature not having certain powers, and it being specified in this clause, there is a principle involved that is worth the attention of this body, and we should study before it is stricken out, whether we wish it stricken out, and have nothing said as to whether the Legislature shall have this power or not.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: Section one, as reported by the Committee on Corporations, in the first and second lines, reads as follows: "Corporations may be formed under general laws, but shall not be created by special Act." Section five says: "The Legislature shall have no power to pass any Act granting any special charter for banking purposes." Now if the Legislature cannot grant any special charter for any purpose whatsoever, what is the benefit? I ask the Chairman of the Committee on Corporations, what is the benefit in section five of designating banking corporations, when section one clearly says that no special charter of any nature can be granted?

Now the gentleman from San Francisco, Mr. Hager, says that this is put in to prevent the Legislature from conferring a charter upon private individuals, or a single person, allowing him to do a banking business; but I ask whether the word "charter" in an article on corporations does not signify a corporate charter. It cannot mean anything else. The word "charter" is defined by Bouvier, as an Act of the Legislature creating a corporation. When section one says that no special charter shall be granted, it embraces the whole subject, and it seems to me entirely useless to specify in section five, that they shall not be granted for banking purposes.

MR. WATERS. Will the gentleman from San Francisco, allow a question? Are not our statute books full of special franchises to ferries and toll roads? I understand that the object of this is to cut them off.

MR. VAN DYKE. Mr. Chairman: I wish to send up my amendment in writing. It obviates the objection raised by the gentleman from San Francisco and the gentleman from San Bernardino.

THE SECRETARY read:

"Amend section five by striking out all to and including the word 'but,' in line three, and insert between the words 'corporation' and 'or,' in line three, the word 'person,' so that it will read: 'No corporation, person, or association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money in this State, except the lawful money of the United States.'"

MR. VAN DYKE. That accomplishes the whole purpose.

MR. BEERSTECHER. Mr. Chairman: In answer to the gentleman from San Bernardino, I would say that it was held in the 48th Cal., in the case of San Francisco vs. the Spring Valley Water Company, that an Act which purports to be and is in fact a special Act, cannot be converted into a general Act by the declaration of any other Act of the Legislature that it shall be considered a general Act. And furthermore, in the same case the Supreme Court held that corporations, except for municipal purposes, must be formed under general laws. Of course I am unable to say what the Legislature undertook to do, but they certainly had no power or authority to do any such act as the gentleman speaks of under the Constitution of the State. The only trouble about retaining this, it seems to me, is that the Courts would have but a stumbling block. In one place it says that no special charter of any kind shall be granted; and in another place it says that the Legislature shall not grant any special charter for banking purposes. I hope the amendment will prevail.

REMARKS OF MR. WATERS.

MR. WATERS. Mr. Chairman: When I asked the question of the gentleman from San Francisco, I supposed that perhaps his mistake was caused by his unfamiliarity with the statutes of this State; that he did not know that it had been the custom of the Legislature of this State to grant special franchises to maintain toll-roads and to maintain ferries. I supposed that that was the extent of the gentleman's mistake, and I am sorry to see that the malady is deeper. I am sorry to see that it is a constitutional malady which affects the gentleman. Do we not know that State Constitutions are mere limitations upon the Legislature? Do we not know that special franchises may be granted to individuals? The only limitation is that a special franchise shall not be granted to a corporation; which would in effect amount to creating a corporation by special Act. There is no prohibition in the existing Constitution prohibiting the Legislature from granting special franchises to individuals. The case cited by the gentleman is one where the Legislature attempted to grant a special franchise to a corporation. That has been uniformly held to be illegal and void. But there is no

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decision of the State of California deciding that the grant of a special franchise to an individual is unlawful.

MR. VAN DYKE. I will call the gentleman's attention to the decision of the Supreme Court on the Ensign case, where they held expressly that you could not grant these privileges.

MR. WATERS. I reply that he can find dozens of cases where franchises have been granted to individuals to maintain ferries and toll-roads, and they have been upheld by the Supreme Court, and they are to-day collecting their tolls. But we know that unless we do place something here in the nature of this first clause in section five, restricting this, that the Constitution, only being a limitation upon the Legislature, it would have the power. Where we do not limit the Legislature, it has the power. In other words, when a matter is introduced into the Legislature, there is nothing to prevent the Legislature from passing that law unless the power has been delegated to the United States Congress, or unless it is expressly prohibited by the Constitution. Now unless this first clause of section five is put in, it seems to me that the Legislature would have power to grant special franchises to individuals.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: It seems to me that this amendment ought to be adopted, for this reason, that the provision is in the wrong place, if needed at all. That is merely a prohibition against a special Act granting a special charter for banking purposes. This prohibits the granting of a special charter to either corporation or private individual. That clause must have been drawn up under the impression that banking would not be conducted except by corporations, whereas, I think, after two days discussion upon the question, that banking can be carried on by others than corporations. Therefore, that prohibition does not necessarily have any reference to corporations, as I can see, at all. If special banking charters are to be prohibited let it be in the Legislative Department. If that prohibition is necessary strike it out from here, where it does not belong, and put it into the Legislative Department, as a restriction upon legislation. There is where it belongs if it belongs in the Constitution at all.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: It is well enough to understand exactly what we are talking about, and what we are trying to do. I presume that we all understand that we are amending the old Constitution with reference to proposing a new. Now, the provision reported by the committee is substantially the same as the old Constitution, and the criticisms would equally apply to the Constitution as it now exists. That is, the Constitution as it now exists, provides that corporations may be formed under general laws, but shall not be created by special Act. Such is the amendment of the committee. The Constitution, as it exists, provides that the Legislature shall not have power to pass any Act granting any charter for banking purposes, but associations may be formed under general laws for the deposit of gold and silver. Now, the only substantial variation is by leaving out that provision for the deposit of gold and silver. "The Legislature shall have no power to pass any Act granting any charter for banking purposes; but corporations or associations may be formed for such purposes under general laws." Now, I merely refer to this to show that the criticisms indulged in here would equally apply to the old Constitution as it exists, except in the alteration of the word that I have made. I think that the committee have been wise to follow the language of the provision in the old Constitution, inasmuch as that language has been in use, and the Supreme Court has passed upon its different relations again and again, and it is a well settled rule that when constitutional law, as well as statutory law, has been repeatedly adjudicated, it should be left standing according to that adjudication.

Why should we change the phraseology and introduce something of a doubtful character? The only criticism that I assumed to make, was that it would amount to nothing, inasmuch as the Constitution we are amending has the same provision precisely. I can see a propriety in its reading as it does, because it applies to all corporations and partnerships, men either of native or foreign birth, that they shall have no special privileges in this country as individuals, partnerships, or corporations, to pursue banking.

The gentleman from San Bernardino, Mr. Waters, says that special privileges have been granted men in this State. That is true, and they were sustained by the Supreme Court of this State. The Legislature has again and again passed laws giving special franchises to toll-roads, ferries, and toll-bridges, and it has been almost impossible to get rid of them afterwards, in the earlier days of the State. I cannot see any good reason for changing the old Constitution in the manner that it is proposed to be changed by the amendment which is proposed by the Senator from Alameda; and I commend the Committee on Corporations that they have adopted the old Constitution in a great many of the provisions that are well understood and well settled by adjudication.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: It seems to me that the report of the Committee on Corporations, while apparently retaining almost the old section, they still put a construction upon it that entirely defeats the idea contained in the old Constitution. The old section prohibits the Legislature from granting a charter for banking purposes, while the section as reported confines it to a special charter.

MR. ESTEE. I have stated that the word "special" crept in there by mistake, and that we consented to have it stricken out.

MR. FILCHER. It is a broad declaration that associations and corporations, without any limit whatever, can be formed, and in this respect at any rate, the effect of the section as reported would be the same as is proposed by the amendment offered by the gentleman from Alameda. I am opposed to either the amendment or the section reported by the committee, and if it is the sense of the committee that the section as it stands in the old Constitution should be adopted substantially, I hope that they will vote down these amendments and will consider an amendment I will send up. It is exactly the same section as in the old Constitution, except that it adds after the words, "for the deposit of gold and silver," the words, "and other lawful money of the United States." There you have all the old provision with that addition that we have found necessary by experience. I think that is all the change necessary, and all that in wisdom we are justified in making.

As to the remark of the gentleman from San Bernardino, Mr. Rolfe, that this matter ought possibly to go before the Committee on Legislative Department, I would say that it was considered and thoroughly discussed in that committee, and after discussing and considering it, the change I suggest was made in the committee, and that was the only change.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from San Joaquin, Mr. Dudley.

The amendment was adopted.

MR. FILCHER. Mr. Chairman: I now offer my amendment, which I have sent to the clerk.

THE SECRETARY read:

"The Legislature shall have no power to pass any Act granting any charter for banking purposes, but associations may be formed under general laws for the deposit of gold and silver and other lawful money of the United States; but no such associations shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money."

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: Your committee, sir, in adopting the section as reported first, felt that the declaration should be made as found in the old Constitution, namely, that "the Legislature shall have no power to pass any Act granting any charter for banking purposes." That was held necessary for several reasons. First, we wanted to hold all such institutions bound by all of the provisions in this Constitution and limited by all the provisions of this Constitution, so that the Legislature should not at any time in the future interfere with this great question, but that the banking institution, whether an association or corporation, should come in under general laws and be subject to all of its restrictions, and all of the restrictions in the other section of the draft reported by the committee. We adopted the old Constitution. It has stood for twenty-nine years, and unless the gentleman can show some more potent reason for striking that out, I appeal to the sense of the Convention to let it stand.

MR. HALE. I understand that the report follows out the original intent of the old Constitution.

MR. ESTEE. Except so far as it adds to it.

MR. HALE. The old Constitution authorizes not corporations but associations to be formed under general laws for the deposit of gold and silver.

MR. ESTEE. If the gentleman will wait a minute, I will come to that. That was the reason that we left that first proposition in. The next proposition of the committee is: "But corporations or associations may be formed for such purposes under general laws." The old Constitution read, "but associations may be formed under general laws for the deposit of gold and silver." The fact is patent to every member that corporations had been formed for the deposit of gold and silver, and for the loaning of money, ever since eighteen hundred and fifty—ever since the adoption of the present Constitution. Your committee saw this strange condition of things. They saw a provision in the Constitution that no bank should exist, but banks did exist, and the Supreme Court held that, notwithstanding that provision, these banks could get into the Courts of the country and enforce their rights, and they have existed from that time up to the present. With that in view, your committee concluded to add this: "But corporations or associations may be formed for such purposes under general laws." That is fair, if there is going to be any. Of course, if the gentleman makes the point that there should not be any banks, that is a different proposition. But if they are to exist, then your committee thought they should stand upon the same footing as any other business institution of the country.

The next proposition is: "But no corporation or association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money in this State, except the lawful money of the United States." Now, sir, these were the reasons that moved your committee in reporting that section as it is. If it can be improved we have no pride in its present shape. If anything can be added to perfect it, put it in.

MR. TERRY. What is the object of the words, "in this State?"

MR. ESTEE. I do not know why the words, "in this State" were put in. If any member of the committee would explain it—I do not remember. But if the business is done in this State, of course the power of the Constitution cannot reach beyond the limits of the State. However, if the gentleman wishes to strike that out, I am perfectly willing it should come out, unless some member of the committee can give a reason for its being there. I do not believe in putting anything in this Constitution unless it is needed, and I am desirous of having any section amended that can be improved. But we object to such amendments as interfere with the old established reading and meaning of the section as it is and has been used, unless it is to reach some evil, and I am unable to see that the amendment proposed by the gentleman from Alameda, Mr. Van Dyke, is going to do that; we want the declaration that the Legislature shall have no power to pass any Act granting any charter for banking purposes. As I said before, we have no pride about the terms of the section or its wording in general, so long as it makes the rights of the people more secure, and limits the power properly.

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REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: My proposition was intended to accomplish that very purpose; that is, to place a banking institution on precisely the same footing as other corporations, giving them no more favor, and taking from them no more rights. There is a declaration in the first section of that article that corporations cannot be formed by special enactment. Now, is not that sufficient? Does not that apply to all corporations? Most undoubtedly. Now, the only purpose I can see had in view in the fifth section is to prohibit the issuance of paper to circulate as money. Now, I am willing to go to the extent of the committee and the old Constitution in that particular, and I have included individuals as well as corporations—that they should not be allowed to issue paper to circulate as money. And, with all deference, I cannot see the necessity, after we have declared most emphatically that no corporation shall be formed by special Act, to repeat again that no corporation of a particular kind can be formed that way. I object to unnecessary repetition in the Constitution—to tautology. If any good can be done by it, I would like to see it; but it is not enough to say that it existed in the old Constitution. But it did not so exist in the old Constitution. They have stricken out, "for the deposit of gold and silver." I am willing that they should be on the same footing with other institutions, and, while I voted to hold the directors and trustees responsible for the misappropriation of the funds intrusted to them, I am willing to concede that this class of corporations are a useful institution in the State, and have been promotive of the best interests of the State when properly managed and conducted, and I am willing that they should stand upon the same footing as all other corporations. That is the purpose I have in this amendment. Then the section will be stripped of everything excepting the declaration that neither corporation, nor individual, nor association, shall issue paper to circulate as money.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I would ask the gentleman to accept this proposition as a substitute for both amendments, and I think it will include the idea that was intended to be retained in the original section by the gentleman from San Francisco, Mr. Estee, and also the purpose of the gentleman from Alameda, Mr. Van Dyke, and not be subject to the objection of being tautological:

"No person, corporation, or association shall be authorized to make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money in this State, except the lawful money of the United States."

That includes an inhibition to the Legislature, and at the same time it prevents them from issuing paper to circulate as money. Now, if the gentleman will accept that as a substitute, gentlemen can be accommodated with reference to the meaning which we desire that this section will have.

MR. VAN DYKE. That is my amendment.

MR. HERRINGTON. With the exception of the words "be authorized to." I can only get it in by your accepting it as a substitute.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: I suppose that the committee aimed at these three propositions; that the Legislature shall not grant any special charter; second, that associations or corporations may be formed for banking purposes; third, that they shall not issue paper to circulate as money; and that the majority of the Convention are in favor of this proposal. Now, it does seem to me that we can accept that. I am sorry that the word "special" has been stricken out. It reads now that "the Legislature shall have no power to pass any Act granting any special charter for banking purposes," and yet it says "that corporations or associations may be formed under general laws." Now, the general law is in itself only a charter. A charter is a mere grant, and the general law is a grant, and I think the word "special" had much better be left in there. But, sir, if we are in favor of banks being organized for general banking purposes, except that they shall not issue money, it seems to me that this expression in the report is much better than the old Constitution. The old Constitution says that there shall be no banks, but associations may be formed for the deposit of gold and silver. That means upon the face of it that you can only have places where money can be deposited with some person who shall take care of it for pay and hand it back to you when you want it. Yet, we know that we have had banks that do a general banking business, except that they cannot issue money, and I understand that the people want them and the Courts have been compelled to get around the proposition. If we want these banks it is much better to say so, and I think the committee has done so. It seems to me that this section had better be left just as it stands.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I hope that these amendments will be voted down. This committee is dealing with corporations. If I am correctly informed the Committee on Legislative Department will propose a general section forbidding the Legislature granting any special privileges of any kind or forbidding special legislation of any kind. This section reported by the Committee on Corporations, is prepared as relating to corporations. I do not mean to go into the Legislative Department, for that will be regulated by the matter presented by another committee; but if these amendments are voted down, and I get an opportunity, I propose to offer to amend the section where I think the committee have fallen short in not putting the banking corporations, as they intended to do, on the same footing as all other corporations. They stopped short, after providing that they might be formed under general laws, by not inserting "but such laws may be repealed or altered from time to time." I propose to add that to the section and make it conform to the declaration in section one which has already been adopted by this committee. Section one provides: "Corporations may be formed under general laws, but shall not be created by special Act. All laws passed pursuant to this section may be altered from time to time, or repealed." In other words, putting the corporations under the control of the Legislature. This section five might imply that the banking corporations are not subject to that provision. Therefore, I propose to add to the section, after the words "under general laws" the words, "but such laws may be altered from time to time or repealed," just as in the first section; and then some proviso further as to the duty of the Legislature in controlling and regulating them.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I spoke to the substitute, but not since my amendment was offered, and I wish to point out the difference between the section as reported by the Committee on Corporations, the amendment proposed by the gentleman from Alameda, and the amendment proposed by myself. In the first place, in the old Constitution we find a limitation. We find that while associations may be formed, it points out for what purpose. The report of the Committee on Corporations ingeniously avoids the limitation, and simply provides that corporations may be formed for banking purposes That of course includes all, without any limitation whatever. Next, the amendment of the gentleman from Alameda, would simply declare that no corporation, person, or association shall be formed which shall have power to make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other papers, to circulate as money. The same limitation that now exists. But, that would leave the question open with the Legislature to form the class or character of banking institutions without limit.

Now, sir, it is wise, in my judgment, to retain the limitation. My amendment retains that specification, or the limitation. It declares that while a corporation may be formed, it shall be for the deposit of gold and silver and the lawful money of the United States, as experience has proven necessary. I see no reason why that clause should not be added. I believe the section would then be all that is desired. But, as for changing it as proposed by the report of the committee, and destroying these limitations, I am certainly opposed to it. Gold and silver is lawful money, and there may be other money that is lawful—and there is—so there is no reason for that limitation. While, on the other hand, I do not think it is wise to obliterate the restriction which states for what purposes these institutions may be formed.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: If this amendment is adopted, a bank could not do any of the ordinary business. They could not negotiate notes; they could not loan money; they could not carry on that very kind of business that every man knows that bankers do do, and that they must do. If they are only for the purpose of receiving deposits of gold and silver, it amounts to nothing. They cannot carry on that business. We do not want to restrict the gentleman in any limitations that are legitimate. If he has got any limitation that will protect the people against any evil, we are anxious that he should submit it and have it adopted. And I will say that he is very much mistaken when he says that the committee has sought ingenuously to avoid the limitation. On the contrary, the committee sought ingenuously to impose all the limitations consistent with the business in which they are engaged. I do not think that the amendment offered by the gentleman will be either advantageous to the people, or offer any limitation of use to the people, or protect the people from any wrong, and at the same time it would merely destroy that class of business.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: I hope that the committee will vote down all the amendments that have been so far offered. The object of the people in adopting this clause in the old Constitution was, first, to prevent the formation of banks, except under general laws; second, they desired to prevent the establishment of banks of issue. Now, they used language that accomplished that purpose, and I am entirely opposed to departing from the language of the old Constitution, unless some good can be effected by it. The first clause read: "The Legislature shall have no power to pass any Act granting any charter for banking purposes." That covered individuals as well as corporations and associations. So we desire to preserve that intact.

The gentleman from Alameda is entirely mistaken, when he says that the Ensign Act fell for the reason that he assigns. Every lawyer here who has studied that decision must know that it fell because it was a practical evasion of the provision of the Constitution that provided that corporations should not be formed by special Act. The Ensign Act pretended to grant a special charter to individuals, on which they were to form a corporation within a given time, and if that part of the Act had been left out, the Supreme Court would have upheld the Act. But, in the language used by the framers of the first Constitution, it was provided that "associations may be formed under general laws for the deposit of gold and silver." Under a strict construction, commercial banks could not be formed. However, they have been formed and carried on for a long time. The committee have changed that, but still inhibit banks of issue. I think that was very proper.

This amendment, offered by the gentleman from Alameda, would open the door to special privileges to other than corporations, and leave the Legislature untrammeled in that regard. The other amendment leaves out the word "corporation;" and I was anxious to hear a reason for it, but did not. But the committee provide that "no corporation or association shall make, issue, or put in circulation, any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money in this State, except the lawful money of the United States," so that they have covered the whole ground. But the balance of the section, after the word "money," I am satisfied ought to go out. But either one of these

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amendments will impair or destroy the usefulness of this section. I am satisfied that the committee has worded it according to the wishes of the people of this State, and it ought to stand down to that word.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: In this discussion, it seems to me, one important thing has been lost sight of, and that is this: the old Constitution has no article—no special article—in relation to corporations and corporations alone. Now, it seems to me that whenever any Court passes upon any article of the new Constitution (if the new Constitution is adopted), the Court will take into consideration the section that it is passing upon, and in what particular article that section happens to be. If the section being passed upon is under the general title of "Corporations," of course, of necessity, the section must be specially considered with reference to the law of corporations, and not with reference to the Legislative Department. In the old Constitution we had no article on corporations. Article four, in which we find the subject of corporations, is the article upon Legislative Department; and therefore, when, in section thirty-one of article four of the old Constitution, it is said corporations may be formed under general laws, but shall not be created by special Act, except for municipal purposes, that section thirty-one relates to corporations. Then, when we come to section thirty-four of that article, it relates to banks, and not to corporations. And when the gentleman says that special privileges have been granted other than privileges conferred upon corporations, of course—this article relating to everything within the bounds of the Legislative Department—it was necessary to designate, to make a distinction, between corporations and other franchises and privileges that might be conferred. But in the particular article under discussion, and to which the gentleman from Alameda has offered an amendment—it relates to corporations solely and alone, and every section found in that article relates to corporations. But when the word "charter" is used, it means an Act of the Legislature conferring the right of incorporation. It does not mean special privileges outside of corporations. And, as was well said by another gentleman, if we want to insert anything of that character in relation to banks, it ought to be inserted in the article on Legislative Department; and I am perfectly willing to vote for it in the article on the Legislative Department. But it seems to me, to allow it to stand in section five, is to say, in effect, that the Legislature shall have power to pass Acts granting special charters for other purposes, because there is a special inhibition which says that the Legislature shall have no power to pass any Act granting any charter for banking purposes. The expression of one thing is the exclusion of everything else, and the exclusion of everything else may be said to be the expression of that very thing. Therefore, if we say here that the Legislature shall not pass any Act granting any charter for banking purposes, it seems to me that they can grant a special charter for other purposes.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I propose to say a few words in favor of the amendment as offered by the committee, and I think it is very clear that the language used by the committee is an improvement upon the old Constitution. I may say in the beginning that it was the intention, no doubt, of the framers of the Constitution of eighteen hundred and forty-nine to allow all banking except banking for the purpose of issuing and circulating money. But it has been expressed in a very obscure manner. Section thirty-four, of article four, is this:

"The Legislature shall have no power to pass any Act granting any charter for banking purposes; but associations may be formed under general laws for the deposit of gold and silver, and other lawful moneys of the United States, but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money."

Now that excludes banks of loan, and excludes banks from taking any other deposits than gold and silver, which obviously could not have been the intention of the framers of the Constitution, although so expressed. But we know that our banks are banks of loan, and would be banks of very little utility if they were not banks of loan. They have gone on loaning money continually, and always in violation of the Constitution. Now, sir, let us look at the next section. It says:

"The Legislature of this State shall prohibit by law any person or persons, association, company, or corporation, from exercising the privileges of banking or creating paper to circulate as money."

Now, in the first place, they say there shall be no banking except for the deposit of gold and silver. There shall be no banks of loan. There shall be no banks that may take any other money except gold and silver; and then in the thirty-fifth section it is still further contracted. Now, it is obvious to every one that this language is obscure, to say the least. We have met it by providing, in substance, that there may be banks of deposit of all classes of money; that there may be banks of loan; that there may be banks for all purposes usually understood by the word banking, except banks for issuing paper money. It seems to me that the language of the committee is clear; that it gets rid of the difficulty of this ambiguity, and places banks where they should be placed in this country. It allows banks of loan and banks for the deposit of all kinds of money, but prohibits them from making paper money and circulating it.

Now, sir, this provision is brought down from the Constitution of Texas, with which I had something to do. There we prohibited paper money. Now, I will say that in Texas we had no paper money up to the time of the Rebellion, when it was deluged by Confederate money. It was found to be a salutary provision. We always had an abundance of gold and silver, and I hope we shall adhere to the policy here, which has been engrafted upon our specific contract law, and which has protected this State from the commercial convulsions and failures that have prevailed in almost every other State in the Union. This is to be done by prohibiting, in clear and explicit terms, banks from making paper money to circulate as a circulating medium. We have used clear language for that purpose. We have removed the ambiguities in the Constitution of eighteen hundred and forty-nine, and I trust, sir, that the language of the committee will not be tinkered with, but that we will use clear language, as we have used, and which we propose to engraft in the Constitution, to express what we mean. I hope these amendments will all be voted down.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Alameda, Mr. Van Dyke.

The amendment was lost.

THE CHAIRMAN. The question now recurs on the amendment offered by the gentleman from Placer, Mr. Filcher. The Secretary will read it:

"The Legislature shall have no power to pass any Act granting any charter for banking purposes; but associations may be formed under general laws, for the deposit of gold and silver, and other lawful money of the United States, but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money."

MR. HOWARD. Mr. Chairman: That is open to the same objection. It prohibits banks of loan.

MR. WHITE. Mr. Chairman: I move to amend by adding at the end of the section the following:

"All laws passed pursuant to this section may be altered from time to time, or repealed. It shall be the duty of the Legislature to pass laws for the regulation and control of corporations formed under this section; to protect the depositors in savings banks; to prohibit loans at high rates; to prohibit discrimination between borrowers; and to regulate by law the salaries of officers of savings banks."

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Santa Cruz, Mr. White.

The amendment was lost.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I move to strike out the whole of the amendment and insert the following:

"No person, corporation, or association shall be authorized to make, issue, or put in circulation any bill, check, ticket, certificate, or promissory note, or other paper, to circulate as money in this State, except the lawful money of the United States."

Now, it seems to me, that ought to cover the ground contended for by the gentleman from San Francisco, Mr. Estee, and the ideas intended to be conveyed by the gentleman who offered the first amendment; and it also embraces the substance of the present section, and is not subject to the objection that was interposed to the section as it now stands. It inhibits the Legislature from authorizing any person, corporation, or association to issue any paper to circulate as money. It also, as a matter of course, attaches to the private individual. It leaves also the power in the hands of the Legislature to authorize these banking associations to loan money. It takes no authority away from the Legislature to give full and ample power and authority to do all the business they are now doing, and does not limit them to the deposit of gold and silver coin or other moneys of the United States. It strikes me that we should be satisfied with that and avoid the difficulty that is now in the way of the adoption of the section as it now stands.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I rise to a point of order. My point is this: that this amendment is substantially and almost literally the same as was offered by the gentleman from Alameda, Mr. Van Dyke, and voted down. Now, although I favored that amendment, it was voted down, and I cannot see any material difference between it and this one. The only difference I can see is that one says, "no corporation, person, or association shall make, issue," etc., and the other says, "no person, corporation, or association shall be authorized to make, issue," etc. He puts it in a different form, but I cannot see any difference in the meaning.

THE CHAIRMAN. The point of order is not well taken. This is an amendment offered to another amendment entirely.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I object to this amendment on the same ground. Now I do not wish to present myself before this body as a critic, or anything of that kind, but this amendment comes before us in a certain form. I am not saying whether other forms that embraced about the same are correct or incorrect, but I am opposed to this because I think it is decidedly ambiguous. "No person, corporation, or association, shall be authorized to make, issue, or put in circulation any bill, check, ticket, certificate, or promissory note, or other paper, to circulate as money in this State, *except the lawful money of the United States.*" Now, do we consider that they have a right to make and put into circulation the lawful money of the United States? [Laughter.] Look at the language as it is. Now, Mr. Chairman, we wish in these cases to see correctly. We want good sense. We want law. We want principle. But we do not want things which would show that they would have a right to make, issue, and put in circulation, the lawful money of the United States of America. [Applause and laughter.]

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Santa Clara, Mr. Herrington.

The amendment was lost.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I wish to call the attention of the Convention briefly, before the vote upon this last amendment, to the three substantial propositions before the committee. One is the Constitution as it is; another is section five of the report of the Committee on

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Corporations, and the other is section thirty-one of the report of the Committee on Legislative Department. The amendment offered by the gentleman from Placer, is section thirty-one of the report of the Committee on Legislative Department.

MR. HOWARD. I rise to a point of order. The report of the Committee on Legislative Department is not before the committee now.

THE CHAIRMAN. The point of order is to the manner in which he is discussing the question. Gentlemen have every range they desire in this discussion.

MR. McCALLUM. I think that if the gentleman will notice that my discussion is strictly in order, for this reason: the gentleman from Placer has offered section thirty-one of the report of the Committee on Legislative Department, as an amendment to section five of the report of the Committee on Corporations.

MR. HOWARD. I was not aware of that. That is all right.

MR. McCALLUM. The Committee on Legislative Department have inserted it too, and deemed it a part of their duty to report upon these sections in regard to corporations, to a limited extent, and this section thirty-one is a part of the report of that committee, and is the one offered as a substitute for section five. I submit that the report of the Committee on Legislative Department upon this point, is all that is necessary, and we are not to duplicate this section. Where they come in contact, or are upon the same subject, we have to take our choice, and now is the time to take our choice. Gentlemen, I prefer the report of the Committee on Legislative Department, because it seems to me that the wording has been more carefully considered, as admitted by the Chairman of the committee. He was asked what use the words "in this State" were in the section, and he confessed that he does not know why that change was made, and asked some other gentleman to tell. There is no such thing in the present Constitution.

MR. ESTEE. Judge Terry has an amendment that will remedy that evil. I am not pretending to know how it got in.

MR. McCALLUM. That is the very point that I urge in support of the amendment offered by the gentleman from Placer, Mr. Filcher. We need such a change as is in the amendment—that is, section thirty-one of the report of the Committee on Legislative Department—and there is no need to amend, or go to work upon this section five, provided, in the judgment of the committee, section thirty-one is good as it stands. That error does not occur in the report of the Committee on Legislative Department. It is now before the Convention in the amendment pending. The section reported does not contain the clause now in the Constitution about associations for the deposit of gold and silver. They use generally, the language, "for such purposes." What is attempted, as a matter of grammatical construction, I am unable to very clearly understand. It reads: "The Legislature shall have no power to pass any Act granting any charter for banking purposes; but corporations or associations may be formed for such purposes under general laws." Now, we state, in that respect, the report of the Committee on Corporations is ambiguous.

It is said that in the twenty-nine years of the Constitution the Courts have construed that section, giving the banks the right to do the kind of business which the banks have done in all these years. Then if construction has been given to that language where is the necessity of changing that language? I am opposed to inserting anything in the Constitution, as we find it, or to striking anything from it, without some good reason showing the necessity. It is a strong argument against the section reported by the Committee on Corporations, that they change the section after the Courts have construed it for twenty-nine years, without any difficulty. If it is wrong it has been so for twenty-eight or twenty-nine years. If difficulty can come in the future, I submit that we had better not change it, for fear some other construction may be given, giving them some right which we do not propose to give by the amendment.

MR. LAINE. I would ask the gentleman if the Supreme Court has ever construed that language? If it has, I never found it.

MR. McCALLUM. I understood the Chairman of the committee to say so.

MR. ESTEE. Mr. Chairman: I will say that what the Chairman of the committee said was this: that the Supreme Court had permitted these banks to exist, which the old Constitution did not seem to contemplate, and had permitted them to get into Court on that kind of business, notwithstanding the apparent inhibition of the Constitution, and we thought we would make it a little clearer if we could.

MR. McCALLUM. I would say, in answer, that the language reported by the Committee on Legislative Department is the language of the Constitution proposed by Mr. Laine, section thirty-four, it reads:

"The Legislature shall have no power to pass any Act granting any charter for banking purposes; but associations may be formed, under general laws, for the deposit of gold and silver; but no such associations shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money."

That is the identical section reported by the Committee on Legislative Department, with the addition of the words, "and other lawful money of the United States," a point upon which we are all agreed. So it is a part of his own Constitution.

MR. LAINE. Mr. Chairman: Mr. Laine is not one of the Courts.

MR. McCALLUM. Mr. Chairman: I am not quoting any decisions. Here is section thirty-one of the report of the Legislative Committee, which I beg leave to read and submit the matter to the committee:

"The Legislature shall have no power to pass any Act granting any charter for banking purposes, but associations may be formed under general laws for the deposit of gold and silver and other lawful money of the United States; but no such associations shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money."

That is the amendment now pending, and I submit that it is rather preferable to section five of the report of the Committee on Corporations. My own judgment would have been to strike out section five and pass it entirely, and consider that when we come to consider the report of the Committee on Legislative Department, where it belongs.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: There is the same objection, the same obscurity, in the section proposed by the Legislative Committee that there is in the old Constitution: "The Legislature shall have no power to pass any Act granting any charter for banking purposes." Now, under that all banking is forbidden. That is the trouble with this thing. And then it goes on and makes a single exception: "but associations may be formed under general laws for the deposit of gold and silver and other lawful money of the United States." It limits banking to that single operation. It, in effect, prohibits banks of discount, banks of loan, and banks of exchange. "But no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money." So far as that is concerned it is the provision of the old Constitution and of all the amendments. The thirty-second section of the report of the Committee on Legislation reads thus:

"The Legislature of this State shall prohibit by law any person or persons, association, company, or corporation, from exercising the privileges of banking, or creating paper to circulate as money."

Now there is an absolute prohibition against banking at all. All banking would be excluded under that. It strikes me that this is a very inadequate way of banking. In effect it destroys—if it is carried out and interpreted by the Courts, as it is here reported by the Committee on Legislative Department—all banking in this State, except that of receiving deposits of gold and silver, and other lawful money of the United States. It is not, I apprehend, the intention of this Convention to do that. If banking, banks of deposit, banks of discount, banks of exchange, banks of loan, and banks for general commercial purposes are beneficial institutions to everybody, I cannot believe it is the intention of this Convention to prohibit banking entirely. Why should we?

MR. GREGG. I offer an amendment to the amendment. Strike out the words "in this State" at the end of the fifth line, and insert the word "individual" after the word "association," in the fourth line.

MR. GRACE. I move that the Committee rise, report progress, and ask leave to sit again.

The motion was lost, on a division, by a vote of 55 ayes to 65 noes.

MR. GREGG. I have sent up my amendment in writing.

The SECRETARY read:

"Amend section five to read: 'Section 5. TheLegislature shall have no power to pass any Act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws; but no corporation, association, or individual shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money, except the lawful money of the United States.'"

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: There is something in the criticism that has been made, that a strict construction of this section would authorize corporations to make the lawful money of the United States. It says that no corporation shall make, issue, or put in circulation, any bill, etc., to circulate as money, except the lawful money of the United States. That is, they shall not make any money unless it be the lawful money of the United States. By the Constitution of the United States, we are prohibited from making anything but gold and silver legal tender——

MR. GREGG. My amendment strikes out "in this State."

MR. HAGER. I was going to read the Constitution of the United States. It says, that no State shall "coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts;" and we cannot as a State make even the so-called legal tender of the United States a legal tender of this State. The Constitution, as it was originally framed, does not contain this provision, "except the lawful money of the United States," and I think it ought to be stricken out here. When you come to speak about the lawful money of the United States there is another power, beyond the authority of this State, which overrides anything we may do or say here. That is, the Constitution of the United States, and the laws made in pursuance thereof, are the paramount law of the land.

MR. ESTEE. When we come to a vote on this amendment, then the gentleman can propose an amendment to meet that.

MR. HOWARD. What power is there in the Federal Government to make any lawful money except gold and silver?

MR. HAGER. That is a conundrum that I am not called upon to answer. I did not undertake to say that the Government could make anything legal tender but gold and silver. I am arguing how far we can go. I read in the Constitution of the United States what a State may do, and it is foreign to our purpose to discuss what the Government of the United States can do. For my own part I should say that the greenback, so-called, never was a lawful currency within the meaning of the Constitution.

MR. HOWARD. That is all I wished.

MR. HAGER. That is my idea. The Supreme Court has decided that they were to a certain extent. But they decided one way and then decided the other way, and if it should come up now the general prevailing sentiment is that the Supreme Court would decide that all currency issued since the war is in violation of the Constitution. These are my ideas; but we are not here for the purpose of discussing that matter.

MR. TINNIN. How about Butler's fiat money?

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MR. HAGER. That is the easiest defined money in the world. You print on a piece of paper "I am a dollar," and it is a dollar. That is fiat money as I understand it. But as I was saying, I think these words, "in this State, unless the lawful money of the United States," should be stricken out altogether, and I have drawn an amendment with reference to that matter to strike out these words and let the clause stand just as it was in the old Constitution; "but no corporation or association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money;" and there it stops. Then the Constitution of the United States comes in as the paramount law, and it says, whatever is the legal money of the United States, any bank, or any corporation, can make use of the same as any individual; that we, by our legislation, cannot do anything with it one way or the other. If my friend will accept my amendment to strike out all after the word "money," that is, the words, "in this State, except the lawful money of the United States," it would remove the difficulty. I am opposed to having that clause left in. They might make money to circulate in some other State. They might send it into Nevada and elsewhere to circulate as money.

MR. GREGG. My amendment strikes out "in this State."

MR. HAGER. But if it stands as reported now any banking corporation of the State of California might make and issue money to be circulated in the State of Nevada, in New York, Philadelphia, Europe, or elsewhere, provided they did not make it to be circulated in this State. We want no such provision as that. We do not wish it to appear that there is even an implied authority to issue paper money to circulate anywhere in the world. It has never been the policy in this State to have anything but gold and silver for money. The banking corporations have been for deposit and discount, and nothing more. So they ought to be, for the reception of money and for the loaning of money, but not for the issue of paper as money in any form. The older States of the Union are coming around now to that principle and stop State banks from issuing paper to circulate as money. I will offer this amendment if I am in order.

THE CHAIRMAN. There is an amendment already pending, but the Chair will receive the amendment to perfect the original section.

MR. HAGER. So that the section will stand as in the original Constitution.

MR. McFARLAND. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and quorum present.

REPORT OF THE COMMITTEE ON CORPORATIONS.

MR. ESTEE. Mr. President: I wish to send up a supplemental report from the Committee on Corporations other than Municipal, and ask that it go to the table, and be printed without reading.

So ordered.

Following is the report:

SACRAMENTO, November 15th, 1878.

MR. PRESIDENT: Your Committee on Corporations other than Municipal, to whom were referred proposed amendments number four hundred and fifty-one, introduced by Mr. Hale; number four hundred and sixty-one, introduced by Mr. Vacquerel; number four hundred and ninety-eight, introduced by Mr. Hughey, have had the same under consideration, and report them back, with a recommendation that the same be indefinitely postponed.

The committee recommend that section six of the article on corporations, submitted by the committee on October thirtieth, be amended so as to read as follows:

SEC. 6. All existing charters or grants of exclusive or special privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

The committee also recommend that section fourteen of the article proposed by the committee be amended to read as follows:

SEC. 14. Every corporation, other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

The committee also recommend that the following words be added to section twelve:

Provided, that coöperative societies may be formed under general laws, which may provide by by-laws of their own for limiting the representation of shareholders of their stock, and the number of shares that may be held; and the Legislature shall enact such laws as may be necessary for their faithful management and protection, and may limit the liabilities of their members.

The committee further recommend the adoption of amendment number four hundred and fifty-eight, proposed by Mr. McConnell, to be known as section fifteen, and that the numbering of the sections following be changed to correspond thereto. The section proposed reads as follows:

SEC. 15. No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State. The Legislature shall enforce this section by appropriate legislation.

Respectfully,

M. M. ESTEE, Chairman.

REPORT FROM THE CONTROLLER OF STATE.

MR. HILBORN. Mr. President: I have a communication from the State Controller, addressed to the committee of which I am Chairman, showing the precise condition of the appropriation under which we are working, how much has been drawn, the daily expenses, and how long the fund will last.

THE SECRETARY read:

CONTROLLER'S OFFICE, November 15th, 1878.

To the Hon. S. G. Hilborn, Chairman Committee on Contingent Expenses:

Amount appropriated for expenses of Constitutional Convention	$150,000 00
Cost of Convention up to and including November 16th, as shown by Controller's books	92,645 00
Balance in appropriation	$57,355 00
Per diem of delegates and attachés	1,651 00
Estimated expenses other than per diem	94 00
Estimated total expenses per day	$1,745 00

From the above showing, I would estimate that the appropriation for expenses of Constitutional Convention will last for thirty-three days, from and including the seventeenth day of November.

The estimated expenses, other than per diem of members and attachés, is only an approximation, made by taking the amounts that have already been paid for printing, stationery, etc., and dividing it by the number of days up to date of payment that the Convention had been in session.

W. B. C. BROWN, Controller.

THE PRESIDENT. The communication will lie on the table and be printed.

BANKING CORPORATIONS.

MR. ESTEE. I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, to further consider the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Kern, Mr. Gregg, to the amendment offered by the gentleman from Placer, Mr. Filcher. The Secretary will read.

THE SECRETARY read the amendment of Mr. Filcher:

"SEC. 5. The Legislature shall have no power to pass any Act granting any charter for banking purposes; but associations may be formed under general laws for the deposit of gold and silver, or other lawful money of the United States; but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, or promissory note, or other paper, or the paper of any bank, to circulate as money."

MR. GREGG moved to amend the amendment:

"Strike out the words, 'in this State,' at the end of the fifth line, and insert the word 'individuals' after the word 'association,' in the fourth line."

THE CHAIRMAN. The question is on the amendment to the amendment.

THE SECRETARY read the amendment offered by Mr Gregg:

"Amend section five so as to read as follows:

"SEC. 5. The Legislature shall have no power to pass any Act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws: but no corporation, association, or individual shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper to circulate as money, except the lawful money of the United States."

THE CHAIRMAN. The question is on the amendment to the amendment.

Lost.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from Placer, Mr. Filcher.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I hope that the amendment will not pass in the shape in which it is proposed, and that the section reported by the committee will be adopted. No one can ignore the fact that we have a large number of banks in this State, exercising general banking powers, and all of the powers except issuing money. Now, under the old classification of banks, a bank of deposit was a generic term which embraced all except those which issued money. But this is not confined to that. It is analogous, therefore it should not be put in the Constitution. The Code of California contains some provisions showing the legislative construction of the old Constitution. That legislative construction provides for the accumulation, saving, and loaning, so as to create what are called savings banks. Also, provides for banks of discount and deposit, and ultimately the section was altered so as to provide for all other general business purposes. Now, we have banks of savings, general savings banks; one institution I think I may mention here, against which nobody will make any objection whatever, and that is the Hibernia Savings Bank of San Francisco. I never heard any objection to that institution, or to the management, or against the directors, in any way whatever. It is certainly a very useful institution, and the practical workings of it are to induce the laboring classes, having small earnings, to bring them and deposit them in the bank, that the money may go into general circulation, thus adding to the aggregate amount in the general business of the country. Now, upon these deposits, the depositors receive regular dividends. The money is loaned out, and as far as this bank is concerned, the business has been done safely. It is a good institution, and the benefits are recognized by all. And yet, literally, upon this amendment no such bank could exist. None of the savings banks could exist, because, to restrict it in this manner, it could not loan the money out, and it would have to remain in the vaults, and it would be simply in the possession of a safe deposit company. Now, the safe deposit company receives money to keep safely, and nothing else. If the Constitution is intended to limit the business to this one thing, then say so. If you intend to have your savings banks, which receive money of the people and loan it out on interest, and pay dividends to the depositors, and accommodate the

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general commercial necessities of the country, if that is the desire, then this provision should be broad enough to embrace it. If you intend to embrace other banks, which are banks not only of deposit but banks for loans, for discount, and banks to the whole extent, then this language should be broad. The great and principal business of the world is done by banks that are not banks of issue. And that I am not incorrect, I say that the Bank of France, in Paris, is not a bank of issue, but a bank possessed of general powers of banking institutions—that is, such as loaning money, discounting paper, selling bills of exchange, etc. It is impossible to get along, it seems to me, in this State, or in any of the modern States of the Union, without banks of discount. The bullion of the country goes to the banks, and then goes into the mints; a portion of it is transmitted to the East in bullion, and upon that bullion banks draw their exchange. Exchange is necessary to the country. Unless our own banks—those incorporated here in our own State—are permitted to sell exchange on the East, that business will fall to the foreign banks. They will sell exchange, and the home banks will be deprived of it. Without banks of exchange it is impossible to get along. It seems to me, therefore, that this section as reported by the committee: "The Legislature shall have no power to pass any Act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws; but no corporation or association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money in this State, except the lawful money of the United States," prohibiting them from putting in circulation anything that should circulate as paper money, is the proper clause, and that the old Constitution should be amended in that respect, because the old clause simply limited them to banks of deposit. We find, upon examining the Journals of the old Convention of eighteen hundred and forty-nine, that the Convention was composed mostly of old fashioned, hard-money Democrats. They came here, therefore, with all that prejudice, and dislike, and abomination of anything in the nature of paper money, many of them coming direct from those States that were flooded with paper money, and they determined to put a veto on the issuing of paper from local banks. Such was the meaning of the Constitution. They meant that we should have banks of deposit, banks possessed of other general banking powers, except the power to issue paper money. Everybody here will agree to the wisdom and policy of that clause, or the intent of that clause. I do not suppose there is a gentleman upon the floor of this Convention who would be in favor of allowing banks to issue and circulate paper as money. Therefore, the question is, shall we so word this Constitution as to make it plain and clear, that there can be no doubt about the proposition that banks may exist having the general powers belonging to banking institutions, or shall we adopt this obscure language of the old Constitution? It is wise to make this section as clear and as plain as we can. It says they may exist for general banking purposes, and that is all. They are specially prohibited from making, issuing, or putting in circulation, any paper money of any description. I do not see how any difference of opinion can exist on this subject. This first clause is a prohibition of any charter except for regular banking purposes. That has been explained. The objection is insisted on here that this clause was intended to prohibit individuals from doing a banking business. It says, for general banking purposes, corporations and associations may be formed under general laws. So far, that is perfectly consistent and perfectly harmonious. Then follows another distinct prohibition, making it still clearer and stronger: "But no corporation or association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money in this State." Now, with the insertion of the word "individual" there, and strike out the words "in this State," it seems to me that the section should be adopted, and that is what this Convention desires. Otherwise, you have all the time to place the construction of the old Constitution, which is apparently against its letter, seemingly against the ordinary meaning of language, in order to make your savings banks in this State to exist, in order to permit any bank to discount paper, or sell bills of exchange. For that reason, I would suggest that some gentleman who voted in the negative on the amendment offered by the gentleman from Kern, to move a reconsideration. This section, as reported by the committee, will be sufficient, with a few trifling alterations. Then it would read in this way:

"The Legislature shall have no power to pass any Act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws; but no corporation, association, or individual shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money"——

(Omit the words, "in this State,") "except the lawful money of the United States."

I will say one word in regard to that sentence, "except the lawful money of the United States." Of course, it is generally understood that the United States is going to make no money except gold and silver, but we cannot tell what may occur. Whatever is lawful money, whether paper or gold, the banks ought to have the privilege of circulating. Therefore, I can see no harm in leaving those words in the section. I can see no harm in the amendment proposed by the gentleman from Placer.

SPEECH OF MR. JONES.

MR. JONES. Mr. Chairman: For myself, I would prefer if possible that a still simpler form than section five be arrived at. While I do not particularly disagree with the remarks of the other members, it seems to me that there is a confusion of ideas arising from the language of the section as it exists in the report of the committee, and I believe the will of the Convention to be in favor of the amendments proposed. Following the example set here I wish to say that in case I should have an opportunity, I propose to submit for the consideration of the Convention what seems to me to be a reduction to its lowest terms, of the absolute sense of the Convention, as sought to be embodied in the various amendments, though I may be utterly mistaken in that idea. The amendment I propose to submit strikes out of the second line of section five the word "special," and "for banking purposes;" strikes out the remainder of the second line and all of the third line to the words "no corporations;" add the word "persons" where the amendment of the gentleman from Kern inserts it, and strike out the words, "except the lawful money of the United States," and the words "in this State," in lines five and six, so as to read:

"SEC. 5. The Legislature shall have no power to pass any Act granting any charter. No corporation, association, or person, shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money."

Mr. Chairman, the reason why it seems to me that this will embody the sense of this Convention, and why it is that it embodies my best judgment of the intent and meaning of the section. A great number of words have a tendency to mislead members. The first section of this article prescribes that corporations and joint stock associations may be formed under general laws. Now, I understand that to be a general proposition. There is no restriction, nothing to prevent such corporations or associations from being formed for any legitimate purpose. I think that is clearly understood by the Convention. Then, when we come to section five, why introduce words saying that a particular business shall not be specially chartered by the Legislature; it seems to me that, at least, it does introduce the implication, when we say that the Legislature shall have no power to pass an Act granting a special charter for banking purposes—it does imply to the ordinary mind, and we'll come within the legal rule—that the expression of the one is the exclusion of the other; that it may be done for other purposes; that the Legislature may pass such laws for any other purpose than banking institutions. I do not understand that this was meant by the committee when they reported this section, but it certainly bears that construction. If we don't mean that, why say it? If we simply mean that the Legislature shall not pass any Act granting any charter, why not say it and have done with it? Then, following the words of the report, that corporations or associations may be formed for such purposes under general laws. Is there anything to prevent them organizing for this or any other business under the first section of the report? If that is so, why put these superfluous words in there? And then it is implied again that other business may not, perhaps, be done under general laws. Then comes the proposition, that no corporation or association shall make, issue, or put in circulation, any check, etc., to circulate as money in this State. The words, "in this State," are not required. And, following up the words, "except the lawful money of the United States." Now, I see no propriety, no use that these words can serve here. If we adopt this section as it stands, we will not adopt it to the extent that you cannot pay a man, or deliver to another man, to put in circulation, greenbacks, if he is willing to take them. No bank can emit any paper money whatever if we leave off these words. If we retain them, then we retain this word person. Then we have this proposition, that no person can put in circulation any, even of the lawful currency of the United States, for that would be paper money. It would be a nugatory provision as regards the person. Now, Mr. Chairman, it seems to me that we can dispense with all these words upon which we have been differing, which would simplify it very much. The Hibernia Bank, that have been doing business under the present Constitution, will stand where they stood in the beginning. There will be no discrimination against them. But even if it should be found necessary, as this Constitution will not be retroactive—there will be abundant time for them to adapt themselves to any provision which we may adopt. If they have been outside of the Constitution heretofore, there will be abundant time to bring themselves within the scope and the protection of the organic law. Therefore, I speak against the amendments that are proposed, for the simple reason that it seems to me that the amendment I have suggested will be all sufficient. It will prevent the issuance of any paper money, which seems to be the principal object here. The other amendments, as well as the section itself, are calculated to mislead.

MR. DUDLEY, of Solano. I move to reconsider the vote by which the amendment proposed by the gentleman from Kern, Mr. Gregg, was rejected.

MR. HOWARD. I second the motion.

MR. TERRY. The rule requires notice to be given the same day.

MR. WILSON, of First District. I do not think so. The rule says you must at least give that notice. You cannot do it at a later period than the day on which the vote was taken. It is not exhaustive of the power of the Constitution.

THE CHAIRMAN. The motion to reconsider can be entertained by the unanimous consent of the Convention. Objection is made. The question is on the amendment proposed by the gentleman from Placer.

SPEECH OF MR. HAGER.

MR. HAGER. Mr. Chairman: We have two reports before us on the same proposition. The Legislative Committee have reported upon the same branch, and they adhere more closely to the phraseology of the old Constitution. In the old Constitution these provisions are under the head of "Legislative Department;" therefore the committee had a right to report on them. I think it is nothing more than fair that we should discuss the different propositions brought in here by the Committee on Corporations and the Committee on Legislative Department. So it is a matter of choice between the two, whether we shall take the proposition reported by the Committee on Corporations, or whether we shall adopt the proposition reported by the Committee on Legislative

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Department. The Legislative Committee have adhered more strictly to the provision of the Constitution as it now exists. The Committee on Corporations have departed from that provision, and changed the phraseology. They have changed the language in one particular about which I have some doubt—using the express terms that charters for banking purposes may be formed under general laws. The old Constitution does not contain any provision so broad as that—that corporations and associations for banking generally may be formed under general laws—but it provides that corporations may be formed under general laws for the deposit of gold and silver. That is the provision in the old Constitution; and the Committee on Corporations have changed the phraseology by putting the words into it, "may be formed for banking purposes under general laws." The one limits them to the deposit of gold and silver, the other allows them to be formed for general banking purposes. The Committee on Legislative Department have reported back the following provision:

"SEC. 31. The Legislature shall have no power to pass any Act granting any charter for banking purposes; but associations may be formed under general laws for the deposit of gold and silver and other lawful money of the United States. But no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money."

Nobody objects to that; so that the Legislative Committee have reported substantially what was in the old Constitution.

Now, the point to be decided by this Convention is, which do you prefer—the language that was used in the old Constitution, as modified by the additional words, "or other lawful money of the United States," or the provision reported by the Committee on Corporations? I sent up one amendment, to strike out the words (as reported by the committee) "in this State," and "except the lawful money of the United States;" which will make it satisfactory to me. But, upon reflection, I am inclined to favor the proposition reported by the Committee on Legislative Department, with the simple amendment which I will send up and explain. I am inclined to adhere to the Constitution as it is, with some little improvement, and that is, to let it read in this way:

"The Legislature shall have no power to pass any Act granting any charter for banking purposes, but associations may be formed under general laws for the deposit and loaning of gold and silver, and other lawful money of the United States."

My amendment is to put in the words "and loaning."

MR. FILCHER. I accept the amendment.

MR. HAGER. That will cover every bank now legally in existence under the laws of this State, if it was originally intended to have banks of deposit and discount. Now I think perhaps it is the sentiment of this Convention that we should not engraft anything in the Constitution which would authorize banks for general banking purposes so far as to authorize the use of any paper money in any shape by them, or in any form. I hope never to see a banking corporation in the State of California with authority to issue paper money. I know that it is contrary to what has been the policy of the State, the purpose of the State, contrary to the sentiments of the people of the State, and it has become the sentiment of the world. All the old State institutions are going out of existence. The Bank of France has been referred to. That, like the Bank of England, is an official government institution. The notes are guaranteed by the government. Go where you will, in England, in India, in Turkey, anywhere, and you will find the notes of the Bank of England and of the Bank of France in circulation, and considered better than gold. But in England there are no private banks that issue paper money, not one. The Bank of Ireland is the only one that does. Take the great Bank of London, and other banks; they are merely banks for the purpose of receiving and loaning money, according to the phraseology of the provision here.

MR. WILSON. Don't they discount paper and sell exchange?

MR. HAGER. Certainly; and I do not intend to prohibit that here.

MR. WILSON. You are prohibiting by construction, why not put in the words?

MR. HAGER. The Rothschilds of London are not classed as bankers, but general commercial men. They are depositors who receive and loan money. But I did not intend to restrict the operations of banks here as they now exist. My intention is, as far as I can influence the Convention, not to have anything in the Constitution that will authorize the issuing of anything like paper money by the banks. Now, sir, I think the trifling amendment which I offer will make the section reported by the Committee on Legislative Department acceptable.

NOTICE OF RECONSIDERATION.

MR. HOWARD. I give notice that, to-morrow, I will move to reconsider the vote by which the amendment proposed by the gentleman from Kern, Mr. Gregg, was voted down.

SPEECH BY MR. O'DONNELL.

MR. O'DONNELL. If I understand the amendment, it is, "The Legislature shall have no power to pass any Act granting any charter for any banking purposes, but corporations and associations may be formed for such purposes under general laws; but no corporation or association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money." Now, Mr. Chairman, I think it is the duty of this Convention to do everything in its power to put a curb on these rotten banks. But there seems to be a strong tendency here on the part of many delegates, to put in a provision to injure the force of section three, which is aimed to destroy these rotten banks. As long ago as eighteen hundred and twenty-eight, General Jackson predicted and swore that these gigantic corporations were the most terrible foes with which a republic has to deal. Experience has proved the truth of that prophecy. At that very time Old Hickory was engaged in making war against the most terrible corporation that ever existed in America, that is, the United States Bank at Philadelphia. And he destroyed it. Destroyed it at the risk of his life. That is the way the delegates in this Convention have got to deal with these gigantic corporations, who, singly and alone, would be contemptible, but who, banded together for plunder, are more remorseless and merciless than a band of cutthroats. Corporations, it seems to me, and monopolies, have a club with which tyrants beat our brains out. It is an engine by which the wealth and power of the country is centralized in the hands of a favored few. It is these dark crimes conducted under the cloak of respectability. It is a power which to-day wields thousands of millions of dollars. It is a power which to-day wields and controls your Senators, and I think, Mr. President, that it is high time now that we should put a curb on these rotten banks. I find a strong feeling here to-day, in regard to this amendment. There can be but one or two little objections to it, and those we have rectified so far, I think, removing that word in the second line "special," before the word charter, and removing in the fifth line the words "in this State," and the words "except the lawful money of the United States." Now I hope that the members of this Convention will support that, and vote down all other amendments. Some of the gentlemen have asserted here that it would have a tendency to blot out some of these banking institutions. I think it would be a good thing if they were all blotted out. I don't think there are half a dozen solvent banks in the State of California—all the rest are rotten.

[A Voice. "Name them."]

MR. O'DONNELL. I can name them if you want them.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: It strikes me that the amendment proposed by the gentleman from San Francisco, Judge Hager, accomplishes no purpose except to weaken the amendment of the gentleman from Placer, Mr. Filcher. I know it has been accepted by the gentleman from Placer. The reason is this: the committee reported that corporations and associations may be formed for such purposes under general laws—that is, for banking purposes. Banking is a generic term, and the committee intended that there should be associations and corporations for banking, having all the powers of banks, with one solitary exception, and that exception was the making or issuing of paper money or anything of that character. Now, sir, we do not want to mark out any line for these banks to follow—that is for the Legislature to do; because if gentlemen insist in putting in the words "and loaning," it may be inferred that they can only receive and loan money, and nothing else. Let me say to these gentlemen, and all concerned, that receiving and loaning money is not the chief part of banking; not the most beneficial part. Selling exchange, deposits, checking out, and saving the money of the people, are some of the things done. And I hope the Convention will vote down this amendment, and then you can amend the section by striking out the words which have been shown to be useless.

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: It seems to me that in elaborating a new Constitution, we should depart from the phraseology of the old instrument as little as possible, and only when some grievance has been sustained. If there is no grievance it is better to retain the old phraseology, because our people are familiar with the language and its meaning.

Now, let us consider this section of the present Constitution, section thirty-four of article four, and see what grievance under it remains to be remedied. "The Legislature shall have no power to pass any Act granting any charter for banking purposes." So far there is no objection, and in the report of the committee I see that they retain the phraseology. Then the section further provides, "but associations may be formed under general laws for the deposit of gold and silver." I should prefer the word corporations, instead of "associations," but am not particular.

The section as reported by the Committee on Corporations other than Municipal reads: "The Legislature shall have no power to pass any Act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws, but no corporation or association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money in this State, except the lawful money of the United States."

MR. HAGER. Let me refer you to section four, where the term corporations is defined. I will read it:

"SEC. 4. The term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships; and all corporations shall have the right to sue, and shall be subject to be sued, in all Courts, in like cases as natural persons."

MR. JOHNSON. I am not very particular about the word "corporations," but I think that word would be sufficient by itself and preferable to any other, because section four, as just read, makes it include associations.

Now, to resume. In section thirty-four of article four of the present Constitution, the disjunctive conjunction "but" is followed by this language: "Associations may be formed under general laws for the deposit of gold and silver."

In the report of the committee it is proposed to amend as follows: "But corporations or associations may be formed for such purposes under general laws."

Leaving out of consideration the tautology implied in the words "corporations or associations," the amendment of the committee thus far is an improvement. What is the use of stating whether these banks shall loan money, or receive deposits of money, or discount paper, or sell exchange? There is no occasion for it at all, and the language of the

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committee thus far is preferable to that used in the present Constitution. It is a change from the old section, which limited, it would seem, associations to be formed under general laws, to the deposit of gold and silver.

We come now to the qualifying clauses. In the present Constitution the qualifying clause reads: "But no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money."

In the report of the committee the qualifying clause is: "But no corporation or association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money in this State, except the lawful money of the United States." This amendment of the committee is certainly subject to criticism. With an ellipsis the proposed amendment would read that no corporation should make any money except the lawful money of the United States. In other words, that only corporations should make, and that they should have the right to make, the lawful money of the United States.

The intent of the present Constitution was to inhibit the making or circulating of paper money by corporations, and in it there is another provision that the Legislature shall inhibit individuals from creating paper to circulate as money. It has been suggested that the word "individual" could be inserted in this proposed amendment, so that the inhibition shall run against corporations and individuals alike, and the whole be embodied in one section. I think this is a good suggestion. This proposed inhibition of the committee is not against individuals, but against corporations or associations. It occurs to me that the inhibition should be equally against individuals.

Now, in order to preserve the old phraseology as nearly as possible, would it not be better to read in this way: "But no corporation, association, or individual shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, to circulate as money?"

The gentleman from Kern proposed an amendment, but he left out the word "make." In this amendment which I propose to offer, this word is inserted, and the word "individual" is inserted, so that the whole will read as follows:

"The Legislature shall have no power to pass any Act granting any charter for banking purposes, but corporations or associations may be formed for such purposes under general laws; but no corporation, association, or individual shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper to circulate as money."

I preserve as far as possible the phraseology of the provisions of the present Constitution, with which our people are familiar, and at the same time seek to correct them, where correction is advisable or necessary.

MR. WILSON. Allow me to look at your amendment.

MR. JOHNSON. With pleasure.

MR. VAN DYKE. I would like to ask the gentleman a question; "but associations may be formed for such purposes under general laws." I would ask if that cannot be done under the first section of this part?

MR. JOHNSON. In answer to that I have this to say: that the phraseology in our present Constitution, as I have already remarked, should be preserved as far as possible, unless there is some grievance. We are not here as mere sticklers for phraseology, not to make idle criticisms, not to say there is a word too much in the old, but intelligently to discuss the sense of it. Inasmuch as the present Constitution has this provision, that corporations may be formed under general laws, and this further provision that the Legislature shall have no power to pass any Act granting any charter for banking purposes, etc., I see no reason why these two sections should not be preserved in the new Constitution.

MR. VAN DYKE. They are given the power to form under the first section, and why repeat here that they may be formed under general laws?

MR. JOHNSON. There is a special inhibition in the existing Constitution against granting charters to banks by special Acts; but it is added they may be formed under general laws, for the deposit of gold and silver. I think it best to retain this special inhibition, for the reason that it is emphatic, and we are familiar with that language; but the words, "for the deposit of gold and silver," should be eliminated, and the words, "for banking purposes," or something equivalent, should be substituted, as those words will include all the purposes for which banks are instituted; and then will follow in proper order the limitation on the power of banks as to making or issuing paper to circulate as money. Thus the cognate sections in the existing Constitution will serve to illustrate and explain the new; and by comparison the purposes and objects of this Convention will be readily seen. The advantage of my proposed amendment is, that the phraseology of the present Constitution is but slightly changed, the inhibition is equally against corporations and individuals, and it is in the same section, and it does not give to any corporation the privilege to make the lawful money of the United States, a privilege which—with all due deference to the Committee on Corporations other than Municipal—would not be much protection to the defendant in a criminal case in the United States Criminal Courts.

Mr. Chairman, I now offer this proposition which I have read as an amendment to the amendment.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from Sonoma, Mr. Johnson.

SPEECH OF MR. CROSS.

MR. CROSS. Mr. Chairman: It seems to me, in a matter of so much importance as this is, we should be quite deliberate in our action. These banks are a necessity; something that our business men cannot get along without. The commercial world can hardly move without banks, with those very powers which they have now. The banks today, in California, as I understand it, exercise five important functions. One is, receiving deposits and loaning money. This is done by the savings banks, and by the ordinary commercial banks. Also, transacting the business of buying and selling exchange, and issuing letters of credit. Also, another branch, which is very important to us here, and will become more so in the future, and especially to the mining regions of the State, and that is the business of handling gold dust and bullion produced by the miners. Now, sir, the amendments which have been offered, except the last, it seems to me, limit the business of banking substantially to only one of these important functions. As I understand the amendment proposed by the gentleman from Placer, it amounts to this: that hereafter banking corporations and associations may be formed under general laws for the deposit of gold and silver, or other lawful money, and for the loaning out of the same. Now, section nine of the report of the Committee on Corporations other than Municipal reads:

"No corporation shall engage in business other than that expressly authorized in its charter, or the law under which it may have been or may heretofore be organized; nor shall it hold any real estate for a longer period than five years, except such as may be necessary for carrying on its business, or which is incident thereto.

That section probably will be adopted by the Convention. Now, the gentlemen propose to say that banks may be organized for the purpose of receiving and loaning money. This section nine says that the business of corporations shall be limited to that expressed in the charter, and this amendment will limit the banks to receiving and loaning money, and in that case the old maxim will apply—*expressio unius est exclusio alterius*—and when this amendment is adopted, which says that banking associations may be formed for receiving moneys and loaning moneys, that is all they can do. Then the stockholders in banks will be cut off from the large profits arising from selling exchange, letters of credit, dealing in gold dust, and making collections, and the commercial communities would be cut off from the dues which they derive from these sources. We must consider these matters carefully. Simply because it is a bank we must not tear it to pieces. We cannot get along without banks; and the business of receiving deposits is so intimately connected with the issuing of letters of credit, the business of buying and selling exchange, the business of making collections, that they must go hand in hand together, and we should not adopt a provision which will cut off the stockholders in banks from receiving the benefits which will accrue by allowing these various branches to be combined. In some sections of the State these incomes amount to a considerable sum. I have in mind one bank in Nevada City, where the total expenses of the bank are sustained by the business of dealing in and handling bullion. Now, the stockholders have the full benefit of this. It is a business which is as safe as any that a bank could do. I am opposed to any provision which will take that very important and profitable and legitimate business away from them. The banks could not afford to keep open simply for the transaction of the one branch of business proposed by the amendment—that of receiving and loaning money. The expenses of the bank would have to come entirely out of the earnings of the depositors' money, and it would leave nothing to be paid to the depositors in the shape of dividends. I am therefore opposed to all these amendments, and in favor of the substitute proposed by the gentleman from Sonoma, Mr. Johnson.

THE CHAIRMAN. The question is on the amendment of the gentleman from Sonoma, Judge Johnson.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I wish to call attention to the fact that a section of the Constitution seems to be overlooked in that amendment. Section thirty-five of the present Constitution, which in the report of the Legislative Committee they do not propose to change, reads as follows:

"The Legislature of the State shall prohibit by law any person or persons, association, company, or corporation from exercising the privileges of banking, or creating paper to circulate as money."

Section thirty-four reads as follows:

"The Legislature shall have no power to pass any Act granting any charter for banking purposes; but associations may be formed under general laws for the deposit of gold and silver; but no such association shall make, issue, or put in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money."

The report of the committee seems to cover both those sections. Section thirty-four uses the identical language of the report of the Legislative Committee, except the use of the word "association." It says, "*associations* may be formed under general laws, etc., for the deposit of gold and silver, but no such *association* shall make, issue, or put in circulation," etc. The legislative report uses the identical language of the Constitution except the words, "or other lawful money of the United States." Therefore it seems to me to be the very expression of the Constitution as it is.

THE PREVIOUS QUESTION.

MR. MCCONNELL. Mr. Chairman: I now move the previous question.

MR. WYATT. I second the motion.

THE CHAIRMAN. The previous question has been moved. The question is, Shall the main question be now put?

Carried.

THE CHAIRMAN. The main question has been ordered. The question comes first on the amendment to the amendment, offered by the gentleman from Sonoma, Judge Johnson.

Division was called for, and the amendment to the amendment was adopted by a vote of 81 ayes to 46 noes.

THE CHAIRMAN. The question is on the adoption of the amendment as amended.

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Adopted.

GRANTS, CHARTERS, AND FRANCHISES.

THE CHAIRMAN. The Secretary will read section six.

THE SECRETARY read:

SEC. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter have no validity.

MR. LAINE. I would like to ask the Chairman of the committee what is intended to be done by this section.

MR. ESTEE. I have an amendment to the section which was adopted by the committee this morning. Then I will explain it. I will ask the Secretary to read the amendment.

THE SECRETARY read:

SEC. 6. All existing charters or grants of exclusive or special privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman; I will state for the benefit of the gentleman from Santa Clara, the reason why this section was modified, and the reason why we have placed it in our report. Section one, of article sixteen, of the new Pennsylvania Constitution reads as follows:

"SECTION 1. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity."

The reason of that is this: that it seems in the last twenty-five years the whole State has been covered with certain exclusive privileges, franchises, etc., under which, in many instances, no organization has taken place, and no work has ever been done, but the parties still claim certain invisible rights to water, without having actually appropriated it, without performing any of the work which is required by the Act of the Legislature. A large number of these water rights were applied for. Notices were put up, and that is about all that has ever been done. Now, these special grants and privileges should end some time, and that is the object of this provision. The object is to invalidate all fraudulent claims and force men to enter into the work in good faith, and with that object in view the committee have presented this section for the consideration of the Convention.

MR. JOYCE. Mr. President: It seems to me this section should not have any place here. It seems to me we are suffering from the scheming tricks of corporations. The gentleman has acknowledged just now that there is no competition in corporations. Now, this amounts to nothing unless we can have some competition. To-day the people of the City and County of San Francisco are looking to have anybody that will bring them a different water system from the one that supplies them. I think if this was to be passed it would shut off the water competition of the City and County of San Francisco. I think the people of the City and County of San Francisco need some system to regulate competition with the present system, and it may be that some of these other companies will make it convenient to give us a competing line. We need a competing railroad system too, and if this should be passed and made part of the Constitution, I think it would shut off all competition. I move that any further consideration of this section be laid on the table. [Laughter].

THE CHAIRMAN. That motion is not in order. The question is on the amendment proposed by the Chairman of the Committee on Corporations other than Municipal.

MR. ESTEE. The amendment is simply to strike out the word "grants" and place it in a different position, so that the section will read:

"SEC. 6. All existing charters or grants of exclusive or special privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter have no validity."

MR. SCHELL. Why do you strike out the words "franchises and special privileges?"

MR. ESTEE. We thought it better to follow the language of the Pennsylvania Constitution. It is intended to cover all grants made by the Legislature to any person or persons, or corporations, where the parties have not complied with the provisions of the law.

MR. LAINE. Mr. Chairman: I desire to send up an amendment.

THE SECRETARY read:

"Amend the article reported by the Committee on Corporations by striking out section six thereof."

MR. LAINE. Mr. Chairman: It seems to me that this can serve no good purpose. I am not able to see any purpose that it can serve. I am fearful it will work some wrong, because if grants have been made, they are either contracts or not. They are either valid or invalid. If they are contracts, we cannot by any means impair them. I see no good in it, therefore, I move to strike it out.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. I wish to call the attention of the Chairman of the Committee on Corporations to the language of the section. It says: "All existing charters or grants, or exclusive or special privileges." Now, what class of cases would that cover in this State? I may have a franchise to build a bridge across a river somewhere, or build a toll road, and it would be a little awkward if I had to go and execute it before this Constitution is adopted. But the general law establishing the proposition that a certain number of men may organize a corporation and go on and take up water rights, is that in the nature of a grant to them; is it a charter to them; is it a special privilege? I do not think it is a charter, or a grant, or a special or exclusive privilege—that is the term used in this section. A charter or grant means a charter or grant to some person mentioned by name, or to some association of persons. There must be a grantor and a grantee, and the grantee must be named and known too. I understand the proposition that anybody may go on and locate the waters under general laws. But a charter or grant contemplates a grant to some person who must be named. If anybody can take, there is no special grant or exclusive privilege. I am aware that the wholesale appropriation of the waters of the State should be prohibited, but does the phraseology of this amendment accomplish that result? I think not, sir.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: Your Committee on Corporations thought that this was a very important provision to put into the article relating to corporations. And your committee were informed, and believe it to be an acknowledged fact, that when gentlemen come to go through the statutes, they will find a very large number of grants of the kind I have mentioned privileges and charters for various things throughout the State, which exist now only upon the statute, and which are a living menace to enterprise and improvements in those branches of business to which these privileges relate, and your committee believed, sir, that there should be an end somewhere, and that the balance of these things, where no work has been done, should be wiped out; and I cannot imagine how it can hurt anybody. I do not see how it could harm a single person or a single bona fide institution in this State. I cannot see where it will wrong any one, and it certainly will do a great deal of good.

MR. SMITH, of Fourth District. Mr. Chairman: I do not suppose I can inform the gentleman upon a question of law, but it seems to me there is danger in this proposition. Now, some of the grants and charters given by the Legislature might exceed the powers of the Legislature under the present Constitution, and this clause would make good all that it had done wrong. I say it might do so. If any person has acquired any right properly, from this State, any grant that the Legislature had power to make, then it does not require a provision of this kind in the Constitution to protect him in his rights. They hold these rights at law, and by the law, and they cannot be violated by any Constitution. It requires no provision to protect them in their rights, and no provision can deprive them of their rights. Therefore I shall oppose this section in the Constitution.

MR. WHITE. Mr. Chairman: I trust the Convention will adopt that clause. I can't see any possible harm it can do, and there may be a great many half dead corporations that will be wiped out. I hope the members of this Convention will consider this thing well. I think it can't possibly do any harm, and it may do a great deal of good in wiping out many of these useless corporations; so I trust, sir, that it will be adopted. The Committee on Corporations were unanimous in its favor.

MR. LARKIN. I desire to offer a substitute to section six.

THE CHAIRMAN. The motion cannot be received now.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I do not know whether there is any virtue in this provision or not. It is as plain as anything in the world can be that its retention in this Constitution can do no harm; and if it does no further good it will stimulate these gentlemen who have these charters, to commence work, to organize and proceed to business. If at the time of the adoption of this Constitution, if it should be inserted here, and the people adopt it, they have really organized in good faith, this provision will have no effect upon them. But if they have not organized and commenced work in good faith at the time of the adoption of this Constitution, then under its provisions the charters will have no existence. If they refuse to act, if they refuse to put in force the powers vested in them by virtue of their incorporation, they will cease to exist. There are the best reasons in the world why this provision should be retained here. If they refuse to comply with the terms of the statute authorizing their existence, they should be made in some way to conform to it. Here is a provision that puts them on their good behavior. They are compelled to proceed at once and organize, as the law contemplates they will do, for the benefit of the people, as is supposed their organization is instituted for. I do submit, therefore, that we should keep it here and compel these parties to make use of these rights conferred upon them, or else give them up.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I merely wish to say that the proposition in this section is this: it cannot operate upon any charter unless there has been a forfeiture, and a forfeiture for non-user cannot be enforced without direct proceedings. This provision saves the expense of direct proceedings in a Court. It seems to me, therefore, there can be no objection to it. It will do a great deal of good without doing any wrong.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: It is no argument against striking out the clause that it can do no harm if it is allowed to remain. The first chapter of Genesis might be put in the Constitution, and a motion to strike it out might be resisted for the same reason. It does do harm by its own dead weight, if nothing else. It is harm in itself. Now it only says, "charter or grant under which no bona fide organization, etc., shall have no validity. If a man claims a right to water I do not think this can affect it. More than this, there is one good it might do, it might benefit the lawyers—that worthy and deserving class. It would certainly give rise to a great many law-suits. The fact as to whether or not corporations had organized at the time this goes into effect would have to be decided in the Courts. It would only be a test question as to whether certain corporations were in existence at the time of the adoption of the Constitution; and that would give rise to a

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great many law-suits, as to whether they had organized or not, and as to whether work had been commenced in good faith or not. It seems to me we had better strike it out.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: Now, this forenoon, gentlemen of the Convention were in such a hurry that they could not take time to go to dinner. Now they propose to talk for hours over this section. Now all of them agree that it can do no harm, but the only objection is that it cannot do any good. The section might possibly do some good, but it is doubtful, and I think it would be more beneficial to the people and taxpayers of this State to devote the time of this Convention to the consideration of taxation and other important subjects.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: The provision, as the gentleman has said, is contained in the Pennsylvania Constitution, and also in the last Constitution of Missouri, adopted recently. The reasons for its adoption are very different—the causes do not exist here that exist there. In Pennsylvania and Missouri, as well as other States, charters were obtained from the Legislature. Corporations were incorporated under charters from the Legislature. We have no such things here. Therefore, when you say charters, grants, etc., shall have no validity unless they do thus and so, does not have the same significance as there. It might be put in a different shape. I would say that no exclusive privileges heretofore granted, and that hereafter may be granted, shall have no validity in this State, etc. I am against exclusive privileges of any kind being granted to any person. But, this is in the Constitution of Missouri and Pennsylvania, and I cannot see that it can do any harm.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: The objection I have to this, is that it does not cover a class of cases where special charters have been assumed under the general laws, and which form a very large share of the evils complained of. Therefore, I have drawn an amendment to that effect. Perhaps the phraseology may be defective, but it is open to debate and criticism. I will read it:

"All special or exclusive privileges, whether claimed under general laws or by special grants, shall have no validity unless such claim for special or exclusive privilege shall have been appropriated by occupancy or organization, and business commenced in good faith before the adoption of this Constitution."

MR. JONES. I would ask if it would not be better to substitute the word "and" in place of the word "or," before the word "organization?"

THE CHAIRMAN. The question is on the motion of the gentleman from Santa Clara, Mr. Laine, to strike out the section.

Lost.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from San Francisco, Chairman of the Committee on Corporations, as follows:

THE SECRETARY read:

SEC. 6. All existing charters or grants of exclusive or special privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith, at the time of the adoption of this Constitution, shall thereafter have no validity.

MR. SHAFTER. I offer an amendment to the amendment:

"SEC. 6. All special or exclusive privileges, whether claimed under general laws or by special grants, shall have no validity unless such claim for special or exclusive privilege shall have been appropriated by occupancy and organization, and business commenced in good faith before the adoption of this Constitution."

THE CHAIRMAN. The question is on the amendment to the amendment.

MR. MILLS. Mr. Chairman: I desire to ask a question, whether that would not confirm all the grants made?

MR. ESTEE. Not much.

MR. MILLS. As I understand this provision it confirms every grant made, and I am opposed to that, and therefore I vote no. I hope this amendment will not prevail. I am not in favor of any proposition that will confirm these grants.

MR. ESTEE. I think likely the gentleman has not heard the section read.

MR. MILLS. Yes, I have read it.

MR. ESTEE. Well, it is all right.

MR. MILLS. The proposition is to confirm all the grants we have made. That is the proposition. You can't go into the Supreme Court against any man under this provision. Not much. No, sir. Leave it as it is, and let us get down to business.

MR. SMITH, of Fourth District. I ask the Chairman of the committee whether or not this will not have the effect of confirming all these grants, as the gentleman has just suggested? That question has been on my mind also. This section says, they shall have no validity unless they do certain things. Would it not be inferred that they shall have validity if they do certain things, whether they are legal or not? Will not this section go to that extent?

THE CHAIRMAN. The question is on the amendment of the gentleman from Marin, Mr. Shafter.

MR. HOWARD, of Los Angeles. I think the amendment proposed by the gentleman from Marin is a great improvement, and I hope it will be adopted.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: There is a question about this provision which bothers me some, and perhaps either the gentleman who proposes this amendment, or some other gentleman, will set me right. Now we have in this State such a thing as mining claims, which becomes a special privilege. Also a claim for water rights, the claiming of the waters of certain streams, and springs, and lakes. These claims are necessary and are certainly an important interest in this State. As I understand this amendment, as proposed by the gentleman, it will amount to this: that immediately after the Constitution takes effect, any claim which is now recognized by the laws of this State is liable to be cut off by this provision, and the benefits arising from such claim will be cut off. If I am wrong I wish to be corrected and informed as to the true meaning of the provision. I want to understand it, but my judgment is that this will be the result. The laws of this State provide that a man may go on to a stream of water and there make a location, and claim all or a portion of the water of such stream. For instance, this Constitution is to be voted for on the fifth of next May. As the law exists I may locate a water right on the third of May, for instance, and the law allows me sixty days in which to commence constructing a ditch, or canal, or other works, by which to conduct the water to the place where it is to be used. Now, as I understand this amendment, if I locate a water claim the day before this Constitution is adopted, if it should be adopted, by the adoption of the Constitution, I lose that right unless I commence work on the very same day. I understand if I commence work on the day after the adoption of this Constitution that my claim will have no validity, because I did not commence to perform some act to appropriate that right previous to the adoption of the Constitution. This will be true of corporations and individuals, because it is a special privilege, a special grant.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: The original section reads:

"SEC. 6. All existing charters, grants, franchises, special or exclusive privileges, under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter have no validity."

Then the committee amended it so as to read as follows:

"SEC. 6. All existing charters or grants of exclusive or special privileges under which an actual and bona fide organization shall not have taken place, and business been commenced in good faith at the time of the adoption of this Constitution, shall thereafter have no validity."

Now, I do not see how any intelligent man can put such a construction on the section, because the question of compliance or non-compliance with the law would constitute a question of good faith, and on that every lawyer will agree with me, I think. Now, as to the amendment of the gentleman from Marin, I think it is more explicit, and as far as I am concerned, I am in favor of it. I wish to say to the gentlemen of the Convention that there is nothing unique in this—we did not invent it, but found it in the Constitutions of Missouri, Colorado, and Pennsylvania; and it will be found in all, I think, of the more recent Constitutions, and it commended itself to the committee as a proper provision to be put in this Constitution, and I am unable to see how it can injure anything. I think the amendment proposed by the gentleman from Marin is a little more explicit.

THE CHAIRMAN. The question is on the amendment of the gentleman from Marin, Judge Shafter.

MR. JONES. I do not know as to the meaning of the gentleman from Marin, but I suggested the word "and" in place of the word "or."

MR. CROSS. I want an answer to my question, whether that will not cut off all such things as mining claims or water claims.

MR. SHAFTER. Everything of that kind will enter into the question of good faith.

MR. CROSS. Suppose these claims are made after the adoption of the Constitution?

MR. SHAFTER. It will have no effect at all.

Division was called for, and the amendment of the gentleman from Marin, Judge Shafter, was adopted by a vote of 65 ayes to 43 noes.

THE CHAIRMAN. The question is on the amendment as amended.

MR. BARNES. Mr. Chairman: I am opposed to the amendment and to the section simply because, whatever is intended by it, it will be utterly futile and a waste of words. Whatever rights have been acquired cannot be overthrown by any provision in this Constitution. Rights that have been forfeited by non-compliance with the law can be set aside by law without any constitutional provisions. It will neither invalidate anything that is good, nor overthrow anything that is bad. The whole section, as covered by the amendment of the gentleman from Marin, is, in my judgment, not only useless, but worse than useless—it is vicious.

THE CHAIRMAN. The question is on the amendment as amended.

Division was called for, the committee divided, and the amendment as amended was adopted—ayes, 65; noes, 48.

EXTENSION OF FRANCHISES.

THE CHAIRMAN. The Secretary will read section seven.

THE SECRETARY read:

SEC. 7. The Legislature shall not extend any franchise or charter, or remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State.

MR. BARTON. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"SEC. 7. The Legislature shall not extend or renew any franchise or charter," etc.

MR. BARTON. My object in offering this amendment is to make it a little more plain and explicit.

MR. WILSON, of First District. Mr. Chairman: I would ask whether a motion to strike out the whole section is in order, and if it will carry with the amendment?

THE CHAIRMAN. Yes, sir.

MR. WILSON. I move that the whole section be stricken out.

THE CHAIRMAN. The question is on the motion to strike out the whole section.

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SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I desire briefly to express the views I entertain upon the section before us. It is practically modeled after the Pennsylvania Constitution. It certainly is borrowed from that Constitution, although the phraseology has been somewhat altered. In Pennsylvania, at the time of the adoption of that Constitution, they had no law or previous Constitution resembling ours. They had no incorporations existing under general laws. They had merely the old fashioned system of special charters, and under the decisions of the Supreme Court of the United States all these special charters were placed beyond the control or power of the Legislature. They were held to be inviolable contracts, and every one familiar with the subject must know that the Legislature could not alter or repeal them, or impair them in any manner. When the new Constitution of Pennsylvania of eighteen hundred and seventy-three was adopted, they accepted and adopted substantially our system, providing for incorporations under general laws, and providing that all such corporations should thereafter be subject to alteration and amendment by the Legislature, and at the same time, in order to coerce the old corporations then existing under special charters to accept the new Constitution of eighteen hundred and seventy-three, and to place themselves in a position where the Legislature could control them by enacting laws which would affect them, the Constitution contained the following clause by way of inducement. Section two, of article sixteen, provides:

"SEC. 2. The general assembly shall not remit the forfeiture of the charter of any corporation now in existence, or alter or amend the same, or pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution."

In other words, the Legislature of Pennsylvania was denied the power to remit forfeitures, or to enact any laws for the benefit of corporations existing under special charters, except upon the conditions set out in section two, which I have just read.

That section notified all corporations then existing under special charters, that unless they gave their unqualified consent to the provisions of the new Constitution, and placed themselves entirely subject to it, the Legislature in the future could pass no laws of which they could receive the benefit. When they did accept the new Constitution, the Legislature might then, in its discretion and judgment, remit forfeitures, or otherwise make them the recipients of its bounty. Such a provision is utterly inapplicable in California, because every corporation heretofore and now existing has been and still is under the control of the Legislature, and the existing general law under which they all exist may be altered or amended at any time in the wisdom of the Legislature; and the amendment proposed by the gentleman from Santa Clara to section one of this report, and adopted by the committee, provides that these general laws may be altered or repealed, not only as to corporations hereafter to be formed, but as to those which already exist under the present Constitution. Now this section in the Pennsylvania Constitution, as any one may perceive by reading it, was intended merely as a standing inducement to these older corporations, with special charters, to place themselves in the same position as our present corporations are placed, and within the reasonable control of the Legislature. Every corporation now existing in this State has been organized under the general law, and they are all subject to the general power of the Legislature to alter, repeal, or amend the general law. But in the State of Pennsylvania, as I have said, many corporations were acting under special charters, and the Legislature could not control or interfere with them. They could not be affected in any manner by the Legislature of that State, and this provision of their Constitution of eighteen hundred and seventy-three was to induce them to place themselves in a position where the Legislature could legislate with reference to them. But if they preferred to stand on their special charters, and defy the Legislature, they could legally do so, but as a penalty in consequence of such election, they could never receive the benefit of any future legislation, because they refused to place themselves on a common platform with the other corporations of the State. We have no such special charters in California, and therefore we would receive no benefit whatever from such a provision in our Constitution; and as altered by the committee here—with all deference to them—it would work irreparable injury. As altered, the committee has ignored the entire latter part of the provision contained in the Pennsylvania Constitution, and has taken from the Legislature of California the power which the Constitution of Pennsylvania confers upon the Legislature of that State. The difference in the two is this: that whereas the power was reserved to the Legislature in Pennsylvania, there is no reservation whatever made in favor of our Legislature. There they have absolute power in the premises, while here the power is entirely denied to our Legislature. I do not think it is right. This section provides as follows: "The Legislature shall not extend any franchise or charter, or remit the forfeiture of any franchise or charter of any corporation now existing, or which shall hereafter exist under the laws of this State."

We have a vast number of corporations in this State which will be injuriously affected by this provision. Benevolent associations, and all that great class of corporations will be affected. Why should we to-day declare that the Legislature of this State fifteen years hence shall not extend or renew the charter of any of these worthy institutions which may expire at that time; in other words, why should not the Legislature, at some future time, pass general laws under which existing corporations may renew their corporate existence for an additional period of time, by adopting certain forms and complying with certain conditions to be prescribed by the Legislature?

Why is it that the purely benevolent associations of this State, or any other class of associations incorporated for fifty years, and whose charters are about expiring, should not be permitted to renew their existence under general laws uniform in their operation? Why is it that the banks of this State fifteen years hence should not be allowed to renew their existence under general law? Why is it that all the corporations in this State hereafter, when their terms expire, must be compelled to withdraw from business and cease to exist? A bank may be prosperous, or a corporation organized for benevolent purposes may be in a flourishing condition; they may be beneficial, worthy, and deserving, and one of a class of institutions which the people of the State desire to continue and foster, and yet, under the provision suggested, they would be compelled to wind up their business and pass out of existence. Many of the corporations in this State now doing an extensive business were organized twenty years ago, and their charters and corporate powers are therefore limited to a few years hence. Why should we compel them to abruptly wind up their business? Why drive them thus out of existence? Gentlemen may say they can reorganize; but they cannot reorganize and transfer their property except at a very great risk and possible disaster to depositors, stockholders, and creditors. Suppose that the charter of the Hibernia Savings Bank should expire at the end of five years, under this provision it would be compelled to wind up its business at an immense sacrifice, call in its money and settle up with its depositors, and legally terminate its existence before a new organization could be effected. I am apprehensive that if the section is adopted as at present drawn, it would prevent the Legislature from hereafter passing any general laws under which a corporation whose existence is about to expire, can reorganize without entirely winding up its business and legally passing out of existence. There is no just reason for adopting such a course, and in my judgment there is no sense in it. I have shown already that this section does not contemplate performing the same functions here as the one in Pennsylvania, and that the reasons which there exist for the enactment of such a provision do not exist here, and under our laws can never exist in California. I claim that our Legislature should be invested with the power to pass a general law by which corporations about to expire may continue their existence upon the terms and conditions which the Legislature in its wisdom may see fit to impose; and as to the question of forfeiture, I do not see why the Legislature should not be vested with equal discretion on that subject. Forfeiture may arise in various ways. A corporation may forfeit its charter by non-user; it may forfeit its charter by undertaking to perform an act beyond the scope of its corporate powers, and in various other ways may incur a forfeiture of its charter—still the forfeiture does not occur forthwith upon the act being committed, it is only a ground of forfeiture which requires proceedings by the Attorney-General of State, who files a petition setting forth that the corporation has committed or omitted certain specified acts, and seeks the judgment of a Court to declare the forfeiture or asking for a writ of quo warranto. Sometimes questions of law arise upon the construction of the charter, and often it is difficult to tell whether a corporation has exceeded its powers or not. A corporation may in good faith have been acting outside of its powers through inadvertence, and without intending to violate its charter. Any person aggrieved is at liberty to apply to the Attorney-General for the purpose of having him file or institute proceedings against the corporation, and in such cases the Attorney-General occupies the position, so to speak, of a Judge. He carefully reviews the matter, and takes a judicial, as well as a judicious view. If he ascertains to his satisfaction that the corporation has willfully committed an act or omitted the performance of an act which the law requires to be done, he may proceed by due course of law to have the charter forfeited. Should he find simply a technical violation, and yet no actual bad faith, no intent to disregard the law, he may in the exercise of a sound discretion dismiss the proceeding. Sometimes he notifies corporations of their failure to comply with the strict letter of the law where he is satisfied there is no bad faith or intention of omission, and requires their compliance with the law forthwith. I remember upon one occasion of presenting that question before the Attorney-General of this State, and I found from an examination of the authorities that such was the universal rule and custom. The Attorney-General would afford the parties a full and fair hearing, and then determine from all the facts adduced whether he would institute proceedings or not, and he acted upon this exact proposition which I have stated. If it were a mere technical forfeiture—that is a forfeiture based upon mere technical grounds, where the corporation was acting in good faith, he would never institute proceedings. Every lawyer knows that questions often arise as to whether the act sought to be done by a corporation is inside or outside of the line of its power, and it requires at times a nice discrimination to define the limit. It is frequently a difficult question to determine. In a case of that character, where an innocent mistake has been made, it is never the rule to institute a forfeiture. The law in its bounty does not favor forfeitures. I believe the question of forfeitures should be left as it is at present, to the judgment, discrimination, and wisdom of the official law officer of the State. If the violation is merely technical and no wrong intended, the Attorney-General may condone the offense upon terms, but if there is a willful or intentional violation, then proceedings should be instituted by him to declare the forfeiture. It is wrong in my judgment, to take from the Legislature the power to remit forfeitures in any instance, because the principle would apply to charitable and benevolent institutions, as well as to all other classes of corporations; and why should the Legislature, in the exercise of a sound discretion, be debarred from remitting forfeitures, based on violations of a technical character, looking fairly at the good faith and honesty of the transaction. For the reasons stated I say that this section seven, taken from the Pennsylvania Constitution, does not apply in California with the same force that it does in Pennsylvania. I think such action here would be highly injurious, and tend to tie the hands of the Legislature and embarrass it in the exercise of powers which should properly be vested in the Legislature. I therefore move to strike out the entire section as reported by the committee.

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SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: We claim, and claim justly, that the present policy of granting leases to corporations is liberal enough, and in the judgment of the people of this State, is too liberal. Granting them that power for a lifetime with the power of accumulating as they did and consolidating as they will, the present term is long enough, sir, and if the terms are not satisfactory, there is no compulsion upon any corporation to accept them and incorporate. Now, sir, it is a usual argument presented here—always brought forward in this Convention—when any proposition looking to the regulation of corporations is up for consideration, to point out the danger to various benevolent institutions, and to one or two popular banks, notably the Hibernia Bank. Does not the gentleman know that whenever he proposes to extend by the general law, or to renew by general law, the franchise of a corporation which has done good service to the public, that it brings under the same general law every corporation in the State, granting to them the identical power to further continue the oppression under which the people groan?

Why they seek, sir, to establish a principle here by an exceptional rule. Why? Because there are scattered over the State, may be, one or two benevolent institutions, they seek to lodge in the Legislature the power to grant an unlimited renewal of life to all the corporations in the State. We are here for a purpose, and we are commanded by the people of this State to take away from the Legislature the power to grant any further privileges, or of enacting any further special legislation. Now, how much better is it—how it would improve it—if at the close of their lease of life you notify them that their franchise shall not be renewed. They took the franchise with these conditions. They knew what those conditions were.

The proposition here is right; it is correct in both of its branches, not only as to depriving the Legislature of the power to extend or renew franchises, but also as to the power of prohibiting the Legislature from remitting forfeitures of charters. Why, sir, how much justice is there in allowing a Legislature to remit a forfeiture, where it has been determined by a judicial trial? The Legislature has no place to go for the purpose of obtaining evidence to reverse a judicial decision. Let us make the provision binding, so that corporations can no longer openly violate the terms of the charter, and then go to the Legislature and obtain a remission of the forfeitures. These life-long franchises never expire, and it is high time that the people should have some protection as well as the corporations.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: I will offer an amendment, which I think will obviate all the difficulties:

"Insert in the first line, after the word 'not,' the words, 'by special Act,' so as to read: "The Legislature shall not by a special Act extend any franchise or charter, or remit the forfeiture of any franchise or charter, of any corporation now existing, or which shall hereafter exist, under the laws of this State.'"

Many corporations exist in this State to-day that are doing business which is beneficial to the State. Now, corporations are organized in the State of California for a period of fifty years. If this provision is adopted as proposed by the committee, whenever that fifty years expires that corporation must dissolve and distribute its property, and wind up its business. Take, for instance, the case of some banking association that is conducting an honorable business. Say its charter expires in twenty years. When its charter expires, there must be a distribution of all its corporate property among the stockholders. Now, pass this provision, and it is absolutely necessary that the corporation shall be wiped out of existence, without any remedy. If we insert this amendment, the Legislature can provide by general law that corporations now existing may continue their existence.

MR. WILSON. I will accept an amendment of that kind. That is sufficient for the purposes I desire to accomplish. I withdraw the motion to strike out the section, and allow this to be substituted.

MR. CROSS. This would be a great improvement, I think. When the Legislature passes a law which allows corporations to continue their existence, they can attach to that general law just such conditions or limitations as it sees fit, and thereby we will have every corporation which continues existence under the general law just where we want it—under the absolute control of the law of the State, and the general law at that.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: It was not thought by the Committee on Corporations, when section seven of the article on corporations was reported, that there could be any objection to its adoption. The natural inquiry is, what is wrong with this section; what material interest of the State does it injure; why should it not be adopted? On its adoption or rejection will, in a large degree, depend the future action of this Convention on subjects necessarily akin to it. Now, what is the objection made by the gentleman from San Francisco? He first claimed that it would be wrong to adopt this section, because it is copied from the Pennsylvania Constitution, and that under their Constitution no grant of exclusive privileges could be made by the Legislature, and hence, while it was very proper there, it would be very improper here. I have to remind the gentleman that we have just passed section one of this article, which provides that corporations may be framed under general laws, but shall not be created by special Act—that all laws passed pursuant to the section may be altered or repealed. Hence, there is no such thing—if we wipe this out to-day—no such thing as granting a charter under the Constitution by special Act. That would be an impossibility. This section provides that the Legislature shall not extend the franchise of any corporation. What is the point about the extending of franchises? Why, sir, the point is—and the gentleman has admitted it—the point is—and the only point—when the life of a corporation expires, the corporations reincorporate, just exactly as any other persons engaged in like business; and thereby come under the provisions and restrictions of the other sections of this article, and will be bound by them. In other words, in the future, whenever there shall be a termination of the time for which a charter has been granted by Act to any corporation, they shall come in and reincorporate, if they wish to continue, under the general laws of this State, and be bound by all its provisions. And why not? I want to know why they should not? Can there be any rational reasons given why they should not conform to the same rule as all other persons in this State are bound by?

There is no question but that they can be incorporated. Any person or set of persons, engaging in business, who have a certain amount of property, can incorporate under the general laws of the State. They can do it. But it prohibits them from coming before the Legislature and asking for special privileges which they could not get under the other provisions of the Constitution. In other words, these corporations want to come to the Legislature and say, now we were in existence prior to the adoption of the Constitution, and therefore we come before you and ask you to extend to us this privilege—extend our franchise for twenty-five or fifty years upon the same terms that we now have. It is true, nobody else can get any such privileges, but we ask you to do it for us. And, sir, there might be influence sufficient brought to bear on the Legislature to induce them to do it, and it is against that right to come before the Legislature and get a special Act passed granting them privileges that they could not get under the general law, that your committee adopted this section.

Why, sir, a law extending the time of the corporate existence of the Hibernia Bank would not be a general law, it would be a special law. So with regard to every other corporation. Let me say to my friend from San Francisco, Mr. Wilson, that there is very little that will benefit benevolent societies in this, and a great deal of something else, in my judgment.

MR. WILSON. Please define what you mean, sir.

MR. ESTEE. What I mean is this: there is no benevolent society in this State, not a solitary one, but what can afford to come in under the general law, and incorporate just as other institutions can, when their time expires. All honestly conducted institutions can afford to come in under the general law and incorporate. But there are special grants to street railroads; there are special grants to hundreds and thousands of mining corporations; they could not afford to come in under the general law, because new penalties would be imposed upon them. Benevolent institutions and honest corporations can afford to and will incorporate under the provisions of this article.

There is nothing peculiar about this section. You will find it in section three, of article eleven, of the Missouri Constitution. In the Illinois Constitution, section two, of article eleven. It is a good and wise provision, and has elsewhere proved of great utility. I have not had time to look through any other recent Constitutions. It strikes me, sir, however, that this provision must necessarily commend itself to the popular judgment. It cannot harm any one. It does not take the property from these people when their time expires. The gentleman is very much mistaken when he thinks that every one of these corporations would have to go into liquidation. They would simply have to reincorporate under the existing general law. This provision does not prevent them. The Constitution says corporations may be formed under general laws, and that means everybody that wants to incorporate. Because they have been incorporated once is no reason why they cannot incorporate again. The Constitution allows it, and there is no question but what the Legislature would provide the means by which every proper institution could incorporate under the laws of the State. Let us make this Constitution in such a manner that it will take nothing away from any body that belongs to them, and so that it will give no special immunities to any class. When the time of these corporations expires, let them reincorporate if they choose, but they must put themselves under the new provisions of law which the exigencies of the times have made necessary. I think this section will commend itself to the thoughtful examination of the gentleman from San Francisco, Mr. Wilson, and the gentleman from Nevada, Mr. Cross. I think it is one of the most important sections which the committee have reported. It was adopted by the unanimous action of the committee. There was no objection made to it. I believe if there is one section in this article that should be adopted, it is this section, which is not a similar provision. It was recently adopted in the new Constitutions of Pennsylvania, Missouri, Illinois, and, I believe, in Colorado, though the latter Constitution I have not examined. Therefore I hope that the amendment which the gentleman from San Francisco, Mr. Wilson, has proposed, will not be adopted. Better strike out the section entirely, because it would allow the Legislature to grant extensions to charters to corporations.

MR. CROSS. All corporations under this amendment can reincorporate, and become subject to the provisions of the general laws.

MR. ESTEE. Imagine twenty thousand corporations coming here and reincorporating under special laws.

MR. CROSS. And why not, as well as twenty thousand could incorporate in the first place?

MR. ESTEE. Let them reincorporate under the general laws; we do not want the Legislature to have the power to extend any franchise or charter, but leave it to the general laws. Let a corporation act under the law just as every other person. My friend from San Francisco spoke about there being cases of technical forfeiture where the Attorney-General was always willing to decide justly. If there is a case of technical forfeiture, the Courts will protect them, and I would leave it to the Courts rather than to the Legislature. My experience has been that it is much safer in the Courts.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I occupy a very dif-

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ferent position here from that of the Chairman of the Committee on Corporations. He has a great deal of pride of opinion on this subject, and very sensitive as to any alteration of the section reported by the committee. With due deference to his feelings, I occupy a different position as a member of this Convention, and my duty will not permit me to sanction anything which my judgment tells me is wrong. The question here upon the amendment offered by the gentleman from Nevada, Mr. Cross, is this: whether or not that amendment is an improvement upon the section as reported by the committee. Now, my objection to the section, as it stands, was that it would prevent the Legislature from passing general laws on the subject. My objection was, and my judgment is, that passing that in the shape in which it is, that no corporation could ever be reincorporated under general laws. I think so still. The old Constitution did not contain any such provision. Therefore, not containing any such provision, the Legislature had passed a Civil Code by which, when their time expires, corporations may renew. My judgment is that if we pass this provision in the shape in which it is reported, no such legislation in future could be enacted, as no special legislation could take place under this Constitution as we expect to adopt it, therefore I thought the whole section should be stricken out. But as the amendment proposed by the gentleman from Nevada meets the question exactly, and presents it fairly to the Convention, I withdraw my motion to strike out, so as to allow his to come before the Convention. I think the amendment is a very proper one. The Legislature is not allowed, by special Act, to extend any franchise, or to remit forfeitures. Whatever they do must be done by general law. Now, the Chairman of the Committee on Corporations says, you will have the entire lot of corporations coming to the Legislature for an extension of charters. With all respect to the gentleman, I say it is absurd; it is an impossibility. Because the Legislature could only legislate by general law; they cannot legislate for the benefit of anybody, and the distinction between general and special law ought to be too marked to require any explanation. A general law is one passed which affects all alike, the provisions of which are applicable to all alike, and which benefits one as well as another. If any individual wants to take advantage of the general law, he must bring himself within its provisions; while a special law is intended to advance the interests of some particular person, or some particular corporation. He agrees that there should be a general law upon the subject of these corporations which would enable these institutions to continue their existence at the expiration of their charters. We all agree upon that, and I do not argue anything else—I do not seek anything else. He admits, therefore, that the Legislature should have power to pass such laws as will enable corporations to continue their existence, and that these laws must be general laws. The gentleman from Nevada desires to obtain the same, and so we are all in accord on this part of the proposition.

MR. ESTEE. I have here section one of the report, which I will read:

"SECTION 1. Corporations may be formed under general laws, but shall not be created by special Act. All laws now in force in this State concerning corporations, and all laws that may be hereafter passed pursuant to this section, may be altered from time to time, or repealed."

That would certainly apply to every corporation.

MR. WILSON. It seems to me that anybody ought to know that this applies to the original formation of corporations. It has nothing to do with the renewal of a charter after the fifty years has expired. They cannot form under this section without first disincorporating and then reincorporating. These are the facts, and there is no use in trying to avoid them. The object of this amendment to the section is to permit existing corporations, under the general law, to continue their existence without having to disincorporate; without having to start anew; and it seems to me that it would be wise to pass such a general law, one that will operate upon all alike. There has been considerable talk here about some gigantic corporations that come to ask some special privileges, and that there is no benevolence in any of the corporations. I asked the gentleman to explain his meaning, and his definition was one that failed to reach my comprehension. I do not yet fully understand what he was endeavoring to come at. Now, under the amendment offered by the gentleman from Nevada, Mr. Cross, there is a prohibition against the passage of any special law on the subject, and any measure passed by the Legislature must be general. They cannot legislate in favor of any one or against any one. I think the provision is right and proper, and ought to be adopted.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. In regard to the second clause, Mr. Chairman, I do not see any great necessity for it. Yet I disagree with my learned friend, the Chairman of the Judiciary Committee. I shall not enlarge upon the powers of corporations to reincorporate under existing franchises. As to the next clause, the gentleman says that the same law does not exist here that exists in Pennsylvania. It is not material whether the franchise is granted directly by the Legislature to incorporate, or obtained under the general law; the franchise is equally a contract. That doctrine has been distinctly enunciated in a celebrated case. A man commences one day before the adoption of this Constitution to appropriate the waters of a stream. The law gives him sixty days in which to commence operations. It is a part of the contract, and he still has sixty days to commence operations. The Constitution cannot annul that contract.

Now, then, as to the second point. He says that it would apply to every religious society, to every benevolent society, and that the Legislature ought to have power to remit forfeitures in such cases. I don't see it. Suppose a religious society is incorporated for the purpose of establishing a Christian church. Money is collected for that purpose, but afterwards the funds were diverted and used in the erection of a Joss house. That is a misuse. It has incurred a forfeiture, and what sense is there in allowing that church to go to the Legislature and claim and obtain a remission of the forfeiture?

MR. CROSS. Do you think the Legislature would be apt to pass a general law remitting that class of forfeitures?

MR. HOWARD. God only knows what they would do. [Laughter.] The time may come when "Joss" will have influence enough to get a provision passed to remit forfeitures on the Joss house. [Laughter.] Again, sir, a railroad company has a charter in carrying freight and passengers. It abandons that business and goes into merchandising, or into insurance, or runs a steamboat. It has forfeited its franchise, and what right, what propriety is there in permitting them to go in the Legislature, and influence the Legislature to remit the forfeiture? Why, sir, I see that the President of the Central Pacific Railroad Company is the presiding officer of the Oregon Steamship Company, and the company whose steamers are plying between here and China. What propriety is there in permitting that corporation in going to the Legislature for a remission of its forfeiture? I am opposed to it. I say this is a necessary and wise provision which we have adopted here from the Constitutions of other States, and the adoption of it here will be a curb upon these abuses. I hope the Convention will have good sense enough to stick to this report.

REMARKS OF MR. BARTON.

MR. BARTON. Mr. Chairman: This section seven is very brief and very short, but it embodies a great deal. I hope this Convention will not pass upon it without due consideration. My amendment reads that the Legislature shall not extend or renew any charter. Now there are hundreds of charters extended, and the people of this State, I think, are becoming tired of it. When the people, in their generosity, have granted them a franchise for a number of years, I think when the time expires they should be compelled to reincorporate. I hope the Convention will consider this matter carefully before voting on it.

MR. STEDMAN. I move that the committee rise, report progress, and ask leave to set again.

Lost, ayes 47.

[Cries of "question," "question."]

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. Chairman: It does seem to me that the proposition here is so mischievous that it ought not to be tolerated. It seems to me that gentlemen have not fully comprehended the meaning of the word franchise, as it is used in this seventh section. They seem to confine it entirely to corporations. Now a franchise may be held by an individual as well as by a corporation. Now what do we mean by the word franchise? We mean a privilege given by the Legislature, for instance, to a party to build a bridge and collect tolls for twenty years. Now, if you adopt this proposition you provide that at the end of twenty years the man who has put his money in there, who has accommodated the community, cannot renew that franchise. A franchise is a privilege granted, and I see no reason why we should prohibit the Legislature from extending that privilege at the end of the time for which it was originally granted. I cannot see any reason for it.

THE PREVIOUS QUESTION.

MR. VAN DYKE. Mr. Chairman: I move the previous question.

THE CHAIRMAN. The gentleman from Alameda, Mr. Van Dyke, moves the previous question, and the motion has been seconded. The question is, Shall the main question be now put?

The motion prevailed, and the main question was ordered.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Nevada, Mr. Cross.

Lost.

THE CHAIRMAN. The question is on the amendment of the gentleman from Humboldt, Mr. Barton.

Lost.

THE CHAIRMAN. The Secretary will read section eight.

MR. HOWARD. I move the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations, have made progress therein, and ask leave to sit again.

ADJOURNMENT.

MR. HEISKELL. I move that the Convention adjourn.

Carried. And at five o'clock and fifteen minutes, the Convention stood adjourned.

FIFTIETH DAY.

SACRAMENTO, Saturday, November 16th, 1878.

The Convention met in regular session at ten o'clock A. M. President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Boggs,	Cowden,
Ayers,	Boucher,	Cross,
Barbour,	Brown,	Crouch,
Barnes,	Burt,	Davis,
Barton,	Caples,	Dowling,
Beerstecher,	Casserly,	Doyle,
Bell,	Charles,	Dudley, of Solano,
Blackmer,	Condon,	Dunlap,

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Eagon,	Keyes,	Shoemaker,
Edgerton,	Kleine,	Shurtleff,
Estee,	Laine,	Smith, of Santa Clara,
Estey,	Lampson,	Smith, of 4th District,
Evey,	Larkin,	Smith, of San Francisco,
Fawcett,	Larue,	Soule,
Filcher,	Lavigne,	Stedman,
Finney,	Lewis,	Steele,
Freeman,	Lindow,	Stevenson,
Freud,	Mansfield,	Sweasey,
Garvey,	Martin, of Santa Cruz,	Swenson,
Glascock,	McCallum,	Swing,
Gorman,	McComas,	Terry,
Grace,	McConnell,	Thompson,
Graves,	McCoy,	Tinnin,
Gregg,	McFarland,	Townsend,
Hager,	McNutt,	Tully,
Hall,	Mills,	Turner,
Harrison,	Moffat,	Tuttle,
Harvey,	Moreland,	Vacquerel,
Heiskell,	Morse,	Van Dyke,
Herold,	Nason,	Van Voorhies,
Herrington,	Neunaber,	Walker, of Tuolumne,
Hilborn,	Ohleyer,	Waters,
Hitchcock,	O'Sullivan,	Webster,
Holmes,	Porter,	Weller,
Howard,	Prouty,	Wellin,
Huestis,	Pulliam,	West,
Hughey,	Reed,	White,
Hunter,	Reynolds,	Winans,
Inman,	Rhodes,	Wickes,
Johnson,	Ringgold,	Wilson, of Tehama,
Jones,	Rolfe,	Wilson, of 1st District,
Joyce,	Schell,	Wyatt,
Kelley,	Schomp,	Mr. President.

ABSENT.

Barry,	Farrell,	O'Donnell,
Belcher,	Hale,	Overton,
Berry,	Kenny,	Reddy,
Biggs,	Martin, of Alameda,	Shafter,
Campbell,	Miller,	Strong,
Chapman,	Murphy,	Stuart,
Dean,	Nelson,	Walker, of Marin.
Dudley, of San Joaquin,	Noel,	

LEAVE OF ABSENCE.

Leave of absence for two days was granted Messrs. Dean and Winans.

Leave of absence for one day was granted Messrs. Shoemaker, Chapman, and Wilson, of San Francisco.

THE JOURNAL.

MR. CAPLES. I move that the reading of the Journal be dispensed with.

Carried.

ADJOURNMENT.

MR. LAINE. Mr. President: I desire to offer a resolution.

THE SECRETARY read:

Resolved, That the Convention, to-day, dispense with the usual recess at twelve o'clock M., and that it continue its sitting until two o'clock P. M., and then adjourn until Monday, at two o'clock P. M.

MR. ESTEE. I second the resolution.

MR. SCHELL. I move to amend by inserting, "one o'clock" in place of "two o'clock."

MR. GRACE. I mode that the resolution be allowed to lay on the table.

MR. LAINE. I accept the amendment to make it one o'clock.

MR. SCHELL. I wish to explain that the amendment which I offered was in relation to the time of adjournment, making it one o'clock this afternoon.

MR. WHITE. I move to amend by making it two o'clock to-day.

MR. TERRY. I second the motion to lay on the table.

The motion to lay on the table was lost.

THE PRESIDENT. The question is on the amendment offered by the gentleman from Santa Cruz, Mr. White.

The amendment was adopted.

THE PRESIDENT. The question recurs on the adoption of the resolution as amended.

MR. STEDMAN. I move to amend so that it will read, "Monday at ten o'clock A. M.," instead of "Monday at two o'clock P. M."

MR. BEERSTECHER. Make it seven o'clock on Monday.

MR. WELLIN. I rise to second that motion.

MR. HOWARD. I move the previous question.

The main question was ordered.

THE PRESIDENT. The main question has been ordered. The first question is on the amendment offered by the gentleman from San Francisco, Mr. Stedman.

The amendment was lost.

THE PRESIDENT. The question recurs on the adoption of the resolution as amended.

The resolution as amended was adopted.

COMMITTEE CLERKS DISCHARGED.

MR. LARKIN. I desire to offer a resolution out of order.

THE SECRETARY read:

Resolved, That all committee clerks are hereby discharged.

MR. LARKIN. Mr. President: I ascertain that all the committees have reported that have business before them. There may be some committees that have some propositions left to act upon, but if so they can do the little work that is required. I think the resolution should pass. We have no need for them.

MR. CONDON. I second the resolution.

MR. BEERSTECHER. I would like to ask whether it will not be necessary to retain the Engrossing and Enrolling Clerks?

MR. LARKIN. I think we can employ them when needed.

The resolution was adopted.

STATE UNIVERSITY REPORT.

MR. HERRINGTON. Mr. Chairman: I desire to present a report of the Regents of the State University. I do this in the absence of the Chairman of the Committee on Education. It is addressed to J. West Martin, of that committee, in obedience to a former resolution offered in this body. I move that it be printed and laid on the desks of the members.

The motion prevailed.

Following is the report and accompanying documents, as subsequently printed by order of the Convention:

UNIVERSITY OF CALIFORNIA,
BERKELEY, November 23d, 1878.

To the Honorable President and Members of the Constitutional Convention:

GENTLEMEN: In response to your resolution of date October thirty-first, eighteen hundred and seventy-eight, the following statements are herewith respectfully submitted, arranged in the following order:

First—Statement of cash receipts from all sources, from August eighth, eighteen hundred and sixty-eight, to June thirtieth, eighteen hundred and seventy-eight, both inclusive.

Second—Statement of cash disbursements and investments for the same period.

Third—Appendices "A" and "B," giving the proper segregations of cash receipts and disbursements.

Fourth—Statements of accounts with savings banks, and certain donations.

UNIVERSITY OF CALIFORNIA.

Statement of Cash Receipts from August 8th, 1868, to June 30th, 1878, both inclusive. (a.)

LEDGER TITLES.	1868-69.	1869-70.	1870-71.	1871-72.	1872-73.	1873-74.	1874-75.	1875-76.	1876-77.	1877-78.	Totals.
Land Fund (grant of 150,000 acres)	$3,440 00	$4,600 65	$6,911 25	$22,599 40	$53,646 68	$43,993 89	$45,708 40	$46,968 62	$42,521 19	$85,882 98	$356,273 06
Forfeited Seminary Land Fund								320 00	160 00		480 00
Seminary Land Fund										505 99	505 99
Land Fund Interest		682 85	2,577 63	5,478 55	11,555 51	15,113 92	35,983 11	40,882 22	41,881 81	28,621 22	182,776 82
Land Fund Fees	16 00	88 00	210 00	422 00	808 00	1,408 00	2,843 50	1,762 00	1,045 00	650 00	9,252 50
Seminary and Public Building Land—Int.	936 00	27,831 00	17,450 00								46,217 00
United States Endowment Interest (on b'ds)								6,058 67	14,314 50	15,235 86	35,609 03
Forfeited Seminary Land Interest								121 94	232 88	192 00	546 82
Forfeited Seminary Land Fees								8 00	8 00		16 00
Seminary Land Fund Investment Interest										1,111 50	1,111 50
Seminary Land Fund Interest										698 48	698 48
Interest and discount			267 50		5 25						272 75
Interest on bank balances		5,151 20	1,948 67	1,654 25	1,085 21	2,846 51	6,336 25	1,599 62			20,581 71
Interest on Brayton property notes							3,339 60	9,068 93	6,821 55	5,907 43	25,137 51
Interest from State Endowment (tide land)						17,380 80	42,956 69	50,290 80	50,040 00	50,040 00	209,708 29
Interest from Special Investment Fund									52 00	990 00	1,042 00
Interest on Brayton Real Estate Fund										309 00	309 00
State appropriations	*44,064 00	†100,000 00	†100,000 00		‡74,265 60	‡31,767 39	‡46,393 62	‡42,400 00			438,890 61
Admission and tuition fees		1,700 00	20 00					100 00	75 00		1,895 00
Water rates				370 00	379 50	585 00	277 50	496 00	993 85	51 50	3,153 35
Preparatory department			500 00								500 00
Excess payments				320 00	2,066 07	13,490 33	27,036 75	10,731 41	4,805 60	3,529 68	61,979 84
Land administration							9,296 52	3,296 23	1,968 48	38 33	14,599 56
Brayton property									4,013 75	13,981 25	17,995 00
College of California								82,255 00	980 00		83,235 00
State Geological Survey								3,434 15	983 70		4,417 85
Cottage rents							814 43	1,820 74	826 47	1,078 69	4,540 33
Building Fund—audited demands						¶299,930 65					299,930 65
Totals	$48,456 00	$140,053 70	$129,885 05	$30,844 20	$143,811 82	$425,516 49	$220,986 37	$301,574 33	$171,723 28	$208,823 91	1,821,675 65

* Act of March 26th, 1868.
† Tide Land Appropriation Act of March 30th, 1868.
‡ Appropriation to meet monthly deficiencies, March 26th, 1872.
§ Act of March 30th, 1874.
¶ Act of April, 1872, appropriation of $300,000.
(a.) See Appendix "A."

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Statement of Cash Disbursements and Investments from August 11th, 1868, to June 30th, 1878, both inclusive. (b.)

LEDGER TITLES.	1868-69.	1869-70.	1870-71.	1871-72.	1872-73.	1873-74.	1874-75.	1875-76.	1876-77.	1877-78.	Totals.
Salaries, educational	$2,400 00	$27,957 50	$38,061 67	$40,346 66	$46,647 65	$53,810 80	$56,176 36	$69,477 99	$71,011 59	$72,359 92	$478,250 14
Salaries*	2,617 15	7,130 17	7,465 80	7,080 00	7,141 66	8,135 46	11,685 00	16,749 30	13,405 00	13,920 00	95,329 54
Land administration	75 00	506 25	120 00	62 50	200 00	1,652 50	526 03	181 90	638 40	764 11	4,726 69
University site improvements	7,639 12	6,721 97	784 46	2,165 71	2,452 40	1,646 14	1,230 83	3,671 48	3,123 53	3,237 16	32,672 80
Office furniture and expenses	749 80	220 00	145 90	168 12	214 65	56 00	37 07	156 45	61 22	11 85	1,821 06
Rent	614 50	925 00	1,545 00	1,580 00	932 50	940 00	600 00	640 00	720 00	610 00	9,107 00
Building Fund	215 00	10,487 52	46,024 66	738 54		299,930 65					357,396 37
Incidental expenses		132 00	1,045 59	355 00	195 50	585 00	872 65	605 00	106 00	94 63	3,991 37
University Water Company		1,103 01	963 40	1,913 88	300 00		78 00		1,218 19	391 72	5,967 50
College of California		72,015 39	7,241 75	1,225 40					200 00		80,682 54
Apparatus		17,908 21	953 95	112 75	23 20	282 73	813 38	1,674 86	404 15	62 60	22,235 83
Library Fund		75 00	1,274 40	3,295 36	2,399 73	2,175 55	1,160 42	5,896 75	770 25	1,352 43	18,399 89
Telegraphing and expressing	116 11	75 48	27 15	3 65	30 25	30 20	560 47	309 06	29 83	107 41	1,289 61
Official and lecturing expenses			502 00	350 50	1,000 00	3 70	2,336 51	457 29	38 25	115 75	4,804 00
College celebrations			609 50	454 65	913 54	685 66	1,094 45	568 35	368 94	318 45	5,013 54
Fuel, lights, and water			160 75	503 91	331 20	1,484 83	1,303 26	1,495 41	735 82	885 40	6,900 58
Postage and revenue stamps			47 65	43 50	143 35	77 10	124 25	200 75	120 77	225 75	983 13
Stationery	36 00	150 10	29 91	126 22	112 00	480 02	610 70	125 30	123 25	103 35	1,896 85
Brayton property			21,122 25		8,336 25	1,729 15	57,699 63				88,787 28
Equipment and repairs		2,003 66	7,444 83	2,796 70	1,217 69	1,168 02	4,328 21	6,639 71	2,195 64	1,533 36	31,327 82
Laboratory			5 17	262 49	34 10	352 68	1,378 00	3,156 54	96 83	1,933 74	7,219 55
Advertising and printing	550 81	681 50	580 32	938 35	729 75	398 95	1,226 29	1,460 67	642 99	1,036 99	8,146 62
Free scholarships			1,500 00	1,500 00	1,000 00	1,499 99					5,499 99
Preparatory Department				1,590 00	955 39						2,545 39
Insurance				985 68	557 50	462 50	3,564 65	2,287 23	1,341 90	1,521 05	10,720 51
Museum					11 25	345 60	973 20	981 09	58 15	28 90	2,398 19
Tompkins Endowment					148 60						148 60
Toland Medical College					30 00	216 22	920 00	30 91	36 00		322 33
University printing office							2,338 59	188 65	86 80		2,614 04
Agricultural Department						646 50	12,033 64	2,657 46	1,961 15	1,545 19	18,843 94
Students' cottages							25,121 28	137 22	1,646 50		26,905 00
State Geological Survey								3,246 86	152 21	160 16	3,559 23
Contingent Fund										1,625 00	1,625 00
Labor Contingent Fund								1,000 00			1,000 00
Mechanical Department							272 53	3 00			275 53
Military Department										761 97	761 97
Interest and discount	157 50		104 00		510 83	30 65	2,296 36	95 90			3,195 24
Brayton Real Estate Fund										20,140 00	20,140 00
Excess payments						790 87	5,320 57	783 93	711 73	7,825 49	15,432 59
Mechanical Arts College										69 35	69 35
United States Endowment							139,640 00	77,039 50	38,435 00	85,820 00	340,934 50
Seminary Land Fund investment									19,380 00		19,380 00
Bills receivable, account of Land Fund										12,895 10	12,895 10
Totals	$15,170 99	$148,092 76	$137,660 11	$68,598 87	$76,568 99	$379,617 47	$335,411 54	$203,918 56	$159,720 09	$231,456 83	$1,756,216 21

* Secretaries, Curators, Land Agents, Janitors, etc. (b.) See Appendix "B."

APPENDIX "A."

SEGREGATION OF CASH RECEIPTS.

Endowments—(From Congressional Grants.)

Land Fund—From sales of land, grant 150,000 acres	$356,273 03	
Seminary Land Fund—From sales under grant of seventy-two sections	19,505 99	
Forfeited Seminary Land Fund—From sales of forfeited lands resold by the Regents of the University	480 00	
Total cash receipts from Congressional endowments		$376,259 02

Income—(From Congressional Endowments.)

Land Fund Interest—From interest received on deferred payments of principal, grant of 150,000 acres	$182,776 82	
Land Fund Fees—From fees on applications, certificates of deposit, and patents	9,252 50	
Interest on excess payments	3,372 46	
Seminary Land Fund Interest—(On bonds)	1,111 50	
Seminary Land Fund Interest—On deferred payments, Controller's warrants	698 48	
Forfeited Seminary Land Interest	546 82	
Forfeited Seminary Land Fund Fees	16 00	
Special Investment Fund Interest—From investment of excess payments in bonds	1,042 00	
Interest on Certificates of Deposit—From interest on preliminary deposits of one dollar per acre, made by applicants for lands under the grant of 150,000 acres. Said deposits held by the Land Department of the University, awaiting action by the United States Land Offices	14,599 56	
United States Endowment Interest—From interest on bonds purchased from proceeds of sales of land belonging to the grant of 150,000 acres	35,609 03	
Seminary and Public Building Land Fund Interest—From interest on deferred payments of principal, Controller's warrants	27,217 00	
		276,242 17
Total cash receipts from Congressional endowments and income therefrom		$652,501 17

Trust Funds.

Excess Payments—From collections of $1 25 per acre on double minimum lands	$61,974 84	
State Geological Survey, collections on account of	4,417 85	
Total cash receipts from Trust Fund		66,392 69
College of California—From amounts received from sales of real estate, etc.	$83,235 00	
Building Fund—From amounts received for construction of buildings	357,396 37	
		440,631 37
Amounts of income received from the State to pay current expenses		662,150 42
Total cash receipts from all sources		$1,821,675 65

APPENDIX "B."

SEGREGATION OF CASH DISBURSEMENTS AND INVESTMENTS.

Investments.

United States Endowment Fund—Investment of proceeds from sales of the agricultural grant of 150,000 acres, in bonds of the par value of $348,000, at a cost of	$346,934 50	
Amount brought forward	$346,934 50	
Seminary Land Investment Fund—Investment of proceeds from sales of the seminary grant of seventy-two sections, in bonds of the par value of $19,000, at a cost of	19,380 00	
Brayton Real Estate Fund—Investment from proceeds of the sale of Oakland property (so called Brayton property), in bonds of the par value of $19,500, at a cost of	20,140 00	
(NOTE.—The Treasurer of the University now holds mortgage notes received in part payment from sales of above property, amounting to $68,530, bearing interest at the rate of eight (8) per cent. per annum, payable quarterly. As the notes are paid, investments are made in bonds for account of said fund.)		
Bills receivable—Investment of proceeds belonging to the grant of 150,000 acres	12,895 10	
(NOTE.—This amount of $12,895 10 was credited to the Land Fund, forming a part of the statement of cash receipts, and is here represented by a joint note due January 1st, 1879, bearing ten per cent. per annum interest.)		
Building Fund—Cost of College buildings known as North and South Hall, formerly known as College of Agriculture and College of Letters	357,396 37	
Students' College—Cost of eight cottages built for occupation of students	26,905 00	
University Site Improvements—Cost of ornamental and useful trees, fencing and grading the grounds	32,672 80	
University Water Company—Cost of construction of water ditch, reservoirs, iron pipe, etc.	5,967 50	
College of California—Cost of lands, expenses of surveys, legal services, etc	80,682 52	
Apparatus	22,235 83	
Library	18,399 89	
Brayton Property—Cost of three blocks in Oakland and buildings thereon	88,787 28	
Museum	2,398 21	
University printing office	2,614 04	
Mechanical Arts College—advance	69 35	
Total cash investments		$1,031,478 39

Trust Funds.

Excess Payments—Amounts paid the United States	$15,432 59	
State Geological Survey—Amounts paid for account of	3,559 23	
		18,991 82
Amounts disbursed for payment of current expenses of the University		705,746 00
Total cash disbursements and investments		$1,756,216 21

The following statements of accounts, which are made up of donations, cash received from excess payments, and bank certificates of deposit, do not properly belong to the exhibits of cash receipts and expenditures, and are deposited with the following savings banks:

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UNION SAVINGS BANK, OF OAKLAND, CALIFORNIA.

Debits.

To deposit of rents and interest thereon—Agassiz Professorship—from March 13th, 1873, to June 30th, 1878		$832 73
To deposit of donations (account of Medal Fund), and interest thereon from March 13th, 1873, to June 30th, 1878		3,486 62
To deposit of donation by H. D. Bacon, of $500, for an Engineering Fund, and interest thereon		714 33
To deposit account of excess payment, made June 30th, 1877	$6,000 00	
To interest thereon	255 00	
		6,255 00
Amount brought forward		$11,288 68
To deposits of certificates of deposit, issued by the Bank of California, (said certificates representing the preliminary deposits made by applicants for lands):		
Deposited February 24th, 1877	$12,039 33	
And interest thereon to January 1st, 1878	885 60	
		12,924 93
Total debits		$24,213 61

Credits.

By amounts paid for medals (account of Medal Fund)	$750 00	
By amounts paid for apparatus ordered by Professor of Civil Engineering, on account of Engineering Fund	528 38	
By amount transferred to Treasury of University of certificate of deposit	1,000 00	
Total credit		2,278 38
Balance due University		$21,935 23

HIBERNIA SAVINGS AND LOAN SOCIETY, SAN FRANCISCO.

Debits.

To deposit of excess payments, made October 12th, 1877	$5,000 00
To interest on same, to January 1st, 1878	93 75
	$5,093 75

SECURITY SAVINGS BANK, SAN FRANCISCO.

To deposit of excess payments, made from June 30th, 1877, to January 31st, 1878	$28,162 50
To interest on same, to January 1st, 1878	448 00
	$28,610 50

SAN FRANCISCO SAVINGS UNION, SAN FRANCISCO.

To deposit of certificate of deposit, issued by Bank of California, made February 23d, 1877		$12,212 62
To deposit of certificate of deposit by Bank of California, made June 25th, 1878		3,250 00
To interest to June 30th, 1877	$286 27	
To interest to January 1st, 1878	506 17	
		792 44
		$16,255 06

THE OAKLAND BANK OF SAVINGS, OAKLAND, CALIFORNIA.

To deposit of excess payments, made October 12th, 1877	$5,000 00
To interest to January 1st, 1878	70 83
Total	$5,070 83

RECAPITULATION

Deposit with savings banks, for account of Agassiz Professorship	$832 73
Deposit with savings banks, for account of Medal Fund	2,736 62
Deposit with savings banks, for account of Civil Engineering Department	185 95
Deposit with savings banks, for account of excess payments	44,162 50
Deposit with savings banks, for account of excess payments, interest	867 58
Deposit with savings banks, for account of certificates of deposit	26,501 95
Deposit with savings banks, for account of certificates of deposit, interest on same	1,678 04
Total amount deposited with savings banks to June 30th, 1878	$76,965 37

CIVIL ENGINEERING DEPARTMENT.

November 13th, 1876—To deposit of donation from H. D. Bacon		$500 00
To interest from April 26th, 1873, to July 1st, 1876		169 22
To interest from July 1st, 1876, to January 1st, 1878		45 11
		$714 33
November 13th, 1876—By amount paid for apparatus	$363 99	
February 20th, 1877—By amount paid for apparatus	104 64	
February 20th, 1877—By amount paid for freight	59 75	
		528 38
Balance due June 30th, 1878		$185 95

THE UNIVERSITY MEDAL FUND.

Dr. *Deposited with the Union Savings Bank, Oakland, California.* Cr.

1874.			1873.		
July 30	To cash for medal (Frank Otis)	$125 00	March 13	By donations	$2,383 68
Oct. 10	To cash for medal (J. M. Whitworth)	125 00	June 30	By interest	56 06
Oct. 10	To cash for medal		Dec. 31	By interest	121 48
1875.	(F. H. Whitworth)	125 00	1874.		
July 16	To cash for medal		June 30	By interest	126 99
1876.	(T. F. Barry)	125 00	Dec. 31	By interest	115 79
Nov. 30	To cash for medals		1875.		
	(D. B. Huntley)	125 00	June 30	By interest	114 41
	(F. L. Button)	125 00	Dec. 31	By interest	114 86
			1876.		
			June 30	By interest	119 37
		$750 00	1877.		
1878.			Jan. 31	By interest	115 13
June 30	To balance	2,736 62	July 30	By interest	112 40
			1878.		
			Jan. 31	By interest	106 46
		$3,486 62			$3,486 62
			June 30	By balance	$2,736 62

THE AGASSIZ PROFESSORSHIP FUND.

Dr. *Deposited with the Union Savings Bank, Oakland, California.* Cr.

			1873.		
1876.			March 13	By cash from rent	$100 00
June 30	To balance	$485 56	June 30	By interest	2 35
			Dec. 31	By interest	5 04
			1874.		
			June 30	By interest	6 08
			August 19	By cash from rent	100 00
			Nov. 14	By cash from rent	100 00
			Dec 31	By interest	9 27
			1875.		
			June 30	By interest	15 22
			Dec. 11	By cash from rent	125 00
			1876.		
			June 30	By interest	22 60
1877.					
June 30	To balance	$485 56			$485 56
			1876.		
		$679 09	June 30	By balance	$485 56
			Dec. 18	By rent	125 00
			1877.		
			June 30	By interest	68 53
		$679 09			$679 09
			1877.		
			June 30	By balance	$679 09
			1878.		
			Jan. 31	By interest	28 64
			March 31	By cash from rent	125 00
			June 30		$832 73
1878					
June 30	To balance	$832 73	June 30	By balance	$832 73

RECAPITULATION.

Total receipts	$1,821,675 65
Total disbursements and investments	1,756,216 21
Excess of receipts over disbursements and investments	$65,459 44

CASH STATEMENT.

By cash balance with Treasurer, D. O. Mills, June 3d, 1878	$21,296 94
By cash deposit with savings bank, account of excess payments, June 3d, 1878	44,162 50
Total	$65,459 44

JOHN LECONTE,
President of the University of California.

ROBT. E. C. STEARNS,
Secretary of the Board of Regents, University of California.

WHAT HAVE THE REGENTS OF THE UNIVERSITY TO SHOW FOR THEIR EXPENDITURE?

1. They have secured a corps of professors and instructors of ability and reputation, and established a curriculum of studies which, for its range and variety, bears comparison with the oldest and best endowed institutions fh the Eastern States.

2. They have, in the course of nine years, succeeded in establishing an institution of high grade, which already assumes an acknowledged rank among the universities of our country—in which instruction is imparted in all branches of culture and useful knowledge, free to all residents of California, both male and female. No money consideration can represent the value of such an institution to the State.

3. The amount expended for instruction in its various forms, for free scholarships, and for support (during a short period) of a preparatory department, has, of course, gone beyond recall. For this they have nothing *tangible* to show. It is represented by the knowledge imparted to hundreds of the youth of our State It will assuredly bear its fruits in time, in the form of wise statesmen and legislators, accomplished scholars, original thinkers and investigators, able jurists, public benefactors, and virtuous citizens. Dollars and cents cannot represent the valne of these contributions to modern civilization

4. But, aside from the intangible blessings conferred by the University, the Regents have *properties* of great value to show for the money expended. The State now owns:

(1.) Two hundred acres of land at Berkeley, with cost of ornamenting, grading, and improving site—valued at	$250,000
(2.) Three first-class buildings at Berkeley, with the furniture of the same	397,000
(3.) A museum, embracing extensive collections of geological, mineralogical, botanical, and ethnological specimens; also, works of art, etc.—mostly private donations	50,000
(4.) A library, containing over 14,000 volumes—expended by Regents	18,000
Private donations (estimated value)	17,000
(5.) Collection of apparatus, physical, chemical, and other aids to instruction	25,000
(6.) Eight (8) cottages for students	24,000
(7.) Gymnasium building—recently the gift of Mr. A. K. P. Harmon	7,000
(8.) Printing office property	2,500
Printing press—gift of Dr. Samuel Merritt	1,500
(9.) Propagating houses, barn, farm implements, and orchard containing over five hundred varieties; also many varieties of grapes, etc.	4,800
(10.) Forty-seven acres of land near Oakland—a gift from the late Edward Tompkins—present value	40,000
(11.) Toland Medical Hall in San Francisco—a gift from Dr. H. H. Toland	75,000
(12.) Medal Fund—a gift from friends of the University	2,600
(13.) Brayton property—mortgaged notes	68,530
Brayton property—investment in bonds	20,140
(14.) Seminary Land Fund—invested by Regents in six per cent. bonds—cost	19,380
	$1,022,450

JOHN LECONTE,
President of University of California.

UNIVERSITY OF CALIFORNIA, COLLEGE OF AGRICULTURE,
BERKELEY, November 18, 1880.

Honorable J. R. Freud:

DEAR SIR: Your favor of sixteenth came duly to hand. As it would be difficult, and on account of the state of my eyes almost impossible, for me to make out, at short notice, as full a statement as would be desirable in respect to the matters you allude to, I mail to you with this such printed matter as I have published, bearing on the questions in hand. My Walnut Creek lecture, and the first fifteen pages of

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my report to the President, contain the gist of the whole matter, so far as my views on the past, present, and future of the Agricultural Department are concerned; and I have only to add that, with the aid of the appropriation made by the last Legislature, these views are now being carried out as rapidly as possible, in accordance with a printed, but not as yet published, programme, of which, unfortunately, I have no copy to send you, but which is in the hands of both Mr. Martin and Mr. Winans. This programme includes:

1. Courses of lectures on "special cultures," in accordance with the circular herewith inclosed. This is given regularly by Mr. C. H. Dwinelle, and by other lecturers specially competent in particular subjects, as these can be obtained. Among the latter, a clinical lecture on "glanders" was last week delivered by Dr. A. De Tavel, of San Francisco, to a large audience. Mr. Dwinelle's lectures are regularly attended by four students, and almost always by from two to six persons not regular students in the agricultural course, of which this is the "senior" year.

2 A garden of economic botany. This is now being laid out and occupied, on the level tract next the entrance from the railroad depot. It will embrace, as fully as possible, all the economically useful plants capable of outdoor culture in this climate. At the same time, culture experiments on a larger scale are being carried out on the grounds north of the branch of Strawberry Creek; and, for the culture of plants requiring heat, an addition is being made to the propagating houses already occupied. A large number of seeds of important forest trees have lately been put into the ground, to be later transplanted to suitable positions in the University domain, which will ultimately (if my plans are carried out) be to the agricultural student what the cabinet of minerals and laboratory are to the mining student.

3. Increased and improved means of demonstration in instruction in the several practical courses, in the way of collections, illustrations, implements, etc.

4. The continuation, to the extent rendered possible by our means, of the work of an agricultural survey, as explained in my report to the President, page eleven and following ones, and exemplified in the appendix, pages twenty to sixty-three. A number of important matters have been under examination since the date of this report, and will be published before long. At the moment, the work has received a check in the resignation of my assistant, who can be replaced only by training up another graduate in his stead. For this purpose, I have selected Mr. F W. Morse, of the class of eighteen hundred and seventy-eight.

I consider the prosecution of this work as the key to the situation, as it is the most direct means of proving to farmers how great are the benefits to be derived by their sons from the study of the scientific principles underlying agriculture. I cannot but ascribe largely to the published and unpublished results of this work, the gratifying increase of students in the strictly agricultural course, and the increased attendance of others upon the lectures of the department, so far from the "single student" of current report (which doubtless originated in the statement that there was but one student in the senior class this session), the facts now are as follows:

Regularly attending senior course of special cultures	4
Regularly attending junior course of agricultural chemistry	6
Electing the course of economic botany, second term, sophomore	12
Total in agricultural course proper, by January 1st, 1879	22
Deduct as twice mentioned	4
Total attending regularly	18

It should be remembered that, moreover, the entire scientific division of the sophomore class (from forty-five to fifty students) attend regularly the first term of my course, to wit: general botany, which begins the agricultural course. After the first term they elect their college, as above stated.

When you remember that years ago not a single student elected the agricultural course at this time of the year, the change that has occurred cannot but be gratifying. The course has become acceptable and respectable, in the eyes of the students and their parents, in proportion to its increased thoroughness and educational value And I have no fears as regards its future increase of patronage and usefulness, if the policy that has effected this change is continued. Let me add that I consider the number of students now in attendance here, on this course, as a fair index of the interest now taken by the farming population in the *professional* education of their sons as farmers. If the means and appliances for such education here are not, at this time, all that could be desired, whatever is offered is indispensable, and what is lacking can in a great degree be made up by practice on any well conducted farm. For mere drill in farm operations no sensible man will send his son to college; and business management of a farm will never be learned under the artificial conditions of a College farm. I am unable to see why, of all professional schools, the Agricultural College should be saddled with the task of converting young men to farming, by keeping them surrounded with what some are pleased to term an "agricultural atmosphere." It is the unintelligent drudgery of ordinary farm life that our boys run away from; and it is only by rendering them intelligent laborers, and not by rubbing in the drudgery, that their aversion to farm life (for which certainly the colleges are not responsible) can be overcome Whenever farming comes to be a learned profession amongst us, and to be considered as such, young men will not need to be surrounded by a dense "agricultural atmosphere," in order to keep them to their profession. And then, the many farmers who now send their sons to all but the agricultural course at the University, will cease to tell their sons that they "can teach them all the farming they need at home" I am hopeful that this day is coming sooner in California than elsewhere, for natural reasons; but its coming will not be hastened by removing our future farmers from contact with the rest of the rising and cultured youth of the State; and if Mr. Morrill's own statement is to be believed, that was assuredly not the object of the "Morrill grant."

In conclusion, allow me to suggest that the first thing needful for rendering the aid of science accessible to the rural population is, that the rudiments, at least, of natural science should be effectually, and not only nominally, taught in the common schools. The reason why this is not now done, is simply that there are too few teachers competent to give such instruction, and if the University does no more than supply these teachers, it will have done the greatest possible service to the cause of agriculture. Then, indeed, "farm schools" scattered over the country could do real service, because they would have suitable material to work upon. But so long as there are no teachers, no law or constitutional provision can create efficient schools.

If there is any farther information that I can furnish you, please let me know, and I will do so as rapidly as possible.

Very respectfully yours,

EUG. W. HILGARD.

LOCAL OPTION PETITION.

MR. SMITH, of Santa Clara, presented the following petition and memorial, signed by a number of citizens of California, requesting that a provision be inserted in the Constitution, providing for a local option law:

To the honorable the Constitutional Convention of the State of California:

We, the undersigned, respectfully petition your honorable body to insert in the new Constitution of this State a clause similar to that now in force in the State of Texas, to wit:

SECTION —. The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, voting precinct, town or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibited within the prescribed limits.

Referred to the Committee on Education.

CORPORATIONS.

MR. FREEMAN. I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of continuing the consideration of the report of the Committee on Corporations.

MR. INMAN. Before that motion is made, I desire to avail myself of my notice to amend Rule Fifty-Six, and ask that it lay over until there is a full house.

THE PRESIDENT. If there be no objection, the gentleman will be allowed until Monday or Tuesday. Hearing no objection, it is so ordered.

MR. McCOMAS. I desire to present a memorial from the Board of Supervisors of Santa Clara County, asking for the establishment of a State Hospital, and ask that it be referred to the Committee on State Institutions and Public Buildings, without printing.

THE PRESIDENT. If there be no objections it is so ordered.

MR. REYNOLDS. I hope the gentleman will withdraw his motion to go into Committee of the Whole, for one moment——

THE PRESIDENT. It is moved and seconded that the Convention resolve itself into Committee of the Whole, for the purpose of further considering the report of the Committee on Corporations other than Municipal——

MR. REYNOLDS. I insist that I have the floor, and had it while the motion was being put.

THE PRESIDENT. The gentleman did not have the floor.

The motion prevailed.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read the next section, section eight.

EMINENT DOMAIN AND POLICE POWER.

THE SECRETARY read:

SEC. 8. The exercise of the right of eminent domain shall never be so abridged or construed as to prevent the Legislature from taking the property and franchises of incorporated companies, and subject them to public use the same as the property of individuals; and the exercise of the police power of the State shall never be so abridged or construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the State.

MR. BARBOUR. Mr. Chairman: I call attention to what appears to be a clerical error in line three, the word "subject" should be "subjecting." I have, however, another amendment to offer.

THE SECRETARY read:

"Amend section eight as follows: after the word 'companies,' in line three, insert the words, 'at their own valuation as made for the purpose of taxation.'"

Adopted.

MR. BLACKMER. Mr. Chairman: I notice in the same line what is undoubtedly a clerical error. The word "subject" ought to be "subjecting." It is not in grammatical form.

THE CHAIRMAN. That is a mere clerical error and will be corrected, of course. If there be no further amendments to section eight, the Secretary will read section nine.

LIMITATION OF CORPORATIONS.

THE SECRETARY read:

SEC. 9. No corporation shall engage in business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold any real estate for a longer period than five years, except such as may be necessary for carrying on its business, or which is incident thereto.

MR. TERRY. Mr. Chairman: I move to strike out the words "or which is incident thereto."

THE CHAIRMAN. The question is on the adoption of the amendment.

MR. ESTEE. Mr. Chairman: The reason that the committee put in the words, "or which is incident thereto," was to apply to savings banks and such institutions, where they are compelled to bid for property at public sales. Of course such purchases are not necessary to carrying on its business, but they are incident to its business, and the committee thought the amendment was very proper and ought to be put in there. The section is as follows: "No corporation shall engage in business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold any real estate for a longer period than five years, except such as may be necessary for carrying on its business, or which is incident thereto." We put it in there, for the purpose I have stated, and we think it ought to remain there.

MR. TERRY. Mr. Chairman: They are authorized to hold five years. If they are compelled to buy land to secure a debt, I think five years is long enough for them to dispose of that land. The construction placed upon these words by the gentleman, would enable any bank or corporation to buy land or other property, and hold it forever. That is not the policy of the State. The policy of the State is to prevent corporations from accumulating property in their hands. I think the words should be striken out.

The amendment was adopted.

MR. SMITH, of Fourth District. I would like to ask a question of the Chairman of the committee. I do not know what this clause is intended to mean, "nor shall it hold any real estate for a longer period than five years, except such as may be necessary for carrying on its business."

MR. ESTEE. It means that they shall not engage in the business of buying and selling real estate, and that they shall not hold it for a longer

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period than five years; that is, that they shall not go on accumulating real estate and holding it. That is the statute now, I will state to the gentleman. It is only following the Code.

THE CHAIRMAN. There being no further amendments to section nine, the Secretary will read section ten.

ALIENATION OF FRANCHISE.

THE SECRETARY read:

SEC. 10. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise, so as to relieve the franchise, or property held thereunder, from liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges.

THE CHAIRMAN. If there are no amendments to section ten, the Secretary will read section eleven.

STOCK OF CORPORATIONS.

THE SECRETARY read:

SEC. 11. No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained, at a meeting called for that purpose, first giving sixty days' public notice, as may be provided by law.

MR. McFARLAND. Mr. Chairman: I would like to inquire what the meaning of that is? It seems to me, sir, that this is a very loose provision to put in the Constitution. These matters are regulated by law, so far as they are necessary to be regulated, and it seems to me that that clause would give rise to a great deal of doubt. I move to strike out section eleven.

THE CHAIRMAN. The question is on the motion of the gentleman from Sacramento to strike out the section.

MR. ESTEE. Mr. Chairman: I hope it will not be done. "No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received."

REMARKS OF MR. BARNES.

MR. BARNES. Mr. Chairman: I would like to ask the Chairman of the Committee on Corporations what he means by a fictitious increase of indebtedness? I understand that a fictitious increase of stock means the watering of stock without the addition of any more property or value. That we all understand. It has become too common, and is very much to be deplored, and ought to be stopped. That is to say, the increase of the capital stock is almost always made for the purpose of enabling them to divide profits that are utterly disproportionate to the amount of capital. Take the case of a gas company that has invested in its property ten thousand dollars. It charges such a rate for gas that the return from the investment would amount to twenty, thirty, forty, or perhaps fifty per cent. per annum. Then, without the addition of a particle of property, they declare an increase of capital stock, and the burden upon the consumers, upon those who are compelled to take this commodity, whatever it is, is kept up at that unjust rate. It is proper enough that that should be stopped, but when you talk of a fictitious increase of indebtedness, I do not know what it means. Fictitious indebtedness, I take it, is always void, and I cannot understand that a corporation would create a fictitious indebtedness. What I want to get at is, what is a fictitious increase of indebtedness? I do not know.

MR. HOWARD. May not a lot of fraudulent directors create a fictitious debt?

MR. BARNES. That would be void at common law. It is a contradiction in itself. Indebtedness implies an obligation arising upon value received. I merely asked for information, because everybody else will be asking some of these days what it means, and I want to be able to answer. The watering of stock certainly ought to be stopped, but I cannot conceive of a man putting a fictitious indebtedness upon himself.

MR. ESTEE. "No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void." "Fictitious" is a well-known word. Its definition can be found out.

MR. CASSERLY. Allow me to suggest—I think that the word "fictitious" should be inserted again before the word "indebtedness," so as to read "or fictitious indebtedness."

MR. ESTEE. That is all right. There is no objection to putting that word in there. But the point is, that there is an evil there to be remedied. Everywhere throughout the country fictitious indebtedness——

MR. BARNES. What I inquired was, not whether fictitious indebtedness was an evil, but what is meant here by fictitious indebtedness? What can be covered by it?

MR. ESTEE. It is void because——

MR. BARNES. How can it be any more void than it is? Is it void as against the creditor who holds the fictitious indebtedness, or is it void against the fictitious debtor? I wanted to have it explained, that is all, if the Chairman of the committee will explain it.

REMARKS OF MR. ESTEE.

MR. ESTEE. I will try to explain, if the gentleman will give me an opportunity. It is well known that mining companies, for instance, in this State, have been organized, that a few men control the mine, and a good many men pay for working it. It is almost a uniform rule, or it very frequently occurs, that these men make up a fictitious indebtedness, and draw money from the treasury, and thereby make it appear that the moneys of the corporation have been properly expended, when they have not been properly expended. There are some corporations that have issued stock, and issued bonds on fictitious indebtedness. There is one in this State that I might name. It is well known that it issued one million dollars of bonds—construction bonds, they were called—for constructing a certain road that never was and never will be built. Now, sir, what your committee intended to do here, was to enforce the rule of common honesty with corporations as with individuals. They intended to do nothing more. It was the object of the committee not to impose any penalty upon a corporation that the law did not already impose upon individuals.

MR. ROLFE. Mr. Chairman: I am laboring under the same ignorance that the gentleman over there is. I will ask if you mean that it shall be void as against the company?

MR. ESTEE. Either against the company, or any stockholder, or anybody else.

REMARKS OF MR. BARNES.

MR. BARNES. Mr. Chairman: We understand then that when the directors inside the ring create an indebtedness and pay money to themselves, that that indebtedness upon which they have collected and received money is void. Is that it? Take the case of a railroad—the California Pacific Railroad extension. They did issue, not merely a million dollars of bonds, but two million and a quarter of bonds, and sold them in Europe upon a projected road that never was built at all, and for which the company received nothing but this Napa branch; a few miles of railroad, for two million and a quarter of bonds. Now, in whose hands shall they be void? Suppose the fraudulent directors—for we are wont to consider all directors fraudulent—shall determine to raise money for their own account upon the company paper, and in accordance with law, the directors authorize the President and Secretary of the company to make and execute a corporate note for ten thousand dollars, and to borrow money upon it, and they take that ten thousand dollars and put them in their pockets. Now, then, the indebtedness is held or owned by some person who discounts the company's note put out in that way. The directors have robbed the company, they have robbed the stockholders, and now it is proposed to rob the bona fide holder of the note, the innocent discounter. That is what it amounts to, if it amounts to anything at all. Now, there is nothing better understood than that the bona fide holder of commercial paper is protected in the holding of it. You cannot have commercial law, or commercial transactions, except upon that basis. Is it meant by this to say that if the directors of a company shall misappropriate money and rob the company, that the man who has loaned the money is responsible? If so, we have a new element in commercial law in this great reform State of California; that a man who loans money to a corporation or association has got to be certain before he loans it that everything is all right on the inside, and has got to know as much and more than the directors themselves. He has to inform himself as to what becomes of the money; and after he has loaned his money he has got to follow that money and see it invested in the land or applied to the purposes of the corporation.

Fictitious indebtedness is always void. But there may be a fictitious indebtedness that is good in the hands of a bona fide holder. There is not a gentleman on the floor of average capacity, which we lawyers claim to be, as well as truly good, that can understand what is meant by that phrase "in their." It is like some of these other ill-considered phrases, like one adopted yesterday. It is vicious. It opens the door to more litigation, and overthrows well settled principles, if it amounts to anything at all. Therefore it is, that before we put this into the Constitution of this State, that is going to stand for fifty years or so, I wished that we could all understand it, so that we would be able to explain it.

MR. ESTEE. Mr. Chairman: My friend asks me a very leading question, and then he answered it in a very elaborate manner, for himself.

MR. BARNES. Mr. Chairman: The reason I did that, was that when I asked it before, the Chairman of the Committee on Corporations did not appear to understand me. He came up to the scratch and looked at it and then walked away.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: If the gentleman wishes to ask any more questions, all right. And if he wants to answer them himself, that is all right; but the proposition here is whether this section eleven is so worded as to convey correctly the ideas intended to be conveyed; and secondly, whether these ideas will meet the evil complained of. Now I am not unaware, sir, that it is impossible to draw any section but what is subject to criticism by all persons, and especially by very bright intellects. I am very well aware that my friend has the capacity of making black seem white and white seem black, and I know that if there is anybody here that can put the language into any peculiar shape I know he can do it. Now if the gentleman will propose an amendment to section eleven that will meet the evil which he condemns, and which we say exists, this committee will be most glad to accept of his eminent services in that line.

MR. BARNES. I will undertake the job.

MR. ESTEE. The amendment proposed by the gentleman from San Francisco, Mr. Casserly, I think is a good one, that all fictitious indebtedness shall be void. Why shouldn't it be?

MR. BARNES. But against whom?

MR. ESTEE. Why shouldn't it be? There is no reason in the world. Now, my friend says that this fictitious indebtedness may come into the hands of innocent holders. That is possibly true; but this will not relate back to anything in the past, and it will make people who buy bonds—I do not mean railroad bonds, but any bonds issued pursuant to this Constitution—see where their money does go. And it is right enough that they should. In other words, that they shall not do as has been done heretofore by companies, issue bonds for fictitious indebtedness, and sell those bonds at twenty or thirty cents on the dollar, and then hold the stockholders responsible for the payment of the interest on them. I

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cannot, for the life of me, see, with this in view, with a full knowledge that this section exists, how many persons can be deceived. It is possible that there might be instances where there might be a wrong; but it strikes me that it will meet and remedy a great evil. Mark the language: "No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received." Now, they know whether they pay money for them or not, "and all fictitious increase of stock or indebtedness shall be void." Then it goes on further and says: "The stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting called for that purpose, first giving sixty days' public notice, as may be provided by law."

I hope the motion of the gentleman from Sacramento to strike that section out will not prevail.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: I have no desire to criticise the work of the committee. I think the greatest error of the committee is in giving us too much on the subject of corporations. The old Constitution contained five or six sections on the subject. In this report we have twenty-three. I think there is a great deal put here that belongs properly to the Legislature. I think if the Legislature passes a law, and the words are found to be ambiguous, it can be amended, but it cannot be done so easily when it is in the Constitution. Now, the very first proposition here is: "No corporation shall issue stock or bonds except for money paid." How much money? I do not suppose the gentleman undertakes to say that they cannot sell stock or bonds unless for its par value paid in money. If that is what is meant it should be inserted, and then we must go on with a regular Code to carry out that idea. Now, look how this would work.

Suppose a corporation is formed up here in Grass Valley by laboring men, miners, men who were working by the day in the Idaho mine at this moment, but members of a corporation for the purpose of finding and mining some other mine for themselves. If you mean that, in that case, they must get the par value of the stock, I do not think the Convention would desire to adopt a proposition of that kind. They procure the land. They have no property at all to start with except the place to prospect. But they imagine that the chances are that a mine will be found in a certain hill. They form a corporation. The first thing they do is to determine their nominal capital stock, and it does not matter much to the community at what figures they place it. The members take a certain amount of stock, as much as they are able to pay for at the time. After they have expended a certain amount of money, they sell a portion of the stock for the purpose of carrying on the prospecting enterprise. They sell it for less than par. Should they not have a right to do that? It seems to me they should. If this was adopted men would be afraid to assist such enterprises. They would be afraid to buy stock under such circumstances as that.

Again: "And all fictitious increase of stock or indebtedness shall be void." I am opposed to the idea. It would be a Herculean task to determine in all cases what was a fictitious increase of stock. Suppose a mining company has a capital stock of twenty thousand dollars, and they increase their stock. They have a perfect right to do it. They increase it two or three hundred per cent., and they issue and sell that stock. Now, is the title of the man who buys the stock to stand upon the condition of showing that it was not a fictitious increase? Suppose they increase it one hundred thousand dollars, and it is not worth that, is that a fictitious increase?

Now, gentlemen have in their minds two or three corporations that have watered their stock to a greater or less extent, and in order to get at their particular cases, they want to put into the Constitution a proposition most doubtful, that would tend to cripple all the ordinary corporations which are made by the people, for the people, and for the benefit of the people. It seems to me that this is a very doubtful provision—"except for money paid." If it means any money at all, it amounts to nothing.

It would be a very dangerous thing to say that all fictitious increase of stock shall be void. Who is to say whether the increase is fictitious or not? If the property of a corporation has advanced, it certainly would not be fictitious to increase it to the same extent. At what point would it be fictitious? It opens the door for an immense amount of litigation, and while you are attempting to benefit the people, you are putting them in a worse position than they are now. These corporations are used every day, by rich and poor, in the development of the country.

I think it would be better to strike out the whole section, and leave it to the Legislature. It is true that there have been cases of watering stock, but this proposition includes everybody and every class of corporations, and, it seems to me, is dangerous. If any law is necessary to reach that particular class, it may be done much more safely by the Legislature, where the law can be changed. Gentlemen will find that when they start that it must necessarily do injury, and give rise to great doubt and much litigation. I think it is much safer to strike it out.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I merely rise to correct one point. It would appear from the gentleman's remarks that the committee put this in to cover some idea of their own. Now, it will be found in the Constitutions of Pennsylvania and Missouri, and most of the late Constitutions. The committee have compared it with these, and then saw the application, and we all understood it; and I think there is nothing in it that a plain man cannot understand. It is a provision to prevent frauds of that kind, and everybody knows that there has been fraud. It is found in the other States, and they have adopted this clause. There are gentlemen here who have more brains than I have, but in the committee it was made very plain to me that it was very necessary.

REMARKS OF MR. DUDLEY, OF SOLANO.

MR. DUDLEY, of Solano. It was admitted by the gentleman from San Francisco, Mr. Barnes, that the matter of watering stocks, or creating fictitious stocks, was an evil that ought to be corrected. And yet, suppose, in the instance given by him, that this gas company should increase its stock in order to make it appear that there was an increased capital in the organization upon which a dividend should be declared; and suppose this fictitious stock should get into the hands of third parties. Would that stock become void? I understand that in common law such parties would have acquired rights of which they could not be divested. Now, let us take the other proposition here, of fictitious indebtedness. Suppose you have engrafted in the Constitution a clause forbidding fictitious stock, and this supposed corporation or gas company, instead of issuing fictitious stock, should issue bonds to the stockholders, in order to create a fictitious liability upon which it was necessary to pay interest. Now, then, so long as those bonds were in the hands of those who had created them, it would be very proper to declare them void; but when subsequent purchasers, in good faith and for a valuable consideration, get possession of them, I do not know how you are going to divest them of their rights. There is no doubt but that these are evils that ought to be remedied; and I am willing to vote for this section for the purpose of making an effort in that direction. It has been admitted by the gentleman that fictitious stocks can be prevented by this section. I see no difference between the fictitious indebtedness and the fictitious stock operation; nor are innocent parties any more liable to be injured in the one case than in the other.

MR. HAGER. Mr. Chairman: I see a difficulty about the phraseology of this section, when it comes to an adjustment of the accounts of a company with the public. The public are not supposed to know what has been done by a company. It cannot be presumed that the public will go and inquire into the validity of their action, provided they act within the authority of law; and that is all that any one could do—ascertain whether the company had acted in pursuance of law. But, when you come to the nicer question, whether it is a fraud or not, it is hardly right to say that the public should suffer. Suppose a man performs work for the company in a certain way. If he buys the obligation of the company, given for work, the presumption is that it would be legally issued, if procured legally, upon its face, and it would be difficult for a man dealing with the company to ascertain whether it was or not according to the requirements of the law. The section reads: "No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void." I presume that the Chairman of the Committee on Corporations had in his mind that India rubber account that he spoke of the other day. That would be a fictitious indebtedness. A railroad corporation, or street railroad corporation, may come up to the Legislature, and they may employ a lobby to get certain bills through. You will find that nothing appears on the books of the company that money was spent for any such purpose. You will find charged, under the head of construction account, thirty thousand dollars. That is, without any items, without any information, it would appear that on account of money expended for construction there is a charge of thirty thousand dollars. It is a fictitious indebtedness, so far as the stockholders are concerned, but the directors have expended the money. It is a fraud on the stockholders, but it is a matter which they have done, inasmuch as they had the power to do it, to pay out and use the company's money. I see the difficulty, as my colleague has said, in regard to the public generally. Now, I would like to amend it in this way:

"No corporation shall issue stock or bonds, except for money paid, labor done, or property actually received, and all fictitious increase of stock or indebtedness shall be void; and the directors of all corporations shall be jointly and severally liable for any fictitious indebtedness created or authorized by them."

Would not that cover the point?

MR. ESTEE. Mr. Chairman: That is all right, so far as it goes. But our section says that "the stock and bonded indebtedness of corporations shall not be increased, except in pursuance of general law."

MR. HAGER. I leave the rest of the section exactly as it is, but I make the directors directly responsible for the fictitious indebtedness.

MR. ESTEE. We find just exactly such a section in Pennsylvania, Missouri, and Illinois, and it strikes me that it is right.

MR. HAGER. If the gentleman will point out the section in the Missouri Constitution.

MR. ESTEE. You will find it in section eight, article twelve, of the Missouri Constitution of eighteen hundred and seventy-five.

MR. HAGER. It is there, sir.

MR. WEST. You will find it also in section thirteen, article eleven, of the Illinois Constitution—the same in substance.

MR. HAGER. It is in the Missouri Constitution, and refers to the Constitution of Pennsylvania and that of Illinois, I suppose. I am inclined to adhere to the Constitution of Missouri and the one in Pennsylvania, because they are drawn with reference to making the Constitution to a certain extent a code, so far as it is a limitation upon legislative power. I am rather in favor of Constitutions being drawn in that shape—that they should contain, if necessary, a code, because Constitutions cannot be changed and overturned so easily. Laws may be by the Legislature at any time; but in a Constitution, when it is once engrafted there, it is like a rock against which the surges of corruption may prevail in vain, and I am in favor of engrafting in the Constitution every provision that I may think necessary for the protection of the people, rather than to leave it to the Legislature.

REMARKS OF MR. BARNES.

MR. BARNES. Mr. Chairman: I see no peculiar holiness or sanctity in the section because it has been shipped over here from Missouri. If it is good we ought to adopt it. If it is bad we ought to reject it. But

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while we are endeavoring to phrase an idea in order to meet what is acknowledged to be a mischief in the business of our corporations, I think it is just as well to phrase it, if we can, so that it will cover the evil intended to be corrected. Now, I will suggest this to the Chairman of the committee. Of course, it may be crude and perhaps not couched in the most fitting language. I remember hearing—if the Convention will pardon me one moment—I remember hearing it said that the elder John Adams, who wrote the Preamble and Bill of Rights for the Constitution of Massachusetts, gave to that great work at the ripe age of eighty-nine years, after twenty-five or thirty years study of republican institutions, after vast travel and experience to live and to learn, with a thorough knowledge of everything that relates to the rights of the people that could be drawn from the earliest existence of republics to the charter that has been so often spoken of here, which was wrung from King John by the Barons at Runemede—that he was occupied seven months, in the solitude of his chamber, in writing the Preamble and Bill of Rights of the Constitution of Massachusetts, around which all these other Constitutions have clustered. But we seem to think that we can come upon the floor of this Convention and suck a stump of lead pencil for five minutes, take an old scrap of paper and prepare any amendment for the Constitution of the State.

MR. HEISKELL. We have the benefit of his vast wisdom.

MR. BARNES. The work is altogether too hurriedly done; and therefore I say in apology for any amendment of mine, that I would much prefer that amendments should go to a committee for study and examination. It is very easy to use language, but it is not so easy to construe it when it has to be investigated. Here is my suggestion:

"No corporation shall issue capital stock, or any evidence of corporate indebtedness, except for money paid to, work or labor done for, or property actually received by it in the course of its business. No corporation shall increase its capital stock, except for the acquisition of property, or for the appointment of property among its stockholders, actually held and owned by said corporation at the time of such increase. No corporation shall create any indebtedness except as herein provided for the issue of capital stock; *provided*, that nothing herein contained shall affect any bona fide holder for value of any evidence of corporate indebtedness."

Now, that would cover the fictitious indebtedness by defining what they might contract a debt for, and the fictitious stock by defining what they might increase their stock for, with a proper reservation in cases of indebtedness only.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: The learned and eloquent gentleman from San Francisco has told us what a gentleman from Massachusetts did, and how many years it took that man to finally get into condition to be able to frame the Preamble and Bill of Rights of the Constitution of Massachusetts, but I must say that I was unable to see what pertinence these remarks had to the subject in hand. But, when the gentleman from San Francisco said that the Constitutions of all the other States clustered around the Constitution of Massachusetts, the only reason for that clustering that I can see is, that the gentleman from San Francisco happens to be born in Massachusetts himself, and that probably accounts for the clustering business around Massachusetts.

MR. BARNES. I beg leave to correct the gentleman. I was not born in Massachusetts. I think it is as good a place to come from, however, as——I do not remember where the gentleman came from, and I have not yet known him long enough in this State to know where he lives here. I think all this is out of the question—we are not discussing that subject.

MR. BEERSTECHER. I stand corrected. I understood the gentleman to tell me the other day that he was born in the State of Ben. Butler.

MR. BARNES. I never could have said that, for Ben. Butler has not got any State. He certainly did not get the State of Massachusetts at the last election. I am aware that the Convention biographer has located me in Massachusetts, and he also gave my age and previous condition of servitude, but he was incorrect about them. But that has nothing to do with this amendment.

MR. BEERSTECHER. I call the attention of the Convention to section seven of article sixteen of the Constitution of Pennsylvania. Section seven of article sixteen of that Constitution is the exact counterpart of the present section before this Convention; or, I should say, the present section is the exact counterpart of the section in the Constitution of Pennsylvania. Section seven reads as follows:

"No corporation shall issue stocks or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained, at a meeting to be held after sixty days' notice, given in pursuance of law."

It seems to me that we can well afford to copy a Constitution, such as was formed by the men who sat in Convention in Pennsylvania. The present section is a direct blow at the whole system of corporate companies in the State of California. A great talk is made here about innocent purchasers. Mr. President, in my humble opinion, I consider this talk about innocent purchasers as all bosh and bombast. Innocent purchasers! If men desire to be innocent, then let them not be stupid and foolish. If a man desires to purchase a promissory note, he naturally looks into the financial responsibility of the maker and the indorsers of that note. He naturally desires to ascertain whether the note is based upon any financial responsibility. If he does not do that, if his own ignorance and stupidity leads him to purchase a worthless piece of paper, he must suffer the consequences. We never can make laws to protect fools against their own foolishness. Talk about innocent purchasers! If a man desires to be an innocent purchaser, let him be a sensible purchaser. It is very well known that the great bulk of the stock of corporations is negotiated, not directly by the officers of the corporation, but is negotiated through the medium of brokers or agents. Whoever desires to buy stock, let him examine whether the act creating the stock is a valid act in law. Let the business be done through the medium of banks of financial ability; let them go to institutions and to men that they know to be solvent, and before purchasing let them require these negotiating agents to indorse the paper. Then, if the paper is worthless, they can come back upon the indorsers. There is no trouble about protecting innocent purchasers at all. And if the history of the railroad corporations of the United States, if the history of the corporations of the State of California is studied, it will be found that the great evil always has been the watering of stock. And it is to prevent the watering of stock, to prevent the fictitious issue of stock, that we desire to have this section inserted in the new Constitution.

The gentleman from Sacramento, Judge McFarland, says that a number of corporations are started in this State without any principal at all except a place to prospect. Mr. President, I have known a number of corporations to be started and run in this State for a number of months that did not even have a place to prospect. I know one company that was called the English Mine. When a certain newspaper in San Francisco sent its correspondents, to ascertain where that mine was located, they were unable to find that they had any location or that they had any place to prospect at all, and yet their stock sold in San Francisco, and was purchased. It is in order to break down this wildcat system of doing business, and in order to protect the citizens of this State and all other States against these corporations without any financial ability whatever. If a corporation desires to do business let it do business as a copartnership does business. Let it have money to do its business with, and let it have something to represent its capital stock; and if it has no financial ability, no principal, no means, then let there be no corporation.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: We have heard this matter discussed to a considerable extent, and it appears to me that new light has been shown with regard to the principles set forth in section eleven. Now, for instance, when we read this, on the first few lines, which has been under discussion, we cannot discover anything inconsistent or anything that is sinister in its tendency. It appears to be broad, correct, honest, and what might be wished for "No corporation shall issue stock or bonds except for money paid, labor done, or property actually received." That looks like starting out upon a solid basis. It looks after the old style of honesty, and it would appear at first review that it would be accepted and acted upon, but we find that there are members who can see something deeply sinister in it where common minds cannot, and if such gentlemen can make it plainly appear that there is something wrong, something radical, something sinister in its tendency, it is well for us to start out and act accordingly. But if, after due effort, there is a failure in that regard and nothing really wrong, nothing inconsistent, nothing corrupting, nothing contrary to our Constitution is shown up, why I think we may pronounce that nothing has been accomplished against what is here presented.

Now, for instance, with regard to another portion of this section eleven: "And all fictitious increase of stock or indebtedness shall be void." That looks to be correct; and, in fact, the gentleman from San Francisco, Mr. Barnes, says that it is a principle that does exist. Well, now I am satisfied that the minds of the members of this Convention would inquire if this is a principle in law, why is it that it becomes so dangerous and subversive in section eleven, as to change the order of business. It is said that it would change the order of business. Now we are desiring to change this, and we think this reaches it. In the midst of everything I am convinced that this has been thought of before.

Here, gentlemen say, that men come here and chaw the stump of a lead pencil, and think upon matters for a moment, and conclude that they know more than men whose mighty minds have been engaged in the investigation of these matters. Now, for instance, I have nothing in particular to say with regard to the men who have sat in any Convention, but I would suppose that the gentleman would admit at once that the men assembled even in the Constitutional Convention of Missouri would know as much as members who have chawed a pencil here for a short time, and who oppose the measures which are presented here. We have also the Convention of Pennsylvania, which has investigated these things. These new deleterious effects that he speaks of as being introduced into business, have not been dragged to light before this body to show that there is something injurious in the article under discussion. With these matters before us, and being convinced that nothing has been shown against the proposition contained in section eleven, I am in hopes that the members of this Convention will consider it on its true merits, not particularly because it has been adopted in the Constitution of Missouri, not particularly because able men in Pennsylvania have adopted the same thing, but because it will prevent fraud in the State of California.

THE PREVIOUS QUESTION.

MR. KEYES. Mr. Chairman: I move the previous question.

Seconded by Messrs. Lindow, Larkin, Smith, of Santa Clara, and Smith, of Kern.

The main question was ordered, on a division, by a vote of 52 ayes to 39 noes.

THE CHAIRMAN. The main question has been ordered. The first question is on the amendment offered by the gentleman from Sacramento, Mr. McFarland, to strike out section eleven.

The amendment was lost.

THE CHAIRMAN. The question now recurs on the amendment offered by the gentleman from San Francisco, Mr. Barnes. The Secretary will read the amendment for information.

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THE SECRETARY read:

"No corporation shall issue capital stock or any evidence of corporate indebtedness except for money paid to, work or labor done for, or property actually received by it in the course of its business. No corporation shall increase its capital stock, except for the acquisition of property or for the apportionment of property among its stockholders actually held and owned by said corporation at the time of such increase. No corporation shall create any indebtedness, except as herein provided for the issue of capital stock; *provided*, that nothing herein contained shall affect any bona fide holder for value of any evidence of corporate indebtedness."

The amendment was lost.

MR. WILSON, of San Francisco. I desire to offer an amendment.

MR. BEERSTECHER. Can an amendment be offered now?

THE CHAIRMAN. The Chair has not heard the proposition of the gentleman from San Francisco?

MR. WILSON, of San Francisco. I desire to offer an amendment to section eleven.

THE CHAIRMAN. That is one of the anomalies of having the previous question in Committee of the Whole. There can be no more amendments.

MR. WILSON, of San Francisco. I simply give notice that I will offer an amendment to line three, section eleven, after the word "void," to say that nothing herein contained shall affect bona fide holders for value paid without notice.

A PROTEST.

MR. REYNOLDS. I rise to a question of privilege. I desire to enter my protest against the action of the Committee of the Whole in ordering the previous question. It is subversive of the popular rights. It is subversive of the rights of the minority in the committee. It is subversive of the rights of the minority of the Convention.

MR. TINNIN. I rise to a point of order. It is that the protest must be sent up in writing.

THE CHAIRMAN. The rule allows it either in writing or verbally.

MR. BEERSTECHER. The previous question being called, I think cuts off all debate upon all subjects.

THE CHAIRMAN. The previous question has already exhausted that section. The gentleman will state his question of privilege.

MR. REYNOLDS. I have nothing more to say. I have stated my whole objection.

MR. AYERS. I rise for information. Is there any such thing as a question of privilege in the Committee of the Whole?

MR. REYNOLDS. Is there any such thing as the previous question in Committee of the Whole?

THE CHAIRMAN. The gentleman will state his question of privilege if he desires to speak to it.

MR. REYNOLDS. I have stated the whole of it.

THE CHAIRMAN. The Secretary will read the next section.

ELECTION OF DIRECTORS OF CORPORATIONS.

THE SECRETARY read:

SEC. 12. The Legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner.

MR. ESTEE. Mr. Chairman: By direction of the Committee on Corporations, I offer an amendment to that section.

THE SECRETARY read:

"*Provided*, that coöperative societies may be formed under general laws, which may provide by by-laws of their own for limiting the representation of shareholders of their stock, and the number of shares that may be held; and the Legislature shall enact such laws as may be necessary for their faithful management and protection, and may limit the liabilities of their members."

Mr. WILSON, of First District. Mr. Chairman: I have another amendment, not at all in conflict with the one offered by the Chairman of the committee, to this effect:

"Add to the section, 'and in elections for directors and trustees of corporations having no capital stock, each member may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.'"

Section twelve, as reported by the committee, contains a very important and beneficial proposition, and one which has lately been acted upon, allowing parties to cumulate their votes upon one candidate, instead of scattering them. The section is good so far as it goes, but persons may be members of corporations and not stockholders. Now, this principle is not applied by the committee to corporations of that character. I think the principle ought to be extended also to that class of corporations. I find in the Pennsylvania Constitution that the same principle is extended to that class of corporations—as well to the ordinary moneyed corporations as to the beneficial and benevolent societies. Now, if this principle is good in one case it is good in the other. The Constitution of Pennsylvania is broad enough to cover all that class of corporations.

Section four of article sixteen reads as follows:

"In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer."

There it applies to all corporations—as well to this class as the other. The object of my amendment is to make it apply to other corporations than merely pecuniary corporations.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I desire to say a word upon the amendment as proposed by the Committee on Corporations. It is a fact that there are a great number of people in different parts of the State who have desired to organize coöperative societies, wherein they could distribute the profit arising from the business; if it was a mercantile business, between those who patronized the corporation and also those who had furnished capital for it, it was found necessary, in order to keep these corporations, when they came to be prosperous, in the hands of those who were receiving the benefits, to limit the votes of stockholders to a certain number, and not have it based upon the amount of stock that they owned. This was to prevent large stockholders, when the thing came to be a success, stepping in and buying up a majority of the stock, and then control it in their own interest. The last Legislature adopted a provision which covers the ground covered by the amendment offered by the Committee on Corporations, that these corporations may be formed, and by their by-laws regulate the number of votes that each stockholder might cast at an election; and these organizations have been extended in different parts of the State. It is desirable, I think, to recognize that principle in this Constitution, in connection with the other; to provide that they may organize, and by their by-laws determine that each stockholder shall, perhaps, have only one vote in the election of the directors, and thus to cover that ground. I hope it will be adopted.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: This second amendment shows the difficulty of trying to put a code into the Constitution. You provide, in the first place, that in corporations votes shall be had in a certain way, and that the directors shall not be elected in any other way. Now you propose that corporate societies may be formed with the privilege of electing their directors as they please. A corporation is a coöperative society, and a coöperative society, having any privilege that private individuals do not have, is a corporation. If you put in this provision you must define what kind of corporations you mean. If you don't you leave the whole matter to the Legislature in the future, because the kind of coöperative societies that are spoken of are all corporations, and the corporations are all coöperative societies.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I am inclined to think that the objection raised to this proposition by Judge McFarland is well taken. Section four of the report of the Committee on Corporation provides that, "the term corporations, as used in this article, shall be construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships." I would inquire of the Chairman of the Committee on Corporations, if a coöperative society would not necessarily be a corporation, and a corporation a coöperative society, under this definition. All of us who possess a knowledge of current history know that this plan of corporate functions are not being tried alone in this State. In fact it did not originate here. It is an importation from abroad. I doubt not that the ideas concentrated and crystallized in this term have been already and will in the future prove to be very beneficial, and the case, in the mind of the Chairman of the Committee on Corporations, is all well enough in itself, but will involve the Constitution in an inextricable confusion if section four stands as we have passed it. In other words, we shall be saying that corporations may elect their trustees and managing Boards only in one way, which we have prescribed, or which we propose to prescribe in section twelve, and then go on and say that a certain class of these corporations may adopt their own rules. Now that is to break down the rule itself.

I am in favor of this rule as it is contained in the committee's report of section twelve, with the amendment proposed by the gentleman from San Francisco, Mr. Wilson. I see no objection to that. I think the language adopted in the Constitution of Pennsylvania, from which he read, probably is a better form than that proposed by himself. It can be easily conformed to that mode of expression. But the object of that is sufficiently accomplished by his proposed amendment. I am not in favor of the amendment suggested by the Chairman of the committee, because it breaks down the rule which the Convention has intended to establish in the government of corporations. Now, what is the reason? These managing Boards of a corporation constitute the authority by which all its business is transacted, all its property is acquired and managed, all its privileges and franchises, when they possess such, are to be exercised. So it is intended that all the stockholders who may not be familiar with the inside manipulations of the corporation may be enabled to consolidate the number of votes that they are entitled to cast upon one or more of their managers, was to obtain at least a minority representation in that Board of managers. Now, sir, that reason is just as cogent in respect to the coöperative class as any other class. The avowed principle upon which all these corporations are founded is upon the coöperative principle. So far as they depart from that they have departed from the principle of corporations. It would be dangerous to break in upon this rule. There would be no reason for the adoption of section twelve. I think the amendment offered by the gentleman from San Francisco, Mr. Wilson, is right, though the language in the Pennsylvania Constitution is preferable, but as to the other, I trust that it will not be adopted.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I only rise for the purpose of speaking to the question of the general propriety of provisions concerning coöperative societies. I have not understood the amendment offered

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by the gentleman from San Francisco, Mr. Wilson. The minority of the Committee on Corporations introduced a proposition, at the request of a number of friends of the principle of coöperation. It is a subject that I confess I do not fully understand, but it is complained that the present constitutional provision is in their way; that they are subject always to that difficulty with regard to representation, where the representation is upon shares. I believe that the main feature of coöperative societies is a vote regulated by the membership. If I understand rightly they are an extremely useful society. They are the means of combining the labor of persons of small means into a society where every member is entitled to just as much voice as every other member. And another principle is that members are not allowed to accumulate into their own hands, more than a certain proportion of the principal of the concern. They have sometimes succeeded; they have sometimes failed. Some of them are very flourishing and they spread around about them a great deal of good.

Now, the one distinctive feature, and the one aimed at in the amendment proposed to this section, is with regard to representation. The present rule contemplates a property qualification, to which I do not object. The share is presumed to be potent. No matter how many shares a man has, he votes all his shares. The other is the personal representation of the coöperative plan permitted by the by-laws of their own. Can there be any objection at all, if every corporation in the State of California wishes to call itself a coöperative society, and limit the representation to the membership, so that if one person owns but one share, he has the same voice in it as any other stockholder in the concern? I know that they will not do it. There is no possible danger that they will do it. The only trouble is that in that class of corporations they may never be able to induce a man of ordinary means to invest his capital in it. On the contrary, the men of large means do invest, because by reason of the accumulation of stock in a single hand, they soon control a majority of the stock. There is the difference in the two propositions, and it ought to be recognized, in my opinion.

It seems to me that we are not throwing open the door to all corporations to call themselves coöperative societies and come in and claim the benefit, because they immediately put themselves upon a footing with coöperative societies in other respects. The word has a legal definition, I believe. At least they have got to be well known, and the principle upon which they proceed is well known. The main objection would be to the limitation of their liability. If we proceed entirely upon a cash basis there can be no necessity of any provision about the limitation of the liability of the members. That is my understanding of it, and that is the reason why I have advocated the adoption of this qualification of the rule.

MR. BLACKMER. Mr. Chairman: As there may be a question whether this does conflict with section four that we have already adopted—this amendment offered by the Committee on Corporations—I desire to make a motion that this amendment be rereferred to the Committee on Corporations for them to report upon.

THE CHAIRMAN. That cannot be done in Committee of the Whole.

MR. BLACKMER. When we get into Convention I will make that motion.

MR. ESTEE. Mr. Chairman: I had not compared it with section four. This proposition is right, in my judgment, but it seems to me that there would be a doubt about it. Therefore, for the purpose of remodeling that amendment and applying it elsewhere, at the request of those gentlemen who take a special interest in it, I would ask leave to withdraw the amendment that I proposed. I ask leave to withdraw it, with the understanding that I may present it again.

MR. WEST. I object.

MR. HAGER. I would suggest to the Chairman of the Committee on Corporations just to pass over that section for the present.

MR. ESTEE. I do not suppose there is any objection.

MR. WEST. Mr. Chairman: There is a diversity of interest that would be affected by the adoption of these several amendments, and in order that the committee may have the privilege of reconsidering the proposition, and harmonizing these different and adverse interests, I move that the committee rise, report progress, and ask leave to sit again. I do this in order that in Convention we can refer this back to the Committee on Corporations.

MR. SCHELL. I move that the further consideration of the section be passed.

MR. WEST. If it is the sense of the committee we can pass these amendments for the time being. I will withdraw my motion.

MR. SCHELL. My object is that it may be referred back to the committee when we get back into Convention.

The motion prevailed.

THE CHAIRMAN. The Secretary will read section thirteen.

THE SECRETARY read:

SEC. 13. The State shall not subscribe to or be interested in the stock of, or in any manner loan its credit to any person, company, association, or corporation.

MR TERRY. Mr. Chairman: I offer a substitute for the section.

"SEC. 13. The Legislature shall have no power to give or to lend, or to authorize the giving or lending of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any grant, or authorize the making of any grant of any public money or thing of value to any individual, municipal or other corporation whatever; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock or to become a stockholder in any corporation whatever.

THE CHAIRMAN. The question is on the substitute offered by the gentleman from San Joaquin.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: That is the clause agreed upon by the Legislative Committee, and it seems to me to be more full. The proposition reported by the Committee on Corporations other than Municipal does not go far enough. If it is important that the State should not become a stockholder in these corporations, it is equally important that counties and cities should not be permitted to aid them. We know it has been done in this State, and we know that it has resulted in great loss to counties, cities, and municipalities. It is therefore desirable to prohibit it altogether.

MR. ESTEE. The general principle is correct. I did not hear the reading distinctly, but if it is intended to prevent a city like San Francisco, for instance, from acquiring and owning its own waterworks, I cannot sustain it.

MR. TERRY. It only prevents it from owning stock in a corporation.

MR. ESTEE. Does it not prohibit it from pledging the credit in any manner?

MR. TERRY. In aid of any corporation.

MR. ESTEE. In the fifth line, I do not know what that means. I would object to anything that will restrain large cities like San Francisco from owning its own waterworks. I think it is correct in principle, provided that construction cannot be put upon it.

MR. TERRY. It cannot have any effect to prevent the city from buying and owning its own waterworks exclusively. It prevents the city from becoming a stockholder in any private corporation, and nothing else.

MR. BEERSTECHER. I would inquire if the substitute is section thirty-eight of the report of the Committee on Legislative Department.

MR. TERRY. Yes, sir.

MR. ESTEE. I think there is probably no objection to it.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I can state in this connection, that the Committee on City, County, and Township Organization had before it this section, and have recommended the following:

"SEC. 21. No county, city, town, or other public or municipal corporation, by a vote of its citizens or otherwise, shall become a subscriber to the capital stock, or a stockholder in any corporation, association, or company, or make any appropriation, or donation, or loan its credit to, or in aid of, any person, corporation, association, company, or institution."

We have already adopted the principle that is there offered. It is substantially what is here offered. I mention this for the purpose of announcing to the Convention the fact that the committee having charge of this matter have agreed substantially upon the provision here offered.

MR. ESTEE. I think it is correct, and I certainly do not object to it. I hope the amended proposition will be adopted.

THE CHAIRMAN. The question is on the substitute proposed by the gentleman from San Joaquin.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I am opposed to the insertion of that section in lieu of the section reported by the Committee on Corporations. This is not the proper place for the provision as it is proposed by the gentleman from San Joaquin. Very many of the provisions contemplated in that amendment no doubt will be inserted in the Constitution. But the proper place is in the Legislative Department, where it has been placed by that committee. I will read section twenty-two. I know what I am talking about. It reads as follows:

"SEC. 22. No money shall be drawn from the treasury but in consequence of appropriations made by law, and upon warrants duly drawn thereon by the Controller; and no money shall ever be appropriated or drawn from the State treasury for the use or benefit of any corporation, association, asylum, hospital, or any other institution, not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State. An accurate statement of the receipts and expenditures of public moneys shall be attached to and published with the laws at every regular session of the Legislature."

Now, I submit that section twenty-two is in its proper place, and its provisions are proper. Now, section thirty-eight has reference to the powers delegated to municipal corporations denying the power of the Legislature to delegate any power whereby they should be permitted to invest money in these corporations in any way. I submit that the provision, as it is here reported by the Committee on Corporations, ought to be adopted. It is clear and perfectly applicable to the purposes designed by the committee, while the other provisions of the proposed amendment are not as proper as under the head of legislative department. The effect of its being separate only makes it more clear as to the real intent and purpose of the provision. When you undertake to restrict the legislative power under the head of corporations, you are not applying it in the proper place, and I submit that this amendment should not be adopted. The provisions are adequately provided for in sections twenty-two and thirty-eight of the legislative department, and that is the proper place.

MR. GRACE. Mr. Chairman: Rule Two says the Convention shall take a recess from twelve o'clock until two, and it is now twelve o'clock.

MR. WELLIN. I raise the point of order: the Convention is not in session. Rule Sixty says this rule shall not be suspended without a two-thirds vote, and one day's notice. Now, the vote by which this motion was carried was not a two-thirds vote of the members present, and I therefore move that the committee rise, report progress, and ask leave to sit again.

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MR. INMAN. I suggest that the gentleman go out and get his lunch.
MR. BEERSTECHER. There was no objection at the time.
The motion was lost.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: The amendment as proposed by the gentleman from San Joaquin has much in it that is unobjectionable, but it has some things in it which are hardly proper to act upon now, if I understand it. I was not aware that any such amendment would be presented to the Convention this morning. I had examined section thirteen as reported, but I had not examined section thirty-eight of the legislative report, now before us as a substitute. If I understand it, upon a casual reading, it has a wide scope. It reads:

"SEC. 38. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township, or other political corporation or subdivision of the State, now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation, whatever; nor shall it have power to make any grant, or authorize the making of any grant, of any public money or thing of value to any individual, municipal or other corporation, whatever; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever."

Now, it seems to me, under that portion which says, "nor shall it (the Legislature) have power to make any grant, or authorize the making of any grant, of any public money or thing of value to any individual, municipal or other corporation, whatever," the Legislature would be deprived of the power to aid any benevolent institution—for instance, orphan asylums—that now receive donations from the State. I do not think the Convention expected this section would be precipitated upon them this morning. It is outside of the ordinary run of the business. We are not considering that department, but the department on corporations. We are considering the matter of corporations other than municipal; and this now comes in to apply to municipal corporations, and the powers of the Legislature in certain matters which have nothing to do with private corporations or corporations other than municipal. This morning, if I were called upon to vote on this, I would vote against it, for this reason: that I am not prepared to say now that this State should not assist the orphan asylums, deaf, dumb, and blind asylums, and other benevolent institutions; and if this section is passed in the language in which it is couched, it certainly would cut off all aid to such institutions. There are other portions of it with which I agree; but I am not now intending to discuss the section, but merely to call the attention of the committee to the fact that it involves this important question. For that reason, and because I want to reflect upon this matter, I move that section thirteen and the amendment be temporarily postponed.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I hope this motion will not prevail. I do not see any reason why we should pass it. I do not know why this committee is not as well prepared now to discuss this question as they will be at any other time. I am quite willing to say that I shall vote for this amendment, because it will do precisely what the gentleman who last spoke fears it will do. Now, if there is any objection this is as good a time to hear it as any other. This is the fiftieth day of the Convention's session, and it is high time that these matters should be passed upon. I am quite free to admit that I shall vote for this amendment, because it will have precisely the effect that the gentleman attributes to it. In fact, the language is very explicit. There is not much chance for any one to mistake its meaning. Its true inwardness is expressed in its words. It is intended to cut off from receiving State aid, those institutions which the gentleman has mentioned. I do not know of any better time than the present to discuss the question. If gentlemen have anything to say, let them say it now. If there are any reasons why the system of the past twenty years should be continued, let those reasons be given here and now, so that we may reach a vote.

REMARKS OF MR. BARNES.

MR. BARNES. Mr. Chairman: The amendment suggested by the gentleman from San Joaquin is not in order, because it is not germane to the section under consideration, which is confined simply to the question of the State becoming a stockholder, or loaning its credit to private corporations. The proposition of the gentleman involves not merely the giving or loaning the credit of the State, but also the credit of any city, county, township, or other political subdivision of the State, to any person, association, or corporation, whether municipal or otherwise. That is entirely a different subject. That matter was included in the Preamble and Bill of Rights—section twenty-two, I think—and it was by consent stricken out or withdrawn.

MR. TERRY. Because it was in the report of the Legislative Committee.

MR. BARNES. Well, it formed a part of the Bill of Rights. Under the head, now, of Corporations other than Municipal, it is sought to incorporate a clause here which covers, not merely these quasi corporations, but also municipal corporations, and also cities, counties, and towns all through the State, and also covers the question of making donations, which is a very broad question, and not at all involved in the question under consideration. There is no other possible limitation upon the legislative power that under this mode of amendment might not be introduced and debated here. I hope it will be allowed to remain where it belongs. My point of order is that it is not germane to the subject under consideration.

MR. HOWARD. Mr. Chairman: If it is in order, I move to amend the motion of the gentleman from San Francisco——

MR. CHAIRMAN. There is a point of order to be disposed of first. Section thirteen provides that, "the State shall not subscribe to or be interested in the stock of, or in any manner loan its credit to, any person, company, association, or corporation." Rule Twenty-eight provides that, "no subject, different from that under consideration shall be admitted under color of amendment." The Chair is of the opinion that the subject-matter is not different from section thirteen. The point of order is overruled.

MR. HOWARD. I agree with the gentleman from Santa Clara, that this section should await action until we reach the report of the Committee on Legislative Department. I move that section thirteen be stricken out.

THE CHAIRMAN. There is a motion now pending that section thirteen and the amendment offered by the gentleman from San Joaquin, be temporarily postponed, and that the committee proceed to the consideration of section fourteen.

MR. HOWARD. Is not my amendment in order?

THE CHAIRMAN. No, sir.

MR. HOWARD. I think it had better go out or be postponed, because it is too weighty a subject to be considered in haste.

THE CHAIRMAN. The question is on the motion to postpone temporarily.

The motion prevailed on a division vote, ayes—43; noes 38.

MR. TINNIN. Did a majority vote?

THE CHAIRMAN. There were eighty-one votes cast. The Secretary will read section fourteen.

THE SECRETARY read:

SEC. 14. Every corporation organized or doing business in this State, under the laws or authority thereof, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers.

MR. ESTEE. Mr. Chairman: I have in my hand an amendment which has been agreed upon by the Committee on Corporations other than Municipal. It merely changes a few words. I move that it be substituted for the original section.

THE SECRETARY read:

"SEC. 14. Every corporation, other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers."

THE CHAIRMAN. The question is on the amendment proposed by the Chairman of the Committee on Corporations other than Municipal.

MR. SCHELL. Mr. Chairman: I move to amend the amendment by striking out, in line four, the word "public," before the word "inspection."

THE CHAIRMAN. The question is on the amendment to the amendment.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. Chairman: They should be open for inspection by any person interested in the stock. I think it is entirely too broad. My recollection is, that in the committee that word "public" was stricken out on my motion. I think it is improperly in there now. Possibly I am mistaken, but I remember that I made the motion to strike out the word "public," and I think it was stricken out; and my understanding was that the motion was carried. I think the section is entirely too broad. Under our statute, under the Code, every stockholder of a corporation has a perfect right to inspect the books of the corporation and see who has made transfers of stock and to see who the stockholders are. This accomplishes all that is desirable. I think it is too broad, when we say that every man, whether he has any interest or not, shall be entitled to come into the office and examine the books of the corporation. I do not think he has any more right to do it than he has to come into my private office and demand an inspection of my books, in which he has no interest and no possible right. I think it is in there improperly; but whether so or not, it ought to be out.

REMARKS OF MR. WHITE.

MR. WHITE. My recollection is that Mr. Schell did put that amendment, and we voted it down. I recollect it was the subject of considerable discussion, and we concluded it would be one of the best means of preventing fraud, and enable the persons who wish to invest in certain companies to judge whether they should do so or not, and so that when corporations put their stock on the market everybody will know the position. That is my recollection, that the Judge's amendment was voted down. I hope the word will not be stricken out. It is one of the most important words in the whole section.

MR. HOWARD. That is my recollection also.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: It seems to me that if we strike out that word, as suggested by the gentleman, we take the vitality out of the whole section. You might as well strike out the whole section if you are going to make that discrimination. You might as well have nothing at all in there. The books are already open to inspection by those directly interested. The stockholders may go in at any time and

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inspect the books and accounts. I hope the amendment will not be adopted.

REMARKS OF MR. HILBORN.

MR. HILBORN. Mr. Chairman: Is it the deliberate purpose of this section to open the doors of all the corporations in this State to a crowd of curious persons who may take a notion to look at the books? I would like to know when and at what time the business of the corporation is to be done, if a crowd of men make a break into these offices at any time they see fit and demand to look at the books? I would like to know when the business is to be done? As the law now stands, anybody who has any interest in the corporation may examine the books at any time they may see fit; but I hope this Convention will not do such a foolish thing as to make the books public property.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: There is one portion of this section, it seems to me, which is of importance. Section three, which we have already passed, is this:

"Each stockholder of a corporation, or joint stock association, shall be individually and personally liable for his proportion of all its debts and liabilities."

Now, how is any person to whom there is an indebtedness to know what stockholders are indebted to him, unless he can obtain that information in some way? Now, sir, they must inspect the books in order to know who the stockholders are, so as to enforce the responsibility. There must be some way of ascertaining who the stockholders are. If this section is adopted they will have the means of obtaining that information at all times. The section provides:

"SEC. 14. Every corporation organized or doing business in this State, under the laws or authority thereof, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amounts of its assets and liabilities, and the names and place of residence of its officers."

Now, it seems to me that another great advantage is this: that if parties should wish to become owners in the corporation, they should have the privilege of investigating the affairs of the corporation, so as to know how to invest. I think it will have a tendency to make these corporations more honest in their accounts, and they will not be so likely to charge so much to "India rubber account."

REMARKS OF MR. BARNES.

MR. BARNES. Mr. Chairman: I understood the amendment of the Chairman of the Committee on Corporations to make an exception in favor of benevolent and charitable institutions. It reads:

"SEC. 14. Every corporation, other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and places of residence of its officers."

I think it would be much better to say, "corporations having capital stock." That covers it. These societies do not have capital stock. Churches, so far as my limited experience goes, have no capital stock. There is another objection to this, if I understand it. "Every corporation organized or doing business in this State shall maintain an office for the transaction of business, etc., where transfers of stock shall be made." Now, that refers to two classes; one class organized under the laws of this State, and another class doing business in this State. I suppose that covers every case—foreign insurance companies, the Liverpool, London, and Globe, and all the companies doing business here. They must all get and keep an office in this State, where transfers of stock shall be made. Then they are to keep books for public inspection. It seems to me that there are several words which do not belong there. The word "and" should be substituted for the word "or," so as to refer to corporations native and to the manner born. But this covers the case of every corporation, wherever organized, that does business in this State. It would compel them to keep a record here of all transfers——

MR. FILCHER. Are there not corporations doing business in this State that have no capital stock, and yet do business?

MR. BARNES. I know of one recently exploded in San Francisco. If it has no capital stock, why then you cannot require them to make transfers of stock; it cannot transfer what it does not have. It seems to me that it should relate to corporations organized and doing business in this State, and having capital stock, and I move to amend by substituting for the word "or" the word "and," in the first line.

THE CHAIRMAN. There is an amendment to an amendment pending.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: The committee, by this amendment, provides that every corporation other than religious, educational, or benevolent, doing business in this State, shall have and maintain an office, etc. Now, the criticisms of Col. Barnes, upon the wording there, in relation to foreign corporations, I think will convince every thoughtful man that we should compel them to have and maintain offices in this State. Why not? Why, for instance, if the Liverpool, London, and Globe Insurance Company is perfectly solvent—why should not the people of this State who patronize it, know the stockholders. Also the London and San Francisco Bank—why are we not just as much entitled to know who the stockholders are, and how much stock they have, and how much is paid in, and by whom, as we have to know the same things about the Bank of California, or any of the banks incorporated under our own laws. This is a proposition that seems to strike me as just and reasonable. I think we ought to have the right to examine their books.

MR. BARNES. I did not suppose for a moment that it was anything more than a misprint. If that is the idea it will have to be considered a little, because it will be impracticable to require corporations organized in Great Britain, with a capital of thirty-five or forty millions of dollars, to comply with the mandates of this provision. It is ridiculous. Who will be any the wiser by reading over the list of names of stockholders? How will we know whether they are responsible or not? What does this section mean? Does it mean that these corporations shall keep a transfer office in San Francisco?

MR. ESTEE. It means just what it says: "Shall have and maintain an office in this State for the transaction of the business." That is required under the present law—"where transfers may be made."

MR. BARNES. Why don't you read it as it is—"shall be made?"

MR. ESTEE. Yes, sir; that is a better word. I accept the correction. Where transfers of stock shall be made. That is the proper wording—"shall be made," and in which shall be kept books for public inspection. The section reads this way, and says just what it means, and nothing else:

"SEC. 14. Every corporation, other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers."

We are entitled to this information. The people of San Francisco are entitled to know how much of the capital stock of the London and San Francisco Bank is subscribed. That institution no doubt is perfectly responsible, but we claim the same right to investigate for ourselves, as we do in regard to any other bank located there. I claim that we should treat foreign corporations and local corporations exactly alike, and theirs should not be put on a more favorable basis than ours. We do business with them, and their securities and their business should be known just as much as the affairs of our local corporations.

MR. BARNES. Why?

MR. ESTEE. Because it is a business proposition, that we should know just as much about them as we do about our own corporations. They come here and do business. We deal with them; we trust them, and we have a right to know.

MR. BARNES. What object could there be in knowing the names of the stockholders? We would not know whether they were responsible men or not.

MR. ESTEE. Of course that is one object, but not the entire object. We want to know who the men are, where they live, and all about it.

MR. BARNES. What sort of good will it do a man to know who the stockholders are in the London and Globe Insurance Company, who are scattered all over Great Britain.

MR. ESTEE. We may not know as to that, but we should know as to a great many other insurance companies scattered over different sections of this Union. We want to know how much stock has been paid up, and the names of the owners of this stock. It is true we may not know them; we may not know whether they are responsible or not, but we might go to people who are well known in the commercial world—in New York, Boston, Liverpool, and London. It says: "and the amounts owned by them respectively." They might publish a circular stating that well known capitalists of London own stock in the company. A great many business men might say, they are perfectly responsible, and when we come to look at the books it might be found that these capitalists did not own any stock. "The amount of stock paid in, and by whom; the transfers of said stock." This is a general provision intended to apply to all corporations, and your committee thought it was just. If the section can be improved, I shall be glad to hear any amendments or suggestions from the gentlemen who are finding fault with it.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I believe this section to be important to become a part of the Constitution. My experience as a legislator is that it has been heretofore impossible to get any information in relation to corporations. They refuse to allow their books to be inspected. Under the provisions of this section I have no fears of curious men annoying the companies, only those men who own stock, or those representing owners, would examine the books. People should have the right to know all about them, because they are all more or less interested in their actions—in the policy and success of these corporations. I deem the section just. It protects the people, and I believe it should be adopted as a part of the Constitution.

SPEECH OF MR. HAGER.

MR. HAGER. Mr. Chairman: I am in favor of the section, provided it be made applicable only to corporations formed under the laws of this State. This State ought to have a general supervision over, and control of her own corporations, and I am in favor of placing in the Constitution provisions amply sufficient to effect this purpose; but the proposed section not only applies to all domestic corporations but also to all foreign corporations that may do business in this State. Now, suppose the Bank of England, or any other foreign corporation, should, for business purposes, have an agency in this State; ought we to require them to keep their records here, with their books of transfer, list of stockholders,

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etc., open to public inspection? It is idle to propose such a thing when its accomplishment is entirely out of the question. There, too, are the foreign insurance companies of England, Scotland, Germany, France, and the countries of the world over, as also of the other States of the Union, that have their offices and agencies here, engaged in the business of insuring property for the benefit of our people. Would you require them to keep their records here, with all the information required by an exact compliance with this proposed section. It could not be done, and the result would be to drive all those companies from us, to the great injury of our people. It is an accommodation to our people to have the benefit of foreign insurance companies. An extensive conflagration in the City of San Francisco alone would destroy every local insurance company of this State. As was the case in Chicago, not one would survive a great conflagration. There is not sufficient capital invested in that business in this State to protect our property. Without the protection of the foreign insurance companies and their capital, would our people be secure against loss by fire? Every one will concede the foreign companies are a benefit to all who wish to effect insurance, and to drive them from us, by onerous provisions like this, would only be doing injury to our own people.

As I have stated, these foreign companies, whether incorporated in Europe, or in New York, or Pennsylvania, or in any other sister State, doing business here, are beneficial. No one is compelled to do business with them unless he chooses to do so. If they have offices here he can go either to them, or to our home offices for information, and effect his insurance according to his own judgment. I have no interest in any foreign insurance company, and I have no more interest in this matter than any other citizen; but every business man will tell you that if this provision is adopted in the Constitution, it will necessarily drive from our borders all insurance companies not incorporated in this State. This would be a calamity. They could not comply with the conditions proposed in this provision. They could not bring their books and records here for our inspection. A similar provision, so far as my knowledge extends, is not contained in the Constitution of any other State. Our Constitution should be framed in the interest of our people, and for our people, and their government. If we attempt to give to its provisions extra territorial force, as in this proposed section, our action would not be justified by any pressure of public sentiment. I have heard of no complaints against the foreign insurance companies doing business in this State. On the contrary, our people have relied upon them for protection in consequence of the inadequate security afforded by our home companies. Suppose the European companies, and those of New York, the New England States, etc., should be driven out of business here, would our people feel equally safe with the sole protection of our home companies? The proposition is too apparent to admit of argument.

This proposed section should be made to apply only to our home companies, organized and doing business under the laws of this State. I will favor any provision making our home corporations subordinate to our laws, but I am unwilling to place in the Constitution an imperative provision which will prevent any foreign corporation from doing business in this State, and from the evil effects of which we cannot be relieved by future legislation.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I think I may point my friend to the example of a certain Governor of Rhode Island, who never spoke unless he had something to say, and always left off when he had done. Now, I disagree with him on this proposition altogether. These foreign corporations do not transact business here for the purpose of accommodating our people, they come here for the purpose of making money—nothing else. Now why treat them any better than our own corporations? Why should they have any immunities which our home corporations do not possess? The object of this provision is obvious; that the public may know who the parties are that they are dealing with; that they may know whether or not the corporation is solvent, and that we may have some security for the business of the country. Why foreign corporations should not be compelled to give that information I do not know——

MR. HAGER. We might require them, for instance, to deposit insurance money in order to do business.

MR. HOWARD. That does not go at all to the question we are discussing. Not at all. It affects it in nowise. Now it may be important to us to have foreign insurance companies here. But it is not important to have those here who are not solvent, who are not trustworthy, who have no capital; and we know that a great many of these life insurance companies have no capital, and are little better than frauds. Now, sir, there is no difficulty about corporations being able to comply with this provision, for I have never known one that did business on any kind of an honest basis, that did not give the names of the stockholders, and the amount of stock subscribed and paid up. Therefore there is no difficulty whatever about this law. They are here for the purpose of making money. They do not exist here by law, they are here as a matter of comity.

MR. WILSON. The directors are published, not the stockholders.

MR. HOWARD. I have seen some that gave the names of stockholders; it may not be a general custom. But there is no trouble about that thing. There is no difficulty in their doing it. They are as able to do it as State institutions, and why they should not be required to do it I am unable to see. If they choose to withdraw from the country that is their business, but we shall not tolerate them here unless they are responsible, unless they have capital, unless they are solvent. It strikes me that it is our duty to see that they have capital. The provision proposes that the public shall be enabled to obtain the necessary information to enable them to determine that fact, to determine whether the corporation can be trusted or not.

REMARKS OF MR. BARNES.

MR. BARNES. Mr. Chairman: One word more. This section has in it more than is contemplated by the gentleman from Los Angeles, General Howard. It requires now as it stands that every corporation shall maintain an office in this State for the transaction of business, where transfers of stock shall be made, and that books for that purpose shall be kept, and in those books, which shall be open to public inspection, shall be kept all the dealings of the corporation. I would call his attention to this, that the only object we have in requiring books to be kept is to show who are stockholders, in order that the creditors of the company may know to whom he has to look, and that is all of it. It is not as a matter of general information. This article does not come under the personal liability clause, as claimed by the gentleman from Nevada, Mr. Cross. In England they have no such thing as personal liability, and there is only a corporate liability. You cannot hold the stockholders liable because an agent comes here to do business. They have no such provision as that. They have a limited liability Act, where the liability of the stockholder is prescribed in a certain way, not like ours. But it does not impair the security of the one who deals with the company. It requires that they shall transfer their stock. They might do it and nobody know it. It is a useless change that accomplishes no earthly good to anybody. If it could be pointed out to us what good it could do, it would be all well enough. The gentleman from Los Angeles says we have a right to know if the company is solvent. Well, sir, I appeal to any sensible man if the list of stockholders of the Liverpool, London and Globe Insurance Company were published, what man on the face of the earth—or this part of the earth—would know whether they were solvent or not? Who would know, and how would they know? They would be names we never have heard of. We would not know them, and no living man in the State of California would be able to tell whether they were solvent or not. Print the names of London directors, and who among us would be any wiser than before? We know our neighbors in this State—whether they are good or not, or we think we do—though sometimes we get badly fooled on that. But I say it can be of no assistance to require a list of the directors in London, and a list of the stockholders in London, and a list of the transfers. Every time a man bought or sold a share of stock, it would have to be shown on the transfer books in the San Francisco office. All the transfers that take place on 'Change in London, or Liverpool, or Hamburg, or Paris, would have to be noted on the agents' books here. Every time a stockholder dies in any of the great cities, the records of his estate must be forwarded here, in order that we may know who the administrator sold his stock to, and when we find out we know just as much as we did before, and no more. Now, what sense is there in it? The effect of it, as Judge Hager has said, will be to drive this desirable class of business men out of the State. As a matter of common sense this provision should be confined to the creatures of our own laws.

THE CHAIRMAN. The question is on the amendment offered by the gentleman from Stanislaus, Mr. Schell.

REMARKS OF MR. CASSERLY.

MR. CASSERLY. Mr. Chairman: I am one of those who believe it is the duty of corporations to exhibit their books when persons—stockholders, creditors, or otherwise, whoever may have an interest in them—desire to inspect them. And if this section was not so strict I would be very willing to vote for it. It seems to me as it stands to be an obstruction to the transaction of business by the old corporations. The gentleman from Solano, I think, touched the point when he urged as an objection that any number of people, at any hour in the day, or under any circumstances, would have a right to go to the offices of a corporation and obstruct the business of the company, get in the way of the clerks, out of mere idle curiosity, having no interest in the affairs of the company whatever. But the real difficulty is with malicious persons, interested in the business of other parties, or employed by them, who would congregate and spy upon the books to the great detriment of the business.

Now, sir, I have no particular admiration for corporations. I was brought up in a political school that instilled into me a wholesome jealousy of corporations, and I have it to-day; it is bred in my bones, and I suppose I shall retain that jealousy until I die. I am fearful of these enormous aggregations of wealth and power which accompany modern corporations. But, sir, where is the sense, where is the judgment in our clamoring against foreign corporations? Some gentlemen have said that they should not stand on any better basis than our own corporations. I do not know that they should; neither should they be discriminated against, for they certainly serve a very useful purpose here. Whenever there is any great property to insure, we go to these foreign companies which have almost unlimited capital. There is not capital enough at home to take all the risks. The foreign corporations never attempt to interfere with legislation. If there be any class of corporations that are wholly innocent of any wrong against us it is this class of foreign business corporations. It seems to me that it would not be to the interest of the people of this State to pass such laws as would drive them away. Have we forgotten the fate of Chicago? Burned out in one night, millions of property destroyed. American insurance companies bankrupted and almost annihilated; and but for foreign insurance companies Chicago would hardly be there to-day. I do not believe in driving them out of the State by hostile legislation. If they should be driven away there is no safety for San Francisco from a great calamity by fire, for who does not know that San Francisco is as combustible as any city in the world? I hope, therefore, that this section will be materially amended before being finally adopted.

MR. HOWARD. Mr. Chairman: As soon as it is in order, I shall move an amendment to insert after the word "inspection" the words "by every person having an interest in the same."

MR. SCHELL. Strike out the word "public" and I will accept the amendment.

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MR. HOWARD. Very well, strike it out. I do not think the word "public" adds any force to it. The gentleman accepts this amendment, to add the words, "by every person having an interest in the same."

SPEECH OF MR. WYATT.

MR. WYATT. Mr. Chairman: I do not rise for the purpose of modifying the section to make it read smoothly, or for the purpose of making it fit home or foreign corporations any better than it does now. For, sir, if I could have my way, I would at one fell swoop wipe them all from the face of the earth. And if that is radical, then I must say I am a radical upon the subject. In discussing corporations, if you attempt to restrict them in any way whatever, or exercise any control over them, then we are told that they cannot live, and that they will be forced to quit the business. You must not put them on a level with other classes of citizens, or they cannot live; they will have to leave the country if you do. They must be privileged over and above all other classes of citizens. If you undertake to restrict home corporations, then the cry is raised that you are discriminating against domestic corporations and giving foreign corporations an advantage over them. If you say anything about governing foreign corporations, then you hear the cry raised that the people cannot do without them, and that they will be driven from the country. Now, my proposition is that foreign corporations here are not doing business as eleemosynary institutions. If they are here, they are here because it pays. They are here to make money, and for no other purpose. And if they cannot stand and do business upon the same footing as the others, then let them bundle up their traps and take their freight to the mother country as soon as possible.

MR. SCHELL. I rise to a point of order, that the gentleman is not discussing the question before the committee. I do not understand that to be the question. A motion was made to strike out the word "public." In the first place, the Chairman of the Committee on Corporations offered an amendment; an amendment to the original report of the committee. Then I made a motion to strike out the word "public." That is the question now before the house. I think the committee is bound to vote first on that amendment, and then the question can come up as to whether the phraseology shall be changed so as not to include foreign corporations.

THE CHAIRMAN. The point of order is not well taken; the gentleman from Monterey will proceed.

MR. WYATT. I was stating that I was opposed to granting foreign insurance companies, or any other foreign companies, privileges that are not to be granted to home corporations. No corporation ought to be granted privileges beyond what are enjoyed by the citizen, but they are. But at least, as between corporations, foreign corporations ought not to be granted privileges beyond domestic corporations. Now, I do not believe the State of California exists by reason of corporations. I am inclined to believe that a very large number of corporations exist by reason of the State of California, and that they do not give existence to the State. I do not give them the credit of creating wealth. I do not give them the prominence of giving liberty to the people. I am in favor of restricting corporations, foreign and domestic, to the same level, and if the restriction necessary to some corporations drives others out, let them go. The foreign corporations, as I said before, are not here for the purpose of giving us eleemosynary institutions; they are here for the purpose of employing their capital profitably to themselves. If the domestic corporations can do business with profit under these restrictions, the foreign corporations can do the same, or go where the climate is less torrid. It is sometimes an advantage to rely upon ourselves, upon our own resources. I believe the chastening hand of poverty has been advantageous to some people and some communities. The State of Mississippi came out from under carpet-bag rule without a scratch of public debt, for twenty-five or fifty millions of dollars might have been forced upon the market, and would have been if she had had any credit. But having repudiated her public indebtedness, her bonds could not be negotiated upon the market of the world, and the only detriment they could be was to tax all they could get for the time, and when carpet-bag rule was raised it left the State without any indebtedness, but without a dollar in the treasury. Having no credit saved the State millions of dollars. And I am of the opinion that the State of California might be benefited likewise by dealing at home, and not depending so much on foreign capital. I can dispose of foreign corporations, so far as I am concerned. If they cannot come here and do business upon the same terms as our domestic corporations, then they had better not stay.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: I confess judgment, that upon this subject under discussion there is a great amount of ignorance. There is another satisfaction I have, that in exposing my ignorance, not more than forty or fifty gentlemen can hear it. What I shall have to say will be more to obtain information than to enlighten anybody else. First, I would like to know whether the State of California has any power to enforce this section. Now, if after passing it, it will amount to nothing, what is the use of passing it? Have we any power to enforce it upon them. Suppose the article on corporations does not apply to them. Suppose they do not or will not keep books, transfer books, then what?

MR. TERRY. Put them in jail.

MR. ROLFE. What good will that do? It will keep the man from transacting business for awhile, and then he will go where he does not have these restrictions. But suppose he does keep an office here, and suppose he keeps a transfer book, and suppose he does not keep it correctly, how are you going to know? Suppose the company is insolvent, how are you going to know? Suppose they put men on the books who do not own a share of stock, how are you going to tell? These names may be put on there for the sole purpose of keeping up the credit of the institution. Suppose the company directs its agent in San Francisco to put the name of one of the Rothschilds on the list, everybody knows that they are good, they are worth their millions; how are you going to know whether it is a true entry or not? You might go to England and make inquiries, but how many of the people who deal with these companies are going to that trouble and expense, and if they did the agent might be out of reach by that time. There is another objection, it seems to me, and that is this: it requires every corporation, other than religious, benevolent, and educational, to keep an office here. Now there are religious and benevolent institutions here in this State, who, I believe, have capital stock. Now will we include them? It has been suggested by one gentleman that those words be stricken out, and in their place, the words "corporations having capital stock," and I hope that amendment will be adopted. The fact of a corporation being religious does not necessarily prevent its being bad, according to my experience.

REMARKS OF MR. HALL.

MR. HALL. Mr. Chairman: I do not see why there should be any discrimination between home and foreign corporations. I think both should come under the same rule, and if we apply this process of regulation, it certainly should apply to all. But the matter now which seems to be of greater importance is the motion made by the gentleman from Stanislaus, to strike out the word "public." I think that motion should be sustained. There is a very dangerous principle embodied there. The right which it gives to the public may be perverted to improper use. We know that whether justly or unjustly, there are a class of corporations, created by private individuals, which are in bad odor at the present time. Some have good grounds, and others may be suspected without any grounds. Such a provision as this absolutely confers upon any person and every person in the community, the right to enter the place of business of the corporation, and inspect the books and the business, to overhaul every book connected with the institution. This is no more than a fair construction of the language. Look at it:

"SEC. 14. Every corporation, other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State, for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and places of residence of its officers."

Now, sir, I maintain that under this provision it will be within the power of any man, a constitutional right, moved by whatever motives or feelings he may be, to enter the place of business of any corporation, and demand as a constitutional right, to examine and have explained to him every book connected with the business of the institution. Now, sir, I am not here as the advocate of any corporation. I have never been connected with them, never have been in a situation in my life to take advantage of the benefits flowing from such institutions. I have never been connected with them in any manner, except occasionally in a professional capacity. I am for retaining every power, and every right, which, by the law and by the Constitution is reserved to the people over these institutions; and I go further, and say that they should be surrounded by every possible safeguard necessary for the protection of the public, and for the general welfare of the people; but I am not in favor of doing an injustice to those institutions by any legislation which I shall participate in here. My conduct here shall be influenced by a spirit of justice and fairness. As a legislator here, I shall not participate in the making of any laws that will violate the spirit of justice. And I say that if we shall adopt this provision, and make it a part of the Constitution, great injustice may result to these institutions. It may be perverted to wrong ends and for undue purposes. If we shall say that institutions of this character shall keep open books for public inspection, to which all persons shall have access at all times, without any restraint whatever, depriving the Legislature of any power to grant any relief, we shall enable men, moved by improper motives, to inflict a wrong upon these institutions, under color of constitutional right. I am opposed to the principle. I am opposed to it now, and I shall oppose it during the entire session of the Convention. I hope the amendment of the gentleman from Stanislaus will prevail.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: I am in favor of retaining the word "public" in this section. I think without it the section is absolutely of no benefit to anybody in the world, and no check whatever upon the corporations. I cannot see any very great wrong that is going to be done to any honest corporation that transacts business fairly and is solvent, in having persons at liberty to ascertain and know who are its stockholders, the amount of stock subscribed, the amount of its assets, and the amount of liabilities. They are required by law to make monthly statements under oath embodying this public information which we now seek to acquire. My friend, who is somewhat exercised about it, says, suppose they do not make these statements, but make false statements. But this section requires that these books shall be kept open for the inspection of the public. It is objected to because so many people will go there out of mere idle curiosity to examine these books. Now, gentlemen, for twenty-six years the books of every Recorder's office in this State have been open to public inspection—to anybody who wanted to look at them, and who ever saw a great crowd of people attracted by idle curiosity, going there and interfering with the business of the office, examining to see whether A had transferred to B, or B to C? No, sir. Nobody will go there to examine the books except those who have some interest in knowing whether they are solvent or not.

MR. HILBORN. Nobody objects to the stockholders examining the books.

MR. TERRY. The general public will not wish to examine these

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books out of mere idle curiosity, unless it be some public spirited newspaper man who may want to find out whether these men are deserving of public trust; whether the institution is sound and solvent. If the institution holds itself out as solvent, it ought to be glad of the chance of giving this information. There will be no one who will examine these books except those who have some kind of an interest, either the stockholders or those who may desire to have dealings with the corporations. Now without this word "public" the whole section might as well be stricken out. The law already provides that the stockholders may go and examine these books, and we want them open to those who have no direct proprietary interest. There are hundreds of men who are not stockholders who are more interested in the solvency of the corporations than many who are stockholders. Every man who desires to trade with them, and have dealings with them, insuring with them, selling to them, has a right to know whether they are solvent or not.

REMARKS OF MR. HAGER.

MR. HAGER. This previous question, which is so unusual in legislative assemblies, sometimes cuts us off from offering amendments. The last section was passed in this way, and I had no opportunity to offer an amendment. I have an amendment, and ask if it is in order.

THE CHAIRMAN. The gentleman will be permitted, I think, to offer it.

MR. HAGER. I shall offer the following amendment:

"No foreign corporation shall do any business in this State without having at least one place of business and an authorized agent in the same, upon whom process may be served."

MR. ESTEE. That is the statute now.

MR. HAGER. That is the statute, but statutes are sometimes repealed. Statutes are sometimes declared unconstitutional, while Constitutions are permanent, and cannot be declared unconstitutional. I wish to put this in the Constitution. I find that some of the Constitutions have this proposition in, and I think it is proper to have a condition in that no corporation shall do business here without having at least one place of business, and an authorized agent upon whom process may be served. Now, different influences are brought to bear upon the Legislature to get these things repealed for the convenience of parties. Corporations are sometimes very powerful, as we all know. The Legislature sometimes falls down under the pressure of corporations, and though it may not be so in this case, still I can see no harm in putting it permanently in the Constitution. I hope it will be adopted.

REMARKS OF MR. LAINE.

MR. LAINE. Mr. Chairman: I have listened patiently to the discussion of this question. I fear that there is some disposition on the part of the Convention to go beyond what our better judgment would dictate to be right. I am aware that the people of this State are greatly irritated on the subject of corporations. They have been so managed in this State that there is a general feeling against them, and I believe that feeling is well founded from their course of conduct. They have not been content with pursuing their business vocations. But, having that feeling of hostility, we may be carried too far in this matter. It may blind us in considering the questions which come before us. We should bear in mind all the time, that if we are not statesmen we ought to be. We have been selected by the people of the State to frame a Constitution under which they expect to live and govern themselves. In doing that we should be careful not to be influenced by our feelings to do any injustice to any part of the community. Now, I am unable to support this section as it now stands. It goes too far. I believe in framing a Constitution that will hold our own domestic corporations to a strict accountability, to bind them as solid as a rock. By so building the government, our domestic corporations will be as solvent and trustworthy as foreign corporations. It is very natural that the people of this State should rally around our own people, and use home capital, because it is a family relation, and I know that it ought to be so, and no foreign corporation will be able to do a successful business in this State unless it places itself upon a higher plane than our domestic institutions—better managed than our home institutions. Now, if these foreign institutions are better managed, and more responsible, why should we put anything into the Constitution of this State that would prevent our people from deriving advantages from them? Hence, I believe that this section goes too far. It is attempting to compel all foreign corporations in this State to have an office where shall be transacted certain business. Books shall be kept open to public inspection, etc. I will read it:

"SEC. 14. Every corporation, other than religious, educational or benevolent, organized or doing business in this State, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom, the names of the owners of its stock and the amounts owned by them respectively, the amount of stock paid in, and by whom, the transfers of said stock, the amount of its assets and liabilities, and the names and places of residence of its officers."

Now, as has already been well said, suppose we have this system established, what real benefit will it be to the people of this State? There are corporations from England, and France, and Germany, and from different States of this Union. Suppose we compel them to keep a transfer book, would we know the stockholders? Why, nonsense. It would take weeks and months, to obtain any information as to who they were. It would, in the next place, be practicably impossible for them to comply with this provision. Hence, if this section is made to apply to our own domestic corporations, and then changed so that people shall not be allowed to inspect the books out of mere idle curiosity, it will do. It is true that these curious people might learn something, but these corporations cannot afford to devote their time to the gratifying of mere idle curiosity. If it is made to read in this way, I would support the proposition: "Every corporation having capital stock, organized and doing business in this State," etc. If it is altered to read in that way, with the other corrections I have mentioned, it would not be objectionable. If it is left as it is, these foreign corporations cannot comply with it, and if they could it would not benefit anybody. It will be of no benefit to the people to drive them out. Adopt the other course, and you make the domestic corporations safe and trustworthy, so that the foreign corporations cannot do business in this State unless they are sound, for the people will not patronize them.

MR. HOWARD. Mr. Chairman: I understood that the gentleman from Stanislaus, Mr. Schell, accepted my amendment.

THE CHAIRMAN. Yes, sir.

MR. HOWARD. My proposition is, that the books should be open to inspection by all persons interested therein, and legislative committees I would not vote to strike out the word "public," without inserting a provision that will give interested parties the right to inspect them. Therefore, unless this provision is inserted, I shall vote against the motion to strike out the word "public." This gives recognition to the fact that these corporations are not to be subjected to inspection from mere idle curiosity.

MR. TERRY. Would they be inspected from mere idle curiosity?

MR. HOWARD. They might take interest enough to do so.

THE CHAIRMAN. The first question is on the amendment of the gentleman from San Francisco, Judge Hager, to add to the end of the section: "No foreign corporation shall do any business in this State without having at least one place of business, and an authorized agent in the same, upon whom process may be served."

Division was called for, and the amendment was adopted by a vote of 50 ayes to 29 noes.

THE CHAIRMAN. The question is now on the amendment to the amendment offered by the gentleman from Stanislaus, Judge Schell. The Secretary will read.

THE SECRETARY read:

"Strike out the word 'public,' between the words 'for' and 'inspection,' in line seven, and add after the word 'inspection,' the words, 'by every person having an interest therein, and legislative committees.'"

MR. REYNOLDS. I move the committee rise, report progress, and ask leave to sit again.

Lost on a division vote—ayes, 31; noes, 57.

THE CHAIRMAN. The question is on the amendment.

Division being called for, the committee divided, and the amendment was adopted—ayes, 51; noes, 40.

THE CHAIRMAN. The question is on the amendment of the Chairman of the Committee on Corporations, as amended.

MR. WILSON, of First District. I move that the word "or," before "doing business," be changed to the word "and."

THE CHAIRMAN. The question is on this amendment.

Lost, by a standing vote of 37 ayes to 51 noes.

MR. TERRY. I move to amend by striking out the words, "educational, religious, and benevolent," and inserting the words, "having capital stock."

MR. SCHELL. Corporations may sometimes do business without capital stock.

MR. LARKIN. Will not that let out all savings banks?

MR. TERRY. Every depositor is a stockholder, so they have capital stock.

MR. HILBORN. The gentleman well knows that savings banks don't have any capital stock.

MR. TERRY. If they have no capital stock, how can they keep books, and record the names of stockholders?

MR. ESTEE. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again.

AMENDING RULE FIFTY-SIX.

MR. DUDLEY, of Solano. Mr. President: I wish to send up a notice.

THE SECRETARY read:

"I hereby give notice that I will, on Monday next, move to amend Rule Fifty-six so as to read as follows:

"RULE FIFTY-SIX.

"The rules of the Convention shall be observed in Committee of the Whole, so far as they may be applicable, except that the ayes and noes shall not be taken, and that the previous question shall not be moved."

MISCELLANEOUS MOTIONS.

MR. REYNOLDS. Mr. President: I move that proposed amendment number five hundred and five, concerning gas and water companies, be printed.

So ordered.

MR. BARNES. Mr. President: I ask that the reports of the Committee on Military Affairs be taken from the table and placed on the general file.

So ordered.

MR. BLACKMER. Mr. President: I move that sections twelve and thirteen of the report of the Committee on Corporations other than Municipal, with the amendments, be rereferred to that committee.

So ordered.

ADJOURNMENT.

MR. JOYCE. I move the Convention do now adjourn.

Carried.

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And at two o'clock P. M. the Convention stood adjourned until Monday at two o'clock P. M., in accordance with the resolution adopted by the Convention.

FIFTY-SECOND DAY.

SACRAMENTO, Monday, November 18th, 1878.

The Convention met pursuant to adjournment, at two o'clock P. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Harvey,	Prouty,
Ayers,	Heiskell,	Pulliam,
Barbour,	Herrington,	Reddy,
Barry,	Hilborn,	Reynolds,
Barton,	Hitchcock,	Rhodes,
Belcher,	Holmes,	Ringgold,
Blackmer,	Howard,	Rolfe,
Boggs,	Huestis,	Schell,
Boucher,	Hughey,	Schomp,
Brown,	Hunter,	Shafter,
Burt,	Inman,	Shurtleff,
Campbell,	Johnson,	Smith, of Santa Clara,
Caples,	Jones,	Smith, of 4th District,
Chapman,	Joyce,	Smith, of San Francisco,
Charles,	Kelley,	Soule,
Condon,	Kleine,	Stedman,
Cowden,	Laine,	Steele,
Crouch,	Lampson,	Stevenson,
Davis,	Larkin,	Sweasey,
Dowling,	Larue,	Swing,
Doyle,	Lavigne,	Terry,
Dudley, of Solano,	Lewis,	Thompson,
Eagon,	Lindow,	Tinnin,
Edgerton,	Mansfield,	Townsend,
Estee,	McCallum,	Tully,
Estey,	McComas,	Turner,
Evey,	McConnell,	Tuttle,
Farrell,	McCoy,	Vacquerel,
Fawcett,	McFarland,	Van Voorhies,
Filcher,	McNutt,	Walker, of Marin,
Finney,	Mills,	Walker, of Tuolumne,
Freeman,	Moffat,	Waters,
Freud,	Moreland,	Weller,
Garvey,	Morse,	Wellin,
Glascock,	Nason,	West,
Gorman,	Nelson,	Wickes,
Grace,	Neunaber,	White,
Graves,	O'Donnell,	Wilson, of Tehama,
Gregg,	Ohleyer,	Wyatt,
Hale,	O'Sullivan,	Mr. President.
Harrison,	Porter,	

ABSENT.

Barnes,	Hager,	Overton,
Beerstecher,	Hall,	Reed,
Bell,	Herold,	Shoemaker,
Berry,	Kenny,	Strong,
Biggs,	Keyes,	Stuart,
Casserly,	Martin, of Alameda,	Swenson,
Cross,	Martin, of Santa Cruz,	Van Dyke,
Dean,	Miller,	Webster,
Dudley, of San Joaquin,	Murphy,	Wilson, of 1st District,
Dunlap,	Noel,	Winans.

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Keyes, Cross, Hitchcock, and Dunlap.

Two days' leave of absence was granted Messrs. Noel and Mills.

Leave of absence for three days was granted Mr. Weller.

THE JOURNAL.

MR. HILBORN. I move that the reading of the Journal be dispensed with, and the same approved.

MR. BLACKMER. I think there is an error in the Journal in regard to the reference of a petition touching local option. It is reported in the Journal as referred to the Committee on Education.

THE PRESIDENT. The gentleman moved its reference to the Committee on Education, and it was so referred.

Mr. Hilborn's motion prevailed.

EVENING SESSION.

MR. LARKIN. I offer the following resolution.

THE SECRETARY read:

Resolved, That this Convention meet for evening sessions on and after November nineteenth, at seven o'clock P. M.

THE PRESIDENT. The resolution will lie over one day under the rules.

PRINTING THE JOURNALS.

MR. REYNOLDS. Mr. President: On Friday, the gentleman from Solano introduced a resolution ordering five hundred copies of the Journal printed and bound, and two hundred and forty copies laid on the desks of members. I now move to take that resolution from the table for the purpose of offering an amendment to it.

THE PRESIDENT. The Secretary will read the resolution for information.

THE SECRETARY read:

Resolved, That five hundred copies of the Journal be printed and bound in book form, together with an appendix, both to be properly indexed. Also, that two hundred and forty copies of the daily Journal be printed and placed on the desks of the members.

MR. REYNOLDS. Mr. President: Before the vote is taken upon that resolution, I desire to say that the object of this resolution is to give effect to the report of the Committee on Reporting and Printing that was accepted on the thirtieth of October, and it seemed to me, on motion of the Chairman of the committee, the Journal was ordered printed as recommended by the committee. Now, I understand that there is some doubt about the effect of receiving that report, and the verbal motion that was made and adopted at that time. The object of this resolution is to give effect to that motion, so that there will be no doubt about it, or any question that the Convention ordered the Journal printed and bound. As a matter of fact, the State Printer has gone forward and printed the daily Journal, and laid it on our desks every day since, but when it comes to drawing a warrant for his pay there seems to be a doubt as to the full effect, the legal effect, of the verbal motion that was adopted. Hence this resolution. The amendment which I shall make to the resolution adds these words: "The object of this resolution is to give effect to the report of the Committee on Reporting and Printing, and the motion by which the same was received on October thirtieth, eighteen hundred and seventy-eight." In that way we shall not be ordering the work twice. The resolution is designed to explain that motion. With this explanation, I have no doubt that the Convention will readily adopt it.

THE PRESIDENT. The question is on taking the resolution from the table.

The motion prevailed, on a division, by a vote of 50 ayes to 36 noes.

MR. REYNOLDS. I now offer the following substitute for the resolution.

THE SECRETARY read:

Resolved, That five hundred copies of the Journal be printed and bound in book form, together with an appendix, both to be properly indexed. Also, that two hundred and forty copies of the daily Journal be printed and placed on the desks of the members.

The object of this resolution is to give effect to the report of the Committee on Reporting and Printing, and the motion by which the same was received on October thirtieth, eighteen hundred and seventy-eight.

MR. REYNOLDS. Mr. President: One word in relation to that resolution—in explanation. I understand that there are some gentlemen who misapprehend the proposition. The motion by which the report of the committee was adopted, and this resolution, are intended to order printed and bound five hundred copies of the Journal, together with two hundred and forty copies of the slips laid on the desks of members. Now, some gentlemen, I understand, are under the impression that if we order five hundred copies bound, we shall incur a large additional expense. That, Mr. President, is not so. The type from which these slips are printed is the same type from which the five hundred copies to be bound will be printed, and the only additional expense for printing and binding the five hundred copies is a little presswork and paper and the trifling cost of binding. Gentlemen are misled, because in the report of the committee the two hundred and forty copies of the daily slips are estimated at two hundred dollars. The reason of that is that the cost of setting the type and reading the proof and distributing is all counted in in the first estimate on the five hundred copies to be bound; so that if we do not order the five hundred copies bound, and only take the two hundred and forty copies of the slips, these slips will cost four or five times two hundred dollars. It costs nearly as much to print these slips as it does to print and bind the five hundred copies. This is the true state of the case; so that in ordering the five hundred copies, we are incurring no material additional expense.

MR. HILBORN. Mr. President: I am inclined to think that the gentleman believes that it does not cost anything to bind books and index them. I apprehend that this body, the other day, when they voted to adopt the report of the committee, did so under the apprehension that they were voting to have these slips at the cost—which appeared from the report—two hundred dollars. I believe that the estimates presented will be far below the cost. It seems to me that the proper way to do is to have as little printing as possible, and only that we are obliged to do. Having these slips printed saves time, and I do not think there can be any serious objection to that; but when you order it bound, and when you order an index made, and all these things, you are certainly adding a thousand or two dollars expense. Talk as you will, every move that you make incurs additional expenditure. Right at the outset this resolution will involve the employment of an additional clerk, and the cost will roll up larger than you expect. I think we had ought to be satisfied with furnishing the members of the Convention with these slips now. I think the next Legislature can order the Journal printed in proper form.

MR. GRACE. Mr. President: I am not certain that I understand this matter correctly; but I understood that the Committee on Judiciary reported that there was one hundred thousand dollars appropriated from the State fund for the printing, and that the Journal, and all the printing of this Convention, was to come out of that appropriation. I did not understand that it was to come out of the appropriation of one hundred and fifty thousand dollars for the expenses of the Convention. If this printing is to come out of that fund I am opposed to it.

MR. REYNOLDS. Mr. President: I hear another objection to this resolution, and that is, on account of the estimated cost of the appendix. That appendix will cost almost nothing at all. It consists of the reports that have laid upon our tables from time to time. The type is already

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standing on which to print these reports. If the requisite number has not already been printed, it can and will be printed without setting any more type at all. The appendix will only amount to the cost of the paper for five hundred copies. The binding will not cost any more. It is a frivolous talk that the appendix is going to cost any such sum. We have, from time to time, ordered the appendix printed as we are going along. The reports of committees and State officers, etc., are the reports that are intended to be put in as an appendix.

MR. WHITE. Mr. President: I made it my business to inquire something into this since the last meeting of the Convention. It was said to me, and so figured out, that these slips are going to cost us, if we do not have anything bound, one thousand seven hundred dollars. I never heard of that before. I only supposed they would cost two hundred and fifty dollars. That is the way they figure the expense that has already been gone to. The binding will cost about forty cents a volume. But really the work is already done. Suppose we refuse to have this done, still we will have about one thousand seven hundred dollars expended in these slips which are laid on our desks. Now, if that is the case, and if it will only cost three hundred and fifty dollars more, which they tell me, I think it would be well to have the binding done. They figured it out to me very clearly that these slips are going to cost one thousand seven hundred dollars. The other day it was reported that the slips would only cost two hundred dollars. I would like to vote against the binding if that is so.

MR. REYNOLDS. Mr. President: I will answer the gentleman. That estimate of the cost is based upon the fact that the Journal has already been set up; the type has already been set to print the Journal for binding. In that way the slips cost only two hundred and fifty dollars. But, if you have the type set for the slips alone, and do not order the five hundred copies for binding, then your slips are going to cost you in proportion more, because you have got to pay for the setting of the type just for the printing of the slips.

MR. JONES. Mr. President: I beg leave to ask the gentleman from San Francisco, whether he knows that at this day the forms of the Journal and slips which have been laid before us are still preserved. The Committee on Contingent Expenses were informed that the foreman could not preserve them more than twenty-four or forty-eight hours longer; that he should be obliged to distribute them. The gentleman from San Francisco may have information up to the present time; but from what I have stated, the committee supposed that after one or two days the forms would be distributed.

MR. REYNOLDS. Mr. President: On yesterday, the State Printer informed me that the forms were still standing, and that he had commenced printing the Journal from the first day of the session; it is standing in type waiting for this order to strike them off.

MR. O'SULLIVAN. There seems to be some misapprehension about the cost. Now the main cost will be for setting the type—for paying for the labor of setting the type. That we have undertaken already. If we want but the two hundred and forty slips it will cost the same for type-setting. The great cost will come in paying for the labor of setting the type. The extra cost of having these copies printed to bind will not be much. We have undertaken the rest already.

MR. BROWN. Mr. President: I think that it is evident to the members of this Convention that in every case yet where printing has had to be done, it has exceeded that which was first represented before this body; not that men did it with any intention to deceive, but such has evidently been the experience of this Convention, that the first estimates have been far surpassed in the results. I am under the impression that we should in this case, as in almost all others, learn by experience and judge of the future by the past. In this case I am under the impression that it is proper for this body to consider this principle and act wisely upon the subject. I shall consequently vote against it.

MR. HILBORN. Mr. President: I move that the resolution and the amendment be indefinitely postponed.

The motion prevailed, on a division, by a vote of 56 ayes to 42 noes.

MR. WEST. Mr. President: I move that the petition presented by Mr. Smith, of Santa Clara, yesterday, and referred to the Committee on Education, be ordered referred to the Committee on City, County, and Township Organization.

Carried.

USE OF THE CHAMBER.

MR. INMAN. Mr. President: I have a resolution to offer.

THE SECRETARY read:

Resolved, That the Honorable Z. Montgomery have the use of this chamber on Wednesday evening, November twentieth, for the purpose of delivering a lecture on the school question.

MR. GRACE. I would like to have that read again.

THE SECRETARY read the resolution again.

The question was put, and the resolution was adopted by a vote of 49 ayes to 42 noes.

MR. HILBORN. Mr. President: Rule Sixty-eight provides that the hall of the Convention shall not be used for any public or private business, other than that of the Convention, except by unanimous consent.

THE PRESIDENT. That is the rule.

MR. STEDMAN. Then I object.

THE PRESIDENT. Under that rule it seems to me that the Convention cannot allow the use of the hall, objection being made.

MR. ROLFE. I would like to inquire whether the Convention can monopolize the use of this hall exclusively; to be sure we have the use of it for our deliberations, but it has been used for other purposes without any leave. It has been used here for caucuses, woman suffrage meetings, and one thing and another. [Laughter.]

MR. ESTEE. I move that the Convention resolve itself into Committee of the Whole——

MR. DUDLEY, of Solano. Mr. President: I desire, now, to make the motion, which I gave notice of on Saturday, to change Rule Fifty-six so that it will be as it was originally.

MR. TERRY. I call for the regular order of business.

MR. DUDLEY, of Solano. I understand that this is a privileged motion.

MR. TINNIN. I object.

THE PRESIDENT. The motion is out of order at present, until we reach that order of business, which we will do in a few minutes.

PETITION.

MR. BLACKMER presented the following petition, signed by more than a thousand citizens of California, asking for a provision in the Constitution, for female suffrage:

To the Constitutional Convention in Sacramento, California, assembled:

The undersigned, citizens of California, respectfully petition your honorable body to so amend the Constitution that no citizen of the State shall be disfranchised on account of sex.

Referred to the Committee on Right of Suffrage.

REPORTS.

MR. TERRY. Mr. Chairman: I have a report to make from the Committee on Legislative Department.

THE SECRETARY read:

MR. PRESIDENT: The Committee on Legislative Department, to whom were referred the following propositions: number four hundred and fifty-nine, by Mr. Barnes; number four hundred and sixty-two, by Mr. Dowling; number four hundred and seventy-five, by Mr. O'Sullivan; number four hundred and seventy seven, by Mr. E. O. Smith; number four hundred and eighty, by Mr. Mills; number four hundred and eighty-three, by Mr. Tully; number four hundred and ninety-three, by Mr. Tinnin; number four hundred and ninety-six, by Mr. Barbour; number four hundred and ninety-nine, by Mr. Barton; number ——, by Mr. Farrell; and the memorial relative to equal and proportional representation, presented by Mr. Estee; have duly considered said propositions and memorial, and beg leave to report the same back to the Convention, and recommend that no action be taken thereon.

The committee further report that they have examined proposition number four hundred and sixty-four, by Mr. Casserly, and recommend that it be adopted as a section in article four of the Constitution.

The committee herewith report back to the Convention several petitions on the subject of local option, and recommend that they be referred to the Committee on City, County, and Township Organization.

D. S. TERRY, Chairman.

MR. TERRY. The proposition offered by Mr. Casserly is as follows: "While Legislatures should be convened in special session, no legislation should be had upon any subject not designated in the Governor's proclamation calling such session."

I move that it take the same course and be printed.

Carried.

MR. EDGERTON. Mr. President: I send up a report from the Committee on Revenue and Taxation.

THE SECRETARY read:

MR. PRESIDENT: Your Committee on Revenue and Taxation, to whom were referred resolutions numbers twelve, twenty-two, twenty-five, twenty-nine, thirty-five, forty, forty-eight, fifty-four, seventy, seventy-five, seventy-seven, ninety-two, ninety-four, one hundred and ten, one hundred and twenty-six, one hundred and thirty-eight, one hundred and fifty, one hundred and fifty-five, one hundred and fifty-eight, one hundred and sixty-eight, one hundred and eighty-one, one hundred and eighty-seven, one hundred and ninety seven, two hundred and seven, two hundred and eighteen, two hundred and nineteen, two hundred and twenty-six, two hundred and twenty-seven, two hundred and forty-one, two hundred and forty-eight, two hundred and sixty, two hundred and seventy-one, two hundred and seventy-six, two hundred and eighty-seven, two hundred and eighty-nine, two hundred and ninety-three, two hundred and ninety-six, three hundred and twelve, three hundred and nineteen, three hundred and twenty-five, three hundred and thirty, three hundred and thirty-eight, three hundred and forty-six, three hundred and sixty, three hundred and sixty-one, three hundred and seventy-one, three hundred and seventy-nine, three hundred and ninety-two, three hundred and ninety-five, three hundred and ninety-eight, four hundred, and thirty-eight, together with two memorials, have had the same under consideration, and herewith report the same back, and recommend that no further action be taken thereon, for the reason that such propositions and suggestions therein contained, as your committee deem it expedient to adopt, have been incorporated in the plan agreed upon, and herewith reported and recommended to the Convention, by a majority of your committee, for adoption.

Messrs. Casserly, Cross, Prouty, Turner, and Edgerton, dissent from section two (2) of the plan.

Messrs. Biggs and Tully, from section four (4).

Messrs. Dudley, Overton, Prouty, Tully, and Turner, from section five (5).

Mr. Overton, from section six (6).

Messrs. Cross and Turner, from section seven (7).

Messrs. Dudley, Overton, Tully, Turner, and Edgerton, from section nine (9).

Messrs. Dudley, Overton, Prouty, Tully, and Turner, from section eleven (11).

Messrs. Cross, Overton, and Edgerton, from section fourteen (14).

Messrs. Cross and Turner, from section sixteen (16); and Messrs. Cross, Overton, Shafter, Wilson, and Edgerton, from section seventeen (17).

Your committee recommend that such plan, upon the subject referred to them, as the Convention shall adopt, be inserted in the new Constitution in the form of a separate article, and designated, "Article —. Revenue and Taxation."

HENRY EDGERTON, Chairman.

REVENUE AND TAXATION.

ARTICLE —.

SECTION 1. All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws.

SEC. 2. All property, including franchises, capital stock of corporations or joint stock associations, and solvent debts, deducting therefrom debts due to bona fide residents of the State, and excluding growing crops, private property exempt from taxation under the laws of the United States, public property belonging to the United States, or to this State, or any municipality thereof, and all property and the proceeds thereof which is used exclusively.

SEC. 5. A mortgage, deed of trust, contract, or other obligation by which a debt is secured, shall, for the purposes of assessment and taxation, be deemed and treated as an interest in the property affected thereby. Except as to railroad and other quasi public corporations, in case of debts so secured, the value of the property affected by such

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mortgage, deed of trust, contract, or obligation, less the value of such security, shall be assessed and taxed to the owner of the property, and the value of such security shall be assessed and taxed to the owner thereof, in the county in which the property affected thereby is situate. The taxes so levied shall be a lien upon the property and security, respectively, and may be paid by either party to such security; if paid by the owner of the security, the tax so levied upon the property affected thereby shall become a part of the debt so secured; if the owner of the property shall pay the tax so levied on such security, it shall constitute a payment thereon, and to the extent of such payment, a full discharge thereof.

SEC. 6. Every contract hereafter made, by which a debtor is obligated to pay any tax or assessment on money loaned, or on any mortgage, deed of trust, or other lien, shall, as to any interest specified therein, and as to such tax or assessment, be null and void.

SEC. 7. No corporation, except for benevolent, religious, scientific, or educational purposes, shall be hereafter formed under the laws of this State, unless the persons named as corporators shall, at or before filing the articles of incorporation, pay into the State treasury one hundred dollars for the first fifty thousand dollars or less of capital stock, and a further sum of twenty dollars for every additional ten thousand dollars of such stock; and no such corporation shall hereafter increase its capital stock without first paying into the State treasury twenty dollars for every ten thousand dollars of increase.

SEC. 8. No license tax shall be imposed by this State, or any municipality thereof, upon any trade, calling, occupation, or business, except the manufacture and sale of wine, spirituous, and malt liquors, shows, theaters, menageries, sleight of hand performances, exhibitions for profit, and such other business and occupations of like character as the Legislature may judge the public peace or good order may require to be under special State or municipal control. But the Legislature may by law impose any license, or other tax, on persons or corporations owning or using franchises or corporate privileges.

SEC. 9. The Legislature shall provide for the levy and collection of an annual poll tax of not less than two dollars, for school purposes, on every male inhabitant of this State over twenty-one and under sixty years of age, except paupers, idiots, insane persons, and Indians not taxed. Said tax shall be paid into the State School Fund.

SEC. 10. The power of taxation shall never be surrendered or suspended by any grant or contract to which the State shall be a party.

SEC. 11. The Legislature shall provide by law for the payment of all taxes on real property by installments.

SEC. 12. The Legislature shall by law require each taxpayer in this State to make and deliver to the County Assessor, annually, a statement, under oath, setting forth specifically all the real and personal property owned by such taxpayer, or in his possession, or under his control, at twelve o'clock meridian, on the first Monday of March.

SEC. 13. Assessors and Collectors of State, county, city and county, town, or district taxes, shall be elected by the qualified electors of the county, city and county, town, or district in which the property taxed for State, county, city and county, town, or district purposes, is situated; *provided*, that vacancies may be filled by appointment, according to general laws.

SEC. 14. The State tax on property, exclusive of such tax as may be necessary to pay the existing State debt, shall not exceed forty cents on each one hundred dollars for any one year.

SEC. 15. A State Board of Equalization, consisting of two members from each Congressional District in this State, shall be elected by the qualified electors of their respective districts, at the general election to be held in the year one thousand eight hundred and seventy-nine, and every four years thereafter, whose duty it shall be to equalize the valuation of the taxable property in the State for purposes of State taxation. The Boards of Supervisors of the several counties in the State shall constitute Boards of Equalization for their respective counties, whose duty it shall be to equalize the valuation of the taxable property in the county for the purpose of county taxation.

SEC. 16. The State Board of Equalization shall assess the value of all the property of all railroad corporations in this State. For the purpose of taxation, the value of all lands, workshops, depots, and other buildings belonging to or under the control of each railroad corporation, shall be apportioned by said Board to the counties, cities and counties, cities, townships, and districts in which such lands, workshops, depots, and other buildings are situate; and the aggregate value of all other property of such railroad corporation shall be apportioned by said Board to each county, city and county, city, town, or district in which its road shall be located, according to the ratio which the number of miles of such road completed in such county, city and county, city, town, or district shall bear to the whole length of such railroad.

SEC. 17. The value of the capital stock of a corporation shall be assessed in the county in which its principal place of business is located, and separately from all other property belonging thereto; and such stock shall be assessed at its market value when the assessment is made. The real and other personal property of such corporation shall be assessed in the several counties respectively in which the same is situate. The value of such stock, over and above the aggregate value of such real and other personal property, according to such assessment, shall be taxed in the county in which the principal place of business of such corporation is located; and the value of such real and other personal property shall be taxed in the several counties respectively in which the same is situate. The shares of stock belonging to the stockholders in such corporation shall be exempt from taxation; *provided*, that the provisions of this section shall not apply to railroad corporations.

SEC. 18. The Legislature shall pass all laws necessary to carry out the provisions of this article.

MR. EDGERTON. I move that nine hundred and sixty copies of the draft be printed.

MR. ROLFE. I move to amend by adding that five copies be placed upon each member's desk.

MR. EDGERTON. I accept the amendment.

The motion prevailed.

RESOLUTION OF INQUIRY.

MR. RINGGOLD. I have a resolution to offer.

THE SECRETARY read:

Resolved, That the San Francisco Gaslight Company, of the City and County of San Francisco, be and is hereby directed to furnish to this Convention a statement setting forth the number of meters which said company has furnished to consumers of gas since the organization of the company, the amount of money deposited with the company for meters furnished, the amount of money refunded for meters taken back by the company, and the amount of money the company still retains as deposits for meters

Resolved, That the Secretary of this Convention be and he is hereby directed to forward immediately a copy of the above resolution to the President and Secretary of the San Francisco Gaslight Company.

MR. RINGGOLD. I have been requested to introduce that, and I now move its adoption.

Adopted, on a division, by an affirmative vote of 80.

MR. ESTEE. Mr. President: I now move that the Convention resolve itself into Committee of the Whole, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

PREVIOUS QUESTION IN COMMITTEE OF THE WHOLE.

MR. DUDLEY, of Solano. Mr. President: I desire now to make my motion to amend Rule Fifty-six, of which I gave notice on Saturday.

MR. TINNIN. Mr. President: The previous question has been moved and carried several times in this body, and I think it is very satisfactory to the members. In fact I think it the only protection that we have had the last few days. I move that it be laid on the table.

The ayes and noes were demanded by Messrs. Reynolds, Heiskell, Tully, Joyce, and Dudley, of Solano.

MR. REYNOLDS. Mr. President: I want to see this Convention put upon the record on this subject.

MR. HUESTIS. I rise to a point of order.

MR. HEISKELL. Yes; ten or a dozen of you rise to a point of order.

MR. HUESTIS. The gentleman has no right to consume the time of the Convention in discussing a motion to lay on the table.

THE PRESIDENT. The point of order is well taken.

The roll was called, and the motion to lay the amendment on the table was lost, by the following vote:

AYES.

Andrews,	Heiskell,	Moreland,
Ayers,	Hitchcock,	Nason,
Boggs,	Holmes,	Ohleyer,
Brown,	Howard,	Porter,
Burt,	Huestis,	Pulliam,
Campbell,	Hunter,	Rhodes,
Caples,	Inman,	Rolfe,
Chapman,	Johnson,	Shafter,
Cowden,	Kelley,	Shurtleff,
Crouch,	Lampson,	Smith, of Santa Clara,
Davis,	Larkin,	Stevenson,
Estee,	Larue,	Terry,
Estey,	Lewis,	Tinnin,
Fawcett,	Mansfield,	Townsend,
Finney,	McComas,	Tully,
Garvey,	McConnell,	Van Voorhies,
Glascock,	McCoy,	Waters,
Graves,	McNutt,	Wilson, of Tehama,
Gregg,	Moffat,	Wyatt—56.

NOES.

Barbour,	Herrington,	Ringgold,
Barry,	Hilborn,	Schell,
Barton,	Hughey,	Schomp,
Belcher,	Jones,	Smith, of 4th District,
Blackmer,	Joyce,	Smith, of San Francisco,
Condon,	Kleine,	Soule,
Dowling,	Laine,	Stedman,
Doyle,	Lavigne,	Steele,
Dudley, of Solano,	Lindow,	Sweasey,
Eagon,	McCallum,	Thompson,
Edgerton,	McFarland,	Tuttle,
Evey,	Morse,	Vacquerel,
Farrell,	Nelson,	Walker, of Marin,
Filcher,	Neunaber,	Walker, of Tuolumne,
Freeman,	O'Donnell,	Wellin,
Freud,	O'Sullivan,	West,
Gorman,	Prouty,	Wickes,
Grace,	Reddy,	White,
Harrison,	Reynolds,	Mr. President—58.
Harvey,		

THE PRESIDENT. The question is on the adoption of the amendment as offered by the gentleman from Solano, Mr. Dudley. The Secretary will read it.

THE SECRETARY read:

"Amend Rule Fifty-six to read as follows:

"RULE FIFTY-SIX.

"The rules of the Convention shall be observed in Committee of the Whole, so far as they may be applicable, except that the ayes and noes shall not be taken, and that the previous question shall not be moved."

MR. DUDLEY, of Solano. Mr. President: I am not classed as one of

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the talking members of this Convention, and I make this motion to-day, because I think that I saw a great deal of inconvenience arising last Saturday from moving the previous question. The situation seems to be this: a section is brought up for consideration, and one member moves an amendment, then another member moves an amendment to the amendment. No more amendments can be offered until these are disposed of. They are discussed until the patience of the Convention is exhausted. The previous question is moved, and no more amendments can be offered to the section at all. We have no chance to vote upon any amendments except the first two. I am willing to limit the time of debate, but certainly I think we should have a chance to consider and vote upon more than two amendments. I hope the amendment will be adopted.

The ayes and noes were demanded by Messrs. Burt, Tinnin, Kelley, Wellin, and Huestis.

MR. ROLFE. Mr. President: I am opposed to the way the rule stands now, and I am opposed to the way it is proposed to be amended; therefore I shall vote against the amendment. It is as the gentleman says: a proposition comes before the Committee of the Whole and some gentleman moves an amendment; another gentleman moves an amendment to that. Then we get tired of discussing it, and the previous question is moved and carried, and then we only have the right, as I understand it, to vote on these three propositions, without giving any opportunity of making other amendments; whereas, it is possible that neither the proposition nor either of the amendments suit the Convention. I think the evil could be avoided in a different way—by allowing the previous question to be put and carried, but with such a modification that after we vote down all the amendments pending, then other amendments may be offered. But I shall simply vote against the amendment changing the rule.

The roll was called, with the following result:

AYES.

Ayers,	Harrison,	Reddy,
Barbour,	Harvey,	Reynolds,
Barry,	Herrington,	Ringgold,
Barton,	Hilborn,	Schell,
Belcher,	Hughey,	Smith, of 4th District,
Blackmer,	Jones,	Smith, of San Francisco,
Condon,	Joyce,	Soule,
Dowling,	Kleine,	Stedman,
Doyle,	Laine,	Steele,
Dudley, of Solano,	Lavigne,	Sweasey,
Eagon,	Lindow,	Thompson,
Edgerton,	Mansfield,	Tuttle,
Estey,	McCallum,	Vacquerel,
Evey,	McFarland,	Walker, of Marin,
Farrell,	Mills,	Walker, of Tuolumne,
Freeman,	Morse,	Waters,
Freud,	Nelson,	Wellin,
Garvey,	Neunaber,	West,
Gorman,	O'Donnell,	Wickes,
Grace,	O'Sullivan,	White,
Graves,	Prouty,	Mr. President—63.

NOES.

Andrews,	Holmes,	Ohleyer,
Boggs,	Howard,	Porter,
Boucher,	Huestis,	Pulliam,
Brown,	Hunter,	Rhodes,
Burt,	Inman,	Rolfe,
Campbell,	Johnson,	Schomp,
Caples,	Kelley,	Shafter,
Chapman,	Lampson,	Shurtleff,
Cowden,	Larkin,	Smith, of Santa Clara,
Crouch,	Larue,	Stevenson,
Davis,	Lewis,	Terry,
Estee,	McComas,	Tinnin,
Fawcett,	McConnell,	Townsend,
Finney,	McCoy,	Tully,
Glascock,	McNutt,	Van Voorhies,
Gregg,	Moffat,	Wilson, of Tehama,
Heiskell,	Moreland,	Wyatt—55.
Hitchcock,	Nason,	

THE PRESIDENT. It takes a two-third vote to change a rule. The amendment is lost.

NOTICE.

MR. REYNOLDS. Mr. President: I give notice that I will, on to-morrow, move to reconsider the vote by which the resolution in relation to printing the Journal was this day indefinitely postponed.

MR. SMITH, of Fourth District. Mr. President: When this rule was first changed, it was changed by a vote of the minority only. There were no ayes and noes called at that time. According to that the rule still stands.

CORPORATIONS.

MR. ESTEE. I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried. [Three o'clock and fifteen minutes P. M.]

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The pending questions were the amendments to section fourteen. The gentleman from San Joaquin moved to strike out the words "other than religious, educational, or benevolent," in line one, and insert the words "having capital stock."

MR. ESTEE. Will the Secretary please read the section as now amended?

THE SECRETARY read:

SEC. 14. Every corporation, other than religious, educational, or benevolent, organized or doing business in this State, shall have and maintain an office in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept for inspection, by every person having an interest therein, and legislative committees, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock, the amount of its assets and liabilities; and the names and place of residence of its officers. No foreign corporation shall do any business in this State without having at least one place of business and an authorized agent in the same, upon whom process may be served.

MR. TERRY. My amendment is withdrawn.

THE CHAIRMAN. The question is on the amendment offered by the Committee on Corporations as amended.

THE SECRETARY again read the amendment as amended.

MR. TERRY. It says, "*and* doing business."

THE SECRETARY. It says, "*or* doing business."

MR. BARBOUR. If it reads that way there is a repetition, because if the word "or" is used it refers to the foreign corporations, and they are, according to the amendment of Judge Hager, required to keep an office where the business is transacted.

The amendment as amended was adopted.

FOREIGN CORPORATIONS.

MR. ESTEE. Mr. Chairman: I now offer an additional section, to follow this section, pursuant to a report made by the Committee on Corporations other than Municipal.

THE CHAIRMAN. The Secretary will read section fifteen, as reported by the committee originally.

THE SECRETARY read:

SEC. 15. All railroads, canal, and transportation companies shall be common carriers and subject to legislative control. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination.

MR. ESTEE. The section I offer was offered by direction of the Committee on Corporations, to precede this section fifteen, and be numbered section fifteen.

THE SECRETARY read:

SEC. 15. No corporation organized outside the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this State. The Legislature shall enforce this section by appropriate legislation.

THE CHAIRMAN. That is offered as an independent section, but operates as an amendment.

MR. FAWCETT. Mr. Chairman: I offer an amendment to the section proposed.

THE SECRETARY read:

"Amend section fifteen by adding: 'A corporation or association may be sued at the county where the contract is made or is to be performed, or where the obligation or liability arises, or breach occurs; or at the county where the principal place of business of such corporation is situated, subject to the power of the Court to change the place of trial as in other cases.'"

MR. ESTEE. Mr. Chairman: That does not seem to be pertinent to section fifteen that was just handed up.

MR. FAWCETT. I think it does.

MR. ESTEE. Section fifteen was on foreign corporations.

MR. FAWCETT. It may not be pertinent, but before we pass all these sections on corporations I wish to offer that, either as an amendment or as an independent section.

THE CHAIRMAN. The gentleman can offer it as an independent section.

MR. FAWCETT. I submit that it would be more proper added to section four, but inasmuch as we have passed that, I suppose it is too late. I will therefore offer it as an independent section, after the section offered by the gentleman from San Francisco is disposed of. I withdraw it as an amendment.

The section offered by Mr. Estee was adopted.

SUITS AGAINST CORPORATIONS.

MR. FAWCETT. I now offer that amendment, to be known as section sixteen of the chapter on corporations.

THE SECRETARY read:

SEC. 16. A corporation or association may be sued at the county where the contract is made or is to be performed, or where the obligation or liability arises, or breach occurs; or at the county where the principal place of business of such corporation is situated, subject to the power of the Court to change the place of trial as in other cases.

MR. HERRINGTON. Mr. Chairman: With unanimous consent, why might not that be attached to section four?

MR. FAWCETT. Mr. Chairman: I suppose the object of this amendment will be readily apparent to all. Under our system, corporations have a legal residence at their principal place of business. The result is that corporations in this State are legally resident, nearly all of them, at the City and County of San Francisco, and that under our rules of practice, those who have litigation with such corporations must go to

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the City and County of San Francisco to sue. For instance, if the gentleman from Los Angeles has a cause of action against the Southern Pacific Railroad Company, he must go to the City and County of San Francisco with his cause of action; bring his suit, carry his witnesses, and maintain his litigation there. That operates unjustly and unfairly. I think that the rule ought to be, that a person having a cause of action against a corporation should be entitled to meet at the place where the cause of action has arisen, where the obligation or liability arises, or the breach occurs. We have transportation companies plying on the South Pacific Coast—steamship companies. It often happens that shippers there lay a cause of action against a steamship company, and they have to go to San Francisco at great expense, delay, and inconvenience. The effect of this amendment will be to authorize them to sue at the place where the cause of action arises, or at the principal place of business of the corporation. I think it is eminently just. Perhaps it may be said that it more properly belongs to the Code of Civil Procedure, but it is quite as important to the rights of the people as many of the provisions contained in this report.

The section was adopted.

RAILROADS.

THE CHAIRMAN. The Secretary will read section fifteen of the report, now numbered section seventeen.

THE SECRETARY read:

SEC. 17. All railroads, canal, and transportation companies shall be common carriers and subject to legislative control. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination.

MR. O'DONNELL. I would like to add to that section the following words: "The Legislature shall, by appropriate legislation, establish a tariff of prices to be charged for the transportation of passengers and freights on railways in this State, by which all such railways shall be governed."

MR. ESTEE. It does that now.

MR. O'DONNELL. I offer it as an amendment. I will send it up.

THE SECRETARY read the proposed amendment as above.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I was wishing before it came to a vote upon amendments to know more precisely with regard to the meaning of the language in the fifteenth section now before us. I acknowledge that I am not able to fully comprehend it with the present lights that I have before me. It says: "All railroads, canal, and transportation companies shall be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States." Now, I do not fully comprehend that portion about "organized for *the* purpose." It seems different when there is a purpose spoken of; but what that purpose is, I am not able to understand. Is it transportation companies that is spoken of? If it is for the purpose of being a transportation company, I am not sure of it by the language. If it means organized for the purpose of being common carriers, any company organized for that purpose, it does not seem to be clear. There is also legislative control spoken of, and it is not clear whether it is for them or not. What follows afterwards seemed at first to explain it: "shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States." Now, instead of the latter part being the purpose, there are several purposes spoken of, and I thought before voting upon it I would wish to hear what the purpose is, whether organized for the purpose of common carriers, or organized for the purpose of an association, as immediately precedes it.

MR. BARBOUR. I move to amend section seventeen by inserting after the word "control," in the second line, the words, "railways and navigable canals heretofore constructed, or which may hereafter be constructed in this State, are hereby declared to be highways, and shall be free to all persons for the transportation of persons and property thereon, under such regulations as may be prescribed by law."

THE CHAIRMAN. The first question is on the amendment offered by the gentleman from San Francisco, Mr. O'Donnell.

MR. CAMPBELL. I sent up an amendment there.

THE CHAIRMAN. That amendment will be the second question.

THE SECRETARY read the amendment offered by Mr. O'Donnell.

MR. TINNIN. Mr. Chairman: I desire to call the attention of the committee to the amendment. It seems to be the entering wedge to defeat the Commission that the committee have decided upon. I merely desire to call the attention of the committee to the fact.

MR. WHITE. Mr. Chairman: I hope the Convention will not entertain that amendment. If the gentleman is opposed to the plan of the Committee on Corporations, his time will be when we reach the twentieth section. It will cause a great deal of confusion in the whole argument. I trust that the Convention will observe the object of it and vote against it.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: Section seventeen, or section fifteen as it is printed, was drawn up by your committee to meet two or three propositions. First, that all railroads, canal, and transportation companies shall be common carriers, and subject to legislative control. Of course we are aware that they were common carriers, and that common carriers were subject to legislative control, and that expression was taken from the decision relative to the power of railroads and their duties to the people.

The second proposition is, that "Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States." That was merely for the purpose, should the time ever come when there would be an opportunity for a competing line, to give that line an opportunity of running to the State line of this State to connect with any other railroad that might come from any other State or Territory for the purpose of transporting freight and passengers to this State.

The next was: "Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination." The object of that was to prohibit any railroad company from favoring one competing line over another, and transporting their passengers and freight or their cars to the exclusion of others, and thereby freezing out, if I may use the term, any connecting line. This section was taken almost verbatim from the Constitutions of Pennsylvania and Missouri. In the Pennsylvania Constitution it is section one of article seventeen. It reads:

"All railroads and canals shall be public highways, and all railroads and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad; and shall receive and transport each the other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination."

Now these were the evils that were attempted to be remedied by your committee in reporting section fifteen, and I will state to the gentleman from San Francisco, Mr. O'Donnell, that the amendment which he proposes is quite unnecessary, unless he wants to destroy the harmony of this article. If he does, why of course he had better adopt it. The proposition is covered by sections nineteen, twenty, twenty-one, and twenty-two. Section nineteen provides against discrimination, and section twenty provides for Railroad Commissioners, fixing their powers and duties. I hope that all amendments for changing this section, so far as the regulation of freights and fares are concerned, will be voted down.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: I think that this code ought to be amplified a little. We say every railroad company shall receive and transport each other's passengers, tonnage, and cars, loaded or empty. Now in order to make that effective we ought to provide that each railroad company should have a certain width gauge. They might come with narrow gauge cars and our roads would not take them. It does seem to me that if they are going to take the cars from the other States that it should be so arranged that the cars of other States and our own should be the same gauge.

REMARKS OF MR. O'DONNELL.

MR. O'DONNELL. Mr. Chairman: This section embodies a great popular demand. It is a measure which involves simply this proposition: Shall the people control the corporations, or shall the corporations control the people? That is the question now before this Convention. The section I think is a little cloudy, and delegates do not exactly understand the reading of that section. It says here in section fifteen, or section seventeen as it is amended: "All railroads, canal, and transportation companies shall be common carriers and subject to legislative control. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination."

Now my amendment is: "The Legislature shall, by appropriate legislation, establish a tariff of prices to be charged for the transportation of passengers and freights on railways in this State, by which all such railways shall be governed." There is an addition. That is the reason that I offer the addition there. As it is now, they have a right to charge their own prices for passengers and freight. The corporations have been controlling the people for the last fifteen or sixteen years. It seems pretty near time that the people were controlling these corporations. I hope that amendment will be added to that section.

MR. AYERS. Mr. Chairman: I trust that the members of this committee will incontinently vote the amendment down. This State has trusted long and patiently to the Legislature of this State to handle that question. They have not done it; and it behooves this Convention itself to handle it; and I believe that this report, further on, provides an effective way by which we can gain control of that matter.

MR. HOWARD. Mr. Chairman: I wish to say to the gentleman from Sacramento that, so far as the Central Pacific and the Southern Pacific are concerned, the Act of Congress provides that the gauge shall be uniform, and it also provides that they shall receive freights and passengers from other roads and run the cars over their roads.

MR. LAINE. I desire to call the attention of the Chairman of the committee to the wording of this section. I think you will find that the word "railroads" ought to be "railroad." You make railroads common carriers instead of railroad companies.

MR. ESTEE. That is right. The Secretary will strike out the letter "s" there.

SPEECH OF MR. HALE.

MR. HALE. Mr. Chairman: I hope that this amendment will not

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prevail. I see that the vote upon this question must necessarily be a test vote upon much more than appears upon the face of the proposed amendment. I beg the indulgence of the house while I attempt to point it out. As has been very truly said by the Chairman of the committee, the adoption of this amendment will be striking a blow, if not a death-blow, to the scheme presented in their report, so far as it applies to a Railroad Commission. For the purpose of showing the correctness of this conclusion, I will take the liberty of reading section nineteen. It is not now before the house, but I wish from it to show that the proposed amendment is not necessary:

"SEC. 19. No discrimination in charges or facilities for transportation shall be made by any railroad or transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State, or coming from or going to any other State. Persons or property transported over any railroad, or by any transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates."

The next section provides:

"SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State, at the regular gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have sole power, and it shall be their duty, to correct abuses by railroad corporations or other transportation companies; establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; report to the Governor, annually, their proceedings, and such other facts as may be deemed important; hear and determine complaints against railroad or other transportation companies; affix penalties and enforce them through the medium of the Courts, and perform such other duties as may be prescribed by law. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in the foregoing sections."

Mr. Chairman, it will be observed from the construction of the sections I have read, that they deal with the matter in detail. The scheme of the committee is substantially this: that so far as the regulation of tariffs for the conveyance of passengers or freight upon railroads in this State are concerned, they shall be determined by the Railroad Commissioners. Now, sir, I am quite aware of the fact that there is a divided sentiment on this subject; that there are two opinions as to the proper mode of reaching this one result, namely, the exercise by the State of its proper supervision and control over railroads in the matter of conveying passengers and freight. The committee's report proceeds upon the assumption, as I take it, that it is unwise to attempt to regulate fares and freights by the terms of statute law. Am I correct, Mr. Chairman?

MR. ESTEE. Yes.

MR. HALE. Now, we have not been without experience in this matter of trusting to the Legislature to control corporations. I say this without reflecting upon any body. While the State, from the first, has claimed the right to control corporations in various acts, public declarations and laws, and I might add, that while the United States and the Courts of this country, both State and Federal, have upheld and sustained as the prerogative and power of the State to exercise this control over the railroads in the conveyance of passengers and freight—while, I say, this is true, this other fact stares us in the face, that we have been attempting, through the medium of the Legislature, to exercise this control for the past fifteen years, and thus far all efforts at success have been abortive. I suppose, without being particularly familiar with the views of the committee, that they are of the opinion (judging from the past) that we would be likely to have a similar experience in the future, and they have presented this scheme providing for a commission consisting of three Railroad Commissioners to be elected by the people, to become the agents of the people and the railroad companies, and fix and determine in all cases the scale of prices for passengers and for freight upon railroads in this State.

For myself, Mr. Chairman, this plan meets my unqualified approbation. I had the fortune—perhaps I should say the misfortune—at quite an early day, to introduce into the Legislature of this State the first bill ever proposed for the regulation of fares and freights. It did not become a law. I need not deal with a detail or explanation of it. At nearly every session of the Legislature, from that time until this, efforts have been made to pass bills of that kind, and they have either proven wholly or partially abortive to accomplish any beneficial exercise of State control over these railroads by such means.

I do not propose, sir, to discuss the reason, why that has been the case. I may call attention to this one fact, and would allude to a public document, or what is in the nature of a public document, an open letter written by the President of the Central Pacific Railroad Company—I allude to Governor Stanford. I doubt not it was written in the hope that it would be read and appreciated by the members of this Convention. While utterly disagreeing with the conclusions reached in that communication, I recognize, and you will all recognize, the soundness of many of its views. The soundness of many of them, and I think I might say most of them, are most prominently illustrated in our past experience, in our attempts to legislate upon this subject. To regulate fares and freights by the establishment of maximum and minimum rates, have proven to be abortive. In other words, he proceeds to reason out and reach the conclusion, that for the purpose of regulating fares and freights it is impossible to effect it justly and beneficially, either to the people or the railroad companies, by any statute of the State regulating fares and freights. For instance, it is true, and it will be plain to every gentleman who is familiar with the subject, that it would be utterly unreasonable to expect any railroad company to transport from San Francisco to the State line, or between any points in this State, a cargo or a carload of silk goods at the same price that it would convey for the same distance a carload of barley, or wheat, or potatoes. It needs no illustration to show the truth of this. It is also true that it is not feasible; it is not reasonable to suppose, perhaps, that you can transport over all portions of any given line freights at the same rate. The grade of the road, the facilities for furnishing fuel, and other conditions necessary to transport a train of cars, whether carrying passengers or freight, or both, are immensely different, and the cost depends upon these conditions. Hence, from these as well as other considerations, which I will not now undertake to detail, it is obvious to every one that it is practically useless to lay down a fixed and inflexible rule as to rates for railroad transportation, as it must be done, if done by statute, fixing maximum or minimum, or both maximum and minimum rates, for the transportation of passengers or freights.

In view of these circumstances, in view of the fact that a wise management will take into consideration all the facts and all the elements which enter into the account of cost of transportation, it is necessary to have somebody, some Board of men, if you please, who are authorized both for the people and for the railroad companies, to have and exercise this most important discretionary power. The committee have (and I think wisely) presented a plan whereby they propose that the people shall elect three Railroad Commissioners, who shall be at once the agents of the people of the State and of the railroad companies, and equally bound to do justice to the people and the railroad companies, and they are to fix and regulate all these railroad questions. That is the plan of the committee, and it is one that I heartily favor. Now it will be understood that when I say the vote upon this question must necessarily be a test vote, I allude to a vote upon the pending amendment, which, if adopted, will be equivalent to knocking on the head the committee's scheme of a Railroad Commission.

Mr. Chairman, as I have said, we have had some experience upon this subject. We are not alone. Other States have had experience likewise. I think it will be quite out of the question for any gentleman on this floor or elsewhere, to show that any beneficial results have resulted in any case from any attempts at State regulation of railroads, in the form of statute laws fixing maximum or minimum rates for passengers or of freights. But they have in various instances succeeded in the attempt to exercise a wise and just and reasonable power of the State over these railroads, through such provisions as are proposed here by this committee report. Now if any one should question whether this proposed State control will be well and justly exercised, he will have to question the wisdom of the people to make wise selections. That there is need of this control, that the State has power to exercise it, and that it is our duty to do it, I think is obvious to most men at this day. The question is, how should we do it? That is the great question. I think the committee have reported wisely upon this proposition. They have provided that the people shall elect a Board of Commissioners, confer upon them the power and the duty to decide all questions between the people and the railroad companies, and then remove this notorious source of vexation, excitement, and corruption from the halls of our Legislatures, and relieve us from the turmoil which it occasions among the people, and place it where there will be a wise, calm, and just exercise of the power of control by the people of the State over these railroad companies.

Mr. Chairman, I hope this amendment will be voted down, and that in lieu of it the Convention will adopt the scheme presented by the committee as shadowed in section nineteen and twenty of their report.

MR. WICKES. Mr. Chairman: I think the gentleman who offered this amendment was premature. I do not think the vote upon this section——

MR. FILCHER. I have been informed that the gentleman is waiting an opportunity to withdraw it.

MR. WICKES. If gentlemen would moderate their zeal to offer amendments it would be better.

MR. O'DONNELL. Mr. Chairman: The Legislature at its last session passed a law regulating the fare on these railroads in San Francisco—these street railroads—and it acted splendidly. The fare for a single ticket then was ten cents. They made it five. I cannot see why the Legislature cannot regulate these steam railroads just as well; but at the same time I will withdraw my amendment until we reach section twenty.

MR. CAMPBELL. Mr. Chairman: I sent up an amendment there some time ago which I now offer.

THE SECRETARY read:

"Amend section seventeen by inserting in line four, after the word 'railroad' the words, 'other than a street railroad.'"

MR. CAMPBELL. Mr. Chairman: As the section now reads it would, I am afraid, be liable to the construction that any person might construct a street railroad through the streets of any city at any point that he might desire to do it, and that would be attended with vast public inconvenience and great danger. For that reason I have offered this amendment. I presume there will be no objection to it on the part of the Chairman of the committee. I suppose the clause was not intended to include that class of roads.

MR. ESTEE. Mr. Chairman: It was not intended to reach street railroads, and I do not think it could possibly be construed to mean railroads of that kind, but I do not see as there is any objection to the amendment.

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MR. EDGERTON. Mr. Chairman: I would suggest to the Chairman of the Committee on Corporations, a fact that is probably not in his mind for the moment—that in all this railroad legislation, street railroads are excepted. They are carried on upon an entirely different basis from the general railroad system. It is left very much to the municipalities where they are in use. I think the suggestion from the gentleman from Alameda, Mr. Campbell, a very pertinent one. As the section now stands, it would include street railroads.

MR. ESTEE. Mr. Chairman: It was not intended to reach street railroads, and for one of the committee, I see no objection to inserting the words, "other than street railroads."

MR. LAINE. Mr. Chairman: I must confess that I am somewhat in the condition of the gentleman from Tulare, Mr. Brown, in regard to the second clause of this section. The way it reads, I do not know that I catch clearly its scope and purpose. I presume it is intended merely to make a provision that railroads may connect with other roads at the State line, but the way it is written, I confess I am not able clearly to understand it. Being in that condition, I have prepared an amendment, to read in this wise, if that is the understanding of the committee: "Any association, or corporation, organized for railroad purposes, except street railroads, shall have the right to connect at the State line with the railroads of other States." That makes it shorter, if that is the purpose, but I confess that it is not at all clear to me.

MR. ESTEE. I think you have hit one point and missed another. "Any association, or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States." The whole section, this clause and the next one, gives them the right to make a railroad and operate it to a certain point, and provides that there shall be no discrimination between railroads in favor of one or against the other. That is the point. Of course, if the gentleman's amendment is thought more correct, if it represents the ideas better, or is stated more clearly, then we have no choice or taste about language, but there are two points in ours—constructing a railroad and operating it between any points within the State, and also to connect with the railroads of other States.

MR. FILCHER. Mr. Chairman: It occurs to me that the same explanation might be necessary in other sections of this same article. And, in order to avoid any ambiguity, or misconstruction of the Constitution relating to railroads, I would suggest to the gentleman from Alameda, that he withdraw his amendment here, and offer it as a separate section, something in this shape: "Nothing relating to railroads in this article shall be construed to apply to street railroads." There might be a doubt about several sections the way it is. If the committee intended to apply the article to this class of roads, of course it would be better in. If they intend to apply it only to the general system of steam roads, then I think the adoption of the section to this effect is very important.

MR. ESTEE. There will be no objection to that when we reach it.

MR. CAMPBELL. I withdraw my amendment then.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I ask the Secretary to read the amendment I sent up.

THE SECRETARY read:

"Amend section seventeen by inserting after the word 'control,' in line two, the following: 'Railways and navigable canals heretofore constructed, or which may hereafter be constructed in this State, are hereby declared to be highways, and shall be free to all persons for the transportation of persons and property thereon, under such regulations as may be prescribed by law.'"

MR. BARBOUR. Mr. Chairman: This matter of declaring railways public highways was discussed in the committee, and the committee compared various Constitutions of the States, many of which have the same provision, and at first adopted this language which I have introduced here from the minority report, but on a subsequent day the committee, while I was not present, struck it out. Now, Mr. Chairman, in my opinion, that is one of the most indispensable declarations in this article concerning corporations. In my opinion it brings it exactly within the modern decisions in regard to the power of the State to control railroads. If I understand the decision of the Supreme Court of the United States in the railroad cases, called the Granger cases, following after the decision in the Elevator cases, the People against Scott and Munn—that decision in favor of the right to regulate and control and prevent abuses and discrimination on the part of railroad companies, went upon the principle that they were clothed with a public character. There was nothing in the decision which directly reversed the former decision with regard to the inviolability of these contracts, but it went purely and solely upon the ground of their being clothed with a public character and conveying a public interest. Now, there is nothing in the declaration that a railroad is a common carrier, as I understand it; that is contrary to all the definitions found in the books. Angell on Railways, and many others pronounce them public highways. I consider that a better expression than common carriers, although I have no objection to making use of both expressions. But when you say that they are public highways and free to all for the transportation of passengers and property, you strike at the greatest abuse of all, and that is discrimination. As to the common carrier characters of them, that is all right enough so far as it concerns the right to regulate fares and freights, but you must use the other declaration, that all persons and communities shall have the right, without discrimination, to have their property transported over these public highways under proper regulations. I consider it a very beneficial proposition to declare that they are public highways free to all persons for the transportation of persons and property, subject to legislative control. I would call the attention of the Convention, although I have not the decision here at present, and would not be able to read it if I had, to this fact, that the Granger cases, so called, or the railroad cases, followed after the decision in the Elevator cases, and after the adoption of the Constitution of Illinois, which declared these elevators public elevators and public warehouses. Now, while the Court does not lay particular stress upon the provision in the Constitution of Illinois, nevertheless it followed the decision in the Elevator cases, and declared the right of the State to control railroads, and based it upon their public character. That it was not an interference with a private right, but being clothed with a public character the State thus obtained its jurisdiction to regulate their rates I maintain that the same proposition is true with regard to railroads.

It is their public character as public highways that is the foundation for the authority of the State to control them, whatever we do or whatever shall be decided on. This decision binds every Court, up to the highest tribunal of the land; and this declaration will come within the scope and purview of their own decision upon the subject in the Granger cases and in the Elevator cases. I never understood why the committee should have left it out. It seems to me an indispensable proposition and a declaration that is just as necessary as and more necessary than the declaration that they are common carriers. I do not know, and the people of this State do not know, but that the time will yet come when they will not only want to act upon the declaration that they are public highways, free to all persons for the transportation of their persons and property theoretically, and under proper control and regulation, but that they shall declare that communities and places along the lines of the road, under proper regulations, can put their own cars and their own locomotives upon these public highways. Whilst not depriving anybody of their property, whilst not depriving them of their franchise, pay all due and proper bills that may be coming to them, but at the same time make the only possible competition in the State of California—perhaps the only kind of competition that is possible under the peculiar geographical formation of this State. I hope that the committee will adopt the amendment.

SPEECH OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: I wish to ask the gentleman from San Francisco, Mr. Barbour, if he means, when he provides that a railroad shall be a highway, that any person can use it for the transportation of goods; whether he means that every person has the right to use it for the transportation of general freight, putting cars and locomotives upon it.

MR. BARBOUR. Yes; under such regulations as may be prescribed by law.

MR. McFARLAND. I supposed you meant that a railroad shall be a public highway, upon which any person can put such cars and locomotives as they please.

MR. BARBOUR. The gentleman misapprehends me. I say this declaration is made upon the same ground that we declare the right to control fares and freights. The same power can put a proper regulation upon the use of the roadbed, regulating the schedule time, and making a time table.

MR. McFARLAND. Then I understood the gentleman right. He says now that railroads shall be public highways, upon which any person can put cars and locomotives, in the manner provided by law. That is what the railroads in this State are to be compelled to do, and the Legislature is to fix up some schedule of time upon which you, or I, or anybody can run a train of cars. I do not care to argue that question. I merely wanted to know what his idea was.

I would like to call the attention of the committee to the two final sentences or clauses in this section. They certainly ought to be amended in some way. The second clause is entirely unnecessary, it seems to me. The general law provides that anybody can build railroads in any part of the State, from one end of it to the other, by paying for private property. What is the use of saying that they may connect with other lines outside of the State, for they have that right if they choose to do so, anyway. This clause is simply useless and unnecessary. The last clause reads: "Every railroad shall transport each other's passengers." Now, each other's passengers refers to the preceding plural. It does not seem to me that it is grammar or common sense to say the companies shall transport each other's passengers and cars. The clause seems to need amendment—I hardly know how. Now, if that first word was "all" and the third word in the plural, it might perhaps help the case some. But, certainly, it does not mean anything to say that every railroad company shall receive and transport each other's passengers. Why should you provide that any railroad shall receive the passengers of any other company? They are common carriers, and bound to take all passengers. There is no use in providing that they shall receive passengers, for they are bound to receive all passengers. They are common carriers, without any declaration in the Constitution to that effect. I do not see any necessity for putting these provisions in.

SPEECH OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. Chairman: As I understand it, the only amendment is the one offered by Mr. Barbour.

THE CHAIRMAN. Yes, sir.

MR. SMITH. I am somewhat surprised at the committee omitting this part of the section introduced by Mr. Barbour—this amendment—inasmuch as I have looked over all the new Constitutions of those States that have dealt with this railroad question, and found without exception that they contain this provision, or substantially this provision. And when I consider further that in making railway and canal companies common carriers, that it is only half of the question, I am surprised at this able committee leaving out the other half. Of course, you can't make the roads common carriers, no more than you can make a river a common carrier. You can make the road a public highway and the company a common carrier; you can declare a river or canal a public highway, and the company plying thereon a common carrier. Now this question

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is not a new one by any means. I presume that no lawyer on this floor will deny the fact that it has been established by all the decisions known upon railroads, that they are considered public highways. It has been decided in a recent case in the Supreme Court of the United States, the case mentioned by the gentleman from San Francisco, Mr. Barbour. They are considered public highways—not as common roads, not as canals, not as turnpike roads, not as street railroads, not as streets—but they are considered as improved highways. In this case, the People vs. Kerr, 27 Cal. p. 207, this question is fully defined.

Now it is not presumed that the Legislature will presume to allow men to put on trains and pass each other, or to run them on their own time. The object is to declare them public highways, and we want it in the Constitution, where the Legislature cannot repeal it.

Mr. Church, one of the ablest delegates in the Convention of Illinois, and one of the ablest jurists of that body, makes this declaration on the subject:

"Railway companies, with the extraordinary privileges they have been allowed to enjoy, and the extraordinary powers they have been allowed to exercise, in confiscating private property for private corporations, have been justified by the Courts, only on the principle that railroads are a species of public highways—improved highways, they are called by the Courts—yet the practices have been such that all participation by the public in these highways has been denied, unless they conform themselves entirely to the private regulation of the private corporation; the people, whose property has been condemned, having had no voice in the matter. The public, in their sovereign capacity, as law makers, have been held to have no participation in the regulation of these highways; but practically the roads, and franchises, and extraordinary immunities have been held and controlled by the companies simply as private property.

This proposition is simply declaratory of the limitation of those rights as they have been indicated by the Courts, and justified in the exercise of those great powers over private rights. The proposition does not contemplate any encroachments upon the rights of property; but that under the sovereign power by which the people of the State have the right to subject private property to public uses, this railroad property may be subjected to the public uses as a public highway, under such regulations as shall be prescribed by law, in reference to compensation and use."

MR. HOWARD, of Los Angeles. I would like to inquire if the amendment is open to amendment?

THE CHAIRMAN. Yes, sir.

MR. HOWARD. Then I suggest an amendment, after the word "law," by inserting the words, "securing just compensation to the railway or canal." I shall vote for the amendment of the gentleman from San Francisco with the amendment I have suggested. I am willing to vote for it with this amendment, but I will not without. If we declare that anybody shall have the right to put on a train, it does not follow that they may do it without paying the railroad company. It is not within the power of the Legislature to take away the right of the company to demand just compensation for the use of the road. Now they must be under some police regulation in order to avoid accidents and collisions. This amendment of the gentleman secures a declaration recognizing the right to put cars on the road, and I shall favor it. The late Transportation Commissioners, in their report to the Legislature, say that one of the great means of solving the railroad problem is to permit any one who desires to run his own cars on the railroad, paying, of course, a just compensation therefor.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: When your committee was examining this subject, it was not unanimous in favor of the report adopted. The same amendment now presented by the gentleman from San Francisco, Mr. Barbour, was presented by him to the committee, and it was duly considered by the committee, and rejected. So far as I understand, it was voted down because your committee believed, in considering this matter, that it would be better to assume the middle ground, and go to no such extremes as is proposed by the gentleman. The committee's report commences by asserting that all railroads, canal, and transportation companies shall be common carriers, and subject to legislative control. It was thought by us that, as the highest Courts of the country had declared that these common carriers were subject to legislative control, we would formulate a section making that law permanent, rather than say they are public highways; the first had received judicial interpretation, the latter had not. It is true that in Illinois, and I think in Missouri, railroads are declared to be public highways, but under this section of the Constitutions adopted in those States, nowhere is there any attempt to control railroads to the extent claimed by the gentleman from San Francisco, Mr. Barbour. Again; "transportation companies" was a term put in, as I understand it, for the purpose of reaching those companies referred to by the gentleman, namely, red lines and star lines, which are understood to be companies within companies, organized for special purposes, with exclusive and special privileges, to transport passengers and freight on more favorable terms than outsiders can obtain. We declare these companies, as well as railroad companies, to be subject to legislative control. Now, what does that mean? If it means anything, it means that the Legislature of the State shall have control over all those companies. And that, as I understand it, is what we want to do. It certainly is all that ought to be asked, it is all I am willing to do, and, for one, as far as that section is concerned, I believe it is right as it stands. I do not believe in putting in words that we ourselves do not know the meaning of, or which are of doubtful interpretation. What construction will be placed upon the proposed amendment no one can know.

I do not believe that anybody, outside of the owners of the railroads, contemplates running cars upon any of the railroads in this State; to run them on their own time, under their own direction, regardless of the peculiar business in which the companies are engaged, for the transportation of passengers and freight, would be hazardous in the extreme.

We are aware that there can be but one head to a railroad company. There must be one rule by which its business is done, and one time table. There must be a time for leaving one point, and a time for arriving at another. The business is of such a peculiar character that it must necessarily be under the control of one company and one mind. I do not believe there will ever be any practical solution of the railroad problem by allowing people indiscriminately to place and run cars on other people's railroad tracks. For that reason I do not propose to favor any amendment that will even contemplate the carrying out of that idea. I think we had better strike at the evils in sight, rather than hunt up imaginary evils and attempt to remedy them. The evils that exist let us remedy by means within our power, and which are practicable. There is a section reported by your Committee on Corporations which puts most of these matters in the hands of a commission. That commission will have a large control of this subject. Unless some gentleman can present some better formulated section, conveying the idea found in our report, I shall support the report as made by the committee. I do not say this section cannot be improved by amendment—that none other can be presented worthy of consideration—but, after full examination by your committee, it was believed that this section, as reported, would best convey the views of your committee, and would represent the views of the people and of the Convention on this subject.

MR. SMITH, of Fourth District. Suppose one of these canal companies should sell to an individual; would the law of common carriers apply?

MR. ESTEE. I am not aware of any right at common law to sell a franchise. There is no right of alienation at common law. The right is statutory only. If the gentleman wants to amend the section by inserting the word "individual," all right.

MR. SMITH. A railroad cannot be sold without selling the franchise, and can be in the name of an individual as well as a company. I only mention this as an illustration that there are many matters that are not, could——

MR. ESTEE. Well, if the gentleman will point out what's the matter, and how it will be remedied by inserting the words "public highways," which will not be remedied by the section as it stands, I will support it. If he will refer to one solitary evil that can be covered by the language suggested by him, let the amendment be adopted. I submit, if he will turn back to the part already adopted, he will find that we have adopted a section that expressly provides that the Legislature shall not pass any law permitting the alienation of franchises, except as therein prescribed. I think my young friend is mistaken in his point.

MR. SMITH. I would ask if there can be an alienation of a franchise under the law?

MR. ESTEE. As I stated, it is not permitted at common law. It is done under the statute.

MR. SMITH. Under no circumstances?

MR. ESTEE. I know of no instance where at common law the owners of a franchise can be permitted to alienate the franchise.

MR. SMITH. Section ten reads:

"SEC. 10. The Legislature shall not pass any laws permitting the leasing or alienation of any franchise so as to relieve the franchise or property held thereunder from liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise, or any of its privileges."

I think they can be alienated.

MR. ESTEE. That section does not say that it can be or cannot be alienated. But I say, under the law, as I understand it, franchises are grants from the State, and cannot be sold at common law. They cannot be alienated. The right to sell is statutory.

MR. WATERS. I wish to ask the gentleman a question. Under our statute law to-day, cannot franchises be sold under forced sale—under execution?

MR. ESTEE. If there is any special law on the subject, I do not know of it. This is the common law, and has for years been made the law of this State.

MR. WATERS. I think this gentleman will find it in the Code.

MR. ESTEE. I ask the gentleman this question: Unless otherwise specially prescribed, hasn't it always been the law that franchises cannot be alienated?

MR. WATERS. The Code provides that it can be done by forced sale or execution.

SPEECH OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: As to the point last made, as to the power to alienate a franchise—at common law a franchise is regarded as a matter of trust between the Crown and the grantee, and therefore not subject to alienation—in this State it has been held, over and over again, that any corporate franchise may be sold on execution, and the title passed, and that is the rule in this State now.

MR. ESTEE. Yes, sir; forced sale.

MR. EDGERTON. It can be at forced sale, and of course there are arrangements for consolidation, and all that. Now, as to the question immediately in hand, the amendment of the gentleman from San Francisco, Mr. Barbour, declaring railroads public highways. It is true, sir, that this provision is found in the Constitutions of some other States, and also in the laws of other States. I object to their drawing the Constitution of Pennsylvania on us. Because this provision is found in the Constitution of some other State is no reason why it should be adopted here. I never could understand to what this proposition points, unless it be that these railroads are to be declared highways in the full sense of the word—open to anybody to go on with his steam engine, with his directors' car, with his passenger car, and his freight car, and use the

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road to the exclusion, perhaps, of the proprietor of the road, under regulations, of course, to be provided by law. Now, there is nothing new in this scheme. It is as old as railroad law, almost. At a very early day in the history of railroads in England, where railroads originated, the Duke of Wellington, in one of the first debates of Parliament, stated that it must always be observed that there was an analogy between a railroad and the King's highway, and it is that analogy that has been paraded before us here; and he tells us that upon that false analogy the past superstructure of legislation was reared, which in England was found to be utterly useless, and was in the end repealed. The folly of that legislation is, that the proprietors of a railroad may be separated from the carrier. In England they passed many laws providing rules and regulations by which the proprietor could go with his steam engine and cars over his own road. But the system was found to be a perfect humbug. It was found to work very great injustice, great inconvenience, and resulted in many accidents. As far as this section is concerned, I think the criticisms of the gentleman from Santa Clara are merited. Like a great many other sections, it is drawn in a bungling manner; it is bad English, bad grammar, and worse sense, and is evidence that the schoolmaster was abroad. It ought to be referred to the Committee on Education to be reformed. I hope the amendment will be voted down, and that the amendment of the gentleman from Santa Clara, Mr. Laine, will be adopted.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: The first part of this proposition simply declares that these companies are common carriers. Now, let us see how closely allied common carriers are to highways. It will be admitted by every one that those who run a stage line upon the public road are common carriers. They are not necessarily connected with the road. They are not so fastened to the road as that no distinction can be made. Now, the distinction is a very plain one, and when we say we will control common carriers, we simply mean those carrying upon the road. The two terms, common carriers and public highways, have not necessarily any connection whatever. There is as broad a distinction as there is between the clouds and the earth, as between land and water. There is no necessary connection whatever. Now, let us see if these are public highways. Nonsense. The authorities are full of these propositions, and the power of eminent domain is never exercised except where it is directed to a public use, for the public good, and you cannot call in the great power of the State to assist you in acquiring an absolute right except it is for a public use. Now, what is a public use? Why do you call it a public use? Simply because it is a use to which all your citizens have a common right, upon certain conditions. What are those conditions? Why, simply the payment of the toll to support the public highways, in your business as common carriers.

Now, Cooley—I do not know—he was not much of a railroad lawyer, I guess, but he understood a little about what constitutes a public use and what constitutes public highways. That distinguished author, page 533, says:

"Every government is expected to make provision for the public ways, and for this purpose it may seize and appropriate lands. And as the wants of traffic and travel require facilities beyond those afforded by the common highway, over which any one may pass with his own vehicles, the government may establish the higher grade of highways, upon some of which only its own vehicles can be allowed to run, while others, differently constructed, shall be open to use by all on payment of toll. The common highway is kept in repair by assessments of labor and money; the tolls paid upon turnpikes, or the fares on railroads, are the equivalents to these assessments; and when these improved ways are required by law to be kept open for use by the public impartially, they also may properly be called highways."

How is that? I think it is just precisely what this amendment provides, which we are trying to put into this Constitution. This provision means that they shall not be above the people. We want to declare that it is a public use, as distinguished from a private use. That is what it means. We want to distinguish it from a private use now attempted to be forced upon this Convention by the distinguished and influential chief of the railroad companies in the State of California, who is admitted to be potent. Now, I have given you the distinction between a common carrier and the road upon which he runs his vehicles; the conveyances and the road itself, as contradistinguished. I propose to vote for this amendment, because it simply declares a proposition of law which is as old as the hills and government itself.

MR. EDGERTON. Mr. Chairman: I rise to ask the Chairman of the Committee on Corporations one question. In the last clause, in line five: "Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each other's passengers, tonnage, and cars, loaded or empty." I want to know if "loaded or empty" has reference to the passengers? [Laughter.] Whether the passengers are loaded or empty, or whether it has any particular reference to starting before breakfast?

MR. ESTEE. Does the gentleman wish an answer? The section reads: "All railroads, canal, and transportation companies shall be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each other's passengers, tonnage, and cars, loaded or empty, without delay or discrimination." If the gentleman wants to know whether I consider him loaded or empty—[laughter]—I don't know but that is good grammar.

MR. EDGERTON. If the gentleman will allow me; I move that the whole report be sent to the Committee on Education, to be reformed.

MR. ESTEE. Mr. Chairman: I do not intend, as far as I am concerned, to permit, if I am able to prevent it, any important amendment to this article to be laughed down. I believe it represents the advanced and true ideas of the times, and meets the requirements of the age. If you want to defeat it, defeat it squarely, or help us correct it, if it is wrong. If it is right, stand by your guns and pass it. [Applause.]

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: I do not see any great difficulty about this section of the article on corporations, but I think it would be better in this wise: "All railroads, other than street railroads, and all canal and transportation companies, shall be common carriers and subject to legislative control." I think that is better phraseology, as it confines it entirely to street railroads. "Any association or corporation organized for railroad purposes" (that would be entirely proper) "shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each other's passengers and cars," etc. That would answer the purpose intended by the additional section of the gentleman from Placer. This would remodel the section and confine it to steam railroads. In respect to the amendment of the gentleman from San Francisco, Mr. Barbour, I have this to say, I am not in favor of any experimental provisions in this Constitution. We have declared railroad companies to be common carriers, and that seems to me to be broad enough. I am not in favor of introducing anything into the Constitution which is vague and indefinite, to be construed by the Supreme Court. I want to use the simplest language possible. I do not believe the people would sanction such an innovation as this. I do not think this amendment should be adopted, because we cannot tell what construction may be put upon it. It may seem harmless, and yet when it comes to be construed, we may find that railroad companies have not the right to a reasonable possession and use of their own property.

MR. GREGG. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again.

ADJOURNMENT.

MR. McCALLUM. I move that the Convention do now adjourn.

Carried.

And at five o'clock and fifteen minutes the Convention stood adjourned.

FIFTY-THIRD DAY.

SACRAMENTO, Tuesday, November 19th, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Garvey,	Moffat,
Ayers,	Glascock,	Moreland,
Barbour,	Gorman,	Morse,
Barnes,	Graves,	Nason,
Barry,	Gregg,	Nelson,
Barton,	Hager,	Neunaber,
Beerstecher,	Hale,	O'Donnell,
Belcher,	Hall,	Ohleyer,
Bell,	Harrison,	O'Sullivan,
Blackmer,	Harvey,	Porter,
Boggs,	Heiskell,	Prouty,
Boucher,	Herold,	Pulliam,
Brown,	Herrington,	Reddy,
Burt,	Hilborn,	Reynolds,
Campbell,	Hitchcock,	Rhodes,
Caples,	Holmes,	Ringgold,
Casserly,	Huestis,	Rolfe,
Chapman,	Hughey,	Schell,
Charles,	Hunter,	Schomp,
Condon,	Inman,	Shafter,
Cowden,	Johnson,	Shurtleff,
Cross,	Jones,	Smith, of Santa Clara,
Crouch,	Joyce,	Smith, of 4th District,
Davis,	Kelley,	Smith, of San Francisco,
Dean,	Kleine,	Soule,
Dowling,	Laine,	Stedman,
Doyle,	Lampson,	Steele,
Dudley, of San Joaquin,	Larkin,	Stevenson,
Dudley, of Solano,	Larue,	Strong,
Eagon,	Lavigne,	Sweasey,
Edgerton,	Lewis,	Swing,
Estee,	Lindow,	Thompson,
Estey,	Mansfield,	Tinnin,
Evey,	Martin, of Alameda,	Townsend,
Farrell,	McCallum,	Tully,
Fawcett,	McComas,	Turner,
Filcher,	McConnell,	Tuttle,
Finney,	McCoy,	Vacquerel,
Freeman,	McNutt,	Van Dyke,
Freud,	Mills,	Van Voorhies,

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Walker, of Marin,	Wellin,	Wilson, of 1st District,
Walker, of Tuolumne,	West,	Winans,
Waters,	Wickes,	Wyatt,
Webster,	White,	Mr. President.
Weller,	Wilson, of Tehama,	

ABSENT.

Berry,	Keyes,	Overton,
Biggs,	Martin, of Santa Cruz,	Reed,
Dunlap,	McFarland,	Shoemaker,
Grace,	Miller,	Stuart,
Howard,	Murphy,	Swenson.
Kenny,	Noel,	Terry.

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Dunlap and Keyes.
Leave of absence for two days was granted Mr. Swenson.

THE JOURNAL.

MR. HUESTIS. I move that the reading of the Journal be dispensed with, and the same approved.
Carried.

DEATH OF HON. J. M. STRONG.

MR. JONES. Mr. President: It is my painful duty to inform you, and through you the members of this Convention, of the death of a member of this body. Mr. J. M. Strong, a member of this Convention, representing the Assembly District composed of the Counties of Mariposa and Merced, died while in attendance upon this body this morning, in this city, and I offer these resolutions in respect to that matter, for the consideration of this Convention:

WHEREAS, We have been informed of the death of the Honorable J. M. Strong, a delegate to this Convention from the Counties of Mariposa and Merced; therefore,
Resolved, That it is with a feeling of profound regret that we have heard of the death of Honorable J. M. Strong, a delegate to this Convention from the Counties of Mariposa and Merced.
Resolved, That in his death this Convention has lost an honest, faithful member; society a useful and intelligent citizen, and his family a tender and devoted parent.
Resolved, That in this hour of their deep affliction and grief, we tender to his family our sincere condolence and profound sympathy.
Resolved, That a committee of five be appointed by the Chair to take charge of the remains of the deceased, and to defray the necessary expenses in connection with his funeral out of the funds of this Convention.
Resolved, That the Secretary be directed to forward a copy of these resolutions to the family of the deceased.
Resolved, That this Convention do now adjourn out of respect to the memory of the deceased.

THE PRESIDENT. The question is on the adoption of the resolutions.
The resolutions were adopted unanimously.

THE COMMITTEE.

THE PRESIDENT. The Chair will appoint, as the committee provided for in the resolutions, Messrs. Holmes, of Fresno; Heiskell, of Stanislaus; Lampson, of Tuolumne; Brown, of Tulare; and Jones, of Mariposa.

REMARKS OF MR. CASSERLY.

MR. CASSERLY. I cannot refrain from adding a word in regard to our deceased fellow member. I had at one time a great deal of correspondence with him in respect of his efforts to make the raising of cotton a success in this State. I found him an intelligent, upright, straightforward man. At that time his experiment fell short of success, and I believe carried with it a large part of his fortune. Whether or not the experiment, under the best of circumstances, could have been an entire success, is more than I am able to say; but he manfully and courageously addressed himself to the effort to make it a success. I feel that our young State owes to such as he the tribute of her good will, of her praise, and kindly remembrance.

MR. REYNOLDS. I move to lay over for one day the motion of which I gave notice yesterday to reconsider the resolution on printing the Journal.

THE PRESIDENT. If there be no objection, the gentleman will have leave to make his motion to-morrow.

Pursuant to these resolutions, the Convention stands adjourned until to-morrow at ten o'clock. [10:15 A. M.]

FIFTY-FOURTH DAY.

SACRAMENTO, Wednesday, November 20th, 1878.

At nine o'clock and forty-five minutes A. M., a quorum being present, the President called the Convention to order.

OBSEQUIES OF MR. STRONG.

MR. LARKIN. I desire to offer a resolution.
THE SECRETARY read:

Resolved, That a recess be taken until one o'clock this day, to enable members to participate in the obsequies of the Hon. J. M. Strong.

MR. LARKIN. Mr. President: I desire that this resolution may pass, so that this Convention will pay due respect to the memory of a deceased member; that we shall march in a body down to the depot and see the body on the cars. I hope there will be no objection.

MR. WEST. I second the resolution.
Adopted, unanimously.

THE PRESIDENT. The Convention will take a recess, according to the resolution, until one o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at one o'clock P. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hall,	Pulliam,
Ayers,	Harrison,	Reddy,
Barbour,	Harvey,	Reed,
Barnes,	Herold,	Reynolds,
Barry,	Herrington,	Rhodes,
Barton,	Hilborn,	Ringgold,
Beerstecher,	Hitchcock,	Rolfe,
Belcher,	Holmes,	Schell,
Bell,	Howard,	Schomp,
Biggs,	Huestis,	Shafter,
Blackmer,	Hughey,	Shoemaker,
Boggs,	Hunter,	Shurtleff,
Boucher,	Inman,	Smith, of Santa Clara,
Burt,	Johnson,	Smith, of 4th District,
Campbell,	Jones,	Smith, of San Francisco,
Caples,	Joyce,	Soule,
Casserly,	Kelley,	Stedman,
Chapman,	Kleine,	Steele,
Charles,	Laine,	Stevenson,
Condon,	Lampson,	Strong,
Cross,	Larkin,	Sweasey,
Crouch,	Larue,	Swenson,
Davis,	Lavigne,	Swing,
Dean,	Lewis,	Terry,
Dowling,	Lindow,	Thompson,
Doyle,	Mansfield,	Tinnin,
Dudley, of San Joaquin,	Martin, of Alameda,	Townsend,
Dudley, of Solano,	Martin, of Santa Cruz,	Tully,
Dunlap,	McCallum,	Turner,
Eagon,	McComas,	Tuttle,
Edgerton,	McConnell,	Vacquerel,
Estee,	McCoy,	Van Dyke,
Estey,	McFarland,	Van Voorhies,
Evey,	McNutt,	Walker, of Marin,
Farrell,	Mills,	Walker, of Tuolumne,
Fawcett,	Moffat,	Waters,
Filcher,	Moreland,	Webster,
Finney,	Morse,	Weller,
Freeman,	Murphy,	Wellin,
Freud,	Nason,	West,
Garvey,	Nelson,	White,
Glascock,	Neunaber,	Wickes,
Gorman,	O'Donnell,	Wilson, of Tehama,
Grace,	Ohleyer,	Wilson, of 1st District,
Graves,	O'Sullivan,	Winans,
Gregg,	Overton,	Wyatt,
Hager,	Porter,	Mr. President.
Hale,	Prouty,	

ABSENT.

Berry,	Heiskell,	Miller,
Brown,	Kenny,	Noel,
Cowden,	Keyes,	Stuart.

THE JOURNAL.

MR. FREUD. I move that the reading of the Journal be dispensed with and the same approved.
Carried.

PETITION.

MR. BEERSTECHER presented the following petition, signed by a large number of mechanics, material men, and laborers of San Francisco:

To the President and Members of the Constitutional Convention:

GENTLEMEN: The undersigned respectfully represent that the practical working of the present legislation, and decisions of Supreme Court based thereon, regarding the rights of mechanics, material-men and laborers to a lien for their labor and material furnished, is such that those who in a measure depend upon such law for just protection fail in nearly all cases to obtain it, because of the inefficient working of said law.

Wherefore, we pray you to declare in our organic law the right of every mechanic, material-man, and laborer to a perfect lien on the thing whereon his labor has been expended, or for which his materials have been furnished

Moreover, we would state that we would be satisfied with amendment number one hundred and sixty-seven, introduced by Mr. Van Dyke, on October tenth, eighteen hundred and seventy-eight, and read and referred to Committee on Miscellaneous Subjects, as follows:

"SECTION —. Mechanics, material-men, artisans, and laborers of every class shall have a lien upon the property on which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished, and the Legislature shall provide by law for the speedy and efficient enforcement of said liens."

And your petitioners will ever pray.

Referred to the Committee on Legislative Department.

REPORT ON CORPORATIONS.

MR. ESTEE presented the following report from the Committee on Corporations other than Municipal:

SACRAMENTO, November 19th, 1878.

MR. PRESIDENT: Your Committee on Corporations other than Municipal, to whom were referred several amendments to sections twelve and thirteen of the article on corporations, reported by the committee, beg leave to report that they have considered the same, and recommend the adoption of the following as a substitute for pending amendments:

Add to section twelve: "Except that members of coöperative societies formed for agricultural, mercantile, and manufacturing purposes, may vote on all questions affecting such societies in manner prescribed by law."

The committee recommend that no alteration be made in section thirteen, as reported by the committee, and which reads as follows:

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SEC 13. The State shall not subscribe to or be interested in the stock of, or in any manner loan its credit to, any person, company, association, or corporation.

M. M. ESTEE, Chairman.

MR. ESTEE. I move that it lay on the table and be printed.

Carried.

THE STATE UNIVERSITY.

MR. WINANS. Mr. President: This Convention some time since passed a resolution calling upon the President and Secretary of the Board of Regents of the University of the State of California to furnish to the Convention a statement in brief of its financial condition, the nature of its funds, etc. The President of the Board of Regents, who is the Governor of the State, could not, of course, comply with that requirement, because he is located in this city and the work was required to be transacted in Berkeley, but the Secretary of the Board of Regents and the President de facto, did prepare and have presented to this body a report, in which the matter involved was exceedingly voluminous and the work very complicated and extensive. It has been discharged with extraordinary expedition, and the report has been ordered printed. It requires, in order to present the subject-matter more clearly to this body, that it should be separated into the different funds. The funds should be presented as separate funds, and the Secretary of the Board of Regents is now here and with the permission of this body can in a short time so arrange the matter now in the printers hands as to present a clear and distinct view of the subject, in that way, by segregating the funds. The Committee on Education, by a unanimous vote last night, instructed me to present to this body the following resolution: "*Resolved*, that the Secretary of the Board of Regents of the University be authorized to arrange the report of the financial affairs of that institution, hitherto presented to this Convention, and now in the hands of the printer, so as to segregate the several funds therein set forth; and also to add to said report, to be printed therewith, the separate report of the President of said University respecting the donations thereto."

The President also sends up a separate report, in which he specifies all the donations which have been made to the University that have already been completed. There are several donations the moneys from which have not been received, but are in due course of transmission to the University. The President's report is indispensable to a full understanding of the other, and our committee requests the passage of this resolution, that the tabulated statement now presented and in the hands of the State Printer, may be so arranged and classified as that it will show the condition of the University funds in the clearest manner; and in order that the President's report as to the donations that have been made to the University may be superadded to the report of the Secretary. I therefore offer that resolution.

THE SECRETARY read:

Resolved, That the Secretary of the Board of Regents of the University be authorized to arrange the report of the financial affairs of that institution, hitherto presented to this Convention, and now in the hands of the printer, so as to segregate the several funds therein set forth; and also add to said report, to be printed therewith, the separate report of the President of said University respecting the donations thereto.

Adopted.

MR. WINANS. Mr. President: The Committee on Education also instructed me to present the following resolution:

Resolved, That the letter of E. W. Hilgard, Agricultural Professor of the University of California, respecting the condition and future prospects of the Agricultural Department of the University, submitted to the Committee on Education, be printed, and copies thereof furnished to the members of this Convention.

The object of that resolution is this: One of the members of the Committee on Education corresponded with the Agricultural Professor of the University, and has received a letter from the Professor, in which he fully sets forth the character and future prospects of the Agricultural Department. It contains valuable information for the use of this Convention, and will correct errors and misapprehensions which now exist. It is therefore asked that this letter be authorized to be printed. It will not consume much time, or involve much expense to have it printed.

THE SECRETARY read:

Resolved, That the letter of E. W. Hilgard, Agricultural Professor of the University of California, respecting the condition and future prospects of the Agricultural Department of the University, submitted to the Committee on Education, be printed, and copies thereof furnished to the members of this Convention.

Adopted.

[The reports and letter alluded to above are printed in the proceedings of November sixteenth, as finally printed for the use of the Convention—REPORTERS.]

ESCHEAT TO THE STATE.

MR. SMITH, of Santa Clara, presented the following proposed amendment to the Constitution, relative to property escheating to the State:

First—No person other than citizens of the United States, and those who are eligible to become such citizens, shall hereafter in this State acquire any estate in lands. And all real property acquired in violation of this provision shall escheat to the State.

Second.—Within the jurisdiction of this State, all lands, the title to which shall fail from a defect of heirs, shall escheat to the State.

Referred to the Committee on Lands and Homestead Exemptions.

MECHANICS' LIENS.

MR. CROUCH presented the following petition, signed by a large number of mechanics, citizens of California:

To the President and Members of the Constitutional Convention:

GENTLEMEN: The undersigned respectfully represent that the practical working of the present legislation, and decisions of Supreme Court based thereon, regarding the rights of mechanics, material-men, and laborers to a lien for their labor and material furnished, is such that those who in a measure depend upon such law for just protection fail in nearly all cases to obtain it, because of the inefficient working of said law.

Wherefore, we pray you to declare, in our organic law, the right of every mechanic, material-man, and laborer to a perfect lien on the thing whereon his labor has been expended or for which his materials have been furnished.

Moreover, we would state that we would be satisfied with amendment number one hundred and sixty-seven, introduced by Mr. Van Dyke, on October tenth, eighteen hundred and seventy-eight, and read and referred to Committee on Miscellaneous Subjects, as follows:

"SEC. —. Mechanics, material-men, artisans, and laborers of every class shall have a lien upon the property on which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished, and the Legislature shall provide by law for the speedy and efficient enforcement of said liens."

And your petitioners will ever pray.

Referred to the Committee on Miscellaneous Subjects.

MOTION TO AMEND RULE.

MR. INMAN. Mr. President: I wish to bring up my motion to amend Rule Fifty-six.

THE SECRETARY read:

"Amend Rule Fifty-six as follows: Strike out, in lines two and three, the words, 'for limiting the times of speaking,' and insert, 'that no member shall speak more than ten minutes on any one proposition without leave of the Convention.'"

MR. BEERSTECHER. I move that it be laid on the table.

MR. INMAN. I will call for the ayes and noes.

The ayes and noes were also demanded by Messrs. Hunter, Dean, Smith of Santa Clara, and Ohleyer.

The roll was called, and the motion lost by the following vote:

AYES.

Ayers,	Gorman,	Schell,
Barbour,	Grace,	Shurtleff,
Barry,	Hale,	Smith, of San Francisco,
Barton,	Herrington,	Stevenson,
Beerstecher,	Hilborn,	Sweasey,
Belcher,	Howard,	Swenson,
Bell,	Hughey,	Terry,
Blackmer,	Johnson,	Thompson,
Boucher,	Joyce,	Townsend,
Casserly,	Kleine,	Vacquerel,
Charles,	Lindow,	Walker, of Tuolumne,
Condon,	Martin, of Santa Cruz,	Wickes,
Doyle,	McComas,	White,
Dudley, of San Joaquin,	McConnell,	Wilson, of Tehama,
Eagon,	Nelson,	Wilson, of 1st District,
Estee,	O'Donnell,	Winans,
Fawcett,	O'Sullivan,	Wyatt,
Freud,	Reddy,	Mr. President—58.
Garvey,	Reynolds,	
Glascock,	Ringgold,	

NOES.

Andrews,	Inman,	Reed,
Boggs,	Jones,	Rolfe,
Burt,	Kelley,	Schomp,
Campbell,	Laine,	Shafter,
Cross,	Lampson,	Shoemaker,
Crouch,	Larkin,	Smith, of Santa Clara,
Davis,	Larue,	Smith, of 4th District,
Dean,	Lavigne,	Soule,
Dowling,	Lewis,	Stedman,
Dudley, of Solano,	Mansfield,	Steele,
Dunlap,	Martin, of Alameda,	Swing,
Edgerton,	McCallum,	Tinnin,
Estey,	McCoy,	Tully,
Evey,	Mills,	Turner,
Farrell,	Moffat,	Tuttle,
Finney,	Moreland,	Van Dyke,
Graves,	Morse,	VanVoorhies,
Gregg,	Murphy,	Walker, of Marin,
Hager,	Nason,	Waters,
Hall,	Neunaber,	Webster,
Harvey,	Ohleyer,	Weller,
Herold,	Overton,	Wellin,
Hitchcock,	Porter,	West—73.
Huestis,	Prouty,	
Hunter,	Pulliam,	

MR. SMITH, of Fourth District. Mr. President: I move to amend by striking out "ten" and inserting the word "fifteen" before the word "minutes."

MR. BEERSTECHER. Mr. President: I hope that any proposition concerning the limiting of speeches upon the subject of corporations, or any other subject that we are about to enter into at this time, will be voted down. Mr. President, I am thoroughly satisfied in my own mind that the object of passing a resolution of this kind at this particular time is to stifle debate upon the subject of corporations. I for one do not propose to vote for any proposition to choke off any one, or for the purpose of stifling debate upon this important subject. We are now considering the subject of corporations. We have finished with corporations generally, and are now entering upon the subject of railroads. Now, at this particular juncture comes the proposition to limit the time of speeches to ten minutes. Just as soon as we reach the subject of railroads—a subject that interests every producer and every working man in the State of California—this motion is made. And not only that. The next subject will be the Chinese question, and then will come taxation and the legislative department. The debates, if debates are to be had at all, ought to be had in the Committee of the Whole, and if there is to be a limit the limit ought to be in the Convention. I am willing to limit debate in the Convention, but I never will place myself upon record as voting to limit debate in Committee of the Whole.

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It seems to me a very significant fact that this motion for a ten-minute limit has not been broached at all until we have reached the subject of railroads. I think the subject of railroads ought to be thoroughly discussed, as well as the subjects of Chinese and taxation. I propose to vote against any amendment of this character which will stifle and cut off debate upon these important subjects. It has not been done in any Convention heretofore, it is unparliamentary, and it is out of place at this time.

MR. INMAN. Mr. President: I am the author of that amendment, and I introduced it simply to shut off such long-winded speeches that we generally have from the gentleman who has just taken his seat. Now, Mr. President, I am just as far from being in the interest of corporations as the gentleman is, and my votes will show it. We have spent some fifty days here and done nothing; ten minutes is as long as any gentleman need take to express his views as a general thing. But my amendment says, "without leave of the Convention." I presume that this Convention will grant any gentleman they desire to hear all the time he wants. I am satisfied that they will. But let them all take their own time and we will not get through here until the end of time. I am very anxious to see exactly who are the friends of the people and who are not. My vote will be my record. My vote shall agree with my talking and with my past history, and I refer the gentleman to that to satisfy him as to whether I wear a collar or not. I do not wear any. If he does I am only sorry for him. In regard to the amendment, I think five minutes would be better than fifteen. I am satisfied of that. We do not want these long speeches, Mr. President.

MR. HOWARD. Mr. President: I move that the Convention resolve itself into Committee of the Whole on the article before the house.

MR. BEERSTECHER. I want the ayes and noes on this question.

MR. HERRINGTON. Ayes and noes.

MR. GRACE. Ayes and noes.

MR. O'DONNELL. Ayes and noes.

MR. O'SULLIVAN. Ayes and noes.

MR. HAGER. Mr. President: I am inclined to favor the proposition about short speeches. One of my colleagues has said that it was unprecedented. I think he is mistaken in that regard. In the Constitutional Convention of Illinois the limit was ten minutes. In the Constitutional Convention of Pennsylvania the limit was twenty minutes. But what I object to most is the rule we have adopted, an erroneous rule I think, in regard to calling the previous question in Committee of the Whole. That cuts off not only debate, but is worse than that, it cuts off any amendment that a member may wish to offer. I would much prefer to cut off these long speeches than to cut off the privilege of amending a proposition. But if we have the rule that we have adopted, and call the previous question in Committee of the Whole, and then shut off debate by a ten-minute rule, I think we should be brought up with a very short turn. I have been against calling the previous question in Committee of the Whole. It is unprecedented in any legislative or deliberative body. It not only cuts off debate but it stops any amendment that any gentlemen may wish to offer. I think it will perhaps be a valuable rule if we limit the debate to ten minutes, and I would favor that, but I would recommend the Convention to rescind the other rule about cutting off debate in Committee of the Whole by calling the previous question. I would not object to a rule that would allow the committee to lay any amendment on the table without debate for the purpose of bringing that matter to an end. That is, that any amendment might be laid on the table without laying the whole subject-matter on the table. In that way we could expedite matters very much. If we could get our rules in that shape we could lay any objectionable amendment on the table, and then act upon some other amendment. If there is anything worth discussing in it we can discuss it, if not we can lay it on the table. But this previous question business sometimes cuts off a very important proposition which some gentleman wishes to offer, and which the Convention would adopt if an opportunity was offered.

MR. TINNIN. Mr. President: I wish to state to the gentleman that I propose to offer this as an amendment to the rule: "Provided, that when the previous question is sustained it shall only apply to the amendments then pending, and other amendments may be offered to the section." That will cover all the defects objected to by the gentleman who has just spoken.

MR. LINDOW. Mr. President: I voted "aye," myself. If this Convention thinks I want to make big speeches—they know I don't speak at all. I am glad that the big speeches always comes from the big side of the house, and I have seen gentlemen make speeches a day and a half. I am glad to have the debates. It is worth the time. If a gentleman will stay here and talk three days, I never will break him off, so that I can understand what it is about. I have seen there last week that it was discussed from the other side of the house—there was just where I was glad about that. If it was from the other side of the house they ought to vote it down. It was discussed over two days from the other side of the house; and I always will vote for it to give a man as long as possible. Let him speak, so long as he speaks to the point. You have to speak at the point. No, sir; so long as I can see it is good for the people at large I will vote for it. I am not in favor of fifteen minutes. Give him all the time he wants; then you will all be enlightened. [Laughter.]

MR. TULLY. I hope the amendment will be adopted.

THE PRESIDENT. The question is on the amendment to the amendment.

MR. TULLY. Mr. President: I hope the ten-minute rule will be adopted, for this reason: I will state that I am very fond of listening to fine speeches, but I am satisfied that if the debates go on as at present, that the Convention will not get out of Committee of the Whole in the hundred days. I am satisfied of another proposition: that any ordinary man can tell all he knows on any subject in this Convention in ten minutes. If my friend Beerstecher cannot do it, I advise him to go out and rent a hall, and we will all come and listen to him.

MR. WEST. Mr. President: I hope that the amendment to the amendment will be voted down, and that the amendment, as offered will be adopted. I believe it to be economy. I believe every man can explain his vote, and the reasons for his thus voting, in ten minutes. I believe that it is time that we should economize time.

MR. GRACE. Mr. President: I move the previous question.

MR. BOUCHER. I second the motion.

MR. VACQUEREL. I second the motion.

MR. BEERSTECHER. I call for the ayes and noes.

MR. TINNIN. I desire to offer my amendment.

MR. GRACE. I am in hopes that all the amendments will be voted down.

THE PRESIDENT. The question is not debatable. Shall the main question be now ordered?

The main question was ordered.

MR. BEERSTECHER. I call for the ayes and noes.

THE PRESIDENT. The ayes and noes have been demanded already. The main question has been ordered. The first question is on the amendment offered by the gentleman from Kern, Mr. Smith.

The roll was called, and the amendment rejected by the following vote:

AYES.

Ayers,	Herrington,	Smith, of 4th District,
Barbour,	Hilborn,	Smith, of San Francisco,
Barnes,	Howard,	Soule,
Barry,	Johnson,	Stedman,
Belcher,	Joyce,	Stevenson,
Bell,	Kleine,	Terry,
Caples,	Laine,	Townsend,
Casserly,	Larkin,	Van Voorhies,
Charles,	McComas,	Walker, of Marin,
Cross,	McCoy,	Weller,
Dean,	Moffat,	Wellin,
Dowling,	Murphy,	White,
Dudley, of Solano,	O'Donnell,	Wickes,
Eagon,	Ohleyer,	Wilson, of 1st District,
Freeman,	Reed,	Wyatt,
Gorman,	Reynolds,	Mr. President—50.
Hale,	Shurtleff,	

NOES.

Andrews,	Hall,	Porter,
Barton,	Harrison,	Prouty,
Beerstecher,	Harvey,	Pulliam,
Blackmer,	Herold,	Reddy,
Boggs,	Hitchcock,	Ringgold,
Boucher,	Heustis,	Rolfe,
Burt,	Hughey,	Schell,
Campbell,	Hunter,	Schomp,
Condon,	Inman,	Shafter,
Crouch,	Jones,	Shoemaker,
Davis,	Kelley,	Smith, of Santa Clara,
Doyle,	Lampson,	Steele,
Dudley, of San Joaquin,	Larue,	Sweasey,
Dunlap,	Lavigne,	Swenson,
Edgerton,	Lewis,	Swing,
Estee,	Lindow,	Thompson,
Estey,	Mansfield,	Tinnin,
Evey,	Martin, of Santa Cruz,	Tully,
Farrell,	McCallum,	Turner,
Fawcett,	McConnell,	Tuttle,
Filcher,	Mills,	Vacquerel,
Finney,	Moreland,	Van Dyke,
Freud,	Morse,	Walker, of Tuolumne,
Garvey,	Nason,	Waters,
Glascock,	Nelson,	Webster,
Grace,	Neunaber,	West,
Graves,	O'Sullivan,	Wilson, of Tehama,
Gregg,	Overton,	Winans—85.
Hager,		

THE PRESIDENT. The question recurs on the amendment offered by the gentleman from Alameda, Mr. Inman, to strike out, in lines two and three, the words, "for limiting the times of speaking," and insert "that no member shall speak more than ten minutes on any one proposition without leave of the Convention."

The ayes and noes were demanded by Messrs. Beerstecher, White, Grace, O'Donnell, and Lindow.

The roll was called, and the amendment to the rule was lost by the following vote:

AYES.

Andrews,	Filcher,	Laine,
Barry,	Finney,	Lampson,
Boggs,	Freeman,	Larkin,
Burt,	Gorman,	Larue,
Campbell,	Graves,	Lewis,
Chapman,	Hager,	Mansfield,
Cross,	Hall,	McCallum,
Crouch,	Harvey,	McComas,
Davis,	Herold,	Mills,
Dean,	Hitchcock,	Moreland,
Dudley, of Solano,	Hunter,	Morse,
Dunlap,	Inman,	Murphy,
Estey,	Jones,	Nason,
Evey,	Kelley,	O'Donnell,

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Ohleyer, Soule, Van Dyke,
Porter, Stedman, Van Voorhies,
Prouty, Steele, Walker, of Marin,
Pulliam, Swing, Waters,
Rolfe, Thompson, Webster,
Schomp, Tinnin, Weller,
Shafter, Tully, West,
Shoemaker, Tuttle, Wilson, of Tehama—67.
Smith, of Santa Clara,

NOES.

Ayers, Grace, Reed,
Barbour, Gregg, Reynolds,
Barnes, Hale, Rhodes,
Barton, Harrison, Ringgold,
Beerstecher, Herrington, Schell,
Belcher, Hilborn, Shurtleff,
Bell, Howard, Smith, of 4th District,
Blackmer, Huestis, Smith, of San Francisco,
Boucher, Hughey, Stevenson,
Caples, Johnson, Sweasey,
Casserly, Joyce, Swenson,
Charles, Kleine, Terry,
Condon, Lavigne, Townsend,
Dowling, Lindow, Turner,
Doyle, Martin, of Santa Cruz, Vacquerel,
Dudley, of San Joaquin, McConnell, Walker, of Tuolumne,
Eagon, McCoy, Wellin,
Edgerton, Moffat, White,
Estee, Nelson, Wickes,
Farrell, Neunaber, Wilson, of 1st District,
Fawcett, O'Sullivan, Winans,
Freud, Overton, Wyatt,
Garvey, Reddy, Mr. President—70.
Glascock,

NOTICE.

MR. TINNIN. I desire to give notice of an amendment to Rule Fifty six.

THE SECRETARY read:

"*Provided*, That when the previous question is sustained, it shall only apply to the amendments then pending, and other amendments may be offered to the section."

Laid over for one day under the rule.

ELIGIBILITY TO OFFICE.

MR. HUESTIS. I have a resolution to refer.

THE SECRETARY read:

Resolved, That the Committee on Miscellaneous Subjects be instructed to report to the Convention a section providing, in effect, that members of this Convention shall not be eligible to any office under the Constitution, at the first general election after its adoption.

MR. HUESTIS. Mr. President: I believe that the adoption of that resolution will have a salutary effect upon this body, and I call for the ayes and noes.

MR. BEERSTECHER. Mr. President: I move to lay the resolution on the table, and I call for the ayes and noes.

The ayes and noes were demanded by Messrs. Fawcett, Huestis, Tully, West, and Condon.

MR. EDGERTON. Mr. President: I move to strike out the words "at the first general election after its adoption."

MR. BEERSTECHER. With the consent of the house I withdraw my motion to lay on the table.

MR. EDGERTON. I move to amend by striking out the words, "at the next general election," so that no gentleman in this Convention will ever be eligible to any other office. [Laughter.]

MR. FAWCETT. I call for the ayes and noes.

The ayes and noes were demanded by Messrs Huestis, Overton, Hitchcock, Casserly, and Grace.

MR. REYNOLDS. I move to insert in the place of the words "stricken out," by the amendment of the gentleman from Sacramento, the word "forever."

MR. BEERSTECHER. I second that motion.

THE PRESIDENT. It is the same amendment as that already pending.

MR. BARNES. Mr. President: I do not believe that this suggestion is at all necessary. [Laughter.] My own opinion being that if we don't behave better than we have been behaving up to this time, that it will be enough to finish the political or personal career of any man to say that he was a member of this concern. I move that we lay this whole subject on the table and proceed to business. We have had fun enough.

THE PRESIDENT. The question is on the motion of the gentleman from San Francisco, to lay the whole subject-matter on the table.

The ayes and noes were demanded by Messrs. Fawcett, Huestis, Winans, Casserly, and Condon.

The roll was called, and the motion prevailed by the following vote:

AYES.

Andrews, Caples, Estey,
Ayers, Chapman, Evey,
Barnes, Charles, Filcher,
Barry, Crouch, Freeman,
Barton, Dean, Freud,
Beerstecher, Dowling, Glascock,
Blackmer, Dudley, of San Joaquin, Gorman,
Boucher, Dudley, of Solano, Graves,
Burt, Eagon, Hale,
Campbell, Edgerton, Harrison,
Harvey, Morse, Stedman,
Herold, Nason, Steele,
Herrington, Neunaber, Stevenson,
Hunter, O'Donnell, Sweasey,
Johnson, Ohleyer, Terry,
Kleine, O'Sullivan, Tinnin,
Lampson, Porter, Turner,
Lavigne, Reed, Tuttle,
Lewis, Reynolds, Van Dyke,
Lindow, Rhodes, Walker, of Marin,
Martin, of Santa Cruz, Rolfe, Walker, of Tuolumne,
McCallum, Schell, Wellin,
McConnell, Schomp, Wickes,
McCoy, Shafter, Wyatt,
Mills, Shurtleff, Mr. President—75.

NOES.

Barbour, Hitchcock, Ringgold,
Belcher, Howard, Shoemaker,
Bell, Huestis, Smith, of Santa Clara,
Boggs, Hughey, Smith, of 4th District,
Casserly, Inman, Smith, of San Francisco,
Condon, Jones, Soule,
Cowden, Joyce, Swenson,
Cross, Kelley, Swing,
Davis, Laine, Thompson,
Doyle, Larkin, Townsend,
Dunlap, Larue, Tully,
Estee, Mansfield, Vacquerel,
Farrell, McComas, Van Voorhies,
Fawcett, Moffat, Waters,
Finney, Moreland, Webster,
Garvey, Murphy, Weller,
Grace, Nelson, West,
Gregg, Overton, White,
Hager, Prouty, Wilson, of 1st District,
Hall, Pulliam, Winans—64.
Hilborn, Reddy,

PRINTING THE JOURNAL.

MR. REYNOLDS. Mr. President: Pursuant to notice given at the last session, I now move to reconsider the vote by which the resolution for printing the Journal was indefinitely postponed. I do not wish to consume the time of the Convention with any remarks upon this question at all. [Cries of "louder."] I do not care to consume the time of the Convention with any remarks concerning this resolution, neither have I any personal interest in the matter one way or the other, any further than to extricate the Convention from the absurd position in which it now is on this question of printing the Journal. When the resolution was before the Convention before, I explained fully the situation. The Convention was not then so full as it is now, and I will just say a word or two in regard to it. This resolution which I now seek to reconsider is a resolution explaining and giving effect to a former motion to print the Journal. The Convention supposed it had ordered the Journal printed. The printing office also supposed it had, and has gone forward and printed the Journal from that time until this. Now there seems to be some doubt about the legal effect of the motion, and this resolution seeks to remedy that defect. The motion was intended to order the copies printed for binding, and the slips to be laid on our desks. The printing office has done that, and incurred the expense, and we now wish to state distinctly what we mean. We are not going to incur another dollar's expense by this motion, whether it is passed or not. Now in regard to the figures. I understand that the gentleman from Placer has been to the printing office and ascertained exactly what the figures are and what they will be when we have completed the work that is designed by the resolution. I think the Convention wishes and intends to deal honestly and fairly with the printing office, and not get into any absurd position on this matter. I would like to hear from the gentleman from Placer.

MR. HOWARD. Mr. President: Is it in order to move to go into Committee of the Whole?

THE PRESIDENT. There's a question already pending.

MR. HOWARD. I move to lay the motion on the table.

The motion prevailed, on a division, by a vote of 50 ayes to 46 noes.

CORPORATIONS.

MR. HOWARD. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, to further consider the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The pending amendments are to section fifteen of the report of the committee, now numbered section seventeen. The Secretary will read the amendment offered by Mr. Barbour.

THE SECRETARY read:

"Amend by inserting after the word 'control,' in line two, the following: 'Railways and navigable canals heretofore constructed or which may hereafter be constructed in this State, are hereby declared to be highways, and shall be free to all persons for the transportation of persons and property thereon, under such regulations as may be prescribed by law."

THE CHAIRMAN. The gentleman from Los Angeles, Mr. Howard, moves to amend the amendment by inserting after the word "law," the words, "securing just compensation to the railway or canal." The question is on the amendment to the amendment.

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SPEECH OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: This amendment is certainly one of very great importance. The first objection that I have to it is the ambiguity of the term "public highways." The author of the amendment, the gentleman from San Francisco, a lawyer of well known and recognized ability, has put his construction upon it, and I presume that his construction is a correct one. He states to the committee that his interpretation is, that it would place railways upon the same footing as toll roads—wagon toll roads. That is, that everybody may go upon it and run their engines, their locomotives, their cars, and carry freight on their own account or the account of others.

Now, as I remarked, the term "public highways" is an ambiguous term, and is susceptible of two constructions; but inasmuch as the gentleman from San Francisco has put his own construction upon it, it is fair that we should argue from his own terms. Now, I venture the assertion, Mr. Chairman, that, taking that construction, that the scheme is wholly and utterly and entirely impracticable—that to run a railroad upon that basis would be a moral impossibility. Let us suppose, for instance, half a dozen individuals, or a dozen individuals, or companies, construct their trains and put them upon this road. Who is to regulate the time? Who is to be responsible for the accidents, for the collisions, for the confusion worse confounded that would result, certainly, inevitably, and unavoidably?

Now, Mr. Chairman, we hold railroads responsible for the damage to persons and property by accidents or collisions. From whatever cause, we hold them responsible. Now let us suppose this state of things inaugurated—a road that is regulated by nobody, or by everybody. It has been said that what is everybody's business is nobody's business. Who would regulate the time? Who would be responsible for the accidents that would occur by collisions, and the various accidents that would occur from the inevitable confusion that would attend the running of the road? I hold that the practical common sense of every man will show him that the scheme is utterly impracticable. It is true that many State Constitutions have adopted this very phraseology, but we are not informed yet as to what construction, if any, the Courts have put upon that term. But I will venture the assertion that the theory has never been carried out practically in any State, no matter what construction is put upon it by the Courts—that it is impossible to do it.

Then there is another aspect of the question that is important. The right to do this thing. The committee have adopted section fourteen of the Bill of Rights, that declares: "Private property shall not be taken for public use without just compensation having been first made to or paid into Court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money or ascertained and paid into Court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury in a Court of record, as shall be prescribed by law."

Now, Mr. Chairman, before we can take private property for public use, or for private use, or for any other use, we have got to do one of two things. We have got to confiscate that property or condemn it. What this proposition may mean to do is open to discussion. It is not exactly confiscation, because it provides that it shall be regulated by law. Law does not contemplate confiscation. And the amendment looks towards a certain kind of compensation to be made to the railroad company. Therefore we cannot call it confiscation. Neither, on the other hand, can we call it condemnation, because the right of the State, by virtue of its power of eminent domain, is recognized, not only by the Constitution and the statutory law, but by the law of universal application, as a judicial proceeding. Yet we are told by the gentleman from San Francisco that under this amendment anybody or everybody may put a train upon the railroad, and that there should be certain compensation provided. This would imply the necessity of a specific act of condemnation for every train that would be put upon that road. And I would just suggest in this connection again that the exercise of the right of eminent domain is a judicial proceeding, therefore we must institute a judicial proceeding every time that a railroad train is put upon that road. This, of course, is an absurdity. It may be argued by gentlemen that there may be one specific act of condemnation by the legislative power that will provide for condemnation for all, but I hold that that is wholly inadequate, for the reason that this is not the mode prescribed by law for the condemnation of property under the State's right of eminent domain. That would be a judicial proceeding and would not come within the purview of the laws of the case as recognized by the laws of all civilized countries. Now I desire to read from Cooley on Constitutional Limitations something pertinent to the subject under discussion. He says:

"The definition given of the right of eminent domain implies that the purpose for which it may be exercised must not be a mere private purpose; and it is conceded on all hands that the Legislature has no power, in any case, to take the property of one individual and pass it over to another without reference to some use to which it is to be applied for the public benefit. The right of eminent domain, it has been said, does not imply a right in the sovereign power to take the property of one citizen and transfer it to another, even for full compensation, where the public interest will be in no way promoted by such transfer. It seems not to be allowable, therefore, to authorize private roads to be laid out across the lands of unwilling parties by an exercise of this right. The easement in such a case would be the property of him for whom it was established; and although the owner would not be deprived of the fee in the land, the beneficial use and exclusive enjoyment of his property would, in greater or less degree, be interfered with. Nor would it be material to inquire what quantum of interest would pass from him. It would be sufficient that some interest, the appropriation of which detracted from his right and authority, and interfered with his exclusive possession as owner, had been taken against his will; and if taken for a purely private purpose, it would be unlawful."

Now, in this connection, I desire to suggest to the committee the fact that a practical application of the rule as laid down in the amendment would be, in my judgment, not a public use, but a private use, for the very good and sufficient reason that the public could not, in the very nature of things, avail themselves of the privilege. Here is a farmer who may be well off. He may be worth twenty-five thousand dollars, or fifty thousand dollars. Can he construct a railroad train and put it on that road? Certainly not. He could not do it. The most that could be done would be to enable competing companies to construct trains and put them upon the road and run in opposition to the road itself; that is, the owners of the road. Therefore, I hold that it would be a private and not a public use. It is true, it may be said, that it would cheapen freights by competition; but in this connection it may be said that we have proposed and do propose to establish by law a tariff of freights and fares. Should we not be satisfied with our own action, after having established a rate of tariff for freights and fares? Should we not be satisfied with our own work? Should we go farther and ask to still further cheapen freights by authorizing a competition in this mode and manner?

Now, Mr. Chairman, the theory upon which this amendment proceeds is, in my judgment, directly in violation of the law governing the exercise of the right of eminent domain. The mode ignores the judicial proceeding. It assumes that the Legislature may prescribe regulations. That is not condemnation under any law in existence; because, as I will read from Cooley on Constitutional Limitations, it is purely and essentially a judicial proceeding. Besides, considering the matter from a pure, equitable, and just standpoint, it would be an outrage, and it would be a destruction of the party's right. It would be taking from one man and giving to another, to proceed upon any other basis except through condemnation by a judicial proceeding. Cooley on Constitutional Limitations, page five hundred and sixty-one, says:

"Where, however, the property is not taken by the State, or by a municipality, but by a private corporation which, though for this purpose to be regarded as a public agent, appropriates it for the benefit and profit of its members, and which may or may not be sufficiently responsible to make secure and certain the payment, in all cases, of the compensation which shall be assessed, it is certainly proper, and it has sometimes been questioned whether it was not absolutely essential, that payment be actually made before the owner could be divested of his freehold. Chancellor Kent has expressed the opinion that compensation and appropriation should be concurrent: 'The settled and fundamental doctrine is, that government has no right to take private property for public purposes, without giving just compensation; and it seems to be necessarily implied that the indemnity should, in cases which will admit of it, be previously and equitably ascertained, and be ready for reception, concurrently in point of time with the actual exercise of the right of eminent domain.' And while this is not an inflexible rule unless in terms established by the Constitution, it is so just and reasonable that statutory provisions for taking private property very generally make payment precede or accompany the appropriation, and by several of the State Constitutions this is expressly required. And on general principles, it is essential that an adequate fund be provided from which the owner of the property can certainly obtain compensation; it is not competent to deprive him of his property, and turn him over to an action at law against a corporation which may or may not prove responsible, and to a judgment of uncertain efficacy. For the consequence would be, in some cases, that the party might lose his estate without redress, in violation of the inflexible maxim upon which the right is based."

Now, it is claimed that the property proposed to be taken is for the public. I deny it. The public are not in a position to take advantage of the privilege granted. It is only a private corporation or an individual having sufficient means to construct a train and run it that could take advantage of it. "On general principles it is essential that an adequate fund be provided from which the owner of the property can certainly obtain compensation." Now, I would ask the gentleman, how is this fund to be provided if the public did avail themselves of this right? Who provides this fund? "It is not competent to deprive him of his property, and turn him over to an action at law against a corporation which may or may not prove responsible, and to a judgment of uncertain efficacy." That is what the amendment proposes to do. That is the amendment proposed, that the State shall regulate it. In other words, that the State shall be the compensation. Now, Mr. Chairman, I submit to the candor of all sensible men if this scheme is practicable; if it is just. In the first place, I hold that it is impracticable; that no railroad could be under these conditions; that it would result in confusion worse confounded; that it never could be a success possibly. We are told that the things works in the East; that there are some States where parties are running independent trains. I believe it is true that one great transportation company has entered into an agreement with certain railroads to transport their cars, but they subject themselves to the President and officers of those railroads, who fix the time. But, that is just one corporation; one concern, different wholly from the public. It is not the public. The proposition here is not to confer the privilege upon the public, for the public cannot avail themselves of it. It is impossible that it should be so. But, as I remarked, it is so that independent companies might come in and compete. There is no necessity of that, for we have another means of creating competition and cheapening fares and freights; and we do propose to do it in a more efficient manner. I believe that the gentleman from San Francisco, Mr. Barbour, is prepared to support, and will support the proposition contained in the nineteenth and twentieth sections of the report of the Committee on Corporations, that will assuredly do that which he would seek to do indirectly by this species of confiscation, or con-

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demnation, or whatever it may be called. I confess my utter inability to comprehend the nature of the proceeding proposed here. I say that it is not confiscation, and it is not condemnation. And in the event that it should be indorsed by this committee, I shall certainly propose to refer it to the Judiciary Committee, with instructions that they shall christen the foundling and give it some name by which we may know it.

SPEECH OF MR. GREGG.

MR. GREGG. Mr. Chairman: I was much surprised when the gentleman offered the amendment. The purpose of the committee was to declare railroads under the control of law in the charges of rates of freights and fares; but I did not think there was one member of that committee that supposed the railroads themselves were the things that the law was to control. We found that the decisions and the rules would give the power of control—not against the railroads, but against those who operate them. The declaration in Munn vs. Illinois, in the first of the Granger cases, is this:

"Under the powers inherent in every sovereignty, a government may regulate the conduct of its citizens toward each other, and, when necessary for the public good, the manner in which each shall use his own property."

That was the warehouse cases. It was to use the property owned by a person in a public relation that we wanted this control by law. In the first railroad case that was before the Supreme Court of the United States, the declaration of the Justice there is that railroad companies are carriers for hire. They are incorporated as such, and given extraordinary powers, in order that they may better serve the public in that capacity. They are therefore engaged in a public employment, effecting a public interest, and under the decision in the case of Munn vs. Illinois, subject to legislative control. That is the whole sum and substance of that decision, and that class of decisions. And when any gentleman who pretends to be a lawyer gets up here and lays down the proposition that they are public highways and subject to control, I am astonished. It is the railroad companies that are subject to control in their charges, and not the railroads. Railroads have been considered the property of the railroad companies, and as such, owing to their public relation, subject to police control. As private property, they would be subject to control. Now we have the curious declaration that they are public highways. What is the effect? I ask the gentleman to answer it. Will they no longer be subject to taxation, if they are public highways? When there are injuries committed upon them, who is responsible? Who is responsible now? The public highways? I ask him, what will be the result of any such declaration? Why, I believe that the proposition is to declare that anybody may run here and there over the railroads of the State, at their pleasure, and only be subject to some charge for that privilege. Of course, every one recognizes that railroading now is a dangerous employment, and in some of the States the common law rule has been advocated in regard to liability for injuries.

Now, what is the result of such a declaration as this? It accomplishes nothing in the purpose that we are now proceeding upon. If our purpose is to regulate freights and fares upon railroads, when we declare that they are common carriers and subject to legislative control we have declared the whole truth. When we say public highways, we declare something that is endangering the whole of our system of taxation, and of our laws for the protection of the public. What would become of the laws requiring the company to fence the road. They would say: "Why, they are public highways; if they must be fenced, they must be fenced by the owners, because that is the rule." When a fire occurs along the line, occasioned by sparks from a passing locomotive, who will pay the damages? The railroad companies will say: "Why, we are not responsible; this a public highway. If anybody is responsible it is the public, and not us; because we are only going over it the same as you or anybody else can."

These foolish innovations, I will call them, they produce great changes in our jurisprudence—changes we cannot anticipate suddenly, upon the declaration. But, sir, the whole aim and purpose is accomplished by declaring them common carriers, and subject to legislative control. The other is not demanded. If gentlemen wish to make them free to any person to run cars and locomotives upon them, put a declaration of that kind in here. Of course, it will not amount to anything. Let them say that hereafter these common carriers shall permit anybody who desires to run trains over the road to do so. Then you will not be building up a system that may destroy the relations of this class of property to the public. But when the gentleman declares them public highways, he does it without examining the authorities, for not once in these cases can the gentleman find that they are controlled because they are highways. You are controlling the corporations that run them, and not the railroads. The railroad is their property, and they are subject to control.

REMARKS OF MR. WICKES.

MR. WICKES. Mr. Chairman: Every proposition that is placed before this house elicits a great deal of talk; and I do not believe it amounts to much in determining the position of members who have already made up their minds, either upon principle or upon prejudice. For my part, I think that we should employ what brief authority we now possess wisely and well, and to do that we must be just to all classes alike, whether rich or poor, high or low. I am opposed to this amendment, because I believe it involves a partial confiscation of the railway beds. I do not believe in laying obstructions in the way of associated wealth that is employed in developing the resources of our State. I believe rather in encouraging it, but preventing it from oppressing society. I believe that our railway system, under proper regulation by the State, might be made a benefit to all in developing the resources of the State. I am in favor of the State jurisdiction over railroad corporations, and in favor of their being equitably taxed, but I am opposed to this amendment, because I believe that it involves a partial confiscation of the railroad beds.

MR. GREGG. Mr. President: I argued the proposition upon the supposition that the other day the gentleman from San Francisco, Mr. Barbour, accepted the amendment of the gentleman from Los Angeles, Mr. Howard.

MR. BARBOUR. I said I had no objection to the amendment. I accept the amendment.

MR. ESTEE. Mr. Chairman: I offer an amendment to the amendment; a corrected section as corrected by the Committee on Corporations, which they authorized me to present to the consideration of the Convention by way of a substitute.

THE SECRETARY read:

"All railroad and transportation companies shall be common carriers, and subject to legislative control. Any association or corporation, organized for the purpose under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars, without delay or discrimination."

Adopted, on a division, by a vote of 78 ayes to 31 noes.

THE CHAIRMAN. The question is on the amendment as amended.

THE SECRETARY read:

"SEC. 15. All railroads and transportation companies shall be common carriers and subject to legislative control. Any association or corporation, organized for the purpose under the laws of this State, shall have the right to connect at the State line with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport each the other's passengers, tonnage, and cars without delay or discrimination."

MR. WILSON, of First District. Is it open to amendment?

THE CHAIRMAN. No, sir, I think not.

MR. WILSON. I would like to reoffer the amendment of the gentleman from Los Angeles, "after just compensation being made therefor." As it is now, they have a right to pass over the road without paying for it at all.

MR. MCFARLAND. I would like to ask why the word "canal" has has been left out; whether it was intentionally omitted, or whether it is a mere oversight.

MR. ESTEE. It was left out intentionally, for the reason that there are no canals in this State that are doing a carrying business.

MR. MCFARLAND. You do not propose to regulate water companies?

MR. ESTEE. Yes, sir; we have regulated water companies, but a canal is a different thing.

THE CHAIRMAN. The question is on the adoption of the amendment as amended.

Adopted.

FURNISHING SUPPLIES TO CORPORATIONS.

THE CHAIRMAN. The Secretary will read the next section of the report.

THE SECRETARY read section sixteen of the report—renumbered section eighteen.

SEC. 18. No President, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company.

MR. FREUD. Mr. Chairman: I wish to offer a substitute.

THE SECRETARY read:

"No President, director, officer, agent, or employé of any corporation shall, during his term of office, either directly or indirectly, buy, sell, or speculate in the capital of said corporation, or be interested in the furnishing of material or supplies to such corporation, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such corporation."

THE CHAIRMAN. The question is on the substitute.

SPEECH OF MR. FREUD.

MR. FREUD. Mr. Chairman: It is neither my intention nor my desire to inflict upon this body a speech. I merely wish to point out wherein the substitute differs from the section proposed by the Committee on Corporations. The President and directors of a corporation hold positions of public trust; therefore, they necessarily ought to be held aloof from anything that might affect the private interests of the occupants of these positions. Few men are able to discharge a public duty wherein their own private profits and losses are concerned; therefore, it is but proper that they should be removed as far as possible from these things. Now, sir, while I freely recognize the correctness of the principles involved in this section, I cannot understand why the committee confined it to railroad and canal companies alone. The principle is eminently just and proper, and should not be confined to such a narrow scope. If it is a sound principle to apply to railroads, it is equally good when applied to other corporations; therefore, I have stricken out "railroads and canal companies," and inserted "corporations." The only other change is in the nature of an amendment, or an addition. I simply followed it out to its logical sequence. It provides that no President or director, who has the control and management of a corporation shall be allowed to furnish that corporation with supplies or material. That is a sound principle, and certainly the argument is more forcible, and the reasons more cogent, why they should not be permitted to speculate in the capital stock of the corporation. Hence, I have added that provision to the section, that no President or director shall be allowed to speculate in the capital stock of the corporation. It is an imposition upon the stockholders and an imposition upon the public.

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It is to remedy these evils that I offer this amendment. It will be noticed that it makes no change in the original, but merely widens the scope of it.

REMARKS OF MR. MCFARLAND.

MR. MCFARLAND. Mr. Chairman: I notice that this section provides that no President or director shall be interested, directly or indirectly, in the transportation of freight or passengers over the works of any company. I would like to inquire if it means that no stockholder shall be President or director, for the stockholders are necessarily interested in the transportation of freight and passengers over the works of the company. It says that no President or director shall be interested, directly or indirectly, in the business of carrying freight and passengers. Now that, sir, would preclude all the stockholders from being President or directors of the corporation, because, as soon as a man becomes a stockholder he necessarily becomes interested. It says he shall not be interested either directly or indirectly. It does seem to me that this would be a common sense construction of that section. I suppose the President would not be allowed to own a share of stock, and under this provision the corporation would have to go outside for the President and directors to manage the affairs of the corporation, because it says distinctly that they shall not be interested, directly or indirectly.

REMARKS OF MR. ESTEE.

MR. ESTEE. I do not think the criticisms of the gentlemen are well founded. The present section reads that "no President, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company." I appeal to the common sense of members whether any such construction can be put upon the section. The object is to prevent an officer from being in a position where he can sell to the company his own property.

MR. BARNES. Is not that the rule of common law now?

MR. ESTEE. Yes, sir; but——

MR. PORTER. The expression against these particular corporations might open the door to others, by giving them indirect permission to deal with themselves.

MR. ESTEE. I do not think it will.

MR. PORTER. I think it will.

MR. ESTEE. The proposition is in regard to the business of transporting, as a common carrier, freights and passengers. Now the section says that no member of a corporation—that is, no President, director, officer, agent, or employé of a transportation company—shall go to the company and make a contract whereby the company will agree to carry his freight and passengers for a less amount over their road; that he shall not deal with them in the position he occupies, the confidential relations which he occupies with the company placing him in such a position that he can defraud the stockholders and enrich himself, if he chooses. If he has no restraint upon him, he will necessarily make that kind of a contract whereby he would make the most money and the company would make the least. This is no modern provision; it is not new. But I wish to say to this Convention that this seems to be the reasonable and rational way to correct what are claimed to be evils affecting some of these corporations. As to the amendment proposed by the gentleman from San Francisco, Mr. Freud, I have no objection to applying the section, the principle, to all corporations. I am speaking now for myself. I have no objections to it; but he uses a term about speculating in stocks. It seems to me that the word speculate would be a very vague and uncertain expression. What does speculate mean? We all know what the general acceptation of the word is, but still it is uncertain when the section comes to be judicially determined. Of course every President and every director must own some of the stock of the corporation. He must own it before he can be an officer in the corporation. He ought to own it, and therefore I would suggest, as far as the amendment is concerned, that he offer it as an independent section, and enunciate what he thinks proper, and in any form he chooses. I would not like to insert a clause here prohibiting an officer from buying and selling his own stock. So far as the evils he complains of are concerned, let us strike at them in a way that will be sure to accomplish some good. I do not think it is wise to adopt the amendment, although I would be in favor of having the principle applied to every corporation in the State.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. President: I hope the amendment, under the circumstances, will be voted down, and I will then make a motion to rerefer this section back to the Committee on Corporations other than Municipal. It seems to me, Mr. President, that when in section fifteen we say that all railroads and transportation companies shall be common carriers, that is sufficient in that direction. We say they *shall be* common carriers. Now it is proposed, according to the express terms of section fifteen, to make them common carriers, and then we say in section sixteen that "no president, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company." He cannot be interested, directly or indirectly, in the legitimate business of the corporation of which he is a member, and certainly everybody will admit that the President and directors ought to be selected from among the stockholders of the company. It seems to me that the statements made by Judge McFarland are entirely pertinent here, and it seems to me that the section should be reconstructed. I am not in favor of any provision that will oblige the companies to put up directors of straw, and a President of straw. It certainly would not be advisable. I see one of the San Francisco journals, the Morning Call, refers to this matter, and suggests that the natural effect of this section would be to compel them to go outside for officers. I think it is nonsense.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I do not see any reason in the world why all corporations should not be included within the purview of this section, and their officers put upon the same category as railroad officers, if the evil is exactly the same in both cases It strikes me, sir, that it would hardly be proper or reasonable to compel the Directors of a corporation to sell their stock simply because they are Directors. They may take advantage of the knowledge their position gives them and speculate in the stock, but cannot the private stockholder who is possessed of the means of acquiring inside information, do the same? But to say that either the director or the stockholder may not buy or sell the property, is in direct and flagrant violation of all principle of commercial business now existing or that have existed since the world began, and I shall be sorry to see any such innovation upon long established principles made by this Convention. Now, sir, as regards the officers of a corporation not being allowed to carry on business as common carriers to transport freight and passengers, such as carrying on the business of express companies, we all know what the evil complained of is, and that is intended to be remedied. But, sir, what sense, what reason is there in debarring a director of a corporation from selling his property to the corporation, the same as any private citizen can do. What sense, or reason, or justice is there in that: As I stated a few days ago, I am a director and an officer in a railroad company. I put my money into the enterprise, knowing that I was going to lose it at that, so far as any profits that might arise from the earnings of the road itself. The only way by which I calculated on being recompensed for the loss, was in the hope that the property which I owned on either side of the road would be enhanced in value by reason of having the road there, and thus counterbalance the loss. Now, on one side of that road it is twenty-eight miles to timber, and on the other side, about ten miles from the station to the timber. I have sold to the company twenty thousand cords of wood, and I have sold it to them cheaper than it could be bought for of anybody else, and yet, according to the idea here advanced, I ought to be debarred from selling my wood to the corporation, even though I sell it at lower figures than any one else can furnish it, simply because I am an officer of the company, having put my money into a precarious enterprise, for no other reason than to avail myself of these advantages. I have a thousand cords lying there now, and yet if you adopt this restriction the corporation will have to go thirty miles away, and pay half a dollar a cord more than they are paying me, and for what reason? For the simple reason that I, who have this wood to sell, have the misfortune to be a stockholder and director in the corporation. Another thing. That railroad was built partially for the purpose of carrying the milk from that region to San Francisco. I am engaged in milking about five thousand cows. Under this section I cannot send that milk to the city. It is admitted that the law should be so framed as to prevent certain patent abuses, preventing the directors from paying one price for an article and charging the stockholders another. This should be done by specific provisions. Neither the directors nor the stockholders are entitled to any privileges. If they have anything to sell, they should not be allowed to receive any more pay for it than any other citizen; but they certainly, in all reason, are entitled to receive as much, and entitled to sell to the company when the company wants to purchase. All such things as contract or finance companies, or rings within rings, should be guarded against by special provision; but such general provisions as this will not accomplish anything, and the person who puts his money out to build a railroad, not with any hope of reward in the way of dividends, but with a view solely to making a market for his produce, and providing a means of sending it to market, stands lower down, because his interest in the enterprise debars him from competition or selling to the corporation when it wants to purchase. I say he stands on a lower and less advantageous footing than the citizen who has not risked a dollar in the enterprise. Sir, it seems blank nonsense to me. If you shall say that no man who puts his money into a corporation shall do any business with the corporation, then men will not be very likely to enter into any such enterprises. Nothing of that kind will suit me.

REMARKS OF MR. FREUD.

MR. FREUD. Mr. Chairman: In reference to the gentleman from San Francisco, the Chairman of the Committee on Corporations, I will state that I prefer to offer this amendment to section sixteen, because I find this is the provision to which it was offered in the debates of the Constitution of Ohio. I will state that it was defeated there by a tie vote, and no member of that Convention objected to it because it was offered as an amendment to this section in their Constitution.

In response to the gentleman from Marin, I will state that the directors and President of a corporation hold positions of public trust towards the stockholders, and therefore the stockholders have a right to expect their duties impartially and justly discharged. If, as the gentleman states, these directors, of whom he is one, desire to buy and sell, or in any way deal in the capital stock of the corporation, or take part in any of the contracts of the corporation, it is their duty, and they ought, to resign.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: The abuse which this section is aimed at is well described in the report of the Railroad Commissioners to the Legislature last Winter, and I beg the indulgence of members while I read a portion of that report with regard to the officers and directors of corporations dealing with themselves. I read from section fifty-four of the report:

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"That the fixed capital of most of our railroad companies has been illegally exaggerated or inflated, scarcely admits of doubt. The process of building railroads through the instrumentality of a construction company, managed by the same persons who control the railroad company, has grown, of late, to be familiar; it may be called common knowledge. The directors, or persons controlling the railroad company, organize a construction company composed of themselves, or of persons acting in their interest; a contract is made between the two companies for the construction and equipment of the road, which the construction company agrees to do for a price, nominally measured in money, but payable entirely in mortgage bonds and stock of the railroad company. In this way, as the construction of the road proceeds, bonds and stock are issued for an amount which bears no necessary relation to the cost of the work, but is fixed, arbitrarily, in advance. As the same persons control both companies, any modifications of the construction contract which their interests may suggest are made by common consent, and when completed the road and its equipment are represented by an amount of fixed capital in the shape of full-paid stock and bonds, on which henceforth interest and dividends must be earned, and which exceeds the actual cost of the work just as much as the directors see fit to prescribe in advance. The evils of this system of inflated capital are not confined to an enhancement of the cost of transportation. It not only affords an excuse for excessive rates, but operates to deter from the construction of rival roads, or the establishment of other competing lines, by giving a fictitious idea of the cost of the construction and of the wealth and power of those who are to be competed with. It likewise practically restricts the building of railroads to those who are willing to take the risk of violating the law by virtue of which they are constructed."

So, it will readily be seen what the evils are that this section aims to correct. The provision is right and just, and this Convention will act wisely if they adopt it.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. Chairman: I wish to say that I think this section is not justly entitled to the criticisms which have emanated from the gentleman from Sacramento, Mr. McFarland, and the gentleman from San Francisco, Mr. Beerstecher. They say that the President and directors and agents of a railroad company must necessarily be interested, either directly or indirectly, in the transportation of freights and passengers, and, therefore, it involves an inconsistency. Now, I do not understand that to be the meaning of this section. I think, for one, that if the section means anything, it means that no President, director, or officer, or agent, shall be, as an individual, interested, directly or indirectly, as a common carrier in the transportation of freight or passengers. It is the company itself which is interested in that matter, and the President, who is but an individual, acting as the agent of the company or the officer of the company, cannot, as an individual, be interested in the transportation of freight and passengers. And that is precisely the meaning of it, that he shall not be a common carrier himself, but it is to be the company that is the common carrier. That is the thing desired to be reached by this section. Now, I desire to say one word in relation to the amendment offered by the gentleman from San Francisco, Mr. Freud. It would not be proper, in my judgment, to amend this section in this way, for it certainly would destroy the object of the section, and would involve an inconsistency. The gentleman desires to have it apply to all corporations. The object of the section is to apply to railroad and transportation companies, and none other. Now, if it is made to apply to every other company, then every other company or corporation is denied the right to act as a common carrier. We do not suppose, Mr. Chairman, that other companies can act as common carriers. We do not suppose that a mining corporation could act as a common carrier. We do not suppose that a banking corporation could act as a common carrier. Hence, I say the amendment of the gentleman from San Francisco involves an inconsistency, and would read in this way: That all companies and corporations shall be prohibited from carrying on the business of transportation and carrying passengers as common carriers. The amendment involves an inconsistency, and I hope it will not pass, and that the section as reported will be adopted.

THE CHAIRMAN. The question is on the amendment proposed by the gentleman from San Francisco, Mr. Freud.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: One word on this subject. I have no doubt myself that the construction placed upon the amendment of the gentleman from San Francisco, Mr. Freud, by the gentleman from Stanislaus, Judge Schell, is the correct one. This is a prohibition that owners in corporations shall not transact the business of common carriers. A man may own a sawmill—be a stockholder in a sawmill, sawing wood or sawing plank, making lumber, up in Humboldt, and if he was he could not deal in the business of transportation at all. He could not be a stockholder in a Humboldt sawmill and a stockholder in a railroad company in Los Angeles. I do not see any reason why a man transacting business in Humboldt could not own stock in a company in the City of Los Angeles. That is the natural reading and construction of this section. "No President, director, officer, agent, or employé of any corporation, shall, during his term of office, be interested in the business of transportation as a common carrier," etc. Certainly the gentleman did not intend any such construction to be placed upon it, but that is the natural construction, it seems to me, that a Court would place upon it. Therefore, as a matter of course, this amendment will be voted down by this Convention. If a man is interested in a corporation in San Francisco which is engaged in making shoes, he cannot be interested in the business of transportation as a common carrier. There is no good reason why he should be prohibited. The man who owns mining stock cannot be interested in a railroad. That is certainly the construction that can be placed upon it.

Now, the original section sixteen is susceptible to the construction placed upon it by the two gentlemen preceding me. Called upon as a lawyer to construe that section, at the request of a client going to operate under it, I would say, if you are a President, director, agent, or employé of any railroad company, or canal company, you cannot own any of the stock in that company, because it is an interest, and you are prohibited from being interested directly or indirectly. As a President you cannot be interested in any way or shape. Now, the learned gentleman from Merced, Judge Schell, says that this is the business of the corporation which is being carried on. I say, in the business of the corporation the stockholder is interested, and the meaning of this is that he shall not be interested. "No President, director, officer, agent, or employé, of any railroad or canal company shall be interested, directly or indirectly," etc. It seems to me he is directly interested. The wording is very broad—"he shall not be interested." Of course the business belongs to the artificial entity of the company, but certainly the words are broad enough, it seems to me, to bear this construction. "No President, director, officer, agent, or employé of any railroad or canal company, shall be interested in the business as a common carrier." Now, if a gentleman is interested in any railroad—if he is interested in a narrow gauge railroad as a stockholder—he could not have his goods transported over a wide gauge railroad, because he is engaged in the transportation of goods over a wide gauge road. There will be very serious results, in my judgment, growing out of this section. As to the first portion of it, in relation to the furnishing of material and supplies by the officers of the company, I have this to say: In the first place, this is a principle of the common law, and you do not want to take up a principle of the common law, for the very reason laid down by the gentleman, Mr. Porter, that when you come to specify one thing you naturally exclude everything else, under the maxim, "*expressio unius exclusio est alterius.*" Now, it says the President shall not be interested in the furnishing of material and supplies, which might be construed as a permission for them to do everything else. They may make any other trade, they may sell real estate, they may speculate in a thousand ways, so long as they do not furnish material or supplies. The limit is simply upon furnishing material or supplies. They may trade with the company in any other way, they may speculate in other ways. For that reason I think it is much better to let it rest on the common law principle, that no man can serve two masters; that he cannot act as an officer of the company and be engaged in speculation with the company at the same time. Better leave it as it is. It is better, broader, and more comprehensive in the law than you can make it in the Constitution. There are many good things we approve, but we do not want to put them all in the Constitution. We approve of the command, "Thou shalt not steal," but need we embody it in the Constitution? We approve the command, "Thou shalt do no murder," but need we therefore embody it in this instrument? Certainly not. We leave that to the Legislature. Therefore I am opposed to this whole section. I am opposed to the first part, because it is only a partial and limited exposition of the common law principle. The common law doctrine is better and clearer than anything we can put in the Constitution. I am opposed to the second part of it because it is susceptible to the construction—and that is enough—that no President, director, officer, agent, or employé can own stock in his own company. I am opposed to the amendment of the gentleman from San Francisco, Mr. Freud, because, as I said before, it would exclude a man who is a stockholder in a Humboldt sawmill from owning any stock in any railroad company, or in any transportation corporation.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I hope the Convention will pardon me for referring to the authority of the Constitutions of the older States of the Union in the debate upon this occasion. I confess, sir, I think the experience of others can well be taken as a guide for our action. Now, I find, notwithstanding the very elaborate argument of my friend from San Francisco, Mr. Wilson, in opposition to this section, that in nearly all the recent Constitutions that have been adopted, this section, or something substantially like it, has been adopted. If the gentleman will turn to the debates in the Constitutional Convention of Missouri, he will find there the most elaborate reasons given for the adoption of this very section. The Constitution of Missouri, adopted in eighteen hundred and seventy-five, contains the following:

"SEC. 22. No President, director, officer, agent, or employé of any railroad company, shall be interested directly or indirectly in furnishing material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company."

MR. WILSON. If the gentleman will permit me. Do you know of any instance in which any Court has construed that section?

MR. ESTEE. I was coming to that. As far as Missouri is concerned, the Constitution was not adopted until eighteen hundred and seventy-five, and I do not know of any case having arisen under this section. But you will find, by referring to the Pennsylvania Constitution of eighteen hundred and seventy-three, under article seventeen, section six, the following:

"SEC. 6. No President, director, officer, agent, or employé of any railroad or canal company, shall be interested directly or indirectly in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over works owned, leased, controlled, or worked by such company."

Now, it is true, sir, that your committee, in adopting this section, were guided in a great degree by the experience of others. This was the part of wisdom; it would have been folly not to have done so, and therefore I do think it would be eminently proper to have this section incorpo-

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rated in the Constitution. If the gentleman will point out any harm that will come of it, then of course it should be remedied so as to relieve it from that objection, so that no wrong can come to any person by reason of it; for we are not here to legislate, as I understand it, in the interest of any particular enterprise or against any particular enterprise. But the fact that this provision, in substance, is a part of the common law of the land, does not argue against its adoption here. Sometimes it is wise to put a little common law into the Constitution so we all may know what it is. A little common sense will not hurt either, and there is no question but it would aid us in the construction of the law. There is no doubt about that.

Now, Mr. Chairman, it is true that this section does not apply to all corporations, as the gentleman from San Francisco, Mr. Freud, proposes. This section only applies to officers of transportation companies, and to them only. All other corporations are left under the control of the Legislature. It strikes me that the criticisms about directors not being permitted to deal with the corporation is unjust. Why should they deal with it as individuals and thus contract with themselves?

The statements of the gentleman from Marin show very conclusively that they ought not to be allowed to deal with the corporation. There may be instances where the corporation is benefited and the officer is benefited, but in the main, in the great majority of cases, no director or officer of a corporation ought to be allowed to deal with the corporation in which he is an officer. He is in the position of a trustee; he may represent millions of dollars, and in the exercise of that trust it is expecting too much of a man, that he will deal with the corporation of which he is a trustee, where there are vast sums of money involved, holding its secrets and in possession of its business knowledge, and not get the best of the bargain. It would be very natural for him to deal with himself in the most favorable manner to himself. I do not say he is necessarily dishonest, but without this protection he could be. He certainly is not going to give away his own interests for the benefit of the corporation. I submit to the Convention that no such opportunities should be allowed him. These officers should be confined to the transaction of the official duties imposed upon them by law, as the representatives of corporations. Now, I cannot see how, in the consideration of this section, it can be said that a President or director of a corporation is interested as a common carrier when he is a stockholder only. The section reads:

"No President, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company."

That is all right; no objection is made to it. No one can certainly object to that; but further, "or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company."

That is, that he shall not, while occupying a judiciary position, engage in business with his own company, as an individual, as a common carrier of freight or passengers, outside of his official relations with the company, because if he could do so it would be very easy for directors to contract with themselves to carry freight and passengers at *one price*, and then make the public pay *another price*, thereby permitting them to commit a great fraud upon the people and upon the stockholders. If the gentleman can present any more correctly worded section than that reported by the committee, embodying the same ideas, we will accept it. The committee have no pride of opinion about this matter. The question is an important one and ought to be embodied in the Constitution. It is fair and honest. It can do no harm. It will protect important interests and destroy none of them.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: Is an amendment now in order?

THE CHAIRMAN. Yes, sir.

MR. MCCALLUM. Then I offer this amendment.

THE SECRETARY read:

"Insert between the word 'company' and the word 'shall,' in line two, the words, 'except as a stockholder of such company.'"

THE CHAIRMAN. The question is on the amendment.

MR. MCCALLUM. Now, Mr. President, while I am aware that this section is to be found in the Constitutions of some other States, I think it is a pertinent question to ask if any Court has ever given it judicial construction. It seems that the committee have reported the identical language of another Constitution, which was read awhile ago by the Chairman. It must be apparent to every man, whether he is a lawyer or not a lawyer, that the views expressed by Mr. Wilson and others are correct, and that the section is susceptible of no other construction. It says:

"SEC. 16. No President, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company."

Therefore he is interested, both directly and indirectly, as a stockholder. The general law provides that no one can be an officer of a corporation unless he is a stockholder. It is admitted here that the object of this provision is not to require that the President, directors, officers, and employés shall not be stockholders; that is admitted. The section—I don't care if it is found in other Constitutions—in the absence of judicial construction, is susceptible of no other construction than that it precludes every person who is a stockholder from being engaged in the business of transportation, directly contrary to section fifteen. I am in favor of the principle presented here in this report, therefore I have tried to make it intelligible, and not contradictory of what we have done. Therefore I offer this amendment.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I have not had much opportunity to consider this amendment (Mr. Freud's). As a general rule the report of a committee ought to be followed, unless for special and obvious reason its recommendation should be disregarded. In this matter I prefer to adhere to the report of the committee. Section sixteen, as I understand it, is intended to prohibit the officers and managers of corporations from dealing with themselves. It is intended to protect stockholders by making it unlawful for directors to enter into contracts for or among themselves. This same provision may be found in other State Constitutions. It is contained in the Constitution of Pennsylvania of eighteen hundred and seventy, and after being in force for six years it was again adopted in the new Constitution of that State—ratified in eighteen hundred and seventy-six. This is some evidence that the provision is a good one, and has operated satisfactorily in one of the great States of the Union.

Now, I do not understand, as has been argued, that this provision will operate to prevent directors, etc., from disposing of their own property. They are only prohibited from either directly or indirectly disposing of their own property to the companies of which they are directors.

It is true, as has been said, directors may have power to dispose of the whole corporate property, and to deal with the public generally. The section does not prevent this, and is not intended to restrict their powers in this regard, but only to limit their powers when making contracts among themselves, or in which they may be personally interested. In furnishing materials or supplies, the directors cannot deal with the President or director, officer, etc., of the company, and such President, etc., shall not either directly or indirectly be interested therein, but they may deal with any one else.

They may sell the corporate property, purchase or authorize the purchase of property as fully as the law may authorize, in all other respects, notwithstanding this limitation.

If the limitation be nothing more than the declaration of a principle of recognized common law, there certainly should be no objection to its being a declared principle of constitutional law.

As to the other branch of the prohibition, that directors, etc., shall not be interested in the business of transportation as a common carrier, etc., over the works owned, etc., by such company, we all understand its purpose. We all know it is a common practice for railroad companies to grant special privileges and concessions to individuals and companies for the transportation of freight, etc. Not granted to the public generally. We have heard of the "Red Line," the "Blue Line," and others, that have these special privileges; we have also heard of express companies having certain exclusive privileges, and it is asserted and generally believed, the directors and officers of railroad corporations are sometimes interested in these special and exclusive privileges, to the detriment of the public and the stockholders who have no interest therein. The purpose of this portion of section sixteen, is to put a stop to this practice, and I am in favor of its adoption. It reads, "railroad and canal companies." Canal companies should be stricken out, as was done in section fifteen.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: I am glad to see gentlemen so morally inclined as to quote so copiously from the good book. I remember, also, of having read some time, in a Sunday school book, that God created man upright; but he has sought out since that time many inventions. It is in order to preclude some of those evil inventions that man in his wisdom has suggested, that this section is offered. What has occurred in other States, what has been done by the officers of railroad companies in other States, may possibly be done in this State. And in order to avoid a repetition of the abuses, and frauds, and rascalities that have been perpetrated in other States by office holders, and Presidents, directors, and employés, acting as interested parties, dealing with themselves, to the injury of the stockholders, we have offered this section. There was rather a singular exhibition in the Western States; almost every railroad officer suddenly became wealthy, and the Legislatures in those States appointed Commissioners to investigate and report, and they discovered in these examinations that there were certain men who had studied the ways that are dark and tricks that are vain. Men who had been poor all their lives, living in very ordinary dwelling houses, suddenly became rich, and had mansions to live in, and their wives and daughters suddenly began to dress in very different style from what they had been accustomed to, and they continued a life of extravagance which precluded the idea that they had obtained this sudden wealth honestly. These investigations showed they had obtained money indirectly, profits indirectly, from the fact that they were officers of the corporation, and were engaged in making contracts for the company, being interested themselves, privately, in those contracts. Now, this section sixteen is simply intended to correct such abuses; and I believe every lawyer here will say its plain, common sense meaning is, that these officers shall not, as officers, transact any business only as representing the company; that the stockholders shall not be defrauded in any such manner as I have described; that there be no such middle operations as will place money in the pockets of the officers at the expense of the rest of the stockholders. That is the object of the section, and I believe it is competent to accomplish that object.

REMARKS OF MR. O'DONNELL.

MR. O'DONNELL. Mr. Chairman: I like the wording of this section. It reads well. Listen: "No President, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company." That section reads well and should be adopted. I am sorry to see so much dissension among these lawyers. [Laughter.] We have an immense delegation of lawyers, and we find them ranged in the ranks in opposition to the workingmen. That is very natural, Mr.

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Chairman. Down in San Francisco, they have a bar association, and they have also an association of bar-tenders. [Laughter.] Between the two the most friendly relations exist. [Roars of laughter.] The bar-tenders, by unanimous vote, have admitted members of the bar to their association. [Laughter and applause.] Now, sir, we find a great deal of dissension among these lawyers. They are trying in every manner, way, and shape possible to destroy the effect of this section sixteen. That section is just what the people of the State of California want, and I hope every honest member of this Convention will vote for it.

MR. LINDOW. Mr. President: I make a motion, or an amendment, that O'Donnell don't read any more of his speech; but I make a motion to have it printed.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: It seems to me that one great consideration, in the discussion of this section, has been lost sight of. The real merit of the case is not in the single consideration of the interests of the stockholders. The great consideration in the adoption of this section as it now stands—and I may as well announce now that I am opposed to the amendment offered by the gentleman from Alameda, because I believe it will destroy the entire section. I accept the construction given by the gentleman from San Francisco, Mr. Wilson, as an honest interpretation of this section. It is perfectly proper that it should exclude these officers from the positions that they occupy in the company. What is that for? The object is to exclude these officers, while they are occupying positions of trust in the company, from the business of transporting freight and passengers on their own account. You all remember the great fire of eighteen hundred and fifty-two, when the City of Sacramento was laid in ashes by the flames. D. O. Mills, one of your citizens, and a man of great influence and resources, he chartered the solitary boat that was capable of transporting lumber, and he was able, in the period of three days, to furnish you lumber at three hundred dollars per thousand. You could not get lumber in any other manner. How was it done? Why, by simply controlling the solitary line of communication. Now, what is the object and purpose of this section? Simply to prevent these officers from being interested in such a manner as to make a discrimination against the public. That is the object and purpose of it. Does any gentleman understand the force and effect of the argument? Do you understand the depth and breadth of this section? Do you understand the purpose for which it has been drawn? I accept the construction given to it by the learned gentleman from San Francisco, Mr. Wilson, as the correct interpretation. The object is to preclude these officers, while occupying confidential positions, from being interested in the carrying of freight or passengers. That is exactly what this does. I undertake to say that the amendment proposed destroys this section, and by simply allowing them to own stock you destroy its effect for good.

MR. McCALLUM. Under this section, as it reads, no stockholder could be an officer of the corporation. It says: "No President, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company." They shall not be interested, directly or indirectly.

MR. HERRINGTON. It is unnecessary to put that amendment in. The section is perfectly clear. We have no objection to their being stockholders in the company over which the freight is carried. It is as clear as a sunbeam to anybody who will read it. He is directly and indirectly interested in the freight that goes over the road, but he shall not be directly interested in the line that transports it. That is clear enough. I am speaking of owners of the freight. It is very clear, and I will read it: "No President, director, officer, agent, or employé of any railroad or canal company shall be interested, directly or indirectly, in the furnishing of material or supplies to such company." Everybody can understand that. He shall not be interested in furnishing it to the company. He is interested in obtaining supplies, as a matter of course, because he is a part owner in the company, but he must not be interested in selling it himself. The other part of the section is just as clear: "Or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such company." Now, there can be but one construction given to that. It is unnecessary to say that because he is a stockholder of the company he is interested in the manner contemplated by the prohibition in this section, because he is not. He is in no manner interested in the freight. He owns none of it; has no interest in it, except so far as the toll is concerned. That is all he is interested in. It is the business of furnishing this material that he is prohibited from engaging in. It is the business of a common carrier that he is prohibited from engaging in. Now, if it can be made any plainer, I would like to see it. They are not in any manner interested in the ownership of the property. The section is clear and explicit, and should be passed without amendment.

MR. CAPLES. I may be permitted to suggest to the committee that it is really a waste of time to discuss this matter. We are practically a unit upon the principle involved. There is but one sentiment here, and that sentiment is in favor of the idea intended to be conveyed by the section, but we do differ as to the construction which can be placed upon the language. There is a direct conflict between it and the preceding section. At the best, the language is susceptible to two or three interpretations, and I therefore move that we refer the matter back to the committee, with instructions to put it in language that will convey the idea, and be less ambiguous.

SPEECH OF MR. BARNES.

MR. BARNES. Mr. Chairman: I did not intend to take any part in this discussion upon this section. But it does seem to me that the criticisms expended upon it are to a great extent hypercriticisms. I do not think the section is open to the construction that is placed upon it. We all understand that by this section there are two evils desired to be remedied. One, that trustees of a corporation shall not traffic with themselves as such trustees. That they shall not be interested in furnishing supplies or material to the company. The committee are satisfied, I think, that this is all right. That is a rule of law as old as the law itself. This is not as broad as the rule which has been laid down by the Courts; not as broad as the rule laid down by the Supreme Court of this State in a case where a gentleman was a member of the Board of Trustees of one of the southern towns in this State, either Santa Barbara or San Diego. He was also interested in a corporation that was to get a grant of land from the town, and he acted in the first place as a trustee of the town in making the grant of land. He was also interested as a member of the corporation that received this grant. There was no pretense of any wrong or fraud of any kind in the transaction; and yet, upon the suggestion being made, and the point being raised, the Supreme Court of this State declared that it came within the rule which prevented a trustee from trafficing in his trust. Now, I say it is less extensive than the general rule of law; but it is, of course, intended to apply to a class of cases which exist, and has existed, in this State in almost every one of these corporations. That is to say, that the persons who are in the management of the companies reap benefits and extraordinary profits by reason of contracts made with themselves in relation to furnishing materials and supplies.

The second part of the section is intended, as I understand it, to prevent such evils as may grow out of companies being organized within the company, to do a carrying business over the same line. This was the evil which existed in the State of Pennsylvania, and which exists here. For instance, Wells, Fargo & Company have an exclusive monopoly of the packet business over all the railroads of this State, and they reap a very large reward from the expeditious manner in which they are enabled to conduct their business. The evil in Pennsylvania, and other States, was this: lines were gotten up called fast freight lines, which ran almost entirely independent of the general lines and general freight business of the company. They solicited freight at great points like New York and Cincinnati, over blue lines, red lines, and star lines, which, under their contract with the railroad companies, had peculiar advantages. They had the right of way over the railroad, and the right to displace all other trains, so that they could get through more quickly. For such transportation, these companies charged a higher rate than the usual price over the same roads. These corporations were thus enabled to reap a large reward. In these contracts the officers of the corporations were largely interested. In other words, they derived benefits from the contracts for the transportation of freight made by themselves with themselves. These were the two great evils. They were sought to be overcome by that section of the Constitution read by the gentleman from San Francisco, Mr. Estee. I am opposed to the motion of the gentleman from Sacramento, to send it back to the committee. Let us vote on it as it stands. I am prepared to vote for the section just as it is.

THE PREVIOUS QUESTION.

MR. HUESTIS. Mr. Chairman: I move the previous question.

MR. INMAN. I second the motion.

MR. EVEY. I second it.

MR. STEELE. So do I.

MR. SMITH, of Santa Clara. I second it.

THE CHAIRMAN. The previous question has been called for. The question is, Shall the main question be now put?

MR. REYNOLDS. I rise to a point of order. My point of order is that it is out of order to move the previous question in the Committee of the Whole. I also make the point that there is no rule by which the previous question can be moved in the Committee of the Whole.

THE CHAIRMAN. The gentleman is out of order in debating the question.

MR. REYNOLDS. My point is that there is no rule by which the previous question can be moved in the Committee of the Whole.

THE CHAIRMAN. Rule Fifty-six expressly provides for the previous question in the Committee of the Whole.

MR. REYNOLDS. Mr. Chairman: It is understood that there was an attempt made to change Rule Fifty-six, so as to provide for the previous question in the Committee of the Whole. There was an attempt made to change Rule Sixty, which passed by a majority vote, but not by a two-thirds vote. Now it requires a vote of two thirds of the whole Convention to change a standing rule, but a rule or order may be temporarily suspended by a vote of two thirds of the members present. That is Rule Sixty. The vote by which Rule Fifty-six was attempted to be changed was not a two-thirds vote of the whole Convention—see Journal of November eleventh, eighteen hundred and seventy-eight; affirmative 77, negative 29, which was not a two-thirds vote of the whole Convention. Now, Rule Sixty reads as follows:

"No standing rule or order of the Convention shall be rescinded or changed without a vote of two thirds, and one day's notice being given of a motion therefor. But a rule or order may be suspended temporarily by a vote of two thirds of the members present."

The expression of the one thing is the exclusion of the other; therefore, Rule Fifty-six was not properly amended. The amendment was not carried according to Rule Sixty, and it is therefore not in order to move the previous question in the Committee of the Whole.

THE CHAIRMAN. The point of order is not well taken. The question is: Shall the main question be now put?

Carried on a division vote—ayes, 73; noes, 33.

THE CHAIRMAN. The first question is on the amendment offered by the gentleman from Alameda, Mr. McCallum.

Lost.

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THE CHAIRMAN. The question is on the substitute of the gentleman from San Francisco, Mr. Freud, which the Secretary will read.

THE SECRETARY read:

"No President, director, officer, agent, or employé of any corporation shall, during his term of office, either directly or indirectly, buy or speculate in the capital of said corporation, or be interested in the furnishing of material or supplies to such corporation, or in the business of transportation as a common carrier of freight or passengers over the works owned, leased, controlled, or worked by such corporation."

Lost.

THE CHAIRMAN. The Secretary will read section seventeen.

MR. DOWLING. Is not an amendment to the other section in order?

THE CHAIRMAN. No, sir.

THE SECRETARY read section seventeen, now numbered section nineteen:

SEC. 17. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket, by a member of the Legislature or any public officer, shall work a forfeiture of his office.

MR. MCCONNELL. Mr. Chairman: I have an amendment to offer.

The SECRETARY read:

"Amend by adding after the word 'office,' in the fifth line, the following: 'The Legislature shall provide by statute for the punishment as a felony of any officer or employé of any railroad or other transportation company who shall give or offer to give to any public officer of or in this State, legislative, executive, or judicial, or other position, a free ticket or pass, or ticket for less price than the usual rates, or who shall knowingly permit such officer to ride on or over such railroad without paying therefor the usual rates.'"

MR. SHAFTER. I move to amend. After the words "public officers," insert, "or member of any Constitutional Convention."

MR. MCCONNELL. I accept the amendment.

THE CHAIRMAN. The question is on the amendment to the amendment.

MR. MCCALLUM. I move to insert the word "capital" before the word "punishment," so as to read, "capital punishment as a felony."

THE CHAIRMAN. That amendment is not in order at present.

REMARKS OF MR. BARNES.

MR. BARNES. I hope these amendments will be voted down. This is making a farce of a very serious piece of business. I think it is time to stop these ridiculous amendments which are intended to make this a matter of ridicule. What is the use in putting in an amendment, "any member of a Constitutional Convention?" It is simply ridiculous. It is not a proper provision to put in, and I hope my sportive friend from the hills of Marin will get a lesson that will make him refrain from this kind of sport in future. Let him retire to his favorite hills if he wishes to indulge in this kind of thing. For my part I am tired of it.

REMARKS OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: This amendment seems to me to be a very reasonable proposition. I do not see why this provision should not be made to apply to the members of Constitutional Conventions as well as to officers of the State. The gentleman has accepted my amendment, and I think it is just as proper and just as sensible as the balance of the provision, though I don't think either very sensible.

REMARKS OF MR. ESTEE.

Mr. ESTEE. Mr. Chairman: The section as originally reported reads as follows:

"SEC. 17. No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this State; and the acceptance of any such pass or ticket by a member of the Legislature, or any public officer, shall work a forfeiture of his office."

That provision is found in several of the Constitutions, and it will not do any harm here, and it may do considerable good. I wish to suggest to the gentleman from Marin, and a number of other gentlemen who argued very learnedly here that we were all officers of the State, that if we are, it is quite unnecessary to adopt the amendment proposed, because this section says, "any person holding any office of honor, trust, or profit in this State." If being a member of this Convention constitutes an officer; if membership here is an office; if it be an honor; if it is a trust; the amendment of my friend is entirely unnecessary. I hope the section will be adopted as it is presented.

MR. SHAFTER. I am gratified to see the gentleman from San Francisco backing down from his position and coming over to my ground at last. He said then that we were not officers, and now he agrees with me that we are. I offered this amendment in accordance with the decision of the majority of this Convention. I am glad to see the gentleman coming over to my side on that matter.

MR. MCCONNELL. Mr. Chairman: I hope this amendment will be adopted. The man who offers a pass as a bribe, is as guilty as the one who accepts it, and ought to be punished. The section is a proper one, and this amendment is necessary to give it full force and effect.

MR. REYNOLDS. I move the gag rule, politely called the previous question.

MR. HOWARD. I second the motion.

THE CHAIRMAN. The previous question has been called for. The question is, Shall the main question be now put?

Carried. Ayes, 80.

THE CHAIRMAN. The main question has been ordered. The question is on the amendment of the gentleman from Sacramento, Mr. McConnell.

Lost.

THE CHAIRMAN. If there are no further amendments, the Secretary will read section eighteen.

THE SECRETARY read section eighteen, renumbered section twenty:

SEC. 18. No railroad company, or other common carrier, shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

MR. AYERS. I offer an amendment.

THE SECRETARY read:

"Amend section eighteen, by adding after the word 'carrying,' in the fifth line, 'and whenever a railroad corporation shall, for the purpose of competing with a rival railroad line, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such reduced standard.'"

THE CHAIRMAN. The question is on the amendment.

SPEECH OF MR. AYERS.

MR. AYERS. Mr. Chairman: I offer this amendment in obedience to what I consider a correct principle. This is a principle which is in part contained in the O'Connor Act of two years ago, and which has worked some good. That Act required that rates existing on the first of January, eighteen hundred and seventy-six, should remain the rates from that time forth. The rule worked well in some portions of the State, at least it did in that portion of the State which I in part represent. At that time Senator Jones, of Nevada, had built a railroad from Santa Monica connecting with Los Angeles. The Southern Pacific Company already had a road in operation from Los Angeles to Wilmington, both roads reaching tide water, and giving the inhabitants of that section the benefit of an ocean highway. But it was soon found that the policy of the old company was to crush out every competing line, so, in order to kill off this competing road, they put the fares down to a very low rate, less than a paying rate. While the fares were thus reduced, the O'Connor bill was passed, fixing the rates at those which obtained on the first of January, eighteen hundred and seventy-six. The Santa Monica road was frozen out, and the owner was compelled to sell to the old corporation, and they found themselves in this position: that while killing off the opposition they had placed the rates below a fair and living rate, and when they had killed it off this law came in and prevented them from raising them again. It worked well in that instance, but a factor has come in which prevents the people there from realizing the benefits of that Act. The aim of this amendment is to incorporate that principle in the Constitution. There are many places in this State where an established line of railroad might subserve the interests of the people, and be made to pay a fair rate, and might be made a good investment to its owners, but under the existing circumstances no man is willing to place his money in the stock of a corporation of that kind where the great monopoly has the power at any moment to crush it out of existence or compete it out of existence. At the present time I know, that if that protection were in the Constitution, the people of my section of the State would disenthrall themselves from the oppression now put upon them, and build a road, provided the great corporation could not come in and crush it out by ruinous competition with them, lowering their rates until this result could be accomplished, and then raising them again, and making up for the loss afterwards. I know that the people of my section would take stock in building a narrow gauge road into Inyo County if it were not that it is well understood that the moment such an enterprise is undertaken the great corporation would step in and either crush it out, or discourage it just before it is entered upon, by threats, as they do every such project that is undertaken, that they will also build a road there. Now, it seems to me that competition ought to be encouraged and protected. I do not think the old corporations would be apt to put down their rates below a fair standard for the purpose of crushing out opposition, if they were made aware that they could not raise them again. We have already established this principle by legislative enactment, and I hope the Convention will pass this amendment.

MR. O'DONNELL. I move to amend the amendment.

THE SECRETARY read:

"Amend by adding in the third line, after the word 'carrier,' the words, 'navigating the waters of this State,' and 'no corporation shall offer to pay any bonus or premium to prevent lawful competition with its business as a common carrier.'"

MR. O'DONNELL. This is an amendment that ought to prevail. It provides that no corporation shall offer to pay any bonus or premium to prevent lawful competition with its business as a common carrier.

MR. WILSON, of First District. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again.

ADJOURNMENT.

MR. GREGG. I move that we do now adjourn.

Carried.

And at four o'clock and forty-five minutes P. M. the Convention stood adjourned.

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FIFTY-FIFTH DAY.

SACRAMENTO, Thursday, November 21st, 1878.

The Convention met in regular session, at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hale,	O'Sullivan,
Ayers,	Hall,	Overton,
Barbour,	Harrison,	Porter,
Barnes,	Harvey,	Prouty,
Barry,	Herold,	Pulliam,
Barton,	Herrington,	Reddy,
Beerstecher,	Hilborn,	Reed,
Belcher,	Hitchcock,	Reynolds,
Bell,	Holmes,	Rhodes,
Blackmer,	Howard,	Ringgold,
Boggs,	Huestis,	Rolfe,
Boucher,	Hughey,	Schell,
Burt,	Hunter,	Schomp,
Campbell,	Inman,	Shafter,
Caples,	Johnson,	Shoemaker,
Casserly,	Jones,	Shurtleff,
Chapman,	Joyce,	Smith, of Santa Clara,
Charles,	Kelley,	Smith, of 4th District,
Condon,	Keyes,	Smith, of San Francisco,
Cowden,	Kleine,	Soule,
Crouch,	Laine,	Stedman,
Davis,	Lampson,	Steele,
Dean,	Larkin,	Stevenson,
Dowling,	Larue,	Strong,
Doyle,	Lavigne,	Stuart,
Dudley, of San Joaquin,	Lewis,	Sweasey,
Dudley, of Solano,	Lindow,	Swenson,
Dunlap,	Mansfield,	Swing,
Eagon,	Martin, of Alameda,	Terry,
Edgerton,	Martin, of Santa Cruz,	Thompson,
Estee,	McCallum,	Tinnin,
Estey,	McComas,	Townsend,
Evey,	McConnell,	Tully,
Farrell,	McCoy,	Turner,
Fawcett,	McFarland,	Tuttle,
Filcher,	McNutt,	Vacquerel,
Finney,	Mills,	Van Dyke,
Freeman,	Moffat,	Van Voorhies,
Freud,	Moreland,	Walker, of Marin,
Garvey,	Morse,	Walker, of Tuolumne,
Glascock,	Murphy,	Waters,
Gorman,	Nason,	Webster,
Grace,	Nelson,	Weller,
Graves,	Neunaber,	Wellin,
Gregg,	O'Donnell,	West,
Hager,	Ohleyer,	Wickes,
White,	Wilson, of 1st District,	Wyatt,
Wilson, of Tehama,	Winans,	Mr. President.

ABSENT.

Berry,	Cross,	Miller,
Biggs,	Heiskell,	Noel.
Brown,	Kenny,	

LEAVE OF ABSENCE.

One day's leave of absence was granted Mr. Cross.

THE JOURNAL.

MR. HUESTIS. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

PETITIONS.

MR. Van Dyke presented the following petition, signed by a large number of mechanics, citizens of California, asking for the insertion of a clause in the Constitution providing for a lien law:

To the President and Members of the Constitutional Convention:

GENTLEMEN: The undersigned respectfully represent that the practical working of the present legislation, and decisions of Supreme Court based thereon, regarding the rights of mechanics, material-men, and laborers to a lien for their labor and material furnished, is such that those who in a measure depend upon such law for just protection fail in nearly all cases to obtain it, because of the inefficient working of said law.

Wherefore, we pray you to declare in our organic law the right of every mechanic, material-man, and laborer to a perfect lien on the thing whereon his labor has been expended, or for which his materials have been furnished.

Moreover, we would state that we would be satisfied with amendment number one hundred and sixty seven, introduced by Mr. Van Dyke, on October tenth, eighteen hundred and seventy-eight, and read and referred to Committee on Miscellaneous Subjects, as follows:

"SEC. —. Mechanics, material-men, artisans, and laborers of every class shall have a lien upon the property on which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished, and the Legislature shall provide by law for the speedy and efficient enforcement of said liens."

And your petitioners will ever pray.

Referred to Committee on Miscellaneous Subjects.

Messrs. Stedman, Wellin, and Barbour also presented petitions on the same subject.

Referred to Committee on Miscellaneous Subjects.

RESPONSE TO INQUIRY.

THE PRESIDENT. I have here a communication from the Superintendent of Streets of the City and County of San Francisco, in response to a resolution of this Convention. If there be no objection, it will lie on the table and be printed.

OFFICE OF SUPERINTENDENT OF PUBLIC STREETS AND HIGHWAYS,
CITY HALL, SAN FRANCISCO, November 19th, 1878.

To the honorable Constitutional Convention, Sacramento:

GENTLEMEN: In compliance with resolution number seventy-three, passed by your honorable body, I herewith have the honor of transmitting the information sought for in said resolution.

Holding myself entirely at your service for any information connected with this department, I remain,

Respectfully, your obedient servant,
L. M. MANZER, Supt. of Streets, etc.
Per LOUIS COHN.

ASSESSMENTS FOR STREET WORK.*

YEAR ENDING—	Grading	Planking	Paving	Macadamizing	Brick sewers	Wood sewers	Cement pipe sewers	Stone pipe sewers	Curbs and Crosswalks	Sidewalks	Corners	Piling	Total
1867.													
June 30...	$327,333 00	$96,897 00	$117,594 00	$117,271 00	$156,745 00	$49,378 00	.....	.....	$47,423 00	$90,154 00	.....	$88 00	$1,002,883 00
1868.													
June 30...	468,734 90	237,482 30	172,087 88	143,858 76	237,798 45	47,423 73	.....	.....	37,568 15	139,787 63	.....	26,744 86	1,511,486 66
1869.													
June 30...	623,056 97	114,502 94	47,424 65	203,066 13	365,598 36	50,097 80	.....	.....	27,796 36	134,073 35	.....	20 79	1,565,616 56
1870.													
June 30...	436,433 92	103,411 69	137,046 24	169,663 82	213,480 79	53,529 78	.....	.....	57,237 00	75,526 81	.....	.....	1,246,130 05
1871.													
June 30...	373,510 00	73,264 00	125,225 00	89,463 00	62,215 00	5,467 00	.....	.....	35,205 00	64,165 00	$14,881 00	.....	843,415 00
1872.													
June 30...	154,676 00	61,004 00	34,461 00	43,304 00	8,797 00	17,533 00	$11,165 00	.....	10,634 00	32,823 00	6,271 00	.....	380,698 00
1873.													
June 30...	159,406 00	87,526 00	46,216 00	57,124 00	59,316 00	6,062 00	11,454 00	.....	18,264 00	44,617 00	16,113 00	.....	506,098 00
1874.													
June 30...	238,277 57	61,346 24	59,659 81	105,915 18	84,388 77	8,902 85	10,372 89	.....	32,349 45	42,127 69	24,147 95	.....	667,488 40
1875.													
June 30...	62,509 75	70,023 86	89,613 14	53,451 31	162,437 15	11,415 13	21,052 60	.....	34,422 53	56,050 87	41,152 99	1,362 95	603,492 32
1876.													
June 30...	295,133 63	100,586 01	94,349 74	74,230 08	256,198 40	14,359 21	36,821 11	$21,863 96	37,922 87	67,736 66	73,705 70	14,119 28	1,087,026 65
1877.													
June 30...	478,948 09	132,518 84	361,959 38	92,574 72	346,784 85	26,953 67	64,430 74	59,654 29	113,132 72	163,890 46	6,681 07	14,665 98	1,862,194 81
1878.													
June 30...	169,027 01	67,878 94	269,056 07	40,908 66	100,417 36	6,707 29	18,081 49	47,826 47	89,813 39	93,443 34	.....	9,110 16	912,270 18
Totals..	$3,787,046 84	$1,206,441 82	$1,554,692 91	$1,190,920 66	$2,054,177 13	$297,829 46	$173,377 83	$129,344 72	$541,767 72	$1,004,195 81	$182,892 71	$66,112 02	$12,188,799 63

* This statement refers to question number one, of Resolution No. 73.

The following applies to inquiry number two, of resolution number seventy-three. It is a literal statement of the amount expended on accepted streets *only*, and does not include any amount in any way except for street repairs:

1867—Ending June 30th, of that year	$17,581 81
1868—Ending June 30th, of that year	26,295 55
1869—Ending June 30th, of that year	45,174 86
1870—Ending June 30th, of that year	51,211 75
1871—Ending June 30th, of that year	94,288 64
1872—Ending June 30th, of that year	91,418 48
Amount carried forward	$000,000 00
Amount brought forward	$000,000 00
1873—Ending June 30th, of that year	89,562 50
1874—Ending June 30th, of that year	277,443 60
1875—Ending June 30th, of that year	163,529 32
1876—Ending June 30th, of that year	390,464 50
1877—Ending June 30th, of that year	259,266 77
1878—Ending June 30th, of that year	118,953 28
Total for twelve years	$1,625,191 06

This is exclusive of materials, street cleaning, and sewer cleaning, but only what it has cost to keep the accepted streets in repair.

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ACQUISITION AND ALIENATION OF LAND.

MR. DAVIS introduced the following proposed amendment to the Constitution, relative to the acquisition and alienation of land:

Amend by adding a new section, to be known as section ——, and to read as follows:

SEC. —. The Legislature may by general law promote the abolition of land monopoly, by regulating and restricting the quantity which hereafter may be in any manner acquired or alienated.

Referred to the Committee on Land and Homestead Exemption.

MR. ESTEE. Mr. President: I move that the Convention resolve itself into Committee of the Whole for the purpose——

GOD IN THE CONSTITUTION.

MR. VAN DYKE. I desire to present a petition from citizens of Oakland, requesting that there be a suitable expression in acknowledgment of Almighty God as the source and authority for civil government. I desire to have the petition laid on the table, as the Committee on Preamble and Bill of Rights have already reported.

The petition was read and laid on the table.

PETITION—TAXATION OF STOCKS.

MR. EAGON presented the following protest, signed by a large number of citizens of Amador County, protesting against the insertion of a clause taxing the capital stock of mining and other corporations:

To the honorable the President and Members of the Constitutional Convention of the State of California:

WHEREAS, Propositions have been offered in your honorable body to be engrafted in the new organic law, making it mandatory upon the Legislature to tax the stock of incorporations organized under the laws of the State; and,

WHEREAS, Incorporations so organized are mainly for the purpose of opening and developing mines which, as a rule, have no certain or fixed value until made so by an expenditure of moneys derived by assessments upon stockholders of said incorporations; and,

WHEREAS, The development of mining property and the encouragement of mining industry is largely dependent upon the coöperation of individuals associated together under the law governing incorporations; and,

WHEREAS, The taxing of the stock of incorporations of this character would have a tendency to discourage mining, and retard the growth of one of the most important interests of the State; and,

WHEREAS, The property created by the expenditure of money upon the development of mines is the only legitimate subject of taxation of such incorporations—the certificates of stock being but evidence of ownership therein;

Therefore, your petitioners, citizens of Amador county, do hereby enter their earnest protest against the adoption of any clause in the Constitution whereby the stock of incorporations shall be taxed, as wrong in principle, and calculated to discourage mining and other legitimate pursuits, and to cripple the efforts of those who, by their association in companies, would otherwise add to the material wealth of the State.

Laid on the table.

AMENDMENT TO RULE FIFTY-SIX.

MR. TINNIN. Mr. President: I move to take up the amendment to Rule Fifty-six, of which I gave notice yesterday.

MR. ESTEE. Mr. President: I move that the committee resolve itself into Committee of the Whole, the President in the chair, for the purpose of——

MR. TINNIN. I rise to a point of order. I made a privileged motion.

THE PRESIDENT. The Chair is of the opinion that it is not a privileged motion. It is moved and seconded that the Convention resolve itself into Committee of the Whole, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Lost.

MR. TINNIN. I move now to take up the amendment to Rule Fifty-six.

Carried.

THE SECRETARY read:

"Amendment to Rule Fifty-six: *Provided*, that when the previous question is sustained it shall only apply to the amendments then pending, and other amendments may be offered to the section."

MR. VAN DYKE. Mr. President: I hope that amendment will be adopted. We saw the utility of it here yesterday. As the rule stands now, the previous question is moved and carried, and the result is we cannot amend a section reported by any committee, for it will work like this: objectionable amendments may be offered to a section, and they will be voted down as a matter of course. Then the section, however objectionable in itself, cannot be amended. This will allow the Committee of the Whole to vote down objectionable amendments, and then go on and perfect the section, and of course that is in the interest of good government and what we all desire. I hope that the amendment will be adopted.

MR. HERRINGTON. Mr. President: I move to amend by inserting before the word "amendment," the word "last," so that it will read "the last amendment then pending," because we might desire to retain the first amendment offered while we would be unwilling to discuss the last amendment that is pending. Now, I move to amend by inserting the word "last" before the word "amendment."

MR. REYNOLDS. Mr. President: I make this point of order. This resolution admits that there is a previous question in Committee of the Whole. If you will refer to Rule Fifty-six you will find that in Committee of the Whole the previous question shall not be moved. I hold, sir, that the rule has never been changed. It is true that on the eleventh of November an attempt was made to change that rule, which resulted in a failure by a vote of seventy-seven to twenty-nine, and the Journal declared that the amendment was "adopted by the following vote." That, Mr. President, is probably a mistake of the clerk, an error of the Journal, for we find by reading Rule Sixty that "no standing rule or order of the Convention shall be rescinded or changed without a vote of two thirds, and one day's notice being given of the motion therefor; but a rule or order may be suspended temporarily by a vote *of two thirds of the members present*, except Rules Fifty, Fifty-one, Fifty-two, Fifty-three, and Fifty-five. Hence it follows that seventy-seven was not two thirds of the Convention required to change an established rule, and was therefore lost. Secondly, there is no authority for the use of the previous question in Committee of the Whole. The point of order that I make therefore is that this resolution is not in order.

MR. MCFARLAND. Mr. President: I do not believe that this Convention wants to fritter away the whole forenoon talking over this amendment. For once in my life I move the previous question.

THE PRESIDENT. The Chair is of the opinion that the point is not well taken. The rule was changed by a two-thirds vote.

MR. REYNOLDS. I appeal from the decision of the Chair.

THE PRESIDENT. It takes three to appeal from the decision of the Chair.

MR. SMITH, of San Francisco. I second the appeal.

MR. NELSON. I second the appeal.

THE PRESIDENT. The gentleman from San Francisco, Mr. Reynolds, raised the point of order that the amendment proposed to Rule Fifty-six is not in order. The Chair held the point of order not well taken, from which decision an appeal has been taken. The question is, Shall the decision of the Chair stand as the judgment of the Convention?

MR. BEERSTECHER. Mr. President: It seems to me that the only question between the Chair and the gentleman from San Francisco, is this: Rule Sixty says, "no standing rule or order of the Convention shall be rescinded or changed without a vote of two thirds." If "two thirds" means two thirds of the delegates elected to this Convention, or in other words two thirds of one hundred and fifty-two, then in such case the rule was not changed. But if "two thirds" means merely two thirds of the members present, then the rule was changed, and regularly changed.

MR. ESTEE. I rise to a point of order. My point is this: that the President of this Convention recognized a motion calling for the previous question. If that be so, then any intermediate questions are not debatable.

THE PRESIDENT. The point of order is well taken.

MR. BEERSTECHER. Then I suppose that the appeal is not in order.

THE PRESIDENT. The appeal is in order, but not debatable. Shall the decision of the Chair stand as the judgment of the Convention?

The ruling of the Chair was sustained, on a division, by an affirmative vote of 103.

THE PRESIDENT. The gentleman from Sacramento called for the previous question. There was a second. The question is, Shall the main question be now put?

The motion prevailed.

THE PRESIDENT. The main question has been ordered. The amendment to the amendment, offered by the gentleman from Santa Clara, Mr. Herrington, was not seconded. The question is on the adoption of the amendment offered by the gentleman from Trinity, Mr. Tinnin.

The amendment was adopted.

CORPORATIONS.

MR. ESTEE. Mr. President: I now move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The amendments to section eighteen were the amendments pending before the committee. The Secretary will read.

THE SECRETARY read:

"By Mr. Ayers. Amend section eighteen by adding after the word 'carrying,' in the fifth line, 'and whenever a railroad corporation shall, for the purpose of competing with a rival railroad line, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such reduced standard.'"

REMARKS OF MR. WYATT.

MR. WYATT. Mr. Chairman: I hope that the amendment proposed by the delegate from Los Angeles will be adopted by the committee. If it would not weary the committee I would like to have read sections sixty-four, sixty-five, sixty-six, sixty-seven, sixty-eight, sixty-nine, and seventy of the report of the Board of Commissioners of Transportation—General Stoneman, Mr. Doyle, and Mr. Smith—to the Legislature two years ago. It contains a recommendation, and gives the reasons in full for that recommendation, which is covered by the amendment proposed by the gentleman from Los Angeles. I hate to tax the patience of the committee to read so long a document, but I should like very much for these sections to be read.

THE CHAIRMAN. It cannot be read except by a vote of the Convention.

MR. WYATT. I will read it myself as a part of my argument. It is better than anything I can say, and the members of this Convention, in my humble opinion, ought to hear it.

THE CHAIRMAN. The gentleman can adopt it as his speech.

MR. HOWARD. Can it not be read by the Secretary as a part of his speech?

THE CHAIRMAN. Not except by vote of the Convention.

MR. WYATT. I can read it. The Commissioners say:

"Before concluding the consideration of rates of freight, the subject of competition calls for some remarks. Without seeking to deprecate the great benefits derived from the construction of railroads, one evil, incident to their construction, which cannot be denied, is their tendency to destroy all other means of communication, especially in a new and

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sparsely settled country. The almost unlimited capacity of the railroad, its superior speed, safety, and punctuality, give it a natural preference over all other modes of communication for certain purposes. The passenger, to whom time is always important, invariably prefers it, and the stage coach infallibly disappears on its construction. So also does the old-fashion carrier's wagon, which cannot possibly compete with it in price or speed. So far, its operation in displacing previous modes of conveyance, is normal, and consequently beneficial to the public. But the greater cheapness of water-borne freight, especially over natural waters, secures a preference to it even over the railroad for many purposes, and this, incidentally, tends to keep down railroad rates. This natural and healthy competition, however, the railroad managers invariably seek to destroy.

"The history of all competing lines of transportation is nearly, if not quite, uniform. It commences with a reduction of prices by the railroad company, responded to in the same way by the other party, and followed up on both sides until rates are reached which resolve the contest into a single question—which party has the longer purse? When that point is reached, the railroad, which, once constructed, is as much a permanent feature in the geography of the country as a river, buys off the opposition line, and prices are raised to a point sufficiently high to indemnify the company for its previous concessions, for which, probably, indemnity has already been found in the augmentation of charges to points not reached by the water line. As the organization of transportation lines by water necessarily calls for the outlay of considerable capital, new parties are little likely to recommence the enterprise, after the old line, with established connections and trained employés, has been fairly beaten off the route, and thus the railroad secures an absolute monopoly of the carriage, even between points possessing navigable water routes, and at higher prices than would be charged over the latter. In this way the steamers which formerly navigated the interior waters of the State have passed into the possession or control of railroad companies, and recently the steamers plying on the coast have been compelled, by the low and evidently losing rates of the Southern Pacific Road, to come into an arrangement to pool their earnings with that road.

"Now, it is no part of the normal functions of a railway to destroy other means of transportation, or supersede their use, *except so far as it is permanently more advantageous or cheaper than they.* That in the hands of private owners and under the spur of individual gain it does so, is one of the fruits of the system of committing to private hands that which is a natural function of government.

"Such proceedings as we have adverted to are a public evil. They affect vitally the interests of whole communities, and lead to the decay of flourishing interior towns, and this without permanently cheapening the cost of transportation to producers, or benefiting any one, except the owners of the railroad. If legislation can prevent them, they should be prevented.

"It is, however, vain to denounce as illegal the contracts by which they are affected, for evasion of such enactments is easy; we believe it can best be accomplished by laws which will require the management of the railroads to be as permanent in its character as their structure is, and forbid, without the consent of the public authorities, the retraction of any concession once made by them to the public. This rule has the advantage of being just in itself, easily enforced, and in harmony with the rules that govern the management of such enterprises in the hands of enlightened self interest.

"A railroad, as before observed, is a permanent feature of the country. On the faith of its existence, and the regularity and cheapness of its communication, people settle on the line of the road, and adapt themselves, adjust their industries, and invest their means on the faith of its permanence and the permanence of the accommodation it affords. To permit it afterwards to withdraw or diminish those facilities, or to enhance their cost, is a wrong to the parties so related to it, differing only in degree, not in kind, from permitting it to tear up its rails and destroy its roadbed. The management of a railroad, even in the hands of men ever so selfish (if they be but wisely selfish), is naturally progressive. Additional facilities for business and travel go hand in hand with additional business and travel, and usually precede and lead to them. The superior accommodations of the Oakland ferry have created Oakland, not Oakland the ferry. The railroads created Chicago, not Chicago the roads. This is the history of all the great West.

"It is not, perhaps, possible to frame a law which will compel the adoption of an enlightened and progressive policy by the companies without conferring undue power on executive officers; but it is in the power of the Legislature to prohibit any progress backwards, by forbidding the raising of rates and the withdrawal of facilities once furnished. Such changes of this kind, if any, as may be consistent with the public interests, the Commissioners may be authorized to assent to on behalf of the public."

Mr. Chairman, and gentlemen of the Convention, I say that the experience of this State is as well portrayed in the few sections I have read to you as it is possible for them to be portrayed, and any man in the State of California who has any knowledge of the railroad system of management in this State, and of the geographical conformation of this country, is perfectly aware that the system of conducting business is precisely as described by these Railroad Commissioners, and complained of yesterday by Col. Ayers, who introduced the amendment. Take, for instance, the Napa Valley. There is a railroad there, and who can now build a competing railroad there? It is a moral impossibility. The valley had just as well be shut up by nature to a second railroad as to be closed by the power of capital as it is there. But not only is that valley so shut up, but every valley in the State is sought to be. A railroad in possession of a valley now can prevent all other competing lines entering. If it does not prevent the construction of a competing line, and one should be built, it is run out of existence by a reduction of rates, and stands as a warning against all future efforts at competition. With this clause in the Constitution they would either be compelled to furnish such facilities as would be reasonable to the community, or they would be liable to be competed with by competing lines and with capital. I hope that the amendment will be adopted.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I am opposed to this amendment, for the reason that I do not think it is at all necessary if sections nineteen and twenty should be adopted. Section eighteen reads:

"No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying."

Now, the amendment proposed by my friend from Los Angeles, goes to the effect that in case any railroad company lowers its rates of prices for freight or passengers for any cause, that they shall never raise them again.

MR. AYERS. Mr. Chairman: I will call the gentleman's attention to the fact that it provides that if they lower the rate in competition with a rival line.

MR. ESTEE. Of course that would raise the question as to whether it was in competition. They would say it was not. It would raise a question of fact in every instance. It would be holding out a premium against their ever-lowering their rates, because, if they ever did, it would be a question of fact as to whether they lowered in competition, and therefore they never could raise them if the business did not pay. But, my chief objection is that sections nineteen and twenty remedy all the evils that my friend complains of. Section twenty, speaking of these Commissioners, says that they "shall have the sole power, and it shall be their duty, to correct abuses by railroad corporations or other transportation companies; establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; report to the Governor, annually, their proceedings, and such other facts as may be deemed important; hear and determine complaints against railroad or other transportation companies; affix penalties and enforce them through the medium of the Courts, and perform such other duties as may be prescribed by law."

Now, if this Convention adopt that section and adopt that principle, then the Commission would have the power to regulate fares and freights first, and, second, they would have the power to correct abuses by railroad companies. My idea is, and I think it was the opinion of the committee, that that meant all the complaint and evils that my friend speaks of.

I hope that this amendment will not be adopted, because we cannot now, looking at it and examining it carefully, know exactly the construction that may be given to the words which are embodied in his amendment. But we do know that section twenty, if adopted, will remedy all these evils, or, at least, I think so, and that was the opinion of the committee. I hope that new things that do not seem to meet any necessity, will not be put in. If there is any great necessity for it, let it go to the table and be printed, and let this Convention have a fair opportunity of examining the proposed amendment.

REMARKS OF MR. GRACE.

MR. GRACE. Mr. Chairman: I am in hopes that this amendment, offered by the gentleman from Los Angeles, will be adopted. The way the matter stands in the State of California, it is almost utterly impossible for there to be and exist any such thing as a competing line against the great corporations that control the public thoroughfares and highways of this State. There is a corporation in this State, which has its principal office and place of business in San Francisco, known as the Central Pacific Railroad Company, and the different companies that it controls, that runs every steamer and every railroad line that is run, almost, in the State of California. A man cannot leave the State of California without he buys his ticket and pays his fare to that company, and it is impossible for any line to compete with it, because if any company invests their money they immediately reduce their fares to a trifle, and reduce so low that it will starve them out and force them to quit, and immediately that they stop, then the fare goes up higher than ever to make it up. I tell you that it is a system of wholesale robbery, and I know that there are gentlemen on this floor that have got retaining fees to stand up and try to gag down and to defeat the will of the people in compelling the railroad corporations in this State to do a legitimate, square, honest business, as any individual has to do in this community. Now, Mr. Chairman, if there should be a steamboat in opposition to the Sacramento boats put on to-morrow, the fare would be reduced to fifty cents. You could go from Sacramento to San Francisco for fifty cents. But as soon as it was drawn off they would raise their fare to three dollars. The working people, the honest people, the producers of the State of California are tired of it, and they send their delegates representatives to Sacramento to amend this Constitution in such a way as would forever prohibit these corporations from robbing the hard-fisted toilers of the country out of their honest money. And all we want here upon this floor, all I ask them, is to make these thieving corporations come down and do a legitimate, square, honest business, the same as any responsible private citizen of California has to do. I do not see as there is any other way to do it except to adopt this amendment, put it into the Constitution, and fix it so that they cannot change it like they do the Code every Legislature. I tell you I have seen for years in California that some way the corporations manage to control the Legislature; that they can change the Code any time that suits their convenience; and I am in hopes that you will come right up to the mark and vote in favor of this amendment of the gentleman from Los Angeles, and it will have a good effect,

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REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. Chairman: I am not a professional gentleman. I presume that I can safely say that I am not one of the paid gentlemen on this floor, alluded to by the gentleman who has just taken his seat. Nevertheless, I am opposed to this amendment. I am opposed to it because it proposes to interfere with the system that is being adopted by this committee. Now, if we commence on that system, if we adopt this idea of appointing a transportation Commission, vested with sole powers to regulate this matter, why do we step in and interfere with a programme in regard to their duties? This idea may conflict with the idea of the Commission. If this Commission is established, if their duties are laid out, they can step in, when a railroad would attempt to raise freights and fares where they had lowered them before, and regulate them. That is the system that we should adopt. We should adhere to this system, and allow the Commission to control this matter.

MR. JOYCE. If the railroads reduce their rates haven't the people a right to keep them there?

MR. TINNNIN. That is a question it is impossible for me to answer. I say that the Commission is to be established to remedy these evils, and if we adopt that system let that Commission remedy the evil.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: I do not see any conflict between section twenty and this. I do not understand that if this amendment, offered by the gentleman from Los Angeles, is carried, that it necessarily conflicts with any part of section twenty. Section twenty provides for the appointment of a Commission who shall fix the rates of fares and freights. I do not suppose it is contemplated that the Commission shall say to the railroads, "If you are willing to take less you shall not take less." This simply provides that when they voluntarily, by their own motion, and to carry out their own ends, fix freight at a certain rate, that they shall not raise it. I do not know that there is any present necessity for the adoption of the amendment, but if the gentlemen who have been here for some years will look into the past, they will see that it would have been a very useful provision in years gone by, when the carrying trade and the waters of this State were monopolized by a corporation. Whenever an individual or company came here with boats, willing to work for fair compensation, freights and fares were put down to nothing, until they were starved out, and then put up again. Now, if some man starts an ox team to carry freight, and for the purpose of starving out that teamster, they lower their rates of freight, and say that they are able to carry for less than the teamster, let it stay at that price. It does them no harm. Our policy is to encourage competition.

I do not think it is a good argument that this amendment should not be voted for, because section twenty has been proposed to the committee. How do we know that section twenty is going to be adopted? I say here and now, that I do not propose to give, by my vote, to any triumvirate the power that is proposed to be given to three Commissioners in the State of California. If they would give me the appointment of the Commission, I do not know where I could find three men that I would be willing to trust so far. It is against the principle of the Lord's Prayer. These men are being led into temptations which they would be more than men if they could withstand.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. Chairman: I would like to see that amendment adopted, because there is, perhaps, a danger that section twenty may not be adopted. I understand that there is a powerful effort being made to defeat it. Letters are written here to members from every quarter of the State, begging them not to adopt that section. If we should lose it by the influence of the railroads, I would like at least that that clause should be adopted. I do not think that it is inconsistent in the least with section twenty or section nineteen, and I think that gentlemen who are opposed really to the monopoly of this railroad ought to steadily vote for everything that tends to check it as we go on. The monopolies will be on one side and the representatives of the people on the other. We may be defeated in that struggle, and therefore let us take, as we go along, every single amendment that tends to curb and control the railroad. Therefore I hope that the amendment will be adopted. We will strive hard on the section, but we may be defeated, so I am asking of you who are opposed to the railroad to adopt that amendment.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: So far as my vote upon this section is concerned, I shall not be governed by any anticipations of what may be done on the twentieth section. Sufficient for the day is the evil thereof. When we get to that section, I think it should stand on its own merits, but the proposition of the gentleman from Los Angeles is a good proposition. It is a proposition demanded in this State. I will refer the gentlemen of this Convention to the first railroad built in this State, the road from here to Folsom, and from that on to Shingle Springs. The fare is four dollars, forty-five miles. Let a stage line be put on that will carry people for two dollars and fifty cents or three dollars, and they will reduce their fares to one dollar, in order that the stage company cannot compete. The fare has been kept up because it is impossible to start a road and run it for a few months. But, provide in that section, that if they reduce their fares they shall so remain, they will be compelled to keep their rates at a reasonable price, or there will soon be competition. The fare from here to Placerville used to be five dollars. It is now five dollars and fifty cents, with a railroad running within five miles of Placerville. All we ask is such reasonable opportunities as we would have, providing there was no railroad there. If we pass this provision, men could take their teams on the road again, and reduce the price of freight. But, the very moment that is done now, the railroad will reduce their rates to half the rates.

Every man who knows the history of the old Steam Navigation Company, that have for years controlled the trade of the river, knows that they will reduce at any time the freights and fares upon the river, and freeze out any company that starts there. I do not desire to do any injustice to a corporation, either railroad or otherwise, but the rights of the people are to be considered first. But if the companies, for the purpose of freezing out competition, reduce their rates, let them remain there. I believe that the amendment is just. I believe that it is equitable. I believe that it is in the interest of the people of this State.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I hope this amendment will be adopted. I can certainly see no injustice in it to the corporations, and I see in it a provision that will be in the interest of the people of this State. It does not need that I should call the attention of this committee to instances where the people have been wronged by the very operations of the corporations that this amendment proposes to remedy. They are common everywhere, in many places in our State. Wherever there is a business grows up in any particular portion of the State, and the railroad is there with its track and its cars to do that business, they then, by the combinations that it is possible for them to make, endeavor to control that business entirely. They do it from the selfishness of a corporation. It is a selfishness natural to the position. They have built their works for the purpose of doing the carrying trade, and the profit is to be determined by the amount they carry and by what they are expected to charge for it. Now, then, if another corporation attempts to put a road from one point to another, which is already reached by the corporation, they will reduce freights between these two points to a figure so low that no corporation can live by it, and the consequence is that the smaller or weaker corporation must go to the wall, while that which has been enabled to create the monopoly, having the longer purse, can hold out until the smaller corporation is unable to do anything, and they not only do a great wrong to the people who have invested in the competing line, but to the whole community.

Sir, it is a fact well known to many here that the corporations all along the coast, above and below, have managed to control the coast line of steamers, so that wherever there was any opposition and people were enabled to get their freight at anything like a fair rate, that opposition has been crushed by a reduction of rates, and then the rates put up to the old figure, or higher, and it has been impossible to get anything below it. There is another reason why this should be done, and that is that the interests of the people of this State are at stake. No one corporation ought to have the power to control and dictate the terms under which any community or the people of any part of the State can have the right or the privilege, that ought to be theirs, by the investment of capital, to carry their freight and passengers from one place to another. Now, sir, we cannot in justice to the people that sent us here overlook this question, and it is no hardship upon the corporation. They do this upon their own motion. They are not compelled to reduce their rates below living rates. But for the purpose of ruining the people and in the interest of their own pockets, they put their rates below living rates, then it is but just that they be compelled to keep them there, and it is the only safeguard that we can have to prevent them sealing up every place in this State.

I hope the amendment will be adopted. I believe it is the only point that we can aim at that will be of real and substantial benefit. It is an addition to the provisions of section twenty, if I may foreshadow the action to be taken by the committee. The Commissioners might not think it their duty. That section might be construed that they should regulate freights and fares, without taking into account competition. So long as they did not allow them to charge more than other routes between the same points, they might consider that they had accomplished their duty and the purpose for which they were elected. But this amendment protects the people. It provides that in a case of that kind they shall not again raise the rate above the point that they have voluntarily reduced it to.

REMARKS OF MR. GREGG.

MR. GREGG. Mr. Chairman: The proposition, upon its face, looks very fair, but when you come to examine it you will find that it will impose upon the people a worse evil than that complained of. It has been held that the Legislature has the power to regulate freights and fares. It simply takes that power away from the Legislature. Now I will illustrate it. There are two competing lines between this place and San Francisco. The owners of the railroad can come here and invest in property in Sacramento, put down their rates, discriminate in favor of localities, and there is no power on earth that can raise them again, because there happens to be a competing line. What is the result? Why, that any place must stand or perish at the will of the railroad company. They could build up the trade of one place at the expense of another. It is discrimination that the people have been complaining of. If the directors of a railroad corporation wish to swindle the stockholders, what is easier than to put down the rates below living rates? They are never able to raise them again, and bankruptcy is the consequence, and the rival company buys them out. They can make combinations for that very purpose. Instead of being the relief sought by the gentleman, it simply makes matters worse. I say that the very thing intended to be remedied is in effect fixed stronger upon the people, and this amendment will make them more suffering than ever. It is a whited sepulcher, fair without, but within filled with dead men's bones. It is fastening upon us what the people have been growling about, and that is discrimination.

REMARKS OF MR. O'DONNELL.

MR. O'DONNELL. Mr. Chairman: I hope that this amendment will be adopted. I will read that amendment: "And whenever a railroad corporation shall, for the purpose of competing with a rival railroad line, lower its rates for transportation of passengers or freight from one point

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to another, such reduced rates shall not be again raised or increased from such reduced standard." That is what men in this Convention were sent here for. That is a want of the people of the State of California. Our system of government contemplates a proper distribution of power. There is another safety for the people, because a monarchy is essentially a one man power, and the king is the embodiment of all power. If we consider the tremendous power which the railroad king of California has wielded for twenty years, can we say that it is consistent with our theory of government? Is it a proper distribution of power? Is it any distribution at all? No! It is a system more nearly resembling oligarchy than a republican form of government. This power must be destroyed. This man must be dethroned. The purple robe of authority must be struck from his back, and he must stand upon the broad principle of manhood, as every man in this Convention stands to-day. See, for instance, this Central Pacific Railroad Company. It is impossible for any other railroad company to compete with it. The very moment that it is undertaken, it controls the entire State. It will cut down the ruling rates of fare to almost nothing. It controls all the boats and all the steam vessels almost in the harbor of San Francisco. If they undertake to run an opposition, the result is they will reduce the fare to starving prices, and I say when the fare is once reduced let it stay there. I hope that every member will vote for this amendment. That is the amendment we were sent here to vote for, and to put into this Constitution.

REMARKS OF MR. TULLY.

MR. TULLY. Mr. Chairman: I hope that the amendment will be sustained. I think that the reasons assigned by the gentleman from San Joaquin, Judge Terry, were full and correct, but I did not rise particularly for that purpose. There are some gentlemen here that assume that they are the embodiment of all the virtue that is in this Convention. Whenever you differ with them upon any little subject connected with the railroad, they begin to threaten you with "the people." I protest against any such proposition as that. I have long since learned that whenever you find a woman going around prating about her virtue, you can suspect her integrity, and as a rule you have the greatest old bawd before you in all the country.

Now, I am in favor of this amendment, and I am not going to vote for section twenty. I am not going to vote for any section that gives a Commission a right to determine everything—to hear complaints, take evidence, fix penalties, and through the Courts enforce those penalties. I am not going to vote for any measure that gives to Commissioners the right to confiscate railroads, and vest the rights of all the railroads in this State in themselves. Now, if the gentleman thinks, or any other gentleman thinks, that railroad influence, or railroad rings, or railroad letters, influence me, they have a perfect right to think it. I am not afraid of any such lash or any such measure. It has been reported here that the railroad has attempted to load down this Constitution with obnoxious measures, that it may be defeated before the people. I would scorn to make any such reference to any man. I believe, and I will continue to believe, that every gentleman in this Convention is an honest man and votes for what he believes to be the best interests of the whole country and of his constituents. I repeat, again, I am tired of these allusions; I think they are in bad taste and unbecoming to any gentleman on this floor.

REMARKS OF MR. HALE.

MR. HALE. Mr. President: This is one of those cases where I am unwilling to vote without explaining the reason of my vote. Having come to the conclusion that this amendment ought to be voted down, I wish to state the reasons why I come to that conclusion. It has been shadowed forth by the Chairman of the Committee on Corporations, Mr. Estee. Believing as I do, that it is the best policy for the people of the State to adopt the Commission system, upon the plan—I do not speak of all the details—reported by the committee, I feel very reluctant to vote for any measure which will either have a tendency to prevent its adoption by the Convention, or, being adopted, may cripple its usefulness. As has been truly said by the Chairman, the commission plan which they have adopted, furnishes a foundation upon which, according to their estimate, there shall be an effective remedy for the evils aimed to be corrected by this amendment. Mr. Chairman, I would ask the reading of the amendment from the desk for the purpose of getting at the exact language.

THE SECRETARY read:

"Amend section eighteen by adding after the word 'carrying,' in the fifth line: 'And whenever a railroad corporation shall, for the purpose of competing with a rival railroad line, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not again be raised or increased from such reduced standard.'"

MR. HALE. The proposition is that when a railroad company, or transportation company, shall lower its rates in competition with a rival line, then, and only then, are they subject to this rule, that they shall not afterwards raise their rates. Now, I call attention to the fact, Mr. Chairman, that this species of constitutional legislation is in the nature of *lex talionis*. I submit that it is not wise for that reason alone. In other words, we say to the railroad company, "Now, if you dare to put your rates down, either above or below living rates, if put down for the purpose of superseding or breaking opposition, you shall not afterwards raise them." I submit that it is not dignified or right. For myself, sir, I do not propose as a member of this body to legislate nor to make constitutional law merely for the purpose of crippling anybody. I have no more disposition to do an act of injustice towards a railroad company than I have towards the people. The truth of the matter is, our duty is to do justice to all and injustice to none. Now, the plain purpose of the committee here is to establish a Commission—a Commission representing whom? It will be said on the one side "the people." Yes, they will represent the people. I hope, on the other side, that they will equally represent the transportation companies; that they shall be a Commission whose duty—a duty as high as was ever imposed upon a citizen or officer for the execution of a trust—is to deal justly, to deal honestly, to deal wisely, not only for the protection of the rights of the people, but equally for the protection of the rights of the railroad companies.

Mr. Chairman, I think we shall fall into a gross error here, if we permit ourselves to lend color to the pretense of arraying ourselves or the people against the transportation companies of this State. Every intelligent man in the State of California knows, if he has studied the history of his own time, that these transportation companies have wrought a mighty revolution in the destinies of this State; a revolution already achieved, and still only in the future to be accomplished. It is not our duty, and in my humble judgment, it is not our moral right to array ourselves against these great improvements which are the engines of progress in the world to-day, and will be in the future. Now, sir, I do not wish any one to imagine that because I take this, which I believe to be a broad, liberal, and just view of the subject, that I am opposed, in spirit or letter, in part or in whole, to a just and reasonable restraint upon these corporations. This, in my judgment, is the truth of the matter, that while these railroad companies are in the great work of working a mighty revolution in the destiny of California, equally with the destiny of the civilized world, yet the experience of the time has demonstrated the necessity of the exercise of that power, now fully recognized as belonging to the State, to control these corporations in the exercise of their franchise rights; to do it, sir, with a strong hand; with a steady hand. That it shall be a control that shall not be awake at noon-day and asleep at midnight. That it shall be strong and steady, but that it shall be just.

We have been trying legislation. We have been attempting, for the last fifteen years, to accomplish this supervision of the railroads through legislation. The failure has not only been complete, but it has been disastrous, or disgraceful—both, I think. I use the terms with a full knowledge of their import, and advisedly. I am in favor, nevertheless, of exercising this power, and I want this Constitutional Convention to submit to the people a plan upon which they can exercise that control; do it steadily, firmly, wisely, and justly—justly to all parties concerned. I am, for that reason, in favor of setting this Commission going from the highest authority that exists in the land, and that is by the people themselves. Let them select them. Not from San Francisco, not from Placer County, but from all over the State of California. It is said by some men that we are intrusting to these men extraordinary powers. True, sir, you are, but there is no other way, in my judgment, of having a steady, uniform, and just control. It is said that you will lodge this power in the hands of men where it will be unsafely lodged. Why, the people of this State and the people of other States have elected officers of just as much importance. They elect Justices of the Supreme Court. The Chief Justice of the State is elected by the people. Before them they come as a last resort. The aggregate rights of the people of the State may be brought to the bar of that Court and finally determined, and from their decision there is no appeal—no appeal except to the right of revolution. Yet the people elect these men. We have found no such recreancy as is anticipated. We have found these positions occupied by men of high character; men who have performed their duties with credit to themselves and honor to their common country. The Executive of your State, who is clothed with the whole executive power of your State, including the power of pardon—he, too, is elected by the people. Are these trusts more sacred? If we leave these questions to be determined by the people, may we not trust questions and responsibilities such as are to be devolved upon this Commission, to the people of the State, to make their choice by their own election? My observation teaches me that when the people take upon themselves the exercise of a choice, they are generally found to be correct, to be conscientious, to be conservative in making the choice. I further observe, as a lesson of history, that when you devolve upon one man, or body of men, and especially a small body of men, these high responsibilities, the inevitable effect is to make them conservative; to brighten their sense of duty. I think, sir, it is safe to intrust this power where the Convention proposes to lodge it. I am not speaking now of the details in full of the plan, but of the general plan itself.

Now, sir, the reason why I must vote against this amendment is that, in the first place, I want to know what we are to do with this plan of the Convention. If we are to adopt it, as I hope we may, then, sir, there will be found a remedy. I take it this is a sufficient remedy for the evils sought to be remedied by the amendment. If, as I should think, unfortunately, that plan were to fail, then I would say to the gentleman that he has a reason for the amendment, but until this plan is defeated, I must feel it my duty to vote against this, because I think that the adoption of this will go a long way towards the defeat of the other. These are my reasons for voting, as I say, against this amendment.

MR. TERRY. Mr. Chairman: I desire to propose an amendment: Amend by striking out the words "a rival railroad line" and inserting "any other common carrier." I propose that if they reduce their rates of freight for the purpose of competing with ox teams, that they shall keep it there. Anybody who carries freight is a common carrier.

REMARKS OF MR. HALL.

MR. HALL. Mr. Chairman: I cannot support the amendment. I have, as a member of this Convention, been called upon to give my assent to the declaration in the Constitution of this State, that corporations may be formed for railroad and transportation purposes. I have indorsed that declaration because I believed that the public good would be subserved by authorizing the creation of these institutions. Now, Mr. Chairman, having thus indorsed that declaration, I am called upon to give my approval to another declaration which will provide the

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means for their destruction. Let me illustrate. The rule which it is sought to engraft into the Constitution here, as I understand it, is this: There are existing two rival transportation companies. If either reduces its rates of charge for the purpose of breaking the other in the competition for business, it shall be held to those rates. Now, as a matter of practice, as a matter of history, as a matter of every day observation, we know that companies organized for transportation purposes will occasionally engage in active competition; that both parties will enter into the matter of reducing rates for the purpose of achieving success, and they sometimes reduce to what are called starving rates. Now I suppose that the rule is not to be applied to one of these companies as against the other, but in order to make it equitable and just, and equal, it must be applied to both. So I understand the principle involved in this amendment. If both reduce their rates they shall both be unalterably held to those rates. The result will be, and that will be the controlling idea with me, that whilst we create these institutions, believing them to be beneficial instrumentalities, believing that they will inure to the public good, believing that they will promote the public interest, we at the same time say that "if you enter into competition, whilst the public receives the benefit of it, you shall be bound hand and foot to those reduced prices and we will leave you to perish." That is the attitude in which the State of California is to be placed. It shall not receive my assent, and I shall vote against the proposition.

MR. WALKER, of Tuolumne. I move to amend by adding "unless the lowering or raising of such rates be by mutual consent of the competing parties."

THE CHAIRMAN. It is not in order at present. There is an amendment to an amendment pending.

MR. AYERS. I will accept the amendment offered by the gentleman from San Joaquin, Mr. Terry.

THE CHAIRMAN. If there be no objection the amendment can be accepted. The Chair hears no objection.

SPEECH OF MR. WILSON.

MR. WILSON, of Fourth District. Mr. Chairman: I did not intend to say anything upon this amendment, which involves, in my judgment, the question whether certain conditions of things may exist in railroads where the Legislature would be without any power at all over the subject-matter; but by some gentlemen the question has been discussed in such a tone, and such a manner, that I would feel myself wanting in self-respect, and recreant to my duty, if I did not express my sentiments upon it, and also my sentiments upon that demeanor and manner which certain gentlemen upon this floor assume whenever they rise to discuss any question. From the beginning, almost, of this Convention, gentlemen who seem to lack argument make it up by insinuations as against the motives and position of other gentlemen who seek to present their views upon this floor. They have one or two catch words which seem to suit them, and take the place of argument. As I came to this Convention the other day, passing along by one of the beautiful little residences for which Sacramento is celebrated, I saw two men engaged in earnest and serious conversation upon business apparently of great importance to them. As I got opposite, there was a loud, cracked voice that uttered two words, startling me and those who were conversing, and looking round I saw that there was in a tree near by a feathered biped, that uttered the words, "Pretty Poll!" As the gentlemen who were conversing started and looked round, the bird spread his wings and shook his head with pride, as if he had said something intelligent, and as if he had participated in the serious conversation which occurred between these two gentlemen. I have been frequently reminded of the circumstance during the debates in this Convention. When we were discussing the question upon the Bill of Rights, and great questions which underlie a republican form of government, great principles which underlie constitutional government, great principles which control all of us in this great nation, and affect the rights of the people—while men here were seriously discussing and seriously considering these questions, a voice, shrill and harsh, went up, "Kar-r-r-paration liayer-r-r!" and the unfeathered biped shook its head, and seemed to pride itself that it had said something intelligent, and had participated in the debate which was going on. When we had reached the question of eminent domain, one of the most important questions that can come before the Convention, and men were discussing when private property should be taken, and under what circumstances private property should be taken for public uses; and endeavoring to frame a section under which no wrong should be done to the property holder, and at the same time no impediment should be interposed by an obstinate or perverse person in the way of the taking of it in a proper case; and whilst men were seriously and earnestly discussing that question, with a view to arriving at the right, the same fierce shriek went up, "Kar-r-r-paration liayer-r-r!" and again the unfeathered biped shook his head with pride as if he had participated in the debate, and said something sensible. Now, when we reach this question and are discussing these great questions as to what should be the control over corporations, and how far the Legislature should be deprived of its power—because that is the question involved here—how far the Legislature should be deprived of its power to regulate corporations under certain circumstances, and men here are earnestly and anxiously seeking, in my judgment, to find out the right, and to do the right, we have the same "Kar-r-r-paration liayer-r-r" presented as an argument in the case. And I suppose that from the beginning to the end of this Convention the same unfeathered bipeds will gratify themselves with the same unmeaning words, and supply the place of argument by these unintelligible squawks.

I propose to say a few words upon the subject now before the Convention as to whether this Convention should put it out of the power of the Legislature to exercise any control over the subject, which it would by the adoption of this amendment offered by the gentleman from Los Angeles, Mr. Ayers. Now, this amendment is aimed at certain abuses. I have no doubt that they exist. I have no doubt that the gentleman from Los Angeles has presented this, in his judgment, as a remedy for these abuses, in good faith and with an earnest desire to protect the people; but we should recollect this, that in attempting to cure one evil we should not run into another. I suppose I may employ a figure of speech never before used except by my friend Colonel Barnes, who referred to Scylla and Charybdis. When the sailors passed along the coast of Italy, and were liable to run upon Scylla, they had to take great pains that they did not run upon Charybdis. I pride myself upon this, as the gentleman——

MR. BARNES. If the gentleman wishes to play unfeathered biped to me I have no objection.

MR. WILSON. The truth here really is that we are running into other faults probably greater than the one it is sought to avoid by the amendment. In the first place, the directors of a company may reduce the rates against the wishes or desires of the stockholders. They might put the company in very great jeopardy, and from an error of judgment they might paralyze forever the interests of the corporation. This is one objection. But that it puts it out of the power of the Legislature to control the matter is, to my mind, the greatest objection, because circumstances may arise where the Legislature ought to exercise a profound discretion, and exercise a wholesome control over these matters. For instance, a corporation which has placed itself in the position which has been contemplated by this amendment of the gentleman from Los Angeles, may have its rates very low, may have its rates below living rates, and if they are continued it may bring the road or other common carrier to absolute insolvency, because of its inability to raise its rates to living rates. Now a railroad is subject to accidents. We may have a very bad Winter; bridges may be carried away; culverts washed out: depots may burn down; collisions may destroy trains. Accidents of this kind are all the time happening, and I think it is ascertained that in the great collision that occurred between two trains in Alameda County on the first starting of the overland road, the loss in destruction of cars and damages recovered against the company was over three hundred thousand dollars. The great corporation of California, the Central Pacific Railroad Company, is under the control of Congress to a very great extent. Gentlemen have been treating that corporation as the great leading corporate interest in the State of California. They have been treating it as absolutely subject to the control of the people of this State. They forget that after the Act of Congress of eighteen hundred and sixty-two was passed, by which Congress granted great privileges, great subsidies, and great aid to the Central Pacific Railroad Company, in connection with the Union Pacific Railroad Company, that it acquired certain rights and interests in this great national work, and that the Legislature of California, by a solemn Act passed, consented to that, and therefore the United States of America is a party to this contract, and the State of California, by an Act of the Legislature, is a party to this contract. They forget that the United States has large interests in that road. The United States has a mortgage upon that road. There are other bondholders who have a mortgage upon that road prior to the United States. The Act of Congress reserves the right to regulate the freights and fares itself upon that road. Recently, by an Act passed here in this last session of Congress, called the Thurman Act, Congress has undertaken to legislate upon this subject and made very large demands upon the Central Pacific Railroad Company. The bill was introduced by the Senator from Ohio, Mr. Thurman, and it made very large demands upon the Central Pacific Railroad Company and the Union Pacific Railroad Company for a sinking fund. Hereafter, the Central Pacific Railroad Company and the Union Pacific Railroad Company have to pay very large sums of money into the treasury of the United States. In the first place, as I understand this Act of Congress, there is a lien, first, in favor of the bondholders, upon this road: then there is the lien of the United States upon it, by way of a mortgage. Then the United States has a claim upon this road for five per cent. of its net earnings. Then the Act provides that in addition to that the road shall pay up certain sums each year, amounting to a certain specific amount, which shall go into a sinking fund, there to be placed at interest in order to meet the bonds as they mature under the original Act of Congress. Besides these great burdens upon the receipts they have, of course, their current and running expenses. Now, I regard this business——

MR. GRACE. I would like to know if the Central Pacific Railroad Company has ever paid any interest?

MR. WILSON. I will answer you. The Supreme Court of the United States has held that the interest has never matured; has never yet been due. The Supreme Court of the United States has so decided. This is an intricate business, the running of a railway. The road must be self-sustaining over this period of time. It has no longer any subsidies. The time has arrived when it must pay its debt, and these annual sums it must make out of the running of its road. There may be some gentleman in this Convention wise enough to state here to-day, the amount of money which is necessary to meet all these accruing sums. I confess, it would take me, with my limited learning, information, and experience, several years to undertake the management of the Central Pacific Railroad Company, if I ever could do it at all. Some gentlemen who are wise enough to run that institution may be able to tell us now the amount necessary, of fares and freights, to enable this road to perform all of its obligations. I am not.

Now, if it should so happen that a railroad company—the Central Pacific Railroad Company, if you please—has reduced its rates of freights and fares on a certain portion of its line, and by reason of that it is unable to meet its obligations to the United States, it is unable to pay all of its accruing debts, its interest, and its running expenses, would any member here say that the Legislature, if it had the power, ought not to enable them to raise their rates to make the institution self-sustaining? Yet, the proposed amendment would prevent the Legislature

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from exercising that power. Your Transportation Commissioners may report this road as not self-sustaining, that at the present rate it will run in debt and become forfeit to the United States. In such a case any one here would say that the rates ought to be raised, no matter what they might have been. The road should be permitted to save itself from insolvency, to raise its rates, and any sensible Legislature would allow it to raise its rates. But if this amendment is adopted, the Legislature would be powerless to effect any good. The hands of the Legislature would be tied, and it would be impossible to save it from impending ruin. That is the reason why we should be careful as to what we insert in a Constitution. Leave it to the Legislature, where there is some flexibility. There must be judgment exercised upon the present condition of things. There must be some room to ward off a crisis which may arise; but put it into this iron-bound Constitution, and it is beyond control. Though ruin stares the State in the face, the legislative body or the Executive of the State is unable to render any assistance.

It seems to me that such a course is not wise. This State can exercise control over corporations, and can regulate them better through its Legislature than it can through provisions in the Constitution. The Constitution is not intended as a Code. The Constitution is intended as a great system of general principles outlining the form and principles of the government, leaving the Legislature to fill up the blank upon the escutcheon, and to make everything work according to the interests, the wants, and the exigencies of the people. Now, because I oppose this amendment, is no reason why I should oppose such power being vested in the Legislature. Upon the contrary, I would provide that the Legislature might pass some rational and proper Acts upon this subject, sufficiently guarded and with sufficient flexibility to avoid wrong, and at the same time to enable them to conduct their business in a self-sustaining manner. Now here, as I said before, if the directors commit an error of judgment contrary to the wishes of the stockholders, that wrong becomes by virtue of this clause in the Constitution beyond remedy forever, and may produce insolvency and forfeiture against the interests of the people. I know that it is popular here to say, "Let them be forfeited. Put corporations under rigid laws to do no wrong; if wrong follow from a violation of the Act, then let forfeiture follow." That kind of argument is not sound, because the State has an interest in these great improvements. The State and the people at large are interested in these great works, and it is not to the interest of the people that they should be destroyed. It is not to the interest of the people that they should be made incapable of sustaining themselves by the profits which they may make by their business as common carriers. Different years make a great difference in the carrying trade in this State. If I am correctly informed, whilst a year or two ago a hundred vessels were loaded with wheat at the Oakland wharf, the succeeding year but three vessels were loaded. Now it may be that Commissioners, or the Legislature, having control of this matter, would look to that condition of things, and not expect that a carrier would carry at the same rate one year that he would carry it another. Men in business would not so act. When freights were plenty, when they had more than they could do, they would be willing to reduce rates. When freights were light and they had the same expenses to meet, freights and fares might be higher. I say that the Legislature should be allowed to control these matters. There is a flexibility; there is a capacity to conform to the necessities of the hour. By this constitutional provision the whole subject-matter is placed out of the power of the people, because the Legislature is the people, by its representatives. I know that there is a great disposition here to say that the Legislature cannot be trusted; that the Legislature will be bribed; that the Legislature will commit fraud. But I beg leave to say here that this Convention can proceed upon no such theory as that. This Convention cannot present as one of the cardinal principles upon which it acts that one of the great departments of the government of this State will not faithfully and honestly perform its duties. This Convention, which claims for itself so much virtue and honor and integrity, and I may say so much hostility to railroads, was elected by the same people, in the same manner, and under the same general circumstances that the Legislature is elected. I do not see why that great branch of the government may not be trusted as it always has been, and always must be, with the essential powers of legislation which pertain to a great State.

I object to the amendment offered by the gentleman from Los Angeles, Mr. Ayers, for the reasons which I have stated; that the power is better lodged either in your Commission, if that should be the determination of the Convention, or with the Legislature, if it should be left to legislative control. While I can only give my single voice, I think this would be unwise as a clause in the Constitution, placing this subject matter beyond the reach of the people through their representatives in the Legislature.

MR. TULLY. Mr. Chairman: Is an amendment in order?

MR. O'DONNELL. I shall first have to read Rule Forty-four to my friend from San Francisco, Mr. Wilson. "If any member be called to order for offensive words spoken in debate, the person calling him to order shall report the words excepted to, and they shall be taken down in writing at the Secretary's table."

MR. WILSON. Mr. Chairman: I am very much obliged to him for his prescription, but I prefer my own doctor.

MR. O'DONNELL. Mr. Chairman: I wish to ask who he alluded to as an "unfeathered biped." If there is any squealing done at all, I think my friend from San Francisco, Mr. Wilson, has done all the squealing. I should like to have that language taken down at the desk. [Laughter.]

MR. DUDLEY, of Solano. I offer the following amendment. Add the following: "except by consent of the Legislature."

REMARKS OF MR. STEDMAN.

MR. STEDMAN. Mr. Chairman: I am not aware, sir, whether it is because the gentleman from San Francisco, Mr. Wilson, has been listening to "pretty poll"—whether that is the reason that he has such a faculty for evading the point at issue, for evading the question. I am not aware whether that is the reason or not, but I am aware that he has not spoken to the point in the beautiful speech that he has made.

MR. WILSON. In your judgment.

MR. STEDMAN. Yes, in my judgment. As I understand the amendment——

MR. BARNES. Mr. Chairman: I endeavored to offer a resolution on words used in debate before Mr. Wilson got the floor, and now two gentlemen have spoken, but I desire to offer a resolution upon that subject, and I do not want to be cut off by the rule.

MR. STEDMAN. I claim the floor.

THE CHAIRMAN. The gentleman from San Francisco, Mr. Stedman, has the floor.

MR. STEDMAN. Mr. Chairman: The amendment reads as follows: "And whenever a railroad corporation shall, for the purpose of competing with a rival railroad line, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such reduced standard." Now, then, the gentleman has argued to this Convention that this amendment contemplated keeping down the rates when any reduction in rates was made by any railroad corporation for any purpose whatever. Now, Mr. President, that is not true. The question presented to this Convention is whether we are going to prevent extortion by these corporations. I want the law to stand up boldly between these corporations and the people. I stand in this Convention as the advocate of the people, not of the corporations. I do not charge that any gentleman is for the corporations, but I say that I am for the people. If an individual or a company shall place a railroad, or a steamboat line, or any other common carrier to compete, with this Central Pacific Railroad Company, we know it to be a fact that in the past this Central Pacific Railroad Company has reduced its freights and fares to such a low rate that it was impossible for the new line to compete with it, and it has been froze out. But the question is whether it will not be right, when such a reduction is made in order to freeze out a new company—a company that is the friend of the people from the fact that it is a competing line—to say that when the Central Pacific Railroad Company, or any other railroad or common carrier, shall reduce its rates for the purpose of freezing out this line, that it shall not have the power to again raise such rates. I believe it would be right, and I shall vote for the amendment, because I think it is for the people. I think the people are crying out for such legislation as this, and I think it should be put into the Constitution.

MR. GRACE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again.

The hour having arrived, the Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and a quorum present.

A PRIVILEGED RESOLUTION.

MR. BARNES. Mr. President: I wish to offer a resolution.

THE SECRETARY read:

WHEREAS, The gentleman from San Francisco, Mr. Grace, has publicly asserted, in debate, in this body, as follows: "I know that there are gentlemen on this floor who have got retaining fees to stand up and try to gag down and defeat the will of the people, in compelling the railroad corporations in this State to do a legitimate, square, honest business;" and, whereas, the language above quoted amounts to the charge of an offense against the law of the land, committed by some member or members of this body, and to a charge of giving or offering a bribe to a member, or by corrupt means or device, directly or indirectly, to control or influence a member in giving his vote;

Resolved, That the gentleman from San Francisco, Mr. Grace, be and he is hereby required to name the persons, within or without this body, whom he knows have entered into such corrupt agreement to gag down and defeat the will of the people, to the end that the power of this Convention to punish such offense may be exercised pursuant to law.

MR. BARNES. Mr. President: Since the assemblying of this body, the charge embraced in the language used by the gentlemen has been, in one form or another, repeated—not once, but, if my recollection serve me, many times.

MR. BEERSTECHER. Mr. President: I raise a point of order: I call attention to Rule Forty-four of the standing rules, which reads:

"If any member be called to order for offensive words spoken in debate, the person calling him to order shall report the words excepted to, and they shall be taken down in writing at the Secretary's table; and no member shall be held to answer or be subject to censure of the Convention for language used in debate if any member has spoken, or other business has intervened after the words, and before the exception to them shall have been taken."

My point of order is that other business has intervened since Mr. Grace uttered the words complained of, and other members have occupied the floor, and spoken, and therefore, according to the standing rule number forty-four, the gentleman from San Francisco, Mr. Grace, is not answerable nor censurable by this Convention for anything he then said.

MR. BARNES. In reply to my colleague from San Francisco, I will call attention to the fact that the resolution does not involve the calling of the gentleman to order for abusive words spoken in debate at all.

MR. BEERSTECHER. For the purpose of censuring him.

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MR. BARNES. On the contrary, Mr. President, when a gentleman rises in his place and asserts that there are members in this body, upon this floor, who have taken money for the purpose of gagging and defeating the will of the people of this State, that he is not censurable for making the statement, if it be true, and I take it that no gentleman will make a charge of that character unless he knows it to be true. No gentleman will say, "I know there are gentleman on this floor who have got retaining fees to defeat the will of the people of this State," unless he states it upon good grounds, and from knowledge. Now, this is not for the purpose of censuring the gentleman, but when a charge of that kind is made, I think the Convention is entitled to know who these persons are.

MR. STEDMAN. I rise to a point of order. As I understand it, the resolution is not debatable.

THE PRESIDENT. It is debatable. The point of order is overruled.

MR. BARNES. Mr. President: I would like to proceed in order. This is not for the purpose of censuring Mr. Grace; that is not what the resolution is offered for; but it is to afford the gentleman an opportunity to state who the members are that are guilty of these things, and the Convention an opportunity to know who it is that has been bribed to stand up in this Convention and defeat the will of the people. We are in the middle of a very important debate, as important as any that will take place here; we are about to consider questions of very great importance, in respect to which, and the policy of which, gentlemen may well differ; and before we proceed further I think we ought to be informed if there is any one here who is paid to advocate any proposition, anybody who is a hireling to anybody for any purpose, in order to weigh his words and know what dependence to put in his words. I can say for myself, as far as this debate has proceeded, I have seen nothing in the report of the Committee on Corporations that I do not give my personal and hearty assent to. I stand with the committee on the main propositions; but there may be gentlemen here who may raise questions and present considerations that may, in the light of their ability and learning, materially influence and change the views which I entertain; and if there is a man here on this floor, who comes here paid and bribed to defeat the will of the people of this State, I want to know it, and I want to know it too, before he speaks here, in order to understand and appreciate what he says, and why he says it. If the charge of the gentleman from San Francisco be true, the Convention has a right to know who the man is, in order that he may be dealt with as he deserves. You will remember that the Act under which this Convention was called, has reference to this very subject. It provides the means by which the Convention may deal, or shall deal, with any person who shall occupy such a position. This is not the first time it has been alluded to, it has been often alluded to; but this is the first time the charge has been absolutely and publicly made, and now is the time to deal with it.

THE PRESIDENT. The Chair is of the opinion that the resolution is not in conflict with Rule Forty-four, and therefore decides that the point of order raised by the gentleman from San Francisco, Mr. Beerstecher, is not well taken. The question is on the resolution, which the Secretary will read.

THE SECRETARY read:

WHEREAS, The gentleman from San Francisco, Mr. Grace, has publicly asserted in debate in this body as follows: "I know that there are gentlemen on this floor who have got retaining fees to stand up and try to gag down and defeat the will of the people in compelling railroad corporations in this State to do a legitimate, square, honest business;" and whereas, the language above quoted amounts to a charge of an offense against the law of the land committed by some member or members in this body, and of a charge of giving or offering a bribe to a member, or by corrupt means to devise, directly or indirectly, to control or influence a member in giving his vote;

Resolved, That the gentleman from San Francisco, Mr. Grace, be and is hereby required to name the persons, within or without this body, who he knows to have entered into such corrupt agreement to gag down and defeat the will of the people, to the end that the power of this Convention to punish such offense may be exercised pursuant to law.

AN APPEAL.

MR. BEERSTECHER. Mr. President: I most respectfully appeal from the decision of the Chair. It seems to me, sir, that when it says that no member——

THE PRESIDENT. The gentleman is not in order; it takes three to appeal.

MR. STEDMAN. I second the appeal.

MR. BARBOUR. I second the appeal.

THE PRESIDENT. The Chair decides that the resolution is not in conflict with Rule Forty-four, and overrules the point of order, and from that decision of the Chair the gentlemen appeal to the Convention. The question is: Shall the decision of the Chair stand as the judgment of the Convention?

MR. BEERSTECHER. Mr. President: I take this appeal with due deference and respect to the ruling of the Chair; but the resolution of the gentleman from San Francisco, Mr. Barnes, asks the gentleman from San Francisco, Mr. Grace, to rise before this body and make explanation as to the words used by him in debate this morning. Of course, if this resolution is adopted, of necessity Mr. Grace will be obliged to rise before this Convention and make answer.

Rule Forty-four says: "If any member be called to order for offensive words spoken under debate, the person calling him to order shall report the words excepted to, and they shall be taken down in writing at the Secretary's table; and no member shall be held to answer or be subject to censure of the Convention for language used in debate, if any member has spoken, or other business has intervened, after the words spoken and before exception to them shall have been taken." Therefore, with due deference to the Chair, in my humble opinion the resolution is in direct conflict with Rule Forty-four, that no member shall be held to answer for language used in debate, if any member has spoken, or other business intervened. It seems to me, as I said before, that the resolution is in direct conflict with the standing rule of this Convention; and furthermore, it seems to me useless and idle to call upon the gentleman, Mr. Grace, to get up here and make an explanation, when the words were not directed to any person, to any gentleman; and I am sorry that the gentleman from San Francisco, Mr. Barnes, feels so sore over the words that have been used.

MR. BARNES. Mr. President: I accept the sympathy of my friend, Mr. Beerstecher, but I am not sore over words uttered in debate. I am sorry that gentlemen have seen fit, whenever there has been any difference of opinion upon subjects under debate here, to throw out these insinuations, when these subjects have been debated, on one side at least, with fairness and candor. I am sorry that these charges should have been made. This thing has been more than once protested against. This morning was the first time that they have assumed a definite form. I submit that the view taken by the gentleman from San Francisco, Mr. Beerstecher, is not the correct one, because this is not a charge against Mr. Grace at all. It does not call on him to answer for any words spoken in debate, because if they were true he had a right to say them, and he ought to have said them. If any member upon this floor knows of any one who is paid to stay here and defeat the will of the people, he ought to rise in his place and say so. I would if I knew it. There is no charge against the gentleman at all. As far as this resolution is concerned it simply seeks to inform the Convention who it is.

MR. TULLY. Is it simply a resolution of inquiry?

MR. BARNES. Yes, sir; he says he knows there are gentlemen on this floor who receive money for gagging down and defeating the will of the people. Now, I cannot conceive of any charge more serious.

MR. GRACE. I spoke it generally. I did not say the gentleman was here; that was not the intention——

MR. BARNES. I have the floor, I believe.

THE PRESIDENT. The gentleman from San Francisco, Colonel Barnes, will proceed.

MR. BARNES. I was very much struck with the observation when it was made, and I took occasion to go to the reporters, and from two of them obtained the language which I have quoted. He said this: "I know that there are gentlemen on this floor who have got retaining fees to stand up and try to gag down and defeat the will of the people, in compelling the railroad corporations in this State to do a legitimate, square, honest business." I now ask the Convention to adopt that resolution. If Mr. Grace says he did not say it, or did not mean it, well enough. But if he knows anybody, or if he can even point the finger of suspicion at anybody, I want to know who it is—that is all.

MR. BARBOUR. I wish to offer an amendment.

MR. TERRY. The question is on the appeal.

THE PRESIDENT. Yes, sir.

MR. HAGER. Mr. President: I did not hear the words spoken, and I did not know that anything of that kind had been said. In parliamentary bodies I always bind myself not to violate parliamentary rules and usages, because order is necessary for the conduct of business, and unless we observe order, of course we will fail to reach the point of debate. The ordinary rule applicable in cases of this kind—the general parliamentary rule, as well as the rules governing this body—are to the effect that the words must be taken down at the time; they must be recorded at the time they are spoken. The President may order them taken down by the clerk, and then the matter comes up immediately. Cushing lays down the rule as follows:

"If offensive words are not taken notice of at the time they are spoken, but the member is allowed to finish his speech, and then any other person speaks, or any other matter of business intervenes before notice is taken of the words which gave offense, the words are not to be written down, or the member using them censured. This rule is established for the common security of all the members, and to prevent the mistakes which must necessarily happen if words complained of are not immediatly reduced to writing."

Now, there is a dispute as to what was said. We cannot appeal to the reporters, because that is contrary to the rule. When words are uttered that are offensive, some member can rise in his place and have the words taken down; and the member may then be censured. But it is now in a stage where we cannot take notice of it with a view to censuring the member who uttered the offensive words. I do not see how we can do anything in the matter. I regret that this resolution has been brought up, because I am at a loss to know how to vote. I am inclined to think the appeal should be sustained, inasmuch as the period has passed under which this body can take notice of the offensive words.

MR. TULLY. I think, sir, this case don't come within Rule Forty-four for offensive words. That rule says:

"If any member be called to order for offensive words spoken in debate, the person calling him to order shall report the words excepted to, and they shall be taken down in writing at the Secretary's table; and no member shall be held to answer or be subject to censure of the Convention for language used in debate, if any member has spoken or other business has intervened after the words spoken and before the exception to them shall have been taken."

I think the Chair is right in its ruling. If this is anything, it is a resolution of inquiry, and perhaps, if it is brought up in proper shape, this matter might be inquired into by a committee, or otherwise; but, sir, I do not think the gentleman himself can be held to answer for the language, or censured under this rule. I do not see that it is anything but a resolution of inquiry. But it certainly cannot be brought within the scope of this rule, because he would have to be called to order by some person for words spoken, and the words taken down. I submit to the gentleman to change the resolution in some way, so as to make it a resolution of inquiry.

MR. BARBOUR. Mr. President: The language of the resolution is

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extraordinary. It is an order, as I understand it, to name certain persons——

MR. BARNES. I call your attention to the fact that it does not make any charges against Mr. Grace himself, nor impugn his motives.

MR. BARBOUR. The resolution sets forth that he made certain statements, and follows up with an unqualified demand that he shall name certain persons. Suppose he says, I am not at liberty to comply with the resolution without betraying confidence, what happens? Would it not be monstrous to censure him for not doing what no gentleman could do? I maintain that you cannot impugn the motives of a member of this Convention in any such manner. It is enough to say that it cannot be done. I have had charges sent me by letter day after day, impugning the motives of some of the Workingmen's delegates on this floor, and saying that some of them are ready to sell out. If this matter is to be investigated, there is a good deal more to be added to it.

MR. HAGER. I move the matter be laid on the table.

MR. LARKIN. I regret that this matter should have been raised here. In legislative bodies I believe there have been paid advocates, but I do not believe there are any such in this body. As to Mr. Barbour's statement, no one believes that he has sold out to any one, or that he is a paid advocate of any company, and no investigation on these general charges should be gone into. If they are to be gone into at all, then I am in favor of a thorough examination.

THE PRESIDENT. The Chair will state the reasons for the decision. Rule Forty-four provides: "If any member be called to order for offensive words spoken in debate, the person calling him to order shall report the words excepted to, and they shall be taken down in writing at the Secretary's table; and no member shall be held to answer or be subject to censure of the Convention for language used in debate, if any member has spoken or other business has intervened after the words spoken and before exception to them shall have been taken." The resolution here is of a different character; it does not proceed against the member, or call him to account for the use of offensive language at all. It is not in conflict, therefore, with Rule Forty-four, or the parliamentary rule. The Convention can institute an inquiry at any time, and in any shape they may deem proper. This resolution is capable of amendment, so as to appoint a committee, or in any other way that the Convention may see proper. It has nothing whatever to do with Rule Forty-four, and therefore the Chair decides that the point of order raised by the gentleman from San Francisco is not well taken. From that decision an appeal has been taken. The question is on the appeal.

MR. VACQUEREL. Mr. President: I wish to call the attention of members to the fact that not very long ago I was required to get up here and explain myself, though it was two days after the words were spoken. I did explain my position. It has been asserted that I am—not exactly a traitor—but a man to be looked upon with suspicion. Now, I say if a member is asked to explain, he should explain. I had to stand up here and explain, and besides that explanation, I am looked upon with distrust, as a man that might be bought by the corporations, and if this thing is to be investigated, I am in favor of it.

THE PRESIDENT. The question is, Shall the decision of the Chair stand as the judgment of the Convention?

MR. WEST. I move that the whole matter be laid on the table.

MR. INMAN. I object.

THE PRESIDENT. The question on the appeal must be decided, unless you move to lay the appeal on the table.

MR. WEST. I move to lay the appeal on the table.

MR. REYNOLDS. Mr. President——

MR. VAN DYKE. Mr. Pres——

MR. REYNOLDS. Mr. President: I desire to state——

THE PRESIDENT. The motion is to lay on the table, and it is not debatable. The question is on the motion to lie on the table.

MR. BARNES. Will the Chair be kind enough to state what the effect of this motion will be; does it lay the whole subject on the table?

THE PRESIDENT. No, sir; simply the appeal. The resolution will remain before the Convention.

MR. WEST. I move that the whole subject-matter be laid on the table.

THE PRESIDENT. The appeal must be disposed of.

The motion to lay the appeal on the table prevailed—ayes, 85.

MR. BEERSTECHER. I move that the resolution be indefinitely postponed.

THE PRESIDENT. The Secretary will read the resolution.

THE SECRETARY read the resolution again:

WHEREAS, The gentleman from San Francisco, Mr. Grace, has publicly asserted in debate, in this body, as follows: "I know that there are gentlemen on this floor who have got retaining fees to stand up and try to gag down and defeat the will of the people, in compelling the railroad corporations in this State to do a legitimate, square, honest business;" and, whereas, the language above quoted amounts to the charge of an offense against the law of the land, committed by some member or members of this body, and to a charge of giving or offering a bribe to a member, or by corrupt means or device, directly or indirectly, to control or influence a member in giving his vote;

Resolved, That the gentleman from San Francisco, Mr. Grace, be and he is hereby required to name the persons, within or without this body, whom he knows have entered into such corrupt agreement to gag down and defeat the will of the people, to the end that the power of this Convention to punish such offense may be exercised pursuant to law.

THE PRESIDENT. The question is on the adoption of the resolution.

MR. REYNOLDS. Mr. President: I am opposed to the passage of the resolution, for the reason that there was no foundation laid for the "whereas," that the gentleman from San Francisco has made certain statements, that he has used such and such language. The resolution purports to repeat the exact words used. I say that no foundation has been laid for the resolution by establishing the fact that the gentleman from San Francisco, Mr. Grace, used those words. And notwithstanding the point of order made by the gentleman from San Francisco, Mr. Beerstecher, has been overruled, still the parliamentary rule holds good that if language is put into the mouth of any gentleman, for which he is to be investigated, or anybody is to be investigated, the foundation must be laid by establishing the fact that he used these words. There has been no such foundation laid here. There is no proof before this Convention that any such words were used, and that is the reason of my objection. Cushing's Manual, 227, says:

"If a member, in speaking, makes use of language which is personally offensive to another, or insulting to the assembly, and the member offended, or any other, thinks proper to complain of it to the assembly, the course of proceeding is as follows: The member speaking is immediately interrupted in the course of his speech, by another or several members rising, and calling to order, and the member who objects or complains of the words is then called upon by the presiding officer to state the words which he complains of, repeating them exactly as he conceives them to have been spoken, in order that they may be reduced to writing by the Clerk; or the member complaining, without being so called upon, may proceed at once to state the words, either verbally or in writing, and desire that the Clerk may take them down at the table. The presiding officer may then direct the clerk to take them down," etc.

Now, if you are going to investigate, you must have something to investigate. Then, sir, that makes it necessary to establish the words that were used, and how. The gentlemen should have been interrupted at the time he used the offensive language, and the words should have been taken down by the clerk. Now, the language which is put in the gentleman's mouth, was not taken down at the time by the clerk. It is said here by the gentleman introducing the resolution, that he obtained a copy of the words from the shorthand reporters' notes. Perhaps he has, but there is no official reporter here, and if there was, the shorthand notes are not evidence, because the attention of the Convention was not directed to it at the time, and it was not taken down.

MR. BEERSTECHER. Mr. President: I call the attention of the Convention to section six,——

MR. REYNOLDS. I believe I have the floor yet.

MR. BEERSTECHER. Then go on and talk. I thought you had finished.

MR. REYNOLDS. Mr. President: Besides these objections to the resolutions, outside of that, I am fully prepared to go into any amount of investigation. There have been charges, and counter charges——

MR. BARNES. On this floor?

MR. REYNOLDS. I did not say on this floor, but by members of this body. Early in the session here the gentleman from San Francisco was reported to have said——

MR. BARNES. Where?

MR. REYNOLDS. It has been stated in a caucus here, that "we must unite two thirds against one third," and referring to "these communists here." Now, who are the "communists?" Let us have a committee of investigation, and find out who are the communists on this floor. Let us go into the investigation business for the balance of the session. There is plenty of room for it. And I call attention now to the fact that the gentleman complains of something this morning which I did not hear, that certain gentlemen had been alluded to as "corporation lawyers." Very well; I heard the latter part of the gentleman's argument, and if it meant anything at all it meant that if Leland Stanford and the railroad company have not the ability to rob the people of California to as great an extent as they desire, the Legislature ought to provide the means for their doing so. That was what the gentleman's argument meant, or it means nothing at all. Now let us find out whether there are any corporation lawyers here, and let us find out whether there are any communists in this body. We are ready to pass the resolution to that effect.

MR. BEERSTECHER. I call attention to section six, or a portion of section six, of the law calling this Convention. It says the Convention shall have power to expel any of its members, and punish its members and officers for disorderly behavior, by imprisonment or otherwise, but that no member shall be expelled until after the facts have been examined into and reported upon by a committee appointed for that purpose. Now, it seems to me that it is contemplated in every case, not falling within or under Rule Forty-four, that a committee shall be appointed to make an investigation; and, Mr. President, I don't believe that this body has got any power to oblige the gentleman from San Francisco, Mr. Grace, to make any answer to the resolution, should the resolution be passed. Mr. President, if that resolution were passed upon we should not make any answer to it, and the Convention could do nothing about it at all. It is an absurd resolution and ought to fall through. But if the object is to appoint a committee, I shall vote to appoint a committee, because I want to find out who the "featherless bipeds" are who sit in this Convention. I want to find out their names. I want the names of the "Communists;" and if we are going into an investigation, let us go into it thoroughly, and let us examine every circumstance that has been uttered upon this floor. But, at the same time, I do not believe that the opinion of the people of California, or the voters of California, will be changed in the least. The opinion of the people as it exists will remain, and this resolution of investigation, or any investigation, is not going to remove the cloud of darkness that envelops members upon this floor, if there is any such cloud of darkness. Therefore the resolution is useless. If members desire to purge their reputations, they are not going to accomplish it in any such way as this, because the opinion of the people of this State will remain, resolution or no resolution. I do not believe in this method of procedure. I will vote against this particular method, but I will vote for a committee to investigate gentlemen who have given utterance to certain things on this floor, because I do not approve of them. I do not approve of these things; they belong not in a deliberative body of this kind, and I hope it will be voted down, and I hope we will resume the business of the

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Convention, and I hope we will not take up the time that belongs to the people of this State, already overburdened with grievous taxation, on account of this Convention and other matters.

MR. SMITH, of Kern. I do not see the necessity of spending valuable time on this matter, and I move to lay the whole matter on the table.

MR. O'DONNELL. Mr. President: I understand this matter in this way—that there is a motion to indefinitely postpone.

THE PRESIDENT. Yes, sir, but another gentleman moves to lay it upon the table, which motion takes precedence. The question is on the motion to lay on the table.

MR. WATERS. I call for the ayes and noes.

MR. HUESTIS. Ayes and noes.

MR. SCHELL. Ayes and noes.

MR. WHITE. Ayes and noes.

MR. O'DONNELL. Ayes and noes.

MR. GRAVES. Ayes and noes.

The roll was called, and the motion to table was lost by the following vote:

AYES.

Ayers,	Gorman,	Reynolds,
Barbour,	Harrison,	Ringgold,
Barry,	Herold,	Smith, of 4th District,
Barton,	Herrington,	Smith, of San Francisco,
Beerstecher,	Hughey,	Stedman,
Bell,	Joyce,	Sweasey,
Condon,	Kleine,	Swenson,
Dean,	Lindow,	Tuttle,
Dowling,	Morse,	Wellin,
Doyle,	Nelson,	West,
Evey,	Neunaber,	Wickes,
Farrell,	O'Donnell,	White,
Freud,	Ohleyer,	Wyatt—41.
Garvey,	O'Sullivan,	

NOES.

Andrews,	Harvey,	Porter,
Barnes,	Hilborn,	Prouty,
Belcher,	Hitchcock,	Pulliam,
Blackmer,	Holmes,	Reddy,
Boggs,	Howard,	Reed,
Boucher,	Huestis,	Rhodes,
Burt,	Hunter,	Rolfe,
Campbell,	Inman,	Schell,
Caples,	Johnson,	Shafter,
Casserly,	Jones,	Shoemaker,
Chapman,	Kelley,	Shurtleff,
Charles,	Keyes,	Smith, of Santa Clara,
Cowden,	Laine,	Soule,
Crouch,	Lampson,	Steele,
Davis,	Larkin,	Stevenson,
Dudley, of San Joaquin,	Larue,	Stuart,
Dudley, of Solano,	Lavigne,	Swing,
Dunlap,	Lewis,	Terry,
Eagon,	Mansfield,	Thompson,
Edgerton,	Martin, of Alameda,	Tinnin,
Estee,	Martin, of Santa Cruz,	Tully,
Estey,	McCallum,	Turner,
Fawcett,	McComas,	Vacquerel,
Filcher,	McConnell,	Van Dyke,
Finney,	McCoy,	Van Voorhies,
Freeman,	McFarland,	Walker, of Marin,
Glascock,	McNutt,	Walker, of Tuolumne,
Grace,	Mills,	Waters,
Graves,	Moffat,	Webster,
Gregg,	Moreland,	Weller,
Hager,	Murphy,	Wilson, of Tehama,
Hale,	Nason,	Wilson, of 1st District,
Hall,	Overton,	Mr. President—99.

MR. McCALLUM. The vote just taken sustains the Chair in his decision that this does not come under Rule Forty-four. It must follow that this is not intended in any manner as a reflection upon the gentleman named in the resolution. There is a word used there that ought not to be used. It is the word "required." I move to insert the word "requested."

MR. BARNES. I accept the amendment.

MR. REYNOLDS. Mr. President: I understand the previous question is now before the house.

MR. O'DONNELL. Mr. President:——

MR. BARBOUR. I send up the following amendment.

THE SECRETARY read:

"Amend by adding to the resolution as follows: 'And the gentleman from San Francisco, Mr. Wilson, shall be required to answer as to who he meant by the words, 'unfeathered bipeds,' and 'communists.'"

THE PRESIDENT. The amendment is out of order.

MR. BARBOUR. I offer another amendment as a substitute.

THE SECRETARY read:

Resolved, That a committee of five be appointed by the Chair to investigate the facts of the matters stated by Mr. Grace, and any other matters impugning the integrity of members, with power to send for persons and papers.

MR. VAN DYKE. One thing at a time.

THE PRESIDENT. The question is on the amendment.

MR. BARBOUR. Mr. President: That is in accordance with what I understand to be the opinion of gentlemen on this floor. If we are going into an investigation of this matter after it has passed, by the most liberal construction you can give it, we have the right to investigate other matters. If you can investigate a matter one hour or two hours after the speech has been delivered, and after other business has intervened, and after other persons have spoken, there is no reason why you cannot go a day, or a week, or a month, back. There is no reason why, if you depart from the rule in one case, you should not depart in all cases. I have a farther reason, Mr. President. I have been, all the time, anxious to go ahead and make a Constitution. I have not consumed any more of the time of the Convention than was proper; I have not brought forward long briefs and propositions; I have not risen to questions of privilege; but, if it has got to come down to it, even so, I will bring in my mud, and others here will bring on their mud. That is all there is about it. I propose now to make a change, and I will do so, too: that this is a trick, a transparent trick, gotten up for the purpose of getting rid of one vote which may be in the way of certain schemes and purposes; and if you can fire one member out on a charge of this kind, for contempt or otherwise, there is nothing to hinder you from firing out all the minority, and running this thing to suit yourselves. Now, I am associated with a class who have been taken from the machine shops, and other fields of labor. They are not skilled in the art of putting things. I, myself, have indirectly put as grave charges as this against the majority here, and against the mover of the resolution, but I have done it in such a way that they could not take it up. I have said things time and time again just as strong as the language used by the gentleman this morning. There is just this difference: one man, who is skilled in parliamentary language and tactics, can say things with impunity that another, less skilled, would not be allowed to say. These things have been said in the heat of debate, and the wonder is that more has not been said. My associates have had great provocation, and if a chance expression has been dropped which hurts some gentleman's feelings, I do not think it ought to be magnified into such a great offense. If it is the intention to expel this gentleman, and thus get rid of a vote, I will tell the gentleman that there are a great many more who will have to go with him.

MR. O'DONNELL. Mr. Pres——

MR. BARBOUR. If they are going to apply that principle—[Mr. O'Donnell. Oh! Lord!] [Laughter]—they will have to include quite a number before they get through.

MR. O'DONNELL. Mr. President: I say there is a gentleman on this floor to-day that travels on a free pass, and he gets that pass from Leland Stanford.

[Cries of "Name him." "Name the man." "Who is he." "No, no; don't." "Take down the language."] [Laughter.]

MR. O'DONNELL. I can name him. If need be, I can name the man who told——

[Cries of "Name him." "Name him."]

MR. O'DONNELL. If you are going to appoint a committee, I will then name him. If you want me to name him, I will name the party who told me—[Hear, hear]—so I hope now that all this buncombe will cease right here, and that the Convention will come down to business. I am sick and tired of this bickering.

MR. BARNES. Is the gentleman's name Barbour.

MR. O'DONNELL. It is not you. [Laughter.]

MR. BARNES. Mr. President: I was not aware that anybody who was supposed to be opposed to the views entertained by the gentleman from San Francisco, Mr. Barbour, and his colleagues, has used any unfriendly personal remarks towards them. I am not aware of it, sir. At least, as far as I am concerned, in the little I have had to say I have made no unfriendly personal allusions, except in response to attacks upon myself.

MR. BARBOUR. I call your attention to one thing. You charged me on this floor with brutally insulting the Governor of this State.

MR. BARNES. Well, I think you did. That, however, was with regard to language used by the gentleman in debate. I did not call the gentleman a brute; not at all. I characterized the language he used, which I had a right to do. It was not personal at all. On the contrary, if I remember right, I did not take any offense at it, because I know his kindly nature too well to believe he meant it, when he said the gentleman from Santa Clara, Mr. Laine, had a voice like a fog horn, and that I had a voice like a dying bull calf. [Laughter and applause.]

MR. BARBOUR. I don't want a committee on that. [Laughter.]

MR. BARNES. I don't either. These are mere pleasantries; expressions of the sportive gentleman. We are not all of us as gifted as he is, and therefore he should not attack us because our voices are not as sweet as his. [Laughter.] Now, if there is anybody here who is under pay of the corporations, I think we have a right to know it. If, as my friend, Mr. Barbour, says, and it may possibly be the case, it was an expression thrown out in the heat of debate, in a straightforward, blundering way, I think it is time that blundering should be stopped. I do not want any more of it here. I do not want to get up and call the gentlemen on the other side hard names. There are lots of names we might call them—I know some of them come from a climate where names are much in vogue, and some of them seem to follow out the idea here. The gentleman says he can throw as much mud as anybody. But mud throwing is not what we are here for. What I want to know is this: Does the gentleman from San Francisco, Mr. Grace, know of any man on this floor who has been paid to defeat the will of the people of this State? If he does, let him say so. If he says it was but an expression that fell from his lips in the heat of debate, let him say so, and that will be the end of it.

Nobody proposes, as the gentleman says—at least such an idea never entered my head—to expel Mr. Grace from this body, or have him fall from grace in any sense. It only means that if he knows of any such person who has been bribed to defeat the will of the people, he shall name him, and make good his charges; and if he does not, to say so. But for one, having been in the employ of the railroad people, as an attor-

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ney in Court to try cases, and where I tried to do my duty to my client, and to earn my money, I do not want it intimated that because I have been so employed, I am now the paid attorney of the railroad company on this floor, drawing ten dollars a day as the servant of the people. I do not want it intimated that I am the paid hireling of any corporation, for it is a base slander; I am no such thing. The man who intimates it, intimates a slander. I do not know—I may be mistaken—but I think Mr. Grace was himself at one time an employé of the Central Pacific Railroad Company. That is no reason why he should be their enemy, or their servant. I am not in their service. I am not the servant of any man that lives, when it comes to that point; and when it comes to voting, I shall vote for what I consider to be for the best interests of the people of this State, according to my best judgment. No man shall say of me that because I have been employed occasionally as a lawyer, by the corporations, that I am their dog, their slave, paid by them to do their bidding, and wear their collar. I will leave it to any member upon this floor, Mr. President, if these insinuations have not been made—not once, but a hundred times—but this is the first time that they have assumed a definite shape, and I propose to have it stopped. I want it understood that I shall do what I think is right and just, and in doing what I consider right, what my conscience and judgment tells me is right, I do not want to be insulted and attacked, and accused of being bribed, and the paid hireling of a corporation, a miserable scoundrel, a dog, for money, to come on this floor and sell out the people of this State. That is the proposition, sir. As far as changing the opinions of the people is concerned, I will say to the gentleman from San Francisco, Mr. Beerstecher, that I do not care the snap of my finger for the people of this State; not the snap of my finger. If a thing commends itself to my judgment, and my conscience tells me it is right, I will do it, and as I am not going to run for Congress, or any other office, I shall not toady to the people. [Applause.] Now, sir, I have been employed from time to time to try cases for the railroad company in the Courts, and they have paid me for it, and I have earned the money they paid me, and I will continue to try cases for them the same as for any other client, just as long as they pay me. But that is not a reason that these insinuations should be thrown out here. I am not swayed in my course by public opinion. I am moved by a consciousness of right, and I would rather feel the conviction of right in my breast than to receive without the highest office from the people. I want no more of these wholesale charges unless they are well founded. I want the gentleman to make good his assertion, and point his finger at the man who wears the corporation collar.

Mr. KLEINE. Mr. Chairman: I don't see why Mr. Barnes is so sensitive. If the shoe don't fit why Mr. Barnes don't need to wear it. I don't think Mr. Grace intended the shoe for Mr. Barnes, but if it fits Mr. Barnes, then let him wear it. We have wasted over an hour over this resolution, and I think it's about time to come to business. I hope we will stop this foolishing, and come to business. That is what we are here for. Since I have been here, gentlemen have thrown out insinuations about the Workingmen's party of San Francisco. They have been called names, we have been called libertines, we have been called communists by members on this floor, and now the gentleman seems to be very sensitive because Mr. Grace said he knew—I don't know whether he said it—Mr. Barnes says he heard him say it. I don't believe the majority of this Convention heard him say so. But, he said he knew there was some members bought by the railroad company. Well, Mr. Barnes should be the last one to be so sensitive. Mr. Chairman, I hope this nonsense will cease. For my part, I consider myself just as honorable as any of the delegates. I don't come here to spend my time in play. I come here to frame a Constitution for the people of the State of California. I have been talked to death by the lawyers every day. We have wasted time enough already, and I move we come to business.

Mr. GRACE. Mr. President: I have been advised by my friends not to say anything upon this resolution now before the Convention, and perhaps it would be as well that I should not. But I cannot stand here, sir, and hear myself misrepresented in such broad terms. I cannot do it. Mr. President, I was born in this country, under the stars and stripes, and the blood of my ancestors stains every battlefield that has become familiar in history, from the period of the Revolution down to the present time. I did not make the assertion as stated; if I had, I would stand up to it though the heavens fall, though the earth should open and swallow me. I did not say, I never meant to say, that any lawyer in this Convention was paid a retaining fee for the purpose of attending to the business of the corporations in this Convention. I meant to say—perhaps the language was misunderstood—I intended to say there were lawyers that had retaining fees, paid by corporations, to attend to their business, outside of the Convention, in this city. I know that was my meaning, and I believe there are. I did not say they were here as delegates to the Convention to represent corporations. Colonel Barnes, the author of this resolution, I have always admired as a man and a lawyer who stands high in his profession, and if I had a case in Court now I would as leave put it in his hands as anybody, but I regret to see him misrepresenting me. I am willing to stand by what I say, but my language has been misunderstood. All I want is for the corporations to do a square, legitimate, honest business, just as partnership firms and individuals do.

Mr. BARNES. If I may do so without being accused of being afraid, I will say that I am satisfied with the explanation. I was surprised myself to hear him make the remark, and I went to the reporters——

Mr. GRACE. As to working on the railroad, I have worked for the railroad company. I worked as a carpenter at four dollars a day. They cut me down and I refused to stand it.

Mr. BARNES. I ask leave to withdraw the resolution.

The PRESIDENT. If there is no objection, the gentleman will have leave. The Chair hears no objection. The resolution is withdrawn.

RAILROAD COMPETITION.

Mr. DUDLEY, of Solano. I move that this Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of taking into consideration the report of the Committee on Corporations. Carried.

IN COMMITTEE OF THE WHOLE.

The CHAIRMAN. Section eighteen, and amendments, are before the committee. The first is the amendment of the gentleman from Los Angeles, Mr. Ayers: "And whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers and freights from one point to another, such reduced rates shall not be again raised or increased from such reduced standard." To which the gentleman from Tuolumne, Mr. Walker, moves an amendment to add, "unless the lowering or raising of such rates be by mutual consent of the competing parties." The question is on the amendment to the amendment.

REMARKS OF MR. VAN DYKE.

Mr. VAN DYKE. Mr. Chairman: I call attention to the fact that this penalty is not mutual. It binds railroad companies, transportation companies, but it does not apply to stage companies or steamboat companies. That is the way it reads now. Therefore the penalty is not mutual. It seems to me to open the door to all sorts of blackmailing schemes against the railroad company. A steamboat company can compete against a railway company, and raise and lower its rates at will, and so can a stage company. A railroad company cannot. So the penalty is not mutual. I think it is mischievous.

Mr. DUDLEY, of Solano. Is the question on the amendment I sent up, or on the one last sent up?

The CHAIRMAN. The question is on the amendment to the amendment, offered by the gentleman from Tuolumne, Mr. Walker.

Mr. O'DONNELL. I sent up an amendment to this section last evening.

The CHAIRMAN. It has been lost sight of. The question is on the amendment to the amendment, proposed by Mr. Walker.

Lost.

Mr. BLACKMER. Mr. Chairman:——

Mr. DUDLEY, of Solano. Mr. Chairman:——

The CHAIRMAN. The question is on the amendment proposed by the gentleman from Solano, Mr. Dudley, to add, "except by consent of the Legislature."

SPEECH OF MR. ESTEE.

Mr. ESTEE. Mr. Chairman: That comes right back to the original proposition, namely, whether this matter shall be left to the Legislature or to a Commission. I hope the amendment will not be adopted. I do not think this Convention wants to place that power in the hands of the Legislature. I want to say one word to the gentleman from Los Angeles, as to the effect of his amendment, as proposed to be amended by the gentleman from San Joaquin, Mr. Terry. What I understand by the proposition is this: to remedy certain evils local to his section of the State, and thereby to remedy evils of like character in other portions of the State. Now, Mr. Chairman, suppose the citizens of Los Angeles do go to work and build a road down to the coast. They raise the money and build a road down to the ocean. The moment they commence building that road, the Central Pacific will put down their rates, and the result would be that the competing line would have to put down its rates to a very low figure in order to get business, and they could not again raise them. The result would be that the competing line would be the first to suffer. My idea is that the very remedy my friend seeks for will prove an injury. It is a two-edged sword that will cut both ways. I hope it will not be adopted. I hope this Convention will conclude to leave these matters in the hands of a Commission, and if you are not satisfied with the Commission as recommended in section twenty, then adopt some other; but I hope it will be taken out of the hands of the Legislature and left to some distinctive body elected by the people of the whole State, with full power to deal with these great questions.

SPEECH OF MR. DOWLING.

Mr. DOWLING. Mr. Chairman: I hope the amendment to the amendment will pass, because the amendment offered by the gentleman from Los Angeles, Mr. Ayers, is an article that ought to be inserted in the Constitution, by all means. I am acquainted personally with the ills which the people of Los Angeles have suffered from the lowering and raising of the rates by this great, overshadowing monopoly. They lowered their rates on the local line between Los Angeles and Santa Monica in order to freeze out Jones and his cohorts. Now, Mr. Chairman, I am interested in this thing myself. I am one of a party that went down to Los Angeles, during the excitement, and bought some town lots there. These lines have since been abolished. We all know that corporations have rights that are to be respected, and protected, too; but it must not be forgotten in the meantime that individuals have rights which are sacred and must be held inviolate. I believe, Mr. Chairman, that we are here as representatives of the people, in order to engraft some laws and provisions in the Constitution by which they will be better guaranteed in the future than in the past. Now, sir, this amendment is a new idea; it is one that is compatible with reason, with common law, with common sense, and common justice. No man has a right to deprive another man of his property. I don't believe that any transportation company has a right, under this same principle, to drive a competing line out of existence. Now let us look at this thing in California for a moment. The original old wagon roads were superseded by railroads. It has robbed their functions and destroyed their vocations; hence, the only mode of transportation we have is railroads. In the City of San Francisco, it must be remembered, some years ago, when the railroad fare was raised to six and one fourth cents on the street cars, there was an opposition line of omnibuses started at five cents a head. But

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as soon as they were fairly under way the street car monopoly reduced fares and drove the opposition out. As soon as the opposition was run off the old companies raised the fares to the old standard. The Legislature then passed a law restricting the monopoly. Now, sir, this is a common sense question, though it may appear superficial. We have several places in this State to-day where omnibuses and stage coaches could make a living if the railroad companies had not the power to reduce the rates and drive off the competing line. As soon as they get started down comes the fare until they are driven off, and then the fare comes up again. Now, sir, this is not an infringement of the rights of the railroad at all; we don't want to do that. We want to bring down the railroad company to a basis so they will make a good fair interest on their investments, and not crush and abuse the people. Then, certainly, I hold that the amendment offered by the gentleman from Los Angeles ought to pass. I hope it will be adopted.

Now, sir, I am sorry for this little squabble going on here to-day. It is in fact outrageous for a body of men assembled together, representing the people, spending an hour and a half or two hours wrangling about nothing. Of course, sir, there has been always, in the heat of debate, remarks made by speakers which, in cooler and calmer moments, they would be sorry for. I know that is the way with myself. A man who was never in a deliberative body before, is apt to say things he would be sorry for. But I would like to know of the gentleman from San Francisco, Mr. Wilson, who he referred to when he mentioned the "unfeathered biped." [Cries of "Come to order."] Perhaps he referred to myself. [Laughter.] There is the bullfrog, an unfeathered biped, [laughter] which represents capital and concentrated wealth, bloated and pompous. Now, I don't care, as far as I am concerned, what gentlemen may call me. They may call me an unfeathered biped; they may call me a jackass. [Laughter.]

MR. HUESTIS. Is the gentleman talking to the question? I would like to know what the question is.

THE CHAIRMAN. The question is on the amendment to section eighteen.

MR. HUESTIS. I suggest that the gentleman had better confine himself to the question under consideration.

MR. DOWLING. Of course, we have to have our merriment. I would like to know if I have not some rights here as well as Mr. Wilson. He was not called to order this morning. When I stand up to defend myself, the gentleman calls me to order, and wants to know what the question is. I will tell him. I don't care if he calls me a jackass, an animal that can bawl louder than any other. But a corporation jackass outbawls them all.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I would not at this late hour say a word on this amendment, if the people whom I in part represent were not deeply interested in this question. I do not think the proposition has been fairly met or fairly dealt with. The Chairman of the Committee on Corporations says that we ought to adhere strictly to the report of the Committee on Corporations, and he intimated that this proposition would somehow conflict with the report. It seems to me that this is entirely a mistake, because this provision ought to be incorporated in the Act creating this Commission. Now, I do not assume as a member of the Committee on Corporations, that we know everything. I do not assume that we know better than anybody else or everybody else. But this proposition was recommended by the late Board of Transportation Commissioners, composed of General Stoneman, a graduate of West Point, Mr. Tuttle, a professional engineer, and who a short time since was in the employ of the Central Pacific Railroad Company, and Mr. Doyle. The legal propositions contained in the report, and themes discussed, are from the pen of Mr. Doyle, who stands among the foremost men in his profession in this State; and, having devoted two years of constant study to this subject, I assume that what they recommend is worthy of the consideration of this Convention. Now, sir, they say this: that all of the steamer lines are under the control, if not owned by the Central Pacific Railroad Company, and that, therefore, we have no chance of competition through water communication. That being the case, this provision is necessary to protect society here, and to preserve it from the grasping schemes of this monopoly. That is the fact in the southern portion of the State. It is true. Now, sir, what is the proposition? It is proposed that when one party is in possession of a line which is a monopoly, and competition goes in—and competition is the life of all business—that the old line shall not, by reducing rates themselves, drive off this competition, and then after they have driven it off, raise the rates again and make the community pay for the cost. I say the amendment applies legally and properly to all common carriers. I maintain that a stage coach line would have no more legal or moral right than a railroad company; therefore, the whole thing ought to be subject to the same regulations.

Now, sir, allow me to state the facts as best I can; allow me to state them as the Commissioners have stated them, and I shall not go beyond their statements, as they state them in Los Angeles County. Previous to the laying down of any rail there, the transportation of freight did not cost over ten dollars a ton, and generally not over six dollars. But as soon as the rails were laid down, and the Southern Pacific commenced operations, freights were increased to nearly double those figures, by rail. And then, when the railroad to Santa Monica came to be built by Senator Jones, the old line again reduced its freights, for the purpose of running off the competition. And they kept it reduced until they had not exactly run out the opposition, but forced Senator Jones to sell his road to them, and the Commissioners say that is the history of the whole subject everywhere, and they say true. Then they raised it again—a year ago last July they, in consequence of their purchase, raised freights again on general merchandise fifty per cent., and they continued them at that figure. Having in the meantime combined and pooled freights and fares, as this report says, with the steamship company, they again raised the rates. A gentleman of that county, having a small steamer, thought he could do a safe business, and benefit the community as well as himself; he put his steamer on in opposition. He put it on and carried freight at four dollars a ton. The company reduced, and he reduced to three dollars per ton, and then they reduced to one dollar, driving him off or compelling him to sell to them. This is the thing we are arriving at. This monopoly is a vice; it is contrary to public policy; it is contrary to right and justice; and I contend, as the Commissioners have said, that we want a law which shall prevent them from raising their rates again when they have lowered them for the purpose of running off competition. The recommendation of the Transportation Commissioners is right, and will accomplish good, and ought to be adopted.

Now, sir, we contributed seven hundred and fifty thousand dollars to the railroad by way of subsidies, to enable the road to cut our own throats. But, thank God, they did not get it by my vote. I made what feeble opposition I could to it. They have not only combined with the steamship companies, but they have bought up the landings and wharves. They are virtually monopolizing the ocean, by driving off all competition. They forced the steamers to pool freights and fares and increase the rates for both. Now, sir, if the railroad company would take up their rails and quit the ocean, and leave it as free as it was before they came there, they could get from the people of Los Angeles another seven hundred and fifty thousand dollars to quit. We are very much in the condition of the man in the circus who gave the clown one dollar to commence singing, and five dollars to quit. I think this provision would correct the abuse aimed at. It cannot injure the report so far as the constitution of the Commission is concerned. If the Commission is created, still this is a salutary recommendation which ought to control them in their action. More than that, sir, this road is constantly raising the rates of freights and fares. I find in a Los Angeles paper of the ninth that they have recently raised the rate. I read the following paragraph from the Express:

"Mr. S. M. Tuttle received an invoice of sewing machines from San Francisco yesterday by water route. His freight bill was thirty-four dollars. Last month he paid on an exactly similar invoice, by the same route, the sum of fourteen dollars. The Philadelphia Brewery received four bales of hops this morning; freight, fourteen dollars and fifty cents. Two months ago the same concern paid on four similar bales, four dollars and seventy-seven cents. In the former case the increase in rates was one hundred and forty-three per cent.; in the latter case it was two hundred and four per cent. The monopoly club has fallen. Comment is unnecessary."

Now, sir, are we bound to submit; have the community no power to defend themselves against this enormous outrage? If not, then we had better transfer this government over to the Central Pacific Railroad Company, if they will pay the expenses, for it is the practical government of this State, and of this country, and the most grasping, unprincipled government at that.

Now, the bills of lading—and they have passed through my hands repeatedly—the shipments now made there are sent by steamship line, the bills of lading run to the Southern Pacific Railroad; that is, they ship by steamer and then charge railroad rates. That is because they have pooled freights and fares with the steamers. Sir, I maintain that it is a violation of their charter, assert it is a violation of law, for it is too plain for controversy that they are doing what the Transportation Commissioners assert is not a railroad business. They have no right to crush out opposition by running a line of steamers combining with steamers, as they are doing between here and San Francisco, and from San Francisco down the coast to Los Angeles, and on the Colorado River, for there they have bought up a line of steamers, and are running them on the river, and have destroyed competition in freights and fares upon the ocean, compelling everything to be shipped by their own conveyance, and by rail. I shall cite a case which states the law of this question.

In the case of Samuel Pearce vs. the Madison and Indianapolis Railroad Company and the Peru and Indianapolis Railroad Company, the Supreme Court of the United States decided that, "Where two separate corporations were created to make railroads, they had no right to unite and conduct their business under one management; nor had they a right to establish a steamboat line to run in connection with the railroads. Notes given for the purchase of the steamboat cannot be recovered upon." Now, it has been settled in English cases, and in American cases, that a railroad being chartered to transport freight by rail has no power to own or run a line of steamships. I assert that if this company was proceeded against in the Courts for a forfeiture of charter on the ground of willful misuses, that their charter would go under so quick that the heads of the officers of the company would swim. Now, all we ask is that justice shall be done, and that the law shall be enforced that shall loosen the grasp of these monstrous monopolists.

The O'Connor law provided that the rates prevailing on the first of January, eighteen hundred and seventy-six, should not be increased. They were increased, in violation of that Act, and the railroad had influence enough in the Legislature to get that Act repealed in the Hart law. The Commissioners directed suits to be instituted for its violation in Los Angeles, but before they could be instituted the law was repealed by the Hart Act, which took away the right of action. This demonstrates the enormity of the abuse, and how little reliance can be placed upon a Legislature manipulated by the railroad, and how potent the railway is for control.

DEATH OF A MEMBER ANNOUNCED.

MR. BEERSTECHER. Mr. Chairman, and gentlemen of the Convention: It becomes my sorrowful duty to announce to this Convention the death of the Honorable B. F. Kenny, delegate elect from the City

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and County of San Francisco, and in respect to his memory, Mr. President, I move you, sir, that the Convention do now adjourn. It is announced in this dispatch that there will be a further dispatch announcing the time of the funeral, and it would be better for the Convention to adjourn until to-morrow morning, when we can determine what farther action to take.

THE CHAIRMAN. The motion cannot be made in Committee of the Whole.

MR. BEERSTECHER. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again. What is the pleasure of the Convention?

ADJOURNMENT.

MR. BEERSTECHER. Mr. President: I move that the Convention do now adjourn, out of respect to the memory of our deceased fellow delegate, the Honorable B. F. Kenny.

Carried, and at three o'clock and fifty minutes P. M., the Convention stood adjourned.

FIFTY-SIXTH DAY.

SACRAMENTO, Friday, November 22d, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Harrison,	Prouty,
Ayers,	Harvey,	Pulliam,
Barbour,	Heiskell,	Reddy,
Barnes,	Herold,	Reed,
Barry,	Herrington,	Reynolds,
Barton,	Hilborn,	Rhodes,
Beerstecher,	Hitchcock,	Ringgold,
Belcher,	Holmes,	Rolfe,
Bell,	Howard,	Schell,
Blackmer,	Huestis,	Schomp,
Boggs,	Hughey,	Shafter,
Boucher,	Hunter,	Shoemaker,
Brown,	Inman,	Shurtleff,
Burt,	Johnson,	Smith, of 4th District,
Campbell,	Jones,	Smith, of San Francisco,
Caples,	Joyce,	Soule,
Casserly,	Kelley,	Stedman,
Charles,	Kenny,	Steele,
Condon,	Keyes,	Stevenson,
Cowden,	Kleine,	Strong,
Crouch,	Laine,	Stuart,
Davis,	Lampson,	Sweasey,
Dean,	Larkin,	Swenson,
Dowling,	Larue,	Swing,
Doyle,	Lavigne,	Terry,
Dudley, of San Joaquin,	Lewis,	Thompson,
Dudley, of Solano,	Lindow,	Tinnin,
Dunlap,	Mansfield,	Townsend,
Eagon,	Martin, of Alameda,	Tully,
Edgerton,	Martin, of Santa Cruz,	Turner,
Estee,	McCallum,	Tuttle,
Estey,	McComas,	Vacquerel,
Evey,	McConnell,	Van Dyke,
Farrell,	McCoy,	Van Voorhies,
Fawcett,	McFarland,	Walker, of Marin,
Filcher,	McNutt,	Walker, of Tuolumne,
Finney,	Mills,	Waters,
Freeman,	Moffat,	Webster,
Freud,	Moreland,	Weller,
Garvey,	Morse,	Wellin,
Glascock,	Nason,	West,
Gorman,	Nelson,	Wickes,
Grace,	Neunaber,	White,
Graves,	O'Donnell,	Wilson, of Tehama,
Gregg,	Ohleyer,	Wilson, of 1st District,
Hager,	O'Sullivan,	Winans,
Hale,	Overton,	Wyatt,
Hall,	Porter,	Mr. President.

ABSENT.

Berry,	Cross,	Noel,
Biggs,	Miller,	Smith, of Santa Clara.
Chapman,	Murphy,	

LEAVE OF ABSENCE.

Leave of absence for two days was granted Mr. Smith, of Santa Clara.

THE JOURNAL.

MR. SCHELL. I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

DEATH OF MR. KENNY.

MR. DOWLING. Mr. President: I rise in connection with the death that was announced here yesterday—the death of the Honorable Bernard F. Kenny, of San Francisco, a young man just verging into manhood; one whose upright conduct and gentlemanly behavior had endeared him to us all. I offer the following resolutions.

THE SECRETARY read:

WHEREAS, It has pleased Almighty God to remove from our midst, by death, one of the delegates to this Convention, the Honorable Bernard F. Kenny, a native of the City and County of San Francisco; therefore,

Resolved, That it is with feelings of profound regret that we have heard of the death of the Honorable Bernard F. Kenny, a delegate to this Convention from the City and County of San Francisco.

Resolved, That in his death this Convention has lost an honest and faithful member, society a useful, moral, and intelligent citizen, and his parents a fond and affectionate son.

Resolved, That in this hour of deep affliction and grief we sincerely tender his parents our sincere condolence and profound sympathy.

Resolved, That a committee of six be appointed by the Chair to act as pall-bearers, and convey the remains of the deceased to the place of burial, and to defray all necessary expenses in connection with his funeral out of the funds of the Convention.

Resolved, That the Secretary be requested to forward a copy of these resolutions to the parents of deceased.

Resolved, That this Convention do adjourn at twelve o'clock on Saturday, out of respect to the memory of the deceased, until two o'clock on Monday next.

The resolutions were unanimously adopted.

THE PRESIDENT. The Chair will appoint as the committee, under the resolutions, Mr. Beerstecher, of San Francisco, Mr. Barnes, of San Francisco, Mr. McCallum, of Alameda, Mr. Barbour, of San Francisco, Mr. Larkin, of El Dorado, and Mr. Reddy, of Inyo.

MR. FREUD. Mr. Chairman: At this sad hour I feel that I cannot without pain drop upon the green memory of my companion, and colleague, and friend, a few flowers of devoted love. He was one of California's frank and noble youths. I fail to recall one harsh or unkind word towards friend or foe that ever fell from his lips. His ambition was not lofty. He did not care for fame, nor yet did he sigh. He loved his party much, but he loved his country more. I cherished him for his candor. I admired him for his principle and his liberality, but, above all, I loved him for his humility. I would never desert him while living, nor shall I now fail him when dead. He was one of those of whom it ought be said, of all the world, "This is a man."

PETITIONS—MECHANICS' LIENS.

MR. VAN DYKE presented the following petition, signed by a large number of mechanics and others, citizens of California, asking that a provision be inserted in the Constitution for a lien law:

To the President and Members of the Constitutional Convention:

GENTLEMEN: The undersigned respectfully represent that the practical working of the present legislation, and decisions of Supreme Court based thereon, regarding the rights of mechanics, material-men and laborers to a lien for their labor and material furnished, is such that those who in a measure depend upon such law for just protection fail in nearly all cases to obtain it, because of the inefficient working of said law.

Wherefore, we pray you to declare in our organic law the right of every mechanic, material-man, and laborer to a perfect lien on the thing whereon his labor has been expended, or for which his materials have been furnished

Moreover, we would state that we would be satisfied with amendment number one hundred and sixty-seven, introduced by Mr. Van Dyke, on October tenth, eighteen hundred and seventy-eight, and read and referred to Committee on Miscellaneous Subjects, as follows:

"SECTION —. Mechanics, material-men, artisans, and laborers of every class shall have a lien upon the property on which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished, and the Legislature shall provide by law for the speedy and efficient enforcement of said liens."

And your petitioners will ever pray.

Referred to the Committee on Miscellaneous Subjects.

MESSRS. FARRELL, WELLIN, TERRY, GORMAN, LARKIN, THOMPSON, HEROLD, and SMITH, of San Francisco, presented petitions on the same subject.

Referred to Committee on Miscellaneous Subjects.

CONSTRUCTIVE FEES OF OFFICERS.

MR. ESTEE introduced the following proposed amendment to the Constitution, relative to constructive fees of officers:

"No person holding an office or position under any law of this State, or under appointment by any corporation, board, or body created or authorized by any law of this State, shall receive or be entitled to compensation for constructive services.

"The Legislature shall pass no law authorizing any person to receive pay or compensation, except for services actually performed."

MR. ESTEE. Mr. President: I move that it be referred to the Committee on Legislative Department, and ordered printed.

Carried.

NOTICE.

MR. CAMPBELL. Mr. President: I desire to give notice that on to-morrow I will move amendments to Rules One and Two. I send it up to the Clerk.

THE SECRETARY read:

Resolved, That Rule One be amended so as to read as follows:

The Convention shall meet each day of sitting at half-past nine o'clock A. M., unless it shall adjourn to some other hour.

Resolved, That Rule Two be amended so as to read as follows:

The Convention shall take a recess each day from half-past twelve o'clock P. M. to two o'clock P. M., and from five o'clock P. M., or such earlier hour as the Convention may determine, until seven o'clock P. M.

Laid over one day under the rules.

MR. ESTEE. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

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REPORT—WATER AND WATER RIGHTS.

MR. TINNIN. Mr. President: I would like to offer a report from the Committee on Water and Water Rights.

THE SECRETARY read:

The Committee on Water and Water Rights, to whom were referred propositions numbers two, thirty, sixty-three, ninety-three, one hundred and forty-four, one hundred and seventy-two, two hundred and eighty-five, three hundred and thirty-seven, three hundred and sixty-two, three hundred and sixty-three, three hundred and sixty-four, four hundred and twelve, and four hundred and twenty-eight, have carefully considered said propositions, and recommend that no further action be had thereon.

The committee recommend that the following sections be made part of the Constitution:

SECTION 1. All water appropriated, or that may hereafter be appropriated, for sale or rental, is hereby declared public, and subject to the control of the State.

SEC. 2. The unappropriated waters of the lakes and rivers of this State are declared to be public property, and may be appropriated by individuals, associations, or corporations, subject to such conditions and restrictions as the Legislature may impose.

SEC. 3. The Legislature shall enact laws permitting the appropriators of water and the owners or occupants of land to construct levees, ditches, canals, flumes, and aqueducts, or run their water through natural channels for agricultural, mining, manufacturing, milling, domestic, drainage, reclamation, or sanitary purposes, across the land of others.

W. J. TINNIN,
E. P. SOULE,
THOMAS McCONNELL,
M. R. C. PULLIAM,
JNO. WALKER,
G. W. HUNTER,
T. H. ESTEY,
RUSH McCOMAS,
JOSIAH BOUCHER,
JOHN McCOY,
DANIEL LEWIS,
J. A. FILCHER,
J. H. KEYES.

MR. SMITH, of San Francisco. Mr. President: I move that the report be laid on the table until the minority report is presented.

THE PRESIDENT. If there be no objection, it is so ordered.

RESOLUTION OF INQUIRY.

MR. HERRINGTON. Mr. President: I send up a resolution.

THE SECRETARY read:

Resolved, That the Board of Commissioners of Transportation be requested to furnish to this Convention, at as early a day as practicable, a compilation of all the general and special laws hitherto passed under which railroad corporations have been formed or franchises granted, together with an abstract of subsidies granted and subscriptions made to corporations by the State and the several counties thereof; *provided*, the expense of the printing thereof be not chargeable to the funds provided for the expenses of this Convention.

THE PRESIDENT. The resolution is not in order at present, but if there be no objection, the gentlemen will have leave to introduce his resolution.

MR. HERRINGTON. Mr. President: I am informed by the Commissioner that he has the matter to which that resolution is addressed, already prepared for his annual report, and that if the Convention desire that information, he can furnish it in about a week, and that he will have it printed himself. It will have to be printed with his annual report, and the Convention may as well have the benefit of that information this much in advance. I certainly think it would save a great deal of labor on the part of members who are desirous of informing themselves thoroughly with reference to corporations. It would require at least a month's labor on the part of any gentleman, to look up this matter. It would certainly be a valuable class of information for the Convention to have.

The resolution was adopted.

CORPORATIONS.

MR. ESTEE. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section eighteen and the amendments were before the committee. The Secretary will read them.

THE SECRETARY read:

SEC. 18. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract, the earnings of the one doing the carrying are to be shared by the other not doing the carrying.

Amendment by Mr. Ayers. "Amend section eighteen by adding after the word 'carrying,' in the fifth line: 'and whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such reduced standard.'"

Amendment to the amendment, by Mr. Dudley, of Solano: "Add, 'except by consent of the Legislature.'"

MR. CAMPBELL. I desire to offer an amendment.

THE CHAIRMAN. There is already an amendment to the amendment pending.

MR. CAMPBELL. I was under the impression that the amendment had been accepted.

THE CHAIRMAN. The immediate question is on the amendment offered by the gentleman from Solano, Mr. Dudley, to the amendment.

MR. GREGG. I move that the further consideration of section eighteen be passed over until sections nineteen and twenty are disposed of. It may be that this matter may affect the adoption of those sections.

REMARKS OF MR. BROWN.

MR. BROWN. Mr. Chairman: I have not been present nor heard the discussions, but it appears to me, if such a regulation as that should be adopted, that it might have a tendency to cramp the Commission spoken of, provided that Commission should be finally determined upon. Here it is proposed that this part of it shall be regulated by a special Act, that once these rates of freights and fares are reduced, they shall remain so. Yet, it seems, in this report as presented, so that the Commission is to have sole power. I have no doubt but that it is proper in some cases, to regulate to a certain extent, but yet it might conflict with their action. I am opposed to the amendment.

MR. ESTEE. Mr. Chairman: I second the motion of the gentleman from Kern, Mr. Gregg. I hope it will be adopted.

REMARKS OF MR. AYERS.

MR. AYERS. Mr. Chairman: I hope that this motion will not prevail. I do not see that the amendment now before the Convention will at all conflict with section twenty, providing this Convention adopts section twenty. We have yet to pass upon section twenty and the amendment, and the amendment that is now before the Convention is one which I believe a majority of this Convention, and of the people of this State, believe is necessary to the protection of the people; and I believe in incorporating into this Constitution as we go along such principles as we consider shall be for the safety and protection of the people. The amendment is not, however, inconsistent with section twenty. It will act as an admonition to the Commissioners, should they be appointed, and it seems to me it will be the greatest protection in the Constitution to the people of the whole State. I hope that the amendment will not be passed over for the present, and I hope that it will be adopted before we get through with it.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: The reason I second the motion is that I am opposed, for one, to meeting this issue except right square in front. Now the gentlemen have presented amendments here which would seem to settle certain propositions which are presented to this Convention squarely in sections nineteen and twenty. I hope that the committee will pass over this section for the present, and then come back to it, as they have to come back to sections twelve and thirteen, and then consider section eighteen with the amendments proposed by the gentleman from Los Angeles. I will say to the Convention that it does not endanger the amendments. It does not affect the gentleman's right. It does not affect the right of this Convention in any degree to adopt any amendment they desire to put to section eighteen. But I hope we will meet the question first as to the power of regulation, as represented in sections nineteen and twenty, squarely, and not by a side track. That is my only object in seconding this amendment. It is not with any view of smothering the question as presented by the gentleman from Los Angeles at all. His amendment will come up in its regular order.

REMARKS OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: I hope this section that the committee now has under consideration will be acted on at this time. It seems to me that it does affect certainly the time of this Convention. We have now been considering it one or two days, and now, that we have had it fully discussed, we are just as ready to act upon it as we will be at any time. I concur with the gentleman from Los Angeles in considering that this section, and the amendments pending to this section, do not affect the other sections presented by the Committee on Corporations. I consider, Mr. Chairman, that this Convention should act upon that matter by itself. The question is whether this amendment which is now proposed is a correct amendment—whether this limitation should be made? I believe that it is an amendment which should be made. I think it stands by itself, and has nothing to do with whether this Convention shall conclude to propose a Commission or not. I hope that we will act upon this section, now that we have spent the time in its consideration that we have.

MR. SMITH, of San Francisco. Mr. Chairman: I hope that the motion made by Mr. Gregg will be voted down, and that the amendment of Mr. Ayers will be adopted. It seems to me that if the Chairman of the Committee on Corporations has such great confidence in this Commission, he ought to leave this whole article on corporations in the hands of the Commissioners. It is just as sensible as to skip over section eighteen until we get to section twenty.

THE CHAIRMAN. The question is on the motion of the gentleman from Kern, Mr. Gregg, to temporarily pass this section until after the consideration of section twenty.

The motion was lost.

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: In the first place, there is no question raised as to the power of this Convention to exercise the claim of regulation which is covered by this amendment. The question of naked power is not raised in this controversy. As far as that question is concerned, it stands on impregnable grounds, not only by early decisions, but by more recent ones. As is known by almost every lawyer in this Convention, in the case of Munn vs. Illinois, Chief Justice Waite decides that even private property, if it is affected by a public interest, is subject to legislative control; and in the next case following—the case of the Chicago, Burlington and Quincy Railroad Company vs. The State of Iowa—he simply refers to the previous decision, seemingly taking the ground that if private property affected by a public interest is subject to the legislative control, so much more must be subject to legislative control the powers exercised by the common carrier. He traces it back—he goes as far back as the statute of William and Mary, by which, in England, the rates of charges by common carriers were regulated. I am not sure but that it may be traced back to the edict of

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the prætor, in Roman law. At any rate, it exists, and may be safely predicated on the police power of the State. Besides, we have a provision in our present Constitution in respect to corporations, which says that the provisions in relation to corporations are subject to alteration or repeal. These corporations are clothed with an immense power. They take the property of a private citizen by virtue of the right of sovereignty. It is exercised under the claim of a public use or public benefit, and every citizen's right is subservient to that sovereign right of the State, which it may exercise in its own capacity, or which it may delegate to a political division, to individuals, or corporate bodies, as public agencies in respect to some public good sought to be advanced. Therefore, as far as this question of power is concerned, it does not figure in this controversy.

Now, as to the question of expediency. Sir, I have nothing to say in this argument in respect to these men who first started the Central Pacific Railroad; I am willing to concede to them the full meed of praise which they deserve for their thrift and enterprise, and I am glad that the conception occurred in this City of Sacramento; that in an humble tenement at fifty-four K street, in this city, these men, Huntington, and Hopkins, and Stanford, and the two Crockers met, and combined together, having confidence in one another, and started the great enterprise of the Central Pacific Railroad. Because I object to a perversion of the doctrine of the rights of these corporations, I am not driven to the necessity of aspersing these men. I listened, sir, with a great deal of pleasure, yesterday, to the argument of the distinguished gentleman from San Francisco, Mr. Wilson, a gentleman of high character and of conceded ability. In his argument he takes the position, first, that the directors of a transportation company may themselves imperil the interests of the corporation by unwise reduction. He said: "First—That the directors of a transportation line may imperil the interests of a corporation by unwise reductions—those which shall prove unwise and destructive, and which would be fastened upon the company by the provision proposed." Sir, I do not contemplate any danger of that kind. It is not the history of the Central Pacific Railroad Company. When they sent Huntington East, and gave him as ample power of attorney as was ever given to agent, to represent them, they had entire confidence in him, and it showed that there was a bond of union between these men that was not capable of severance. And it has been the history of this road from the beginning that the projectors have always coöperated together, and it is these five or six men who have had the complete control of it. Now, sir, is there any danger of this kind to be apprehended, that these directors, elected by the stockholders, that is to say selected by themselves, may reduce their tariff of freights and fares so as to imperil the interests of this great corporation? Can any one think so? These gentlemen, with all their experience; these gentlemen who have had charge of this magnificent enterprise from its inception? I say that it cannot be supposed that they will exercise any such power; but they will exercise it discreetly, with a view to their own interests. That is the history of the Central Pacific Railroad Company. That has been their past, and that will be their future.

There is another position taken by Mr. Wilson, his third, omitting the second: "Third—The inability of a company to raise lowered rates to a living scale might bring a corporation to bankruptcy." Well, sir, that is covered by what I have already said. There is no danger of any such bankruptcy. These men will always agree—with their untold millions, with the richest dowry that was ever given to a corporation, embracing miles and miles, in alternate sections, of the richest land in the State of California.

Let me call the attention of the committee to the earnings of this road. I read from the report of the Commissioners of Transportation, established by an Act of the Legislature of this State, in April, eighteen hundred and seventy-six:

Baltimore and Ohio Road, for seven years ending September 30, 1871.

Gross earnings	$67,763,308 00
Operating expenses	42,372,433 00
Net earnings	$25,390,875 00

Being, say 37½ per cent. of the whole.

Pennsylvania Railroad, 1862 *to* 1871, *both inclusive.*

Gross earnings	$158,073,822 00
Operating expenses	110,184,053 00
Net earnings	$47,889,769 00

Being 30 4-10 per cent. of the whole.

New York Central and Hudson River Railroad, 1862 *to* 1871, *both inclusive.*

Gross earnings	$187,032,624 00
Operating expenses	127,958,239 00
Net earnings	$57,074,385 00

Or 31½ per cent. of the whole.

Central Pacific Railroad, 1864 *to* 1871, *inclusive.*

Gross earnings	$28,374,781 00
Operating expenses	15,162,203 00
Net earnings	$13,212,578 00

Being 46½ per cent. of the whole.

Baltimore and Ohio Railroad, for the year 1871.

Gross earnings	$12,557,529 00
Operating expenses	7,998,175 00
Net earnings	$4,559,354 00

Or 36 3-10 per cent. of the whole.

Central Pacific Railroad, year 1871.

Gross earnings	$9,546,342 00
Operating expenses	4,325,428 00
Net earnings	$5,220,914 00

Or 54 6-10 per cent. of the whole.

Baltimore and Ohio Railroad, year ending September 30, 1875.

Gross earnings	$14,444,238 00
Operating expenses	9,908,665 00
Net earnings	$4,535,573 00

Or 31 4-10 per cent. of the whole.

Pennsylvania Railroad, year 1875.

Gross earnings	$34,464,104 00
Operating expenses	23,040,908 00
Net earnings	$11,423,196 00

Or 33 1-10 per cent. of the whole.

New York Central and Hudson River Railroad Company, year 1875.

Gross earnings	$29,027,218 00
Operating expenses	17,262,107 00
Net earnings	$11,765,111 00

Or 40½ per cent. of the whole.

Central Pacific Railroad, year 1875.

Gross earnings	$17,021,015 00
Operating expenses	7,417,944 00
Net earnings	$9,603,071 00

Or 56 3-10 per cent. of the whole.

Now, sir, with its magnificent dowry, with all of its land lying along the line of the road, they have not been driven to the necessity of bringing it into the market. They have been realizing these immense sums, and have their millions of acres of land in reserve; and this is not the whole secret of this matter, as has been said by the gentleman from Los Angeles. They have not only claimed these great highways overland, but they have also usurped the ocean highway, the throne of international sovereignty. They have even tried to take the trident from Neptune over the sea, and to wield this in connection with this great landed power. Talk about a company such as this being thrown into bankruptcy? No, sir!

Now, I will read the next reason that Mr. Wilson gives: "Accidents will occur; severe seasons and heavy Winters be encountered; fires will burn depots and sheds and other property." The same answer applies to that. In reducing these fares and freights they will take these matters into consideration. So that is not available. What is the next reason given? That is the second one, which I omitted before: "Second—He believed the amendment would put it out of the power of the Legislature to exercise, when it finds it right to do so, wholesome discipline and control over these carriers." Now, sir, I imagine that if there are three men elected by the people of this great State, as is contemplated by section twenty, that the people will hold these men to a rigid responsibility. I tell you that not one of these Commissioners selected by the suffrages of the people would dare violate that trust. They would not pretend to do it. These Commissioners would doubtless act for the interest of the people. But, sir, as to the idea of putting it out of the power of the Legislature to control this matter, we can insert a facile provision in this Constitution for an amendment to this Constitution. We can put it in such a shape so that if our own provisions in this Constitution should operate against the interests of the people of this State, these sections can be changed by an easy amendment of the Constitution.

Now, sir, let us look at this matter in a practical, business light. Here is this great railroad enterprise, with its hundreds of arms, like Briareus, stretching over the State of California, and owing to its spirit of grasping cupidity, not confining its operations alone to the land, but reaching out farther, so that the little boat which passes through the gateway of commerce here on the Pacific slope, that golden gateway, as she speeds along on her errand, with her little capital, to carry our produce to the City of Los Angeles, or the City of San Diego, encounters the power of, and is terrorized by, this magnificent corporation. This grasping cupidity stretches out its tentacles to inveigle this little competitive corporation. It prevents the growth of the towns in the southern portion of this State. And yet that is not all. It does not confine itself to the Pacific seaway, but these great river routes throughout the State of California are similarly affected, and the wharfage, the river fronts, as well as the ocean front, are taken by this magnificent corporation so as to exclude all capital and all competitive enterprise. Sir, I have always regarded the State as the *alma mater* of her citizens. I have always regarded that doctrine taught many hundred years ago by one of the seven wise men of Greece, as the best doctrine, that that government is best which protects the rights of the weakest citizen as well as the strongest. My sympathies, therefore, are in favor of the weaker power, and I very often find myself drifting in that direction. But I endeavor to control it by a judicious exercise of reason in the same connection. I say further that this is no case for sympathy for the Central Pacific Railroad Company. This provision is applicable to all railroads. We do not make any specialty in respect to the Central Pacific Railroad Company. This provision covers the whole ground, and is applicable to all of these corporations. I say that if there is any place for sympathy it should be exercised in favor of the weaker power; in favor of these weak competitive enterprises. They start out with their little capital. They find that they are anticipated; that they are compelled to sell out; that their boats are driven away from the ocean highway, and this great power forestalls and controls the whole trade. In the first place these great corporations seem to commend themselves to the attention of the public: "Why, we reduce the carriage; we reduce this tariff of freights and fares."

But, after they have frozen out the small enterprise, they go back to their first love, they reëstablish their tariff, and make it more odious than before. It is a good deal like the invitation which the giant gave to Ulysses to go into his cave and partake of his hospitality, intimating to Ulysses, that, as a mark of distinguished respect, he would eat his companions first and himself last. So it is with these corporations.

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This giant monopoly will consume these little competitive industries first, and afterwards the otherwise growing towns of the south. No, sir; in the very nature of things the carriage by water is cheaper and should be cheaper. The expense is less. There is a less number of operatives; there is less capital embarked; but on the other hand, the railroad commends itself on account of its increased expedition. This southern country should be developed, and we should endeavor to have it developed by all of these competitive enterprises. It is a noble country; a country with a climate which is tempered to the invalid; a country with its orange groves, its lemons, and almonds, and semi-tropical fruits, reminding us of the Gardens of the Hesperides. But the interests involved are not confined to the South. The whole State is interested in this matter, because, as I have said before, this great railroad has almost corraled the State from one end to the other. Now, sir, it occurs to me that inasmuch as this doctrine, which is contended for by us, is founded upon conceded power; inasmuch as it has the sanction of hundreds of years; inasmuch as it can be made plastic by an easy process of amendment of the Constitution, and the argument in favor of its expediency being equally strong; it occurs to me, I repeat, that the amendment which is offered by the gentleman from Los Angeles, Mr. Ayers, should be adopted, and I hope, sir, in behalf of the people of this great State, from one section to the other, that it will be adopted. Not that I wish to disturb any vested rights. Whenever I come in sight of the Rubicon and find that the vested rights of the people of this great State are disturbed or in any way impaired, I shall not cross it, but shall stand upon the sure foundation of any and every constitutional safeguard.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I hope that the amendment may be perfected, so as to suit what I believe is a majority of this Convention, and that then it will be adopted. I beg leave to say a few words upon the question. At present it is presented in this light: The original proposition, as presented by the gentleman from Los Angeles, Colonel Ayers, was, that whenever a railroad corporation should, for the purpose of competing with any other railroad corporation, lower its rates, that thereafter it should not be allowed to raise them again from that reduced standard. Since that time there was an amendment accepted by the gentleman from Los Angeles, including in this class of corporations, or including with the railroads, all common carriers. As the proposition now stands, if any railroad corporation shall lower its rates for the purpose of competing with any other common carrier, it shall not again raise them. It does not say that no common carrier shall lower its rates for the purpose of competing with any other common carrier, but they shall be compelled to retain them at that reduced standard. Now, sir, in my judgment it ought to embrace common carriers upon one side as well as upon the other, or we shall have this result: a railroad corporation may not combine against any common carrier, and reduce freights for the sake of freezing them out, but a corporation doing the same business, if it is not a railroad corporation, may with impunity combine against any common carrier, and having frozen out the competing line, they are allowed to take their freights and fares back again to the old standard. In my judgment that is not correct. I do not see why we should inhibit railroad corporations from doing this, and allow others who are engaged in the same business to do it. I think the amendment, as it stands, should be amended so as to include all corporations doing the business of common carriers; that they shall not be allowed to lower their rates, or having done it to compete with other common carriers, that they shall not be allowed to raise them again from that reduced standard. I propose, if I have an opportunity, to offer an amendment to that effect.

Now, sir, in regard to the question as to whether this is something which should not be put into this section, provided we adopt sections nineteen and twenty. It seems to me that neither one of those sections cover this point at all. Section nineteen regulates the matter of discrimination in charges of freights and fares from one point to another, and it puts it into the hands of this Commission to determine that. But the question as to one corporation reducing its rates for the purpose of killing another corporation and then taking it back again, is not included either in sections nineteen or twenty, and, as I said yesterday, it seems to me that it is a very proper direction to that Commission, if it should be appointed, that they should see to it that this is not allowed. It is one of the things that should come within the purview of this Commission, and I hope the amendment will be adopted. I think we shall not do ourselves justice unless we adopt an amendment of this kind, and it is certainly very proper here. I hope it will not be confined to railroad corporations, upon the one side, who are inhibited from doing this thing, but that they shall not be allowed to oppress those who are doing a business, no matter what the corporation is on the other. Whatever is included on one side, should also be included on the other.

REMARKS OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: I am very reluctant, after this question has been so long under discussion, to say anything upon it, but it seems to me that there are some considerations connected with this matter which have not been presented to the Convention, and which ought to operate upon our minds in determining this question. As the amendment was originally presented by the gentleman from Los Angeles, I was in favor of it with a slight alteration, which placed the competing line upon the same ground with the line originally in operation. But an amendment has since been accepted which, it seems to me, will be mischievous and dangerous in its consequences, and the dangers of which have not been foreseen and explained to the Convention. When the Commissioners recommended that in the event of a competing line of railroad being constructed, the original line, after reducing its rates to break down that competition, should not be permitted to raise them, they made, I think, a wise recommendation. They did not clothe it in the legal language of a section, but they simply put forth the general principle, which meets with my hearty approval. Now I, in common with most of the members of this committee, have felt the exactions and oppressions which have been practiced upon the people of this State for a number of years by the giant corporation which, with its branches, has overshadowed the State, the Legislature, the officials of the State, and the people themselves. And for the last few years, so far as I have taken any part in public life, it has been simply for the purpose of aiding organized opposition to these exactions and oppressions. And at the same time I feel that that sense of indignation which we all experience at the oppressions and exactions which we have witnessed, may lead us into extreme measures which, so far from benefiting the people and remedying existing evils, may lead to other evils, the consequences of which we have not foreseen.

Now, the amendment as it now stands proposes that whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased. Now that is a prohibition in the first place, to inhibit them from at any time authorizing these rates to be changed; no matter what changes in the road; no matter what changes in the financial condition of the country may take place, rendering a change necessary, there is no power under that amendment, even assuming that sections nineteen and twenty should be adopted, which can at any time authorize the corporation which has lowered its rates in consequence of any competition from any quarter, or of any kind, ever to raise those rates again until the Constitution has been amended. Now with reference to railroads, I desire to say that at the proper time, and when it shall become proper to offer it, I have an amendment which I shall desire to offer, and which I will now read for the information of the Convention. It goes as far as I think we ought to go, and no farther. It is as follows: Add to section eighteen, "And whenever a railroad corporation shall, for the purpose of competing with any other railroad, constructed or in process of construction, lower its rates for transportation of passengers or freight from one point to another, it shall not again raise its rates without the consent of the governmental authority in which shall be vested the power to regulate freights and fares upon railroads; nor shall such other railroads raise its original rates without similar consent." As the section originally stood, while the competing line might raise its fares and freights the one which had lowered its rates never could raise its rates again. That would be clearly unjust and improper. In my amendment I limit it to competing railroads, for this reason: if this section is adopted in the form in which it is now before the house, it will offer an unlimited capacity to blackmail railroad corporations. I do not limit myself to the Central Pacific Railroad, or to its branches. I do not suppose, and I hope it will not be the case, that this will be the only railroad ever built in this State. We have already some one or two others. We have the Santa Cruz Railroad—a road which goes from Alameda to Santa Cruz—now in process of construction.

There is another railroad already built by the citizens of Santa Cruz, running from Watsonville to Santa Cruz. There will doubtless—under proper restrictions of the power of the vast, overshadowing monopoly which now controls—be a number of other railroads—short railroads, constructed from one convenient point to another in the State. Well, now, if you say, in regard to these railroads, that any railroad company building a competing line, as against them, shall, if it lowers its rates, not be permitted to raise them, you do that which is just. But if you leave it the way it is, any man having, for instance, a stage line for which there is no present profitable employment, might go to them and say, "Gentlemen, if you don't pay me so much money I will put on an opposition to you. My stage line at present is doing nothing, or nothing profitable, and I can afford to cut under you for the present, and I can run for some time against you, and while I run I will destroy your business." You can see at once that if that is the case it offers an unlimited opportunity for blackmailing railroads. Now, here, for instance, there was a little railroad between Galt and Ione City, in Amador County. It has, to be sure, been swallowed up by the railroad corporation, and is under its control. But suppose that road had been running alone. It was built at great expense. It was difficult for those who were engaged in it to run it. A very slight opposition would break them down. Now, if it so happened that anybody chose, having an unprofitable stage line, to run in opposition to it, that enterprise, valuable in itself, and instituted for just purposes, might be broken down and utterly destroyed. And so with all that class of weak railroads built with limited capital. There is no reason why this should be confined to competing railroads alone. A railroad is a permanent structure. It cannot be moved from place to place. It cannot be shifted about here and there. Along the coast, for instance, where there is water communication, a vessel or a steamship may be run from one point to another to-day, and shifted to-morrow to a different locality. We all know that in dull times these steamers may be out of employment. They find it difficult to obtain freights and fares. They may be willing to put on their lines at hardly living rates. Now, we all know that water transportation is a good deal cheaper in the main than railroad transportation. It is much less expensive. Now, if in such a case as that a person owning such a vessel, or steamboat, or any other means of transportation, would have an opportunity to go to the railroad company, and say, "Gentlemen, so much money, or I put on an opposition line. I will either take your business from you for the time being, or I will force you to reduce your rates to less than a living rate." It may be used as an engine of vast oppression. It may be used as a check to the construction of small railroads—the construction of which might be of vital importance to the State. It is not done now for fear of this central corporation, but take away that fear by suitable provisions in your Constitution, by limiting its powers, in the manner proposed in the amendment which I just now read, and you will effect the purpose

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and object in view; and if in connection with that you go on to further provide for such regulation of freights and fares as shall be just, you have then put a check upon the undue exercise of corporate power. I do not desire, Mr. Chairman, to detain the Convention. I have merely presented these considerations because I feel that in the form in which this amendment stands, I cannot support it; but if put in a reasonable form, one which will do justice to the people, and not be oppressive to any one, I will support it.

SPEECH OF MR. HAGER.

MR. HAGER. This amendment, offered by the gentleman from Los Angeles, Mr. Ayers, is an inflexible rule which applies to all railroads, if they should do anything of that kind. I would prefer, myself, to have an amendment added (which I have drawn), if I could get it in, by adding: "unless the Legislature, by law passed by a majority vote"—or by a two-thirds vote, just as may be preferred—"of all the members elected to each house, shall authorize a change of rates." That will not conflict with the action of any Commission that might be appointed under the subsequent section, if that should be adopted. Then the Commission would be authorized to fix the rates in this case, just the same as in all other cases. And, as I cannot offer it under the rule, if the author of the proposed amendment would accept this in addition, I think, perhaps, it would popularize the measure.

MR. AYERS. I would accept the amendment, with the leave of the Convention, to have the rates changed by a vote of the Legislature.

MR. HAGER. Then the amendment will read: "And whenever a railroad corporation shall, for the purpose of competing with a rival common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such reduced standard, unless the Legislature, by a two-thirds vote of all the members elected to each house, shall authorize such change." There would, therefore, be no conflict between section twenty and the section we are now proposing to amend. The object of this amendment we all understand, and it is simply in relation to the vast power of railroads in this State. Efforts have been heretofore made for the purpose of controlling railroads to some extent in the charges that they may impose upon the people, or upon the property that is transported within the limits of the State of California; and hitherto every effort made in that direction, as we all know, has proved to be a failure. Some years—many years—ago, a bill passed the Assembly called the Freeman bill. I believe it passed by a very large vote in the popular branch of the Legislature. It went to the Senate, and it there slept the sleep that knows no waking. It rested with the Committee on Corporations until nearly the end of the session, when, finally, no action was taken on it, or on any other measure in its place. Next, at a subsequent Legislature, a bill was introduced in the Assembly called the Archer bill. That was intended to regulate fares and freights. It passed the popular branch of the Legislature—if I am correct; and if I am not, the member from Santa Clara, who was a member, will correct me—it passed the popular branch, I believe, by a large majority. It went to the Senate, and it there slept until the end of the session, in the hands of the Committee on Corporations; and finally there was reported what is now known as the law constituting the Commissioners of Transportation. By that bill a Commission was appointed, with a view to regulating fares and freights in regard to railroads and transportation companies. That Commission, composed of men well known throughout the State, went to work under the provisions of that authority, with the intent of executing its provisions upon all railroad corporations within the State. Did they succeed, sir? Why, the corporations defied the Commission and defied the law. They made no response to the Commission. And when called upon to comply with the law and its provisions by making responses and returns by communication or otherwise, they disregarded every appeal made to them, and defied the Commission, and defied the sovereign authority of the State. And that is the condition in which it now rests. That Commission went to work, and they made their report. They tried to control the corporations; and in order to do this, they instituted suits against them. They brought them into Court by mandamus, and they obtained judgment in the District Court against them; and the Court, by its judgment, attempted to compel them to comply with the requirements of that law. What did they do—acquiesce? No. Appeal was taken to the Supreme Court, from these judgments; and in regard thereto, Mr. Doyle, one of the Commissioners, says:

"You are aware that several actions of mandamus were brought to compel railroad companies to afford statistical information demanded by the present Commissioners, and which they had refused to furnish. These actions are pending in the Supreme Court, on appeal from judgments rendered below in favor of the State. They were set for argument for December third last, but postponed, and finally, by consent, were set for hearing on March fourth. On that day they were pressed by the counsel for the Commissioners, but postponed a week at the instance of the railroad companies. On Monday, the eleventh instant, when they again came up, the same counsel applied to continue them for the term, on the ground that one branch of the Legislature had passed an Act abolishing the Commission, and the other would probably concur. The Court, thus called upon to discount the action of the Senate, did not hesitate to do so, and postponed the cases for the term."

And then the Legislature, while this Commission was engaged in its work, repealed the law, and left the cases standing in the Supreme Court unprovided for, where I believe they quietly rest at this day.

MR. ESTEE. I would like to ask the gentleman, if this amendment does not place the same matter back in the Legislature that he so earnestly denounces.

MR. HAGER. Not at all.

MR. ESTEE. It strikes me that it does.

MR. HAGER. It merely gives the Legislature the power to relieve them from a penalty.

MR. ESTEE. I think the amendment of the gentleman from Alameda, Mr. Campbell, would meet the case.

MR. HAGER. I have no objection to that, so far as I am informed. My amendment was merely to do away with the objection urged, that when a company had once placed themselves in this position it was impossible for them to extricate themselves, by reason of the provision contained in a subsequent section. My amendment was intended to cover a possible contingency of this kind.

MR. SCHELL. I would ask the gentleman if this would not come in conflict with the authority intended to be vested in the Commission, provided sections nineteen and twenty are adopted, which says that they "shall have the sole power," etc.

MR. HAGER. That provision must be subordinate to the other portions of the Constitution. I have very little faith in that sole power, and I have very little faith in the Commission. But I will come to that proposition, and may say something about it hereafter. This is a proposition substantially, in its prominent features, following up the efforts made in this State to control the railroad corporations, or in some measure to fix the limits as to freights and fares. I do not say whether or not they have been unjust to the people of California, or excessive in their charges. I am referring to history here, so far as I can recall it from general recollection. It is true, as has been charged, that they have refused to pay the interest claimed to be due the Government on their bonds, but as has been said by my colleague from San Francisco, Mr. Wilson, the Supreme Court of the United States has decided in their favor, so that is no longer a cause of censure or complaint, and as a consequence of that decision, the Thurman bill, so-called, was introduced into Congress, and passed, and became a law. The intent of that law is to compel them to pay to the Government these bonds and interest which the Government issued as a subsidy for the construction of the road. That Act applies to the Union Pacific and to the Central Pacific. It is in consequence of a clause contained in the Act of Congress authorizing the construction and subsidizing of this great enterprise, to the effect that the law may be altered, changed, or amended, that this Thurman bill was passed. The Union Pacific acquiesced in it; but the Central Pacific Railroad Company rebelled even against the Government, as they have rebelled to a certain extent against the Government of the State of California. They are not satisfied with this law of Congress; they will not comply with its provisions. A suit has been instituted here in the case of Gallatin against that compauy, which is supposed to be instituted in their interest, that they may obtain a final and favorable decision. How that may be, I do not know; but I am informed by good authority from Washington that the Government has no confidence in the suit, and that they have there taken measures to institute proceedings on behalf of the Government to compel the Central Pacific, as well as the Union Pacific Railroad, to conform with the Act of Congress under the so called Thurman bill. I do not undertake to give my opinion in regard to it one way or the other, but simply state what I consider history.

Now, this Central Pacific Railroad controls all the carrying trade, with some inconsiderable exceptions, of this entire State. Their railroads run through our valleys and over our mountains. Their transportation companies control our highways and rivers, and to some extent the ocean. They will not tolerate any opposition, and the people are substantially entirely dependent upon them, and their freights and fares are just what they may please to make them. Well, sir, this great railroad was a grand enterprise, we all admit, but by whom was it built? Certainly not by the persons who are the owners and managers, so called, of that great enterprise. It was built by the munificence of the Government of the United States and the people of the State of California. I do not suppose that the men that started this enterprise, creditable as it may be to them, had enough capital to construct one hundred miles of the road, but by the liberality of the Government in lands and bonds, and by liberal donations in not only this State, but also in others, they were able to carry it through, and, I believe, obtained a great profit in its construction in addition to the road itself. That they deserve great credit for their energy and enterprise, that they should enjoy all the credit, the honor, and the glory, and are entitled to the fruits of success, none will deny. If they had rested on their laurels, and had confined themselves to this enterprise, to this great continental road and its business, and let the State of California—its people, its valleys, and its rivers, its navigable waters and its mountains—alone, it might have been said of them as Junius said of Lord Chatham: "Immortal honors will gather around their monument and thicken over them. It is a solid fabric, and will support the laurels that adorn it."

But further than this, it has been said that they control legislation; that they control the political conventions of both parties, and in this way effectually control the destiny of this great State, by keeping it in their own hands. Now, sir, I was brought up in a State where they had a railroad corporation and a railroad monopoly. It was all powerful, overshadowing, and controlled as effectually the destinies of that State—perhaps more so—than the Central Pacific controls California. I refer to the Camden and Amboy Railroad of New Jersey; which for more than twenty years ruled that State with an iron hand. Political conventions met and nominated candidates for office pledged against monopolists. Both parties were pledged against monopolists. Yet, when the Legislature assembled, an unseen hand, an underground railroad, was at work, and that unseen hand, and that underground railroad, was more efficient than if it had been visible, and in the open air, to control legislation in that State. Is not this our condition in California?

Well, sir, you may go to Washington and see the effect of the influence of corporations there. Take the Erie Railroad, and the New York Central, the Baltimore and Ohio, the Pennsylvania Central, the Union Pacific and the Central Pacific, all combined together, exercising their influence

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upon legislation there. Are they not all-powerful, overshadowing, and incapable of being resisted? Take them in combination with the manufacturers, protected by high tariffs, and with the national banks, and they can control the Congress, and the nation. They can nominate Presidents; they can elect Senators; they can elect members of the House of Representatives; they can nominate Governors in the States; they can nominate legislators, and when they nominate and elect them, they can control them. You may ask, where is the strong arm that is capable of breaking them down? You may say the people—the people. Is that so? Why, sir, they are more powerful than the people. They may crush you, and they may crush me—they can crush any man that raises his arm in opposition to them, if they undertake to do so. Your prosperity is dependent upon their favor, and their enmity may crush you to the earth, and destroy you and your business.

Now, in regard to this amendment—I am referring to the twentieth section, so called—as the great palladium which is to restore us to prosperity, and, so far as railroads are concerned, into happy relations. It reads thus:

"Three Railroad Commissioners shall be elected by the qualified voters of this State at the regular gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation or any other transportation company as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the sole power, and it shall be their duty, to correct abuses by railroad corporations or other transportation companies."

This looks fair. But I would ask how it is to be accomplished, and where do we find the machinery by which it is to be done?

MR. O'DONNELL. We are not discussing section twenty; it is section eighteen that is before the Convention.

MR. HAGER. We are discussing the whole subject. The section says further:

"Establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make."

Now, that reads well enough. They have the power to establish rates of charges for the transportation of passengers, and they have the power to publish them; they have the power to report to the Governor annually their proceedings, with such other facts as may be deemed important. Well, there is nothing there excepting the announcement that they may establish rates of charges; and when made how will they be enforced. Who is bound to obey them? What means can these Commissioners resort to by which these objects are to be accomplished?

MR. WHITE. I merely ask the gentleman to read the balance of the section, and he will see where the authority is.

MR. HAGER. I intended to do so, and will read it, as follows: "Report to the Governor, annually, their proceedings, and such other facts as may be deemed important; hear and determine complaints against railroad and other transportation companies; affix penalties and enforce them through the medium of the Courts, and perform such other duties as may be prescribed by law. Nothing in this section shall prevent individuals from maintaining actions against any of such companies." Now, we have a Government composed of a judicial, a legislative, and an executive department. Are these Commissioners to be transformed into a Court? Can they issue processes, summon a jury, subpena witnesses, hear and try the case, and pronounce judgment? Can they issue executions, and will Sheriffs be found to obey? How will these powers be enforced, even if this provision should go into effect, in regard to fixing fares and freights? There is no power to enforce the order, so far as I can see. It says that they may hear and determine complaints against the railroads, affix penalties, and enforce them through the Courts. Penalties for what? Because they have damaged some man's grounds, or because they have failed to charge a man the fares and freights as fixed by the Commissioners? There is nothing, sir, that will be a guide to this Commission. There is nothing that will be a guide to the people in seeking redress as against the railroads. I think that if I had the control of the Central Pacific Railroad I would favor all that is contained in this section twenty to constitute this Railroad Commission. Now, sir, in the Constitution of Illinois we find some very stringent provisions in regard to railroads. In the new Constitution of the State of Pennsylvania and in the new Constitution of Missouri they have them also.

MR. WHITE. There is an additional clause you have not read, and I will call your attention to it for the purpose of showing the Convention that there is some provision for the enforcement of these penalties.

MR. HAGER. I will read it.

"It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in the foregoing sections."

Suppose the Legislature fails to do it? Suppose they treat a bill from the Assembly as they treated the Freeman bill and the Archer bill, and refused to do anything; and suppose, while the Commissioners are acting under a measure passed for them, the Legislature repeals the measure; the intent of this Convention is to have something permanent, that will be binding upon the Legislature as well as upon the railroad companies in this State. The people expect this. If we leave the enforcement of this provision to the Legislature, why not leave it all to the Legislature? This constitutes the weakness of this proposition. You must resort to the Legislature to clothe the Commission with the necessary powers. That is why I object to it. I want to see something in the Constitution that will operate by itself, and be self-executing. Not to punish the railroad, but to protect the people in case it should become necessary to protect them. But, as I was saying in regard to Illinois, they have constitutional provisions that are stringent, and I wish this committee had reported some of these provisions applicable to railroads that they have omitted in place of some of those they have presented to us.

MR. ESTEE. Will the gentleman read one? I want to know what the gentleman wants.

MR. HAGER. In section fourteen, as reported by the Committee on Corporations other than Municipal, they have this provision, not applicable to railroads only, but to corporations in general:

"Every corporation organized or doing business in this State, under the laws or authority thereof, shall have and maintain an office or place in this State for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in, and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and place of residence of its officers."

Now, sir, that provision is taken bodily from the Constitution of Illinois, where it applies solely to railroad corporations.

MR. ESTEE. I would like to ask the gentleman if it makes it any less effective upon railroad corporations because it is in the section referring to corporations in general?

MR. HAGER. It makes it so effective that in connection with other private corporations it is wrong. If it had been reported in regard to railroads, which are quasi public corporations, every man here who wishes to do something effective would have said it was right. But when you come to prying into the affairs of private corporations, whether it be a woolen manufactory, a laundry, or any other establishment for private business, you are doing a wrong. You have no right to go into private corporations, unless you have an interest, or there are great overpowering reasons. But you have a right to go into the corporation books of any railroad company, because they are quasi public corporations, and are dependent upon the State for the advantages they possess.

MR. ESTEE. I will ask the gentleman if he does not know that section fourteen has been amended, and already adopted by this committee as amended?

MR. HAGER. Certainly. I ask why it was not put in its place and confined to railroads, as in the Constitution of Illinois, from whence it was taken? Then it would not have been objectionable, but if I had wanted that provision rejected, I would have made it applicable to all corporations; but I do not intend to impugn the motives of the Chairman of the committee, or the committee, in the least. I am criticising the act of the committee rather than impeaching their motives. But I should have put this section under the head of railroads, and made it applicable to railroads alone, as in Illinois, Pennsylvania, and Missouri. There is another provision in the Constitution of Illinois to which I will call the attention of the Chairman of the committee, Mr. Estee, and should have been pleased if it had a place in the report of the committee. I have it before me—Constitution of Illinois, article eleven, section fifteen. It reads as follows:

"The General Assembly shall pass laws to correct abuses and prevent unjust discriminations and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises."

That, sir, sounds like business. That sounds as if those Constitution-makers intended to put in some provision that might be and could be enforced. Why did not the Chairman, or rather the committee, put a clause here that these Commissioners might take steps to enforce these provisions, if necessary by a forfeiture of the property and franchises of the corporation? Why did they not put that there when quoting from the Constitution of Illinois? Then there would have been some reason by which we could infer that the intention was to put some check upon the power of railroad corporations. But they are not there. So in these States, Illinois, Pennsylvania, and Missouri, the three last Constitutions, they have declared that all railroads are public highways. That "public highways" is left out here. And we never had an opportunity here to vote whether we would so declare, inasmuch as under our peculiar rule a substitute was adopted and cut off all other amendments.

Now, sir, I am in favor of engrafting into this Constitution such wholesome and necessary provisions as may be required to protect the people, and prevent the railroad from oppressing them. I care not if this Constitution swells into the magnitude of a code. Let it be a code if it is right. Principles, if correct, should be eternal; Constitutions, if founded on correct principle, might be eternal, and I do not object to it. I prefer a Constitution founded on correct principles, even if it were of the magnitude of the Pandects or the Pentateuch, to the fluctuations that prevail in legislation. As we all know, laws are evanescent; like Summer flowers, they fall and fade away. Legislatures meet and pass laws; and other Legislatures meet and repeal them. Sometimes corporation pressure is brought to bear upon Legislatures, and legislation is thus influenced. Courts may declare laws unconstitutional. Men are elected to the Legislature under pledges. When the Conventions meet, the candidates rush before them like the leaves of the forest when the Summer is green; they get their nominations, they make their pledges against railroad monopolies, against water monopolies, against gas monopolies, and against monopolies of all kinds, and when they are elected, too often, like the leaves of the forest when Autumn is blown, they fall, they fall. They forget their pledges, and forget the platforms upon which they were elected, and we are subject to uncertainty and to change. Not so with Constitutions. Constitutions are made in a different way—

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"By freemen casting, with unpurchased hand,
The vote that shakes the turrets of the land."

Freemen make Constitutions. The people make them, and it requires the same power to amend or destroy them. Constitutions cannot be declared unconstitutional. They are something fixed and permanent, as a general rule, and, like a rock in the ocean, the surges of corruption may dash against them in vain. If right, the Constitution will be our protection when laws may fail. Therefore, I am in favor of engrafting in this Constitution every provision that I think wholesome and right, even if it swells to a volume of the size of the codes of the State of California. No harm can come of it if it is right. And if we do not avail ourselves of this opportunity, if we do not engraft some provisions in the Constitution that will be accepted by the people, it will be a source of disappointment from one end of the State to the other. In regard to this particular amendment, with the amendment I have sent up, I am ready to give it my support.

MR. DUDLEY, of Solano. The gentleman from Los Angeles having accepted the amendment of Judge Hager, which covers the same ground as mine, I withdraw my amendment in order to permit Judge Campbell to get his in. I believe the Committee is ready to vote, and, for one, I should like to have the previous question.

MR. GRACE. Does the gentleman want to move the previous question and cut off the debate?

MR. DUDLEY. I do not desire to call the previous question if there is any desire to debate the question further.

MR. CAMPBELL. I now send up my amendment.

THE SECRETARY read:

"Add to section eighteen, 'and whenever a railroad corporation shall, for the purpose of competing with any railroad constructed, or in process of construction, lower its rates for transportation of passengers or freight from one point to another, it shall not again raise its rates without the consent of the governmental authority in which shall be vested the power to regulate fares and freights on railroads; nor shall such other railroad raise its original rates without similar consent.'"

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: I think that amendment is a good one, and I hope it will be adopted by this Convention. I think that each provision in this Constitution should stand upon its own foundation, and I hope that the members of that committee will not be such sticklers for their particular ideas as to seek to defeat any amendments that are offered. So far as this provision is concerned, I do not intend to vote for the proposition to give that Commission the power that is provided for in section twenty. I believe that the amendment of the gentleman from Los Angeles, with the amendment as sent up, is the correct principle, and is a proposition which should be adopted in that section, and be adopted by this Convention. I have not the fears of the future Legislature of California that the experience of the past would seem to warrant. In eighteen hundred and sixty-nine, when the question of subsidy was fought upon the floors of these legislative halls, but one member south of San Francisco, but one member in the south end of the State, was opposed to subsidy. I allude to Fowler, of Tulare. Every other man from the southern portion of the State came upon the floor of the Legislature and demanded, in the name of the people of the southern part of the State, that this people should devote ten million dollars to the building of this road. That is not the condition now. They have pillaged the people. In the history of this State, wherever this corporation controls, wherever they have sought to oppress the people, wherever they have the monopoly, they claim that they have a right to all the profits upon the articles which are raised; all that can be made above the actual cost of raising. The people have seen the situation. They have seen the slavery that has been brought upon them, and will be kept upon them, if they are allowed to continue in power. So in the northern part of this State. Years ago I said that we never could regulate this question; never could correct these abuses, until a majority of the counties of this State had these railroad corporations to deal with, and then we would find a clear working majority, without regard to parties, in favor of limiting and controlling this immense corporation.

The vote of California has indicated the opinion of California. That vote will be to protect the people, and I am willing to trust the Legislature. What! Cannot we trust the Legislature? Cannot we trust the people themselves? What power on earth can we trust? Where else can we rest the future hopes of the people? No Commission for me that shall have the power of the Legislative, Executive, and Judicial Departments of the State of California. Let us give it to the people. They have indicated their intention to stop the abuses of this corporation. In every county, in every village, in every hamlet of the State, where they have left their mark, the people are aroused. It is an anomaly that a corporation created by the good will, created by these magnificent endowments that Judge Hager speaks of, should have created such a change in the civilization of the State wherever they have a road. Why, in Los Angeles they are now prohibiting the people there from running a skiff without their permission. Their transportation costs them more now than before they had a railroad. And that is the reason why these men that set here come here and stand by the people of that part of the State, and in standing by them stand by us and the balance of the State. Let us pass this proposition as submitted here and amended. It is better than the twentieth section. It is a principle that is right and just, and that the people of the State will indorse.

MR. SHAFTER. Mr. Chairman: I wish to say a few words before the Convention votes upon this amendment, but I beg to inquire as regards a question of order that seems to embarrass a great many. Now this Committee on Corporations has reported an independent proposition, not as an amendment, but as a proposition submitted by them. It is an independent proposition. Now one member proposes an amendment and then another amendment is proposed to the amendment. The rule has been to vote upon these two amendments and then pass to the consideration of the next section.

THE CHAIRMAN. That rule has been amended.

MR. SHAFTER. Mr. Chairman: Then the pending amendments are only cut off. But the practice has been here to vote upon the amendments and then the section is held to be adopted because the Convention refuses to amend it. I disagree with that ruling. A distinct vote should be taken upon the approval of the proposition after we get through with the amendments.

As the hour for recess has arrived, I respectfully ask to be recognized when the Convention meets this afternoon. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress, and ask leave to sit again.

The Convention took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

THE RAILROAD COMMISSION.

MR. ESTEE. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, to further consider the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

MR. CAMPBELL. Mr. Chairman: On the suggestion of some gentlemen who think the language of the amendment somewhat doubtful, and that it may be construed only to apply to railroads already constructed and in process of construction, I desire to add the words, "heretofore constructed or hereafter to be constructed."

THE CHAIRMAN. If there is no objection, the clerk will insert the words.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I have no lengthy speech to make to this Convention upon the question before it. I have sat here and listened patiently to the arguments and reasonings which gentlemen have indulged in, and have drawn from them such wisdom as was capable of being assimilated, and I crave the attention of the Convention for a few moments, while I give the reasons for what will be ultimately my action in this matter, unless further debate shall convince me that I am wrong. I regret to see this topic treated as it seems to be, not in a judicial, impartial, and just manner in some respects. Justice is the gift of God, sir, and ought to be impartially administered by those into whose hands it is given by the law. I am admonished, sir, that men are passing away constantly, and in a few years there will not be a solitary one of us left; but after we are dead and gone our work will still remain, and I, for one, want that it should be planted upon equal and impartial justice, upon honesty, and upon law. Mere personal considerations should not be allowed to influence our actions.

In the first place, we ought to consider the importance of the railroads of this State to its welfare and material prosperity. The railroads have redeemed this State from a wilderness, and made it what it is to-day. The railroad property of the State to-day pays taxes on five hundred millions of dollars. Five hundred millions! And they say here, and I have no doubt it is so, that if property was impartially taxed, they would pay a good deal more. Take away these roads, tear up the rails, and the country would soon revert to savagedom, unless somebody else should come in and build roads, and place their charges upon a basis that would make them self-sustaining. I hear gentlemen on this floor constantly asserting that the road was built with somebody else's money. That is entirely a mistake, sir. The money was given to them outright, and belonged to them upon the consideration that they would build the road, which they did. There is no legal right, there is no moral right, to ignore their absolute title to that property whatever. It is the basest meanness, in my judgment, in a man who makes a gift to another, to use for a particular purpose in his own way, to call him to account for the use. There are strong moral considerations as well as legal considerations, in this case, considering the manner in which that trust was executed. They received this money to be used for a beneficial purpose. The property was given to them, and belongs to them. As far as legal considerations are concerned, they are under no legal obligations whatever to the people. They may have made a bad bargain, or they may have made a good bargain; that does not matter; it is as broad as it is long. But I will not dilate upon this matter.

A great deal has been said here as to the immense wealth of those gentlemen who have been engaged in these operations, and I must say that it seems to me that this language was characterized by a strong expression of envy and jealousy. I have no feeling as to the manner and style in which these gentlemen choose to live. If they can live in buildings costing a million of dollars, that fact does not trouble me—not in the least. If I wish to go inside of their mansions, and they wish to have me, I will do so, and if not, I can stay away without any feelings of envy, or jealousy, or dissatisfaction whatever. I say such ideas and such reasonings constantly breaking out are calculated to disturb the judgment of people; they are calculated to disturb the poise of the scales of justice. They are thrown into the scale for the purpose of heaping obloquy upon the question, and exciting prejudice in the public

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mind. Such arguments are made for the purpose of and are calculated to excite distrust and discontent in the public mind.

Now, gentlemen cannot conceal the fact that the general tendency of our acts here is to avoid all deposit of powers in the Legislature—the tendency is to give to the Legislature no power whatever upon this particular subject. I may say, I think, without varying from the fact, that the tendency is to withdraw from the Legislature, whenever it is possible, all power to legislate upon this subject. We take off part of the power with regard to railroads, and leave the balance. I for one cannot adopt this idea in any respect whatever. We started out by declaring that the legislative powers of this State shall be vested in a Senate and Assembly. It is said in the report of the Committee on Legislative Department, that the Legislative Department of the State shall consist of the Senate and Assembly. Now I do not suppose any gentleman here will for a moment entertain the proposition to take the legislative powers of the State, except in exceptional cases, from the Senate and Assembly. But, sir, what is the reason that a distinction should be made against the railroads and their function. The lives of other citizens, and their property, and their rights in every other respect, their personal rights, are left with the Legislature. The Legislature may say for what a man shall be hanged; what the punishment shall be for stealing. You define and express his right to hold property and to convey property; you leave all this matter to the people at large, through their representatives in the Legislature. You confide every vital interest in the community to the Legislature, but propose to take the management of railroads away from them, and confide those powers to another body. Why? Because you say the people themselves are too ignorant, too corrupt, to make laws for their government—applicable to this particular case.

There were heroes before Agamemnon, and there have been heroes since. There were honest men before us, and there will be honest men who will come after us. There will be statesmen and honest men who will survive when we have passed away, and they will be wiser than we have been. We are the oldest men that ever lived in the world. We have had the benefit of the learning, and the wisdom, and the experience of all that have lived before us, and those who come after us will have, in addition to that, our experience and wisdom added to their own. They will be better learned and more enlightened than we upon this topic. And yet you solemnly propose to say that they have sent us here, as members of this body, and that all the wisdom, and all the ability, and all the virtue in this State, when we go away from the capitol, will die with us. Sir, I do not believe any such thing. When they undertake to tell me that the people of this State are too corrupt to elect the proper men to come here to administer the law and to create law, too, for every portion of government, and for the affairs of government in its daily intercourse, I say I do not believe it. We had better go back and make a new distribution of the powers of government, and provide that the powers of government shall be vested in an Executive, Legislative, Judicial Department, and in a Constitutional Convention, and a Railroad Commission. That is the only division that can be made, and what answer can there be to the proposition? That is precisely the position certainly, if this provision is adopted.

Now, sir, constant allusion has been made to the untrustworthiness of members of the Legislature. I know that in almost every session of the Legislature it is charged that some dishonest, tainted men have been sent here. But you go home to their constituents and tell them that, and they will vote down your Constitution. They can't believe it. I do not believe it either. I have been here for three several sessions of the Legislature. I saw men in the Legislature that I thought I might get along just as well without any particular acquaintance with them, but they were very few in number, and after all, I might just as easily have been mistaken as themselves. It is said here that the Legislature cannot be trusted. I see two or three or half a dozen men about me who belong to that company, who have served with credit in past Legislatures.

It is said by some that the people of this State sent us here to regulate corporations. Well, sir, I should be glad to receive some authoritative expression what the people do want upon this subject.

Way back in eighteen hundred and sixty this railroad excitement commenced. There was not a man in the State who would not turn his pockets wrong side out to help build a railroad. The people were willing to give them all they asked, and all they did was to take all the people gave them. You forced it upon them, and they scarcely had to ask for it. You gave it to them without any restrictions whatever. Congress gave them fifty millions of dollars themselves without scarcely inquiring what they were going to do with it. They did not even inquire where their probable terminus would be. It was mentioned as being at or near the Bay of San Francisco, and they stretched that as being at Sacramento. It was given to them without a solitary condition. All this was done by our delegation in Congress. The State itself gave them millions of dollars, and the people subscribed for millions of their stock. I voted against it, and would do it again. Another bill was passed granting them ten thousand dollars a mile for every mile the Pacific Railroad had built or should build in this State. These subsidies amounted to about twenty million dollars. The people got cooled down a little, and sent me with others here to have that Act repealed. We did so, and what did the people do? They sent the man who introduced the bill and got it passed to the United States Senate. Talk about the people wanting this thing and that thing, here is an instance of it. I was sent here to repeal the bill, and I did so, and after I had done so I could not probably have got a vote, because I was a monopolist and the other gentleman was an anti-monopolist. The people are generally hasty, and do not examine deliberately.

Now, sir, this thing takes away certain rights of the Legislature. This amendment seems to contemplate a contest or competition between railroad companies and other public carriers. The original proposition was as to competition between railroad lines. That proposed to correct an evil which cannot occur. Now, the only competition that there can be of any consequence is by water to Marysville, Sacramento, Colusa, Red Bluff, and the coast ports down below San Francisco to Monterey, Los Angeles, San Diego, and other places. These are the only places interested in any practical respect. And it is seriously insisted that this provision shall go into the Constitution, and shall not be left subject to legislative control at all, and all for the particular benefit of these places. Now, sir, as was said this morning, freight and passengers can be carried by water a great deal cheaper than by rail—two to one, almost always. There is fifty per cent in favor of water transportation. I admit I am entirely in favor of having these railroads supervised, and compelling fair dealing in regard to freights and fares; having some competent authority to fix that matter and make it obligatory upon these corporations to deal fairly with the people. I do not believe in turning the State over to the railroads; nor do I believe in turning the railroads entirely over to the people who are making this clamor. Take the case of Los Angeles. I am advised that the receipts on that road are not sufficient to pay interest on the money invested, let alone the running expenses, and nothing allowed for wear and tear of the road. After demanding that their rates be fixed at a given specific sum—no matter whether right or wrong—along comes a steamboat running on the ocean and competes with it. Anybody knows that a steamboat can run land carriage off, fares being the same; the steamboat can run the cars off, if their means of competition be the same. It is merely a question of money, and the weaker must go to the wall. Suppose the steamboat puts its rates down below the actual cost of carrying on the railroad, what is the railroad going to do? It has to run at a dead loss for every ton of freight carried. And yet this amendment goes upon the ground that the railroads drive off opposition by carrying below cost. How are they going to run if they have competition? The steamboats can carry for a sum that will not pay the expenses by rail; and you propose that they must either continue their old prices and lose all the business, or carry at a dead loss, and continue to do so.

The same people who make complaints here are the very ones who patronize the railroads the moment they reduce their rates on account of competition, and aid them directly in running off the competition which they are talking so much about. Why do not these gentlemen pay seven, and eight, and ten dollars a ton to the steamboat, and continue to pay it, instead of patronizing the railroad, and assisting in running off the opposition? Because they look to their own temporary, selfish interests. When they have by assisting the railroad, driven off competition, they come up to the Constitutional Convention and ask to be relieved from the rule which they have put in force, and that the competition rates shall be continued for their benefit. I say it is in direct violation of the provision of the Constitution which declares that punishment for crime shall not be excessive, and this is a violation of this rule. You want this Constitution to say that the railroad company shall continue to carry freight for less than actual cost, as a penalty for the crime which it has committed in running off this opposition, and take freight at the prices which the people prefer to pay. They demand that they shall continue to reap the benefits accruing from the crime which they themselves participated in, and that the penalty should be continuous as to the railroad company, while they themselves go free. That is the case. What road is going to run and carry passengers for five dollars when it costs ten dollars, and carry freight for three dollars a ton when it costs six and seven dollars? Why, sir, it is compelling the road to run at a dead loss, and that is equivalent to absolute destruction of the road. That is what it will do. When they have to run at a loss you may be sure they won't run at all, and you will have to put in another provision, and say that they shall be compelled to run their railroad anyway, whether at a loss or not. That is the only way to make this law effectual. There should be a provision inserted that they shall still continue to run, notwithstanding they have to run at a dead loss. I do not see any way of avoiding it. But, sir, I say, because these people have got their blood up at some improper action or some supposed local grievance, this provision should be forced into the Constitution, is monstrous, and violates all relation between crime and punishment—a perfect Draconian Code.

I believe one amendment here is to submit this question to the Legislature—to the majority of the Legislature; the other is proposed by Mr. Hager, to have a two-thirds vote of the Legislature. Well, it seems to me rather a hard state of things that these corporations, confessedly obliged to carry freight and passengers at less than cost, should be obliged to come to the Legislature and get two thirds of that body to go for them—two thirds of that corrupt body. It will cost too much. We had better take that money and divide it among ourselves, for we are virtuous and can take care of it. Why compel them to get two thirds? Why should two thirds be required to act in this case? It is inflicting a penalty which is not general. It is subjecting them to a rule which nobody else is subjected to. It seems to me a monstrous proposition that the Legislature on this matter is to be compelled to follow a different rule from that laid down in all other cases of like character. Now, I could almost leave the matter here, but there are other sections that are cognate sections, and are also involved in this discussion. There will be a conflict if these amendments are adopted. I would like to know how it is going to be ascertained whether there is any such competition between the railroad companies and the steamboats; how is it going to be decided? Who is going to decide it? There must be some sort of machinery in the matter to work with. The Constitution does not include this. Here is a simple declaration that if they are competing, and lower their rates, they cannot again raise them. Now, suppose they do raise them after the steamboat is driven off, who is going to say whether they were competing or not? They simply raise them, and in what manner are you going to show they were competing? Who is to settle it? It will have to be left to somebody to decide.

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Some indication should be put in that section, either to ascertain that fact, or else to declare that the simple fact of raising the rates after the steamboat has stopped running, shall be considered sufficient to establish the fact that they were competing. There is nothing of that kind in the section.

Now, as to the twentieth section, I do not believe that any man can look at it for a moment and not see that the whole basis of republican institutions is shaken absolutely; that the whole basis of the Constitution is absolutely shaken. Three men are to be given absolute control over one hundred millions of dollars, forming at least a sixth part of the entire assessment rolls of this State; and, as I said before, if justly assessed, no doubt it would greatly exceed that amount. I think I may safely say that one quarter of the assessable property is composed of railroad property. This entire property is to be given over to the legislative, executive, and judicial control of these men. Well, sir, I would like to see these men. I would like to see them stuck up here for examination. Why, sir, the whole nations of Europe would flock here to look at them. They would be the center of all eyes, and their names would be in every mouth, and the monarchs of the world could not be compared with them. They would be a Trinity that it would hardly be blasphemy to call Deity itself, such a Trinity as was distinguished among the heathens. I am horrified. With all respect to the Convention, they will be the Government, and there is no branch of the Government that will have any control over them. The Courts will have nothing to do with them, except to enforce the mandates of the Commissioners. The Courts are obliged to do this. They no longer form part of the Government of the State. They are mere whippersnappers, standing there to obey the beck and whims of these three men. The Judges will crouch down before them like Gerard says the natives do when they meet the lion, and say, "You are the masters, we are but dogs to your will." What does this say? "Shall not be interested." "Their compensation shall be fixed by law. Said Commission shall have the sole power, and it shall be their duty, to correct abuses by railroad companies or other transportation companies." This covers stage coaches, omnibuses, and city railroads—in fact, there is not a single mode of conveyance that does not fall within the scope of their supervising authority. You cannot select out three or four kinds of transportation companies—it must apply to all interests alike, railroads as well as all others. Now, sir, this is puerile. "These Commissioners shall have sole power to correct abuses by railroad corporations and other transportation companies." What is an abuse? If I say you must pay your fare before you get on my stage, is that an abuse? Put a man off the cars if he does not pay his fare, is that an abuse? It has been held by the Courts that you have a right to put a man off the cars, and if he will not go, use force, and if he hangs on, put the screws to him and shove him off. Whether if you put him off in the middle of a desert that would constitute an abuse, I do not know. If you specify that a man must buy his ticket before he gets on the cars, is that an abuse?

Some of my friends here might object to colored gentlemen—for whom I entertain great respect, which I manifested at the time when they needed it—getting in the same car, and have them put out. If a Chinaman gets into the same car with you, and he is put out, is that an abuse? If you happened to get a couple of old lineback, New England abolitionists, they would fetch you up with a round turn. Now they shall "hear and determine complaints against railroad and other transportation companies, affix penalties, and enforce them through the medium of the Courts," etc. Now what is a complaint? Is there any definition as to what shall constitute a complaint? None at all. The terms of the section, it seems to me, are a little ambiguous. How does the complaint have to be presented? Do they have to follow these three men around, as the populace used to the Chief Justices on the King's Bench, pulling them by the coat-tails, saying, I have such and such a complaint, whereupon the Judge would hear and determine them right then and there. In order to hear a complaint, as I understand it, the man complained of should have a chance to be heard. Notice, among lawyers, is considered to be the very essence of justice. Without notice, no man can be deprived of his property. And in the Courts notice is absolutely necessary. I do not know but these Commissioners may decide to determine cases as Sir Thomas Moore did—no, I know they will not either. When Sir Thomas Moore's wife got into a dispute with the fishwoman, he took Mrs. Moore and placed her at the head of the hall—she being the more dignified—the fishwoman at the foot of the hall, and the dog in the middle, and commanded them to whistle. They did so, and the dog ran to the fishwoman, whereupon she was awarded the dog. They may administer law in some such crude mode as that; something like Sancho Panza, on the Baratarian Island, when he decided the question of alleged assault upon the woman, and awarded the money. The result of this sort of thing will be bad. It violates the moral sense of mankind. It violates the experience of ten centuries of labor and work to get the administration of justice up even to its present imperfect form. It violates every principle of law, it violates ever principle of public faith. It violates every principle of caution, and of common sense, and we should pause and hesitate when we come to give such absolute sovereign powers to these men. They will have power to snuff out of existence any and every interest in the State. I have been railroading more or less for twenty years. Even with that experience I doubt my ability to satisfy myself upon the simple question of freights and fares from here to San Francisco. How much less would be men selected at random, without experience or knowledge, to administer upon such a great interest as this—men utterly ignorant of the essential low down details of the business?

SPEECH OF MR. EDGERTON.

MR. EDGERTON. Mr. Chairman: When the Convention first went into Committee of the Whole for the consideration of this report, it was announced by the Chair that full liberty would be allowed in the committee, and that gentlemen in their remarks upon any amendments could traverse the whole subject. I have no desire, sir, to avail myself of the utmost latitude of this rule. But it will be agreeable to my feelings, while I am now up, to discuss sections nineteen and twenty, and, incidentally, section eighteen, with its amendments. They are cognate sections, intimately related in their more remote relations, at least, and may be properly considered together. I shall, therefore, with the consent of the Chair, pursue that course. An analysis of section nineteen will reveal some extraordinary provisions. With the indulgence of the committee I will read it. I may do so with an emphasis different from that which it received at the Secretary's desk, and possibly in a manner that will better develop its meaning. It is as follows:

"No discrimination in charges or facilities for transportation shall be made by any railroad—"

And I may here observe parenthetically, that this inanimate mass of matter known as a railroad, is made to assume a wonderfully live personality all through this report.

"Or transportation company between places or persons, or in the facilities for transportation of freight or passengers within this State, or coming from or going to any other State."

That is to say, in the charges for facilities for transportation first, and afterwards in the facilities for the transportation of freight and passengers. How the force of the first sentence is augmented by the latter I do not see.

"Persons and property transported over any railroad, or by any transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates."

The section inhibits, absolutely, any discrimination whatever in the business of transportation. I therefore challenge it, first, upon the ground that it is repugnant to an immutable economic law and various economic conditions, under which such discrimination is not only justifiable and equitable, but indispensable to the success of the business. It then extends the inhibition to transportation from points within to points beyond, and from points beyond to points within the State. I therefore challenge it further, upon the ground that it is a direct attempt to regulate commerce between the States, as such a usurpation of an exclusive power of the Federal Government, and a plain violation of the Constitution of the United States. The section then descends to particulars, and inhibits greater charges for transportation over a shorter than over a larger distance. Such charges in themselves constitute discrimination in the strictest sense, and the provision is clearly within the purview of the first clause of the section. I therefore object to it upon the ground first stated, and upon the further ground that it is surplusage; and, if I may borrow an aphorism from Lord Bacon and slightly change it, "all surplusage in an organic law is accursed." But, sir, it carries the principle of inhibition still further, and applies it indiscriminately to all transportation companies and to individuals. I therefore object to this provision, upon the ground that, for the evils at which it aims, if any exist, there are ample common law remedies; that under no circumstances could the subject-matter rise above the level of an ordinary legislative enactment; and that to elevate it into the organic law is to belittle and degrade that instrument. I challenge the whole section further because it is legislation. And the pertinency of this observation will appear further along in my remarks. Finally, sir, departing from the substance, I challenge the whole form of the section, upon the ground that it is defective in construction, cumulative or ambiguous, or both, in its provisions, and in point of literature everyway disgraceful, and that hopelessly so. When the Chairman of the Committee on Corporations other than Municipal addressed this committee some days since, in a speech running through nearly two hours, with the avowed purpose of making an exposition of his most extraordinary report in its whole scope, and of the intent and meaning of its various sections, I was surprised that he did not resolve this section into its component parts and lay them fully before our view; that he kept nearly aloof from its specific provisions and contented himself, and attempted to impress the constitutional mind of this house with the perfection of his work, by the bold, unfounded assertion that the section contains nothing new.

I have observed that some gentlemen on this floor, and conspicuously the Chairman of the Committee on Corporations other than Municipal, have contracted the fatal habit of browsing through the organic laws of other States, borrowing enough to show a want of invention and inventing just enough to show a total want of judgment; wrenching from its context a phrase here and a sentence there, which they think gives the slightest color of sanction to their peculiar fancies, and then bringing the result of their labors in here in form of superficial, charlatanic patchwork, of clumsy hybrid eclecticism, and attempting to pass it off upon the credulity and judgment of this house under the authority of great names abroad. Now, sir, against all such quackery as this I enter my protest. When there can be found in, or compounded out of, the organic law of any other State, a terse, unmistakable expression of a broad, universal principle of government, applicable alike to all parallels of latitude, it is eminently befitting that it should be presented here for our consideration. But, when the principle of selection is carried to the extent of pressing upon our approval those special exceptional provisions of other organic laws which had their origin and growth in the peculiar circumstances and condition of the communities for which they were framed; which are wholly unsuited to the political habits, modes of thought, and social wants of our own people, it becomes obnoxious and open to severe animadversion. Above all things, when those provisions are robbed of the only qualifying terms that make them tolerable anywhere; without which they would become mere definitions of tyranny everywhere; when they are brought forward and urged upon us thus mutilated and distorted, the act becomes one of rank,

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barefaced imposture. And it is that precise kind of imposture that I arraign here to-day, and which I intend to expose and denounce without stint.

Turning now to the gentleman's speech, he said, and I quote his exact language:

"And let me say that this is nothing new. I want you to understand distinctly that the committee do not claim the honor of inventing this. We find that section—or one of the same purport—in several of the most recent Constitutions adopted by various States in the Union. I find section three of the Pennsylvania Constitution reads as follows."

And the gentleman read the section. As I shall further on contrast it with the section now before us, for the purpose of showing how radically they differ, I pass it for the present, pausing only to relieve myself from the pressure of a supposed authority invoked by the gentleman, that of the world-renowned lawyer, Jere Black. Judge Black was not in the Convention of Pennsylvania when that section was considered. He resigned on the second day of October, eighteen hundred and seventy-three, and this section was not introduced into that body until the twenty-third of that month, nearly a month after his resignation.

MR. ESTEE. I will say that what the gentleman states is true. It was Charles Black. Knowing that Jere Black was a member of that Convention when Judge Black was spoken of, I naturally supposed that is was Jere Black. Since then, it having been called to my attention, I have found there was another Black, Charles Black, whom I should have referred to.

MR. EDGERTON. I accept the gentleman's apology. The gentleman also stated that that section was passed by an overwhelming majority. It was passed by a vote of forty-six to forty-three, and that minority, sir, contained some of the ablest men of that Convention, some of the ablest men in this nation, and they were only "overwhelmed" by a vote of three. Passing to the gentleman's remarks, he says further:

"Again, I find in Missouri the Constitution which was adopted as late as eighteen hundred and seventy-five. I read section twenty-three of article twelve, on corporations: No discrimination in charges or facilities in transportation shall be made between transportation companies and individuals or in favor of either by abatement, drawback, or otherwise, and no railroad company, or any lessee, manager, or employé thereof, shall make any preference in furnishing cars or motive power."

Now, sir, if a layman should cite that provision as an analogue to the section under review, it would be surprising; but that a constitutional lawyer should do so is astonishing. The framers of that Constitution were not then dealing with the question of discrimination in its larger relations. The object aimed at by that provision was a special form of discrimination between special classes, viz.: transportation companies as such and individuals. It is aimed at the evil suggested by my friend from San Francisco, Colonel Barnes, the other day, where they had certain transportation companies called the "Red line," the "White line," the "Blue line," and the practice was to discriminate in their favor against individuals to avoid the laws which had been passed in those States. But, sir, nothing resembling this section can be found in the report which the Chairman of the committee has submitted for our action. The gentleman proceeds to say:

"Again, in Illinois, I find almost the same provision. I do not recur to it now, but my recollection is that it is also in the Illinois Constitution; also in Colorado; and in the Ohio Convention the same rule was adopted. But when it was submitted to the people, the Constitution as a whole was defeated. And it is indorsed by the strongest minds everywhere over the country. I took occasion the other day, in this State, to ask an eminent railroad engineer where there was anything wrong about it. Without wishing to be quoted, he said: 'While in some instances it might hurt the companies, in the main it is right and ought to be done.'"

Now, sir, it would be indelicate in me to press the gentleman as to the identity of the "eminent engineer," but I violate no rule of parliamentary propriety by interrogating him as to the "strongest minds everywhere all over the country." Who are they? What strong-minded man, or strong-minded woman, can he name who indorses the provisions of this section? I pause for a reply.

MR. ESTEE. I will reply in due time.

MR. EDGERTON. Now, Mr. Chairman, I have grouped the provisions of those Constitutions which relate to this subject, and as they are brief I desire to present them to this committee in connection with that which we are now considering, for the purpose of comparison. The comparison will show how utterly unfounded are the statements of the gentleman, and together with other authorities and considerations to which they lead up, will let in much important light upon the question immediately in hand—that of discrimination in railway transportation; and if the gentlemen have the section before them they can follow me as I read, and judge for themselves of the accuracy of the gentleman's statement. I shall present them in the chronological order in which they were adopted in those four States—Illinois, Pennsylvania, Missouri, and Colorado.

Section fifteen of article eleven of the Illinois Constitution of eighteen hundred and seventy, provides: "The General Assembly shall pass laws to correct abuses and prevent." Prevent what? "Unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises."

Article seventeen, section three, Pennsylvania Constitution of eighteen hundred and seventy-three, is as follows:

"SEC. 3. All individuals, associations, and corporations shall have equal right to have persons and property transported over railroads and canals, and no undue or unreasonable discrimination shall be made in charges for or in facilities for transportation of freight or passengers within the State, or coming from or going to any other State. Persons and property transported over any railroad shall be delivered at any station at charges not exceeding the charges for transportation of persons and property of the same class in the same direction to any more distant station; but excursion and commutation tickets may be issued at special rates."

Article twelve, section twelve, of the Missouri Constitution of eighteen hundred and seventy-five:

"It shall not be lawful in this State for any railway company to charge for freight or passengers a greater amount for the transportation of the same for a less distance, than the amount charged for any greater distance; and suitable laws shall be passed by the General Assembly to enforce this provision; but excursion and commutation tickets may be issued at special rates."

"SEC. 14. Railways heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways, and railroad companies common carriers. The General Assembly shall pass laws to correct abuses, and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and shall, from time to time, pass laws establishing reasonable maximum rates of charges for transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties."

Article fifteen, section six, of the Colorado Constitution of eighteen hundred and seventy-six:

"All individuals, associations, and corporations shall have equal rights to have persons and property transported over any railroad in this State, and no *undue* or *unreasonable* discrimination shall be made in charges, or in facilities, for transportation of freight or passengers within the State; and no railroad company, nor any lessee, manager, or employé thereof, shall give any preference to individuals, associations, or corporations in furnishing cars or motive power."

Now, sir, it is a noticable fact that not a single provision contained in the section now under review can be found either in the Constitution of Illinois or of Colorado. The section is inoculated with two vicious principles which are contained in the Constitution of Pennsylvania, of eighteen hundred and seventy-three, and one in that of Missouri, of eighteen hundred and seventy-five. The course of constitutional provision upon this subject is about as follows: The framers of the Constitution of Missouri had that of Pennsylvania, of eighteen hundred and seventy-three, before them, and gave it a careful consideration. The Supreme Court of the United States had decided that the transportation of freight, or of the subjects of commerce, is a constituent part of commerce itself; and had affirmed, in positive terms, a rule which excludes the power of a State to regulate in any manner whatever the subject of inter-State transportation; and, while in Missouri they imported into their Constitution, from that of Pennsylvania, many provisions, and in the precise phraseology there found, they rejected the clause which attempted to regulate transportation between the States. The authors of the Colorado Constitution, of eighteen hundred and seventy-six, had both of those of Pennsylvania and Missouri before them. They not only rejected the principle of State regulation of inter-State transportation, but, availing themselves of the experience of Pennsylvania and Missouri under their new Constitutions, and of the States of Wisconsin and Illinois, under what is called the Granger legislation, they also rejected the clause prohibiting greater charges for transportation over a shorter than over a longer distance. So that it turns out, upon examination, that there is no identity whatever between the section under consideration and any provision contained in the Constitutions of Colorado or of Illinois.

And while the section does contain the two provisions referred to, in common with the Constitution of Pennsylvania, the resemblance between that Constitution and the section here, as to all other particulars, fails upon every essential point of comparison. No Constitution yet exhibited here contains any provision attempting the regulation of transportation by individuals, or by companies, or corporations, other than quasi public, such as railroad and canal corporations. But the radical, essential difference between the section here and any constitutional provision the gentleman can find (and a distinction which I desire especially to impress upon the minds of members) is, that whereas this section inhibits absolutely any discrimination whatever in any kind of transportation, the several Constitutions to which the gentleman refers limit the inhibition, as in Illinois and Missouri, to unjust discrimination, and as in Colorado and Pennsylvania, to undue and unreasonable discrimination; and I here defy the gentleman to find in the whole range of constitutional composition the prototype of this section, or anything, or the image of anything, in the likeness of which it is made. I have traced the Constitutions referred to by the Chairman of the Committee on Corporations other than Municipal thus minutely, because of an evident tendency on the part of many members of this body to take most any provision contained in any other Constitution simply on trust, and because I know that many members have been misled by the misrepresentations made by the Chairman of that committee, unintentionally of course, of the provisions of other Constitutions, concerning the subjects in hand, viz., discrimination in railway transportation. And it is quite natural that they should be so misled. We have a right to expect from a gentleman occupying the high position of Chairman of one of the most important committees of this house, a careful comparison of systems relating to the subject committed to his charge; we expect from him sound and judicious counsels regarding it; above all, we demand of him rigid exactness in his statements of facts. Such misrepresentations as I have noted would be hardly excusable if made in the heat of debate. But when they are made in cold blood; when they occur in a speech which was weeks in process of incubation, and for which the columns of a widely extended and influential journal were offered days in advance; when they are thus paraded to propagate, mislead, and poison the public mind, when their evils are thus diffused, they are simply atrocious.

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Now, sir, I come directly to the question of discrimination in transportation on railways, which it is proposed by the section under consideration unconditionally to prohibit. I maintain that such discrimination under certain circumstances is just, and should be allowed; and that it is universally practiced, and that, too, under legal sanctions.

At the first session of the Legislature of Illinois after the adoption of the Constitution from which I have read, an Act was passed which will be found in Myers' statutes of Illinois for eighteen hundred and seventy-three, on pages thirty-three and thirty-four, by which any discrimination whatever in transportation on railroads was prohibited; and it specifically prohibited the precise form of discrimination indicated in this section, viz.: a greater charge for transportation for a shorter than for a longer distance; and in section five of the Act it was provided, that "any willful violation of any of the provisions of this Act on the part of any railroad corporation should be deemed and taken as a forfeiture of its franchise."

A case was made up against the Chicago and Alton Railroad Company for a violation of that provision of the law which prohibited a greater charge for transportation over a shorter than a longer distance. The case will be found in the Forty-seventh Illinois Reports, at page eleven. It was an information in the nature of a quo warranto on the relation of the Railroad and Warehouse Commissioners of Illinois, against that corporation, to have a forfeiture of its franchises declared, on the ground that it had repeatedly, in violation of the law cited, charged and received for transporting lumber from Chicago to Lexington, a distance of one hundred and ten miles, the sum of five dollars and sixty-five cents per thousand feet, while at the same time it had only charged for transportation of like lumber from Chicago to Bloomington, a distance of one hundred and twenty-six miles, the sum of five dollars per thousand feet. The company, by way of defense, pleaded its charter and alleged that the rates of toll from Chicago to Lexington were in fact reasonable, while the rates from Chicago to Bloomington were unreasonably low, and were established because of competition at the latter point with the Illinois Central Railroad Company. To this plea the relators demurred. The demurrer was sustained, a judgment of ouster was pronounced against the company, and its franchise was declared forfeited. From this judgment the company took an appeal to the Supreme Court of the State. The Court held that the mere facts that Bloomington was a competitive point, that the mere facts that the rate to that point, or by its longer distance, was unreasonably low, and that the rate to Lexington, the shorter distance, was a reasonable rate, would not of themselves constitute a defense for such a discrimination. But it reversed the judgment upon the ground, among others, that the mere fact of making such a discrimination was, by the terms of the law, made conclusive evidence of unjust discrimination, and that in this the law was in violation of the Constitution of that State. The Court say:

"But in our opinion, if the Act of the Legislature had directed its penalties as it should have done, not against *all* discrimination, but only against *unjust* discrimination, and had made *that* the issue to be tried, it would have been no answer, in the plea, that the larger rates for the less distance were reasonable rates. That would have had only an argumentative bearing upon the issue to be tried, to wit: the existence of an unjust discrimination between towns. * * * Railroad experts might be produced who would testify that, in their opinion, the rate to Lexington, in the present case, was a reasonable rate; but the fact that a less rate was charged for a greater distance to Bloomington, if the difference was a *permanently established* and not a *casual difference*, and if it could be explained only by the fact that there was a competing line at one place and not at the other, might be accepted as conclusive proof that the rate to Lexington was not a reasonable rate. The only issue to be made under a law properly framed would be *whether there was any unjust discrimination or not*. If on the trial of such an issue the prosecutor proves a *permanently established* discrimination like that declared by the present record, and the company *can show no other reason for it* than the existence of a competing line at the favored point, the defense must be held unsatisfactory. * * * The discrimination forbidden by the common law to common carriers is an unjust or unreasonable discrimination. The provision in our new Constitution is also against unjust discrimination. It is in the following words:

"'The General Assembly shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different roads in the State, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises.—[Article XI, Section 15.'

"This provision, expressly directing the Legislature to pass laws to prevent *unjust* discrimination, is a recognition of the palpable fact that there may be discriminations which are not unjust; by implication it restrains the power of the Legislature to a prohibition of those which are unjust. That was undoubtedly the object of the Legislature in passing the existing law. This is clearly shown by its title. But the Act itself goes further. It forbids any discrimination whatever, under any circumstances, and whether just or unjust, in the charges for transporting the same classes of freight over equal distances, even though moving in opposite directions, and does not permit the companies to show that the discrimination is not unjust. The mere proof of the discrimination makes out a case against the railway companies, which they are not allowed to meet by evidence showing the reason or propriety of the discrimination, and then, upon this sort of ex parte trial, imposes as a penalty for the offense, a forfeiture of the franchise, which would often be equivalent to a fine of millions of dollars. The object of the law is commendable, but such a proceeding to be followed by such a penalty for the first offense, cannot be sustained. It could only have been authorized through the inadvertence of the Legislature.

"The law as it now stands, makes an offense out of an act which might be shown not to be an offense, but an exercise of a wise discretion, really beneficial to the people of the State, and while debarring the companies from all right of explanation, confiscates their franchises upon the first conviction. The Legislature cannot raise a conclusive presumption of guilt against a natural person from an act that may be innocent in itself, taking from him the privilege of showing the actual innocence or propriety of the act, and confiscating his property as a penalty for the supposed offense. Those provisions of our Constitution which forbid the deprivation of life, liberty, or property, except by due process of law, and which guarantee the right of trial by jury, 'as heretofore enjoyed,' and the right in all criminal prosecutions to appear and defend in person and by counsel, would all be violated by such a law. These provisions, it is true, are designed to apply only to natural persons, but artificial persons must be permitted to invoke the spirit of justice which prompted them, so far as may be necessary to protect their property and franchises against the operation of a law that substantially condemns without a trial. That the naked fact that a railway company charges a larger sum for transporting freight of the same class over a given distance, than it is charging for the same distance over another part of its road, or in the opposite direction, is not, of itself, conclusive evidence of an unjust discrimination, will be manifest on a moment's consideration. Take, for instance, the road of the appellant, with one terminus at Chicago and the other at East St. Louis. At one season of the year more freights are moving from Chicago towards East St. Louis than in the opposite direction. The consequence, of course, is, that the supply of empty cars at the latter point will be in excess of the demand. There is a water route between these points which also touches several intermediate stations upon the road. Now, unless the railway company is permitted, under such circumstances, to induce shipments over its line by lowering its freights, it is evident that a portion of its cars will return empty. This would, of course, necessitate a higher charge for freights moving towards St. Louis than it would be necessary to impose if return freights could be secured by lowering the rates on the return trip. To forbid the company to lower the rates of return freight would thus benefit no one, and would work an injury both to the company and to the people along the line. At other seasons of the year the larger amount of freights is moving in the opposite direction, and then the operation must be reversed. We give this illustration for the purpose of showing that a difference of price for the same distance of transportation is not necessarily an unjust discrimination, and that any law must be fatally defective which infers guilt, as a conclusive presumption, from the mere fact of difference of rates, without permitting the companies to show why the different rates were adopted.

"We may so far take judicial notice of the course of public affairs in this State as to say that the real abuse which the Legislature was endeavoring, by this Act, to prevent *was not such proper discriminations* as those we have just been supposing, but the practice, which had become general among the railways, of charging a higher compensation for carrying the agricultural products of the State to market when shipped at a station where there was no competing line, than when shipped where there was such competition, although the distance over which the freight was carried in the latter case might greatly exceed the distance in the former. The same system also prevailed in regard to the freight from Chicago to points in the interior, although probably not felt to be so great an evil. For discrimination of this character, *when adopted as a system*, we can certainly perceive neither justification nor excuse; but, nevertheless, it is the right of a company, when prosecuted on the ground of unjust discrimination, to offer what evidence it can by way of explanation. It might, for example, show in the present case that the lumber shipped to Lexington had caused a greater expense in loading or unloading than that shipped to Bloomington. This may not be a very probable defense, but defenses may nevertheless exist, and if they do, the companies should not be deprived of the right to make them. Before this Act can be enforced it should be so amended as to correspond with the requirement of the Constitution by directing its prohibition against *unjust* discrimination. It should make the charging of a greater compensation for a less distance or for the same distance, merely prima facie evidence of unjust discrimination, instead of conclusive evidence, as it now is, and it should give to the railway companies the right of trial by jury, not only on the fact of discrimination, but upon the issue whether such discrimination is just or not."

At the session of the Legislature of Illinois held in eighteen hundred and seventy-three, and at the next session after the rendition of this judgment, an Act was passed providing that if any railroad corporation—

"Shall charge, collect, or receive, for the transportation of any passenger or freight of any description, upon its railroad, for any distance within this State, the same or a greater amount of toll or compensation than is at the same time charged, collected, or received, for the transportation, in the same direction, of any passenger or like quantity of freight of the same class, over a greater distance of the same railroad * * * such discriminations, rates, charges, collections, or receipts, whether made directly or by means of any rebate, drawback, or other shift or evasion, shall be deemed and taken, against such railroad corporation, as prima facie evidence of the unjust discrimination prohibited by the provisions of this Act." [Myers' Statutes Illinois, pp. 184–185.]

It thus appears that the authors of the Constitution of Illinois, *ex industria*, limited the inhibition upon discrimination in rates of charges for railway transportation to *unjust* discrimination, thus by implication admitting that certain discriminations might, under some circumstances, be justifiable; that the Court of last resort in that State has decided that there may be many conditions under which such discrimination would be just; and that the Legislature of that State, squaring its enactments to that decision, have met the question, finally, by providing that any discrimination of the kind specified should be prima facie evidence merely of *unjust* discrimination, thus giving the corporations an opportunity to show, by way of defense in any given case, that the discrimination complained of is proper. In the annual report of the Railroad and Warehouse Commissioners of that State for the year eighteen hun-

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dred and seventy-six, I find the following observations upon this subject. I read from page nineteen:

"All persons having dealings with a railroad company would learn that his neighbor, having precisely the same kind of dealings with the company, was regularly and systematically charged at a less rate than himself for the same or a greater amount of service; or again, persons living in one community on the line of a railroad would be as certain that the charges made against them for freight or passage to a given point on the road were greater than those charged against persons living in another community for freight or passage to the same point, although they were miles nearer the common point than were these last named persons. These two instances are fair illustrations of the kind of acts, proof of which is declared by the law to be prima facie evidence of *unjust* discrimination. *But every discrimination is not an unjust discrimination, and it is possible, therefore, that the two illustrations given may not be unjust.*"

Again I read from the annual report of Railroad Commission of Ohio for the year eighteen hundred and seventy-three, page twenty-six:

"A railroad company makes more money with less annoyance and cost in doing the business of the large shipper than that of the small one, though the rates per ton are less to the former. For example: A and B are shipping coal from the same locality. A ships a train load daily; B ships but fifteen or twenty cars per week, as he is able to mine and sell it. No argument is needed to convince a business man that the train load daily can be moved at a large per cent. less per ton than the occasional cars of B. One is reliable and in quantity sufficient to merit special arrangements and attention. The other is irregular and may often demand transportation when the company is least prepared to furnish it. The same advantages are apparent when distance is considered. From Columbus to Worthington is nine miles, to Cleveland one hundred and thirty-eight. Freight for either place must be received, handled, and loaded; on reaching its destination, unloaded, stored, and delivered; in either case subjecting the cars and men to delay, during which they are earning nothing for the company. When a train is going through to Cleveland, and the additional freight is received, billed, and loaded, it matters little, so far as regards cost, to the company, whether it is hauled ten, twenty, or the one hundred and thirty-eight miles. The same engine and train men, with only a trifle additional cost for power, can take the freight through to Cleveland as well as leave it at Worthington, and the company be better remunerated in proportion to the actual cost of carriage, though the through rate per mile be no more than one half or one third that of the local. An equipped road, one hundred or one thousand miles long, having a regular through business equal to its capacity, could reduce the average cost of carriage per mile per ton to the merest trifle, while in local traffic the large items of cost are the time and labor necessary to receive and discharge freight at the various stations. These "fixed costs" are the same as on through freight, and necessarily add to the mileage cost of carriage in proportion as the distance diminishes. It is only while the wheels are moving that they earn the company money. The impropriety and impracticability of fixing unyielding and inflexible rates for transportation by general laws, applicable to all roads, or by special acts applying to particular roads or classes of roads, seems too apparent to need comment. The almost unlimited differences in the condition of our roads, affected by location, grades, curves, equipment, regularity of business, management, charges in earnings caused by construction of branches, by developing new industries, opening new mines, or making new connections, and the innumerable and diverse matters which come in to affect or change their status for better or worse, but develop the folly of attempts to regulate rates of transportation by inflexible law."

The Transportation Commissioners of our own State have given this subject a thorough consideration, and I find in their report for the year eighteen hundred and seventy-seven, at page fifty-four, the following observations, under the caption, "The general principles and commercial laws influencing and governing railroad tariffs and charges—the necessity for a just discrimination in charges:"

"The problem presented for solution may be illustrated by what may at any time occur in an ordinary railroad depot. There may be a half dozen packages of the same weight and bulk, without exterior marks of difference, to be shipped in the same car, and for the same distance. What, if any, are the reasons justifying a discrimination of charges? And what the elements controlling the amount of charge in such a case?

"A consideration of the elements influencing and governing railroad tariffs will show that the charges are not and cannot be regulated on the principle of a fixed percentage of profit on the cost of the service, or on the capital invested, and that a just discrimination of charges, according to the value of the service rendered, and the ability and will of the public to pay, is a necessary and ruling feature of all transportation for profit, and is founded on the common law rights and mutual interests of both the carrier and the public."

And again on page sixty-five of the same report:

"Assuming the correctness of the principle set forth in this report, as regards the rights and obligations of shippers and carriers, and the elements influencing and governing the charges for transportation, it will be evident that the enforcement of the same uniform rates of charges over different roads, or over different portions of the same road, would be unjust and prejudicial to the interests of both the public and railroad companies. The difference in the cost of carriage even on different portions of the same road is so great that the charges must necessarily be varied accordingly, as otherwise the companies must either be forced to operate at a loss, or the rates of charges must be so high as to afford no protection to the public."

And then the report goes on to say:

"Another objection to the enforcement of uniform rates over an entire road is, that it would deprive railroad companies of the power of reducing their charges to competitive rates. There is, for instance, a competition by water between San Francisco and Los Angeles, and the railroad companies are forced to carry freight between these points at very low rates, or not at all. If such a reduction of rates on any road should necessitate a corresponding reduction of the rates between intermediate stations, the company would be forced to abandon the competitive business altogether.

"Admitting, however, the right and necessity of a just discrimination of charges, it is in the regulation of the exercise of that right, and the prevention of unjust discrimination by a general law, that the main difficulty lies in the regulation of freights and fares."

The Chief of the Bureau of Statistics of the United States, Mr. Joseph Nemo, under direction of an Act of Congress, has made a most searching examination of the whole question of railway transportation in the United States, and in his report for the year eighteen hundred and seventy-six, I find the following observations on the subject of discrimination.

MR. ESTEE. What are you reading from?

MR. EDGERTON. I am reading from a report entitled "Annual Report of the Chief of the Bureau of Statistics, Commerce, and Navigation, eighteen hundred and seventy-six, part two," and at page one hundred and sixty-seven:

"The subject of discrimination is the most complex and difficult one in the entire range of railway management and regulation. It is essentially a question of details, since each case or class must be determined upon its own merits. The conduct of railroad affairs having become so intimately connected with the social and business interests of the people, discrimination and other abuses must be corrected gradually in the ordinary course of judicial proceedings, by regulations established by the railroad companies themselves, by such legislative action as may be taken as the result of a careful study of the whole subject in all its bearings, and by the establishment of customs commanding popular approval. Perhaps a safe guide in efforts to mark the line of distinction between just and unjust discriminations may be had from the following opinion of an English Court as to the general rule which shall prevail in deciding whether certain restraints upon trade, resulting from railway combinations, are reasonable or unreasonable: 'We do not see how a better test can be applied to the question whether reasonable or not, than by considering whether the restraint is such only as to afford a fair protection to the interests of the party in favor of whom it is given, and not so large as to interfere with the interests of the public.' This opinion has been reaffirmed in a leading case in this country. Public sentiment, while ever sensitive of every apparent inroad upon private rights, will undoubtedly sanction the extension to railroad companies of the largest possible immunities and privileges consonant with sound views of public policy, and with those rules of law touching the rights and duties of common carriers, which have become established by the custom of centuries."

And in this connection again, on page one hundred and sixty-three, he says:

"Unjust discriminations and exorbitant freight charges were the immediate cause of the popular uprising against railroad management in the Western States. It is evident that certain discriminations must be made in railway charges, from the fact that no common measure of the value of the services rendered by railroads can be devised. The unit of measure most frequently referred to in the theoretical discussions, is the cost of transporting one ton of freight one mile; but the unit, as we have seen, is inapplicable to the cost of transporting freights under the almost infinite variety of circumstances which present themselves.

"The service rendered by railroad companies as transporters of many kinds of commodities, especially those shipped in single packages, and requiring much care and personal service, cannot be estimated by weight, nor is distance in such cases a criterion of cost. In many cases the cost of handling freight bears but a small proportion to the total cost of receiving it from the shipper, holding it in warehouse, and delivering it to the consignee; and especially is this true in regard to commodities transported short distances. Discrimination, or differences in the rate of charges, with respect to the conditions of weight or distance, may therefore be regarded as proper, if the rates charged are not out of proportion to the actual value of the service rendered.

"The discrimination known as the 'classification of freights' is based upon several conditions, among which may be mentioned differences in the cost of transporting different commodities, the value of different commodities, quantity moved of one kind, the competitive influence of rival transportation lines, and the effect of the competition of rival markets upon traffic in different articles of merchandise.

"A consideration of these facts clearly indicates that the question as to whether discriminations are just or unjust is an exceedingly complex one. Not only is it difficult to decide in special cases, but it is also a very difficult matter to formulate general rules upon the subject. The question is not an absolute but a relative one, the relationships presenting themselves under an almost infinite variety of circumstances.

"Discriminations in rates exist upon all free highways where competition prevails among common carriers, and frequently in quite as marked degree as on railroads. Discriminations in opposition to the common law rule which forbids the charging of different rates for the transportation of commodities *under similar conditions* are evidently unjust. In practice, however, the cases in which the conditions may be said to be quite similar are comparatively few, while the cases in which they are unlike are many.

"Instances may be adduced in which railroad companies charge a greater rate for hauling commodities over a part than over the entire length of their roads. In many cases this practice is unjustifiable, but it is susceptible of proof that oftentimes the actual cost to a company of hauling freight between intermediate points on a railroad is greater than

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the cost of hauling it over the entire length of the road. This has already been explained in the section of this report entitled 'The Economy of Transport by Rail.'"

And again, in relation to the specific form of discrimination prohibited by section nineteen now under consideration, viz.: a greater charge for transportation over a shorter than a longer distance, he says at page twenty-four:

"As an illustration of the relative importance of magnitude of traffic, and of distance, as elements in the cost of transportation, the following extreme case may be stated: Assume a local point situated on a railroad fifty miles from New York City. The person who ships grain from that point to New York in small quantities brings it in sacks to the railroad station, where it is stored until a car is in readiness for its reception. It is placed in the car by hand, and in the same car are loaded the miscellaneous products of that locality seeking a market at New York. This car may not be more than one half or even one fourth loaded. It remains upon a side track until the train of which it is to constitute a part arrives on its way to New York. The time of this train, steam power of the locomotive, and the service of the employés of the road are consumed in the work of receiving the grain into the freight house, in delivering it into the car, and connecting the car with the train. On the arrival of the train at New York, the grain is handled in connection with various classes of freight in the expensive manner incidental to the transaction of a package traffic. The grain is then delivered by hand to the consignee, and the sacks in which it was contained are afterwards returned, being billed, receipted for, and finally delivered to their owner by the agent at the local station."

And then he says, generalizing from these facts:

"No computation is necessary in order to prove that the cost of transporting grain but fifty miles may, in such a case, be in excess of the cost of transporting it several hundred miles if in the latter case it is spouted into cars from grain elevators, and hauled in trains of twenty cars carrying four hundred bushels each, or eight thousand bushels in all, and running day and night, with no other interruptions than may be necessary for taking in supplies of fuel and water. The effect of distance upon cost of transportation may, in certain cases, be the element of least importance."

So much, sir, by way of authority. Now, sir, let us suppose the Illinois rule to be in force in this State, and a case for its breach on trial before this Convention. The Chairman of the Committee on Corporations other than Municipal took passage on the California Pacific Railway the other evening at Napa Junction for Sacramento. He was compelled to pay three dollars and twenty-five cents for his ticket. Had he started from San Francisco, some thirty or thirty-five miles more distant from Sacramento, he could have bought his ticket for three dollars—that is to say, he had to pay twenty-five cents more for a shorter than for a longer distance, traveling over the same road. He felt aggrieved.

MR. ESTEE. I paid it like a man.

MR. EDGERTON. Very well. The fact is as I state it. The gentleman does not deny that. I suppose, then, the prohibition here was upon unjust discrimination only. The issue in the case stated would be, whether the charge of twenty-five cents for the shorter distance from Napa Junction to Sacramento, in excess of the charge for the longer distance from San Francisco, was justifiable. The following are some of the facts that would enter into a determination of the case: At a time when the rates of transportation on that road were fairly and equitably adjusted to the circumstances of the country, to the volume of business, to the cost of transportation, etc., and when every one having dealings with the company was satisfied with its management, a company of blackmailing competitors placed a few old second-class steamboats upon the river, not for the purpose of establishing and maintaining an honest, healthy and permanent competition, but for the purpose of compelling the railroad company to buy their worthless property at an exorbitant price. The Chairman of the Committee on Corporations tells us that this competition is of no importance, but he overlooks an aphorism in the science of transportation, that in competition it is the weakest line which always fixes the rates. Now, a rule of prohibiting a greater charge for a shorter than a longer distance is equivalent to a rule prohibiting a less charge for a longer distance; they are, if I may so express myself, the face and obverse of the same fact. It is obvious, then, that under the rule prescribed by section nineteen of this report, which absolutely prohibits all discrimination under any and all circumstances, that the railroad company would be forced to abandon the competitive business altogether, or, if it entered into competition and reduced its rates at competitive points, that it would be obliged to make a corresponding reduction of rates between intermediate stations. Now, sir, I undertake to say that there is not a railroad in the State, standing alone by itself—unless, perhaps, it be the Central Pacific—that could be successfully operated under the iron rule proposed by this section.

The California Pacific Railroad Company is paying annually in expenses and interest on bonds and other interest, according to a statement I have just received from the Railroad Commissioner, five hundred and seventeen thousand five hundred and fifty-eight dollars and thirty-five cents; twice within the last four years a large segment of that road has been destroyed by floods, and it has cost hundreds of thousands of dollars to repair it. The company is now behind several hundred thousand dollars on current account, and notwithstanding all this is making permanent and expensive improvements, in order to bring its road up to a high standard of efficiency, and make it adequate to the wants of the public. But for this road, it would cost a passenger probably five dollars at least to come from Napa Junction to this city. A whole day would be consumed in the trip, and his necessary incidental expenses would increase the cost of his transportation to at least six dollars. Whereas, with the facilities offered him by that company he could attend to his business at home all day, get into a comfortable car in the evening, and come here in two hours. Under all the circumstances there is not an unbiased jury in America that would not justify the discrimination statute. It is not the case of a "permanently established" discrimination, as put in the Illinois case from which I have read, but a "casual" discrimination, not made with a view to the building up of one locality at the expense of another, or to favor any particular individual, or set of individuals, at the expense of another; nor does it injuriously affect any person or place. This discrimination is resorted to by the company from sheer necessity, to save its existence, and it is justifiable. The same observations, sir, are applicable to the case of the Southern Pacific Railroad. The California Steam Navigation Company, with its hundred thousand dollars of capital stock, absolutely controls the interests of that company with its thirty millions of capital, at all competitive points, San Francisco, Santa Cruz, Monterey, and Los Angeles. It is well known that that road has not paid, and does not now pay operating expenses. Its proprietors are endeavoring, without the aid of subsidies and at vast cost of construction, to extend it across the continent, and connect with it contributory lines of railway to run through Arizona and Mexico, and thus to secure to California, and especially to San Francisco, the traffic of half a hemisphere. And why it is that the delegation from that city upon this floor should seek to embarrass the prosecution of that great enterprise by supporting such illiberal proscriptive provisions as these now under consideration, is a matter of astonishment to me.

There are numerous other facts upon which I might insist, and in view of which I might elaborate the argument, if I had the time, going to the justification of certain discriminations in railway transportation. This ironclad prohibition ignores totally a variety of conditions out of which such discrimination inevitably grows, and which is inseparable, especially from railway transportation; such as comparative amount of business, of value of freights transported, of bulk, of gradients of road, cost of transportation, and a multitude of other considerations, which always and universally affect the great question of discrimination, and determine its justice or injustice. I hold then, sir, that it would be unjust to the railroad companies of the State, and not only *unjust* but impolitic, to harden in the Constitution the rigid rule proposed by this section, and that it should be so amended as to limit the inhibition upon discrimination to *undue* or *unreasonable* discrimination, and at the proper time I shall offer an amendment to that effect.

The next provision of the section to which I object, is that which attempts to regulate commerce between the States. I apprehend it will be sufficient to call the attention of this committee to the real purport of this clause, and to a decision of the Supreme Court of the United States, in order to show the utter folly of incorporating this provision in our Constitution. In the case of the State Freight Tax, reported in the fifteenth volume of Wallace's Reports, at page two hundred and seventy-nine, that Court says:

"However this may be, the rule has been asserted with great clearness, that whenever the subjects over which a power to regulate commerce is asserted are in their nature rational, or admit of one uniform system or plan of regulation, they may justly be said to be of such a nature as to require exclusive legislation by Congress. Surely transportation of passengers or merchandise through a State, or from one State to another, is of this nature. It is of national importance that over that subject there should be but one regulating power, for if one State can directly tax persons or property passing through it, or tax them indirectly by levying a tax upon their transportation, every other may, and thus commercial intercourse between States remote from each other may be destroyed."

Certainly, sir, this provision ought to be eliminated from the section. What state of facts now exists, or is at all likely hereafter to exist in this State, which demands the adoption in our Constitution of any provision affecting the proprietors of stage lines, "mud wagons," express lines, and the various other kinds of common carriers plying their avocations in our State, I do not perceive. One hundred and seventy-five years ago, in the second year of the reign of Queen Anne, I believe, Lord Chief Justice Holt, rendering the unanimous opinion of the Court of King's Bench, decided that the business of a common carrier was in the nature of a public employment, and this has been the rule ever since, wherever Anglo-Saxon jurisprudence has prevailed. I know of no abuse that can be practiced by the classes aimed at by this provision that has not an ample remedy at law, and I protest against incumbering the Constitution, that great organic law, whose proper and sole province it should be to sanctify and confirm those great organic principles which lie at the foundation of free republican government, with these trivial details of legislation, and that, too, legislation of the lowest grade.

I pass now, sir, to the consideration of section twenty. This section provides that—

"Three Railroad Commissioners shall be elected by the qualified voters of this State at the regular gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporations or any other transportation company as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the sole power, and it shall be their duty, to correct abuses by railroad corporations or other transportation companies; establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; report to the Governor, annually, their proceedings, and such other facts as may be deemed important; hear and determine complaints against railroad or other transportation companies; affix penalties, and enforce them through the medium of the Courts, and perform such other duties as may be prescribed by law."

It is thus proposed to create a permanent Commission, to be composed

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of three persons, and to endow it with the *sole* power to establish rates of transportaion, not only over all the railways, but for every conceivable description of common carriage in the State; and the *sole* power to change those rates at will; also with the *sole* power to fix penalties for the violation of the rates thus established, and to correct abuses by transportation companies and individuals employed in that business; with the *sole* power to hear and determine complaints against companies and individuals for such abuses, and for violations of the rates thus established; and it is also made the duty of the Legislature to confer upon it all such further powers as may be necessary to enable it to perform the duties thus enjoined, and to execute the powers thus conferred. There can be no doubt but that the section would, if adopted *ex proprio vigore* create a tribunal endowed with legislative, judicial, and executive powers. The word "establish" as applied to "rates" of transportation, means to fix, to ordain, and clearly imports a legislative power. The words to "hear and determine" are a perfect definition of judicial power. Mr. Bouvier, in his law dictionary, defines jurisdiction to be the "authority by which judicial officers take cognizance of and decide causes. Power to hear and determine. It includes power to enforce the execution of what is decreed." And in the case of the United States against Aredondo, reported in Sixth Peters Reports, at page seven hundred and nine, the rule is laid down by the Supreme Court of the United States, that "the power to hear and determine a cause is jurisdiction; it is *coram judice*, whenever a case is presented which brings this power into action."

Now, sir, if there is any one political apothegm more sacred to the American people, which is more thoroughly imbedded in their political thoughts, feelings, and instincts, than another, it is that which teaches the distribution of the three great organic powers of government, legislative, judicial, and executive, into three great corresponding departments; and the maxim implies in its perfection that the entire mass of each of these great powers, so far as it affects the community at large shall be lodged in its appropriate department. The discovery of this great principle of government, for countless ages locked up in the arcana of politics,

> "Which kings and prophets waited for,
> And sought but never found,"

Is the crowning glory of the Anglo-Saxon race. It is the source of every political and social blessing we enjoy, the palladium of our liberties, the solid rock on which securely reposes the whole fabric of Anglo-Saxon institutions. To the extent that you impair this great conservative principle, to that extent you weaken free institutions. Destroy it, and republican government would perish from the earth. And yet right here in this young republic, which lives, and moves, and has its being by force of this vital principle; in this Constitutional Convention, sworn to guard, preserve, perpetuate, and build upon it; a foul assault is made upon it. It is proposed, not only to blend these great powers and hand them over thus confounded, in perpetuity, without ascertainment, limitation, or definition, to a single Board composed of three men, but to bind forever at the foot of this despotic tribunal all the industrial interests of the State, and the most potent of all agencies for good or for evil. Sir, this measure protends evil and only evil, and that on the most gigantic scale. If adopted it would distort, emasculate, and maim all the sovereign powers of Government. It would draw to and centralize in the triple-headed monster it proposes to create, despotic and boundless powers, and encircle it with every corrupt and festering influence in society. The measure is, moreover, based upon a most vicious principle, regarded from a business point of view. Its theory involves a separation of the ownership of property from its management. Charles Francis Adams, from whose writings the Chairman of the Committee on Corporations has so copiously quoted—or misquoted, I should say—to support his positions, has again and again unsparingly denounced this principle of railway regulation. In the official report of the Railway Commissioners of Massachusetts for the year eighteen hundred and seventy-three, he says:

"The essence of the system is, that certain persons, whether the Legislature itself, or officials designated by the Legislature, have devolved upon them the responsibility of establishing the revenue of property belonging to others. The Commissioners have grave doubts as to the success of any effort at the regulation of the railroad system, which practically effects a separation between the ownership of a railroad and its management."

And subsequent experience and observation of that Board has amply confirmed these views. Why, sir, England and the United States have been experimenting in this sort of legislative regulation of the affairs of railway corporations for forty years, and with no good results. The British Parliament passed no less than three thousand three hundred enactments to regulate the rates of transportation on the English railways.

A single statute referred to by Mr. Adams, in the book from which the gentleman read so copiously the other day, contains over three hundred sections. It had incorporated in it all the old turnpike toll Boards, and contained regulations of the most minute character. But they were found by experience to be nugatory, and simply because they were based upon a false principle now admitted to be so in England, and generally in the United States, viz.: the regulations of the profits of business by legislative enactment.

In Wisconsin the same experiment was tried, and entirely abandoned. In eighteen hundred and seventy-four, the Legislature of that State passed the famous Potter law—a law by which all railroads in the State were classified into three classes, and also classifying freights, and fixing rates of transportation for each class. They also took one fatal step in the same direction in which it is now proposed that we shall travel here. They conferred upon their Railway Commission the power to reduce the rates so fixed by the Legislature. The result was just what we may expect here, should this measure be adopted. All railway construction was suspended, foreign credit was withdrawn from the State, the railway service was greatly deteriorated, and a deep and widespread disturbance of business ensued, and in two years the Legislature of that State wiped all these regulations from its statute book, and passed a new Act, by the provisions of which the Commission is deprived of all power other than inquisitorial, and the only restraint imposed upon the railroad corporations as to rates of transportation is, that they shall be reasonable, and that there shall be no unjust discrimination. The committee raised by the British Parliament in eighteen hundred and seventy-two, to whose report the gentleman (Mr. Estee) referred in his speech the other day, was a select committee, "appointed by the House of Lords and the House of Commons to inquire into the subject of the amalgamation of railway companies with special reference to the bills for that purpose now before Parliament, and to consider whether any and what *regulations* should be imposed by Parliament in the event of such amalgamation being sanctioned, and to report to the House."

On this committee were distinguished representatives of the great industrial interests of England, and some of the most distinguished statesmen of the present age, among them the Earl of Derby and the Marquis of Salisbury, now world renowned for his diplomatic achievements at the recent Berlin Congress. This committee was in session many months. It traversed the whole subject of railway management and legislation relating thereto in England, and took a vast amount of testimony in the premises, embracing that of representative men in all the great industrial pursuits of the realm. In their report they pass in merciless review all the attempts of Parliament to regulate rates of transportation by law, and recommend the establishment of a Railway Commission. The question as to the nature and extent of the powers that should be conferred upon it, and specifically the question whether they should include the power to "regulate," was thoroughly considered, and upon this point they reported, and I quote the precise language of the report, as follows: "It has been proposed to commit to some such tribunal the revision of the rates and charges of the companies. But this cannot be done, unless the tribunal is invested with absolute and arbitrary powers, which is out of the question, or unless some rules can be laid down by Parliament for its guidance—and it has been shown how impracticable it is to lay down any such rules."

The recommendation of this committee was adopted by Parliament, and in eighteen hundred and seventy-three an Act was passed providing for the appointment of a Railway Commission, to consist of not more than three members, one of whom should be "of experience in the law, and one of experience in railway business," and it was endowed with very limited powers, somewhat analogous to those vested in the Boards of Massachusetts and Wisconsin. Mr. Adams, in his recent work on the Railway Problems, reviews the report of that committee at length, and thus summarizes the results:

At first glance, therefore, it seemed as if this committee had arrived at only negative results; but in truth they had reached positive conclusions of the first importance. They had, indeed, clearly stated the problem; a thing never before done in Great Britain. The natural development of the railroad system as a system was recognized, and the folly of restricted legislation demonstrated. A new policy was thus established, at the base of which was the principle of private ownership and management, which was to be left to work out its own destiny through that process of combination in which competing monopolies always result. The members of the committee saw perfectly clear where their process of reasoning would bring them out. It could result only in a tacit assent to the growth of private corporations until they become so great that they must, soon or late, assume relations to the Government corresponding with the public nature of their functions. This was obvious enough. Meanwhile the committee also saw with equal clearness that this was a question of the future—perhaps of the remote future; a question which certainly had not presented itself, and which they had no disposition to precipitate. They accordingly fixed definitely the policy of Great Britian as an expectant one. The railroad system was to be left to develop itself in its own way, as a recognized monopoly, held to a strict public accountability as such. Whenever it should appear that it abused its privileges and power, then the time for action would have arrived. As yet this was not the case in any such degree as called for a decisive and far-reaching measure of reform. To better watch over it meanwhile, and to cause its members to work with less friction among themselves and with a more careful regard to the equal rights of private persons, an exceptional piece of governmental machinery was provided in the form of a Board of Commissioners. The powers of this tribunal were both judicial and executive in character and very broad. It was its duty not only to hear all complaints of private parties, but to intervene in cases of difficulty which might arise between the companies themselves. The Board was, in fact, designed to insure to the community an easy and equitable interchange of traffic over its railroad lines, as well as to put a stop in so far as might be practicable to that unjust and vexatious system of discrimination which seems to be inseparable from all active railroad competition. Through this Board the exceptional character of the railroad system was at last recognized. An attempt was made to deal with the anomaly as an anomaly. Meanwhile, the most noticeable feature in the career of the Board, which has now been in existence five years, is the very trifling call which seems to have been made upon it. So far as can be judged from its annual reports, the cases which come before it are neither numerous nor of great importance. It would, however, be wholly unsafe to conclude from this fact that such a tribunal is unnecessary.

"On the contrary, it may confidently be asserted that no competent Board of Railroad Commissioners, clothed with the peculiar powers of the English Board, will ever, either there or anywhere else, have many cases to dispose of. The mere fact that the tribunal is there; that a machinery does exist for the prompt and final decision of that class of

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questions, puts an end to them. They no longer arise. They cease to arise for the simple reason that the railroad corporations in these matters are not like the members of a numerous and complicated business community. The controveries among them, which do not involve legal points, are comparatively simple and confined to few persons. These they will in the vast majority of cases settle themselves, if they only know that if they do not so settle them a public official will. The English Board has always been composed of very competent men. Accordingly the officials of the corporations, knowing quite well in advance what their decisions will be, do not probably care to encounter them. A single test case disposes of innumerable subsequent cases."

Time does not permit me to recount the many other empirical laws upon the subject we are considering, which are now, at last, a dead letter upon the statute books of other States. Passing them by, I can only characterize them as Mr. Adams says the select committee of Parliament referred to, characterized similar laws in England: "They showed with great precision how, during that period, the English railroad legislation had never accomplished anything which it sought to bring about, nor prevented anything it sought to hinder." The Chairman of the Committee on Corporations other than Municipal, Mr. Estee, has paid a merited tribute to the great ability and high character of Charles Francis Adams. He is the oldest Railroad Commissioner in the United States, and has devoted years of patient investigation and study to the railroad problem in all its relations. His opinions upon the questions we are now considering must necessarily possess great value, and we may safely take them for a guide in our deliberations. In an address delivered by him to the farmers of Wisconsin, at a State Fair held in that State, at a time of great popular excitement over railway affairs, speaking upon the subject directly before us, he said:

"And in the first place let me say one word of myself; and it will be no word of laudation; perhaps I might better describe it as a confession of sadly modified aspirations, if not indeed of downright failure. I am an old soldier now in this discussion. I was among the first to begin in the public prints; to-day I am the senior Railroad Commissioner in the United States. If you ask me what I have done, what I have accomplished, I must needs answer: Little enough in comparison with what I, a few years back, hoped, but still something. At least I have come back to first principles. Another thing I have learned in the healthy though disheartening school of experience, and that is to revise my opinions, for I must needs confess it, that there is hardly a single theory as respects railroads and their relations to the State which I held six years ago, that I have not since, as the result of honest study and mature reflection, either greatly modified or wholly abandoned. I have grown common sense, I think, and like most men thankful at last for little things. Six years ago, in the height of the railroad discussion, a Board of Commissioners was established in Massachusetts, and I became a member of it. The principle upon which the Board was established I at the time thought wholly unsatisfactory; I have since concluded it was a wonderfully happy legislative guess. The Board had no powers, or next to none. It was simply an agency through which publicity could be secured; it was to be the lens through which the scattered, diverging, individually powerless rays of public opinion could be cast, concentrated into a focus, and brought to bear on any given point of railroad management. In those days I had not the faith in public opinion which I have now, and it seemed to me that the law which organized our Board, and then placed us face to face with those great corporations, powerless to do more than to investigate and discuss, it seemed to me that this law was framed in a total misapprehension of the necessities of the case; that it left us in a position which challenged contempt. The fact is, like most officials, I yearned for more power. I wished to be able to compel, as well as to recommend. I wanted a little force bill of my own. This, I am now rejoiced to say, the Legislature of Massachusetts was too wise, perhaps too wisely distrustful, to give me. The law was badly, clumsily framed, but it was based on a very simple idea. A Board of Arbitrators was to be created, with a certain supervisory power. It then became the duty of its members to investigate every complaint brought against any railroad company, and this, too, without cost to the party bringing it."

Mr. Chairman, if the history of the railroad and its management in England and in the United States, if the partial investigations and thoughtful studies of eminent specialists and statesmen, teach us anything at all, it is that all attempts at a forced regulation of rates for railroad transportation, whether it be in form of legislative enactment or of constitutional provision, always have been and always must be the worst kind of empiricism; that the business of a railway is based upon, and must be conducted in accordance with those universal and immutable principles which lie at the base of every other business; that an arbitrary interference with it by government in any form always has been, and from the nature of the case must inevitably be, in proportion to the extent to which it is exerted, destructive.

The great student and observer of railway affairs in this country, from whom I have drawn so liberally in the course of my remarks, has never given utterance to sounder views upon this particular phase of the subject than those he addressed to the farmers of Wisconsin, when he told them, alluding to a state of things in remarkable analogy to that now prevailing in this house, that—

"Political makeshifts are more in vogue just at present than political philosophy. Accordingly, as our swollen statute books bear ample evidence, the regulation law-maker has during the last six years been more than ordinarily busy. I do not know that the passion for legislative panaceas for every ill which the social flesh is heir to is peculiar to America. I do not think it is; only in other countries it takes a different form, and is called not an Act of Legislature, but by some other name, such as "ukase," "firman," "mandate," "imperial decree," or the like. But if there is one thing which human experience has proved more thoroughly than another, it is that the limits of effective legislation are very narrow, and that nine laws out of every ten, so far as they have any effect at all, rather defeat than further their object. This somewhat important fact, however, has not received among us of late any very marked consideration. The essence of all successful republican government is conceded in thought to rest in an appeal to a calm and educated public opinion; but in our practice, the penal law represents the Constable—force; and the moment anything is wrong, it is but necessary to get control of the Constables to have it set right. So, in Massachusetts, for thirty years, now, they have been trying through the agency of the Constables to make men temperate; in nearly every State in the Union, the Constable is invoked to see that the borrowers do not pay more interest than is good for them; in the South, the Constable must see to it that civilization receives no detriment; in the West, the omnipresent Constable must have his eye on the railroads, so that no injuries shall occur from any deficiency in the operation of natural laws. To my mind, the force system, whether in Turkey, or in Russia, or in Massachusetts, or in Wisconsin, is all wrong. It is based upon power, not upon reason; upon an arbitrary will, not an enlightened public opinion. It is as if a physician were to cover with plasters the outward indication of disease and stolidly ignore its seeds in the depth of the system. A thorough investigation of causes and results would, I am confident, reveal past all dispute, the utter futility of the larger part of our statutes, and, by no means least of all, those intended to regulate our railroads—a department of legislation based on the principle that the State must sever itself from all connection with business undertakings, because experience has shown that every such connection tends to waste, to jobbery, and to corruption, and from this basis seeks at once to convert our Legislatures into irresponsible Boards of Railroad Directors, thus substituting a system of organized meddling in place of legitimate business, finally compelling the wealthiest corporations to have recourse, in self-protection, to systematic legislative corruption—an evil ten times worse than the worst executive jobbery."

Sir, the sentiments here advanced are no less pertinent to the scheme now proposed to us than they are to a legislative force bill. Mr. Chairman, I deny that there is anything in the present management of railroads in this State; or in the existing condition of public opinion here, which demands the expression of the power of this Convention upon the railroad corporations of this State. I deny that there is now, or that there ever will be, any action necessary to be taken by the government of this State in reference to railways that may not, with entire safety and absolute propriety, be left to the legislative departments. And, sir, I unhesitatingly affirm that in every instance in which your Legislature has been called upon to act upon this subject, it has treated it intelligently, wisely, and to the best interests of the people, as well as of the corporations. I deny that the people demand the adoption by this Convention of sections eighteen, nineteen, and twenty, or of any single provision contained in them. The management of the railway system of this State is, and for many years past has been, eminently satisfactory to that large class of people in this State having dealings with these corporations; and of this I have evidence of the highest character at hand. In the first report of the Railroad Commissioners of this State, made in the year eighteen hundred and seventy-seven, I find the following statement:

"In October, eighteen hundred and seventy-six, we issued a circular, which was addressed to many hundred citizens in various parts of the State whom we deemed likely to be able to furnish us with information or suggestions of value, in connection with the subject of railroad transportation. A copy of it is as follows:

SACRAMENTO, October, 1876.

Among the principal objects proposed by the Legislature in creating a Board of Transportation Commissioners, is the compilation of facts and statistics connected with the building and operation of railroads in this State, and also the investigation of their management, especially as it affects the interests of their patrons and the public generally. It is believed that an impartial investigation of this subject will result in substantial advantage to all concerned; and to this end this Board desires to receive information and suggestions and statements from all who are interested. As your position has probably led you to give more than usual attention to the subject, there may be matters to which, in your opinion, the attention of the Board should be called; in which event, it is requested that you will communicate them to this Board in writing. By order of the Board.

WALTER M. PHILLIPS, Secretary.

"This was transmitted to Supervisors, county officers, members and ex-members of the Legislature, Judges, prominent merchants, storekeepers, editors, hotel-keepers, Patrons of Husbandry, etc., and it led to some valuable communications, although not to contributions of public opinions, or information on the subject as full or extensive as we might have reasonably looked for.

"We have deemed it our duty to visit and inspect, so far as such inspection can be made in transitu, every part of every railroad in the State, in order to acquaint ourselves, so far as possible, with the circumstances, local connections, situation, and condition of the various roads.

"Without entering into unnecessary detail on this subject, we observe that generally the railroads of the State are in good order, and their management wise and economical, and conducted with a view to public convenience." And further along in their report, in reference to discrimination between individuals, they say: "No instance of the occurrence of this abuse has been brought to our notice. There are rumors of its existence, and it is even said that the sufferers by it fear to complain, lest they be punished by further and ruinous discrimination. While it is possible that there may be some foundation for these suggestions, it is also probable that the instances, if they exist, are of rare occurrence, and in most, if not all cases, explainable by circumstances unknown to, or insufficiently considered by, the parties who have felt aggrieved. The present law is somewhat defective on the subject, and we believe the amendments proposed will be found sufficient to correct it."

But, sir, there is further evidence at hand, and the witnesses are now living and here present. The testimony I am now about to adduce proves to what agencies the regulation of this subject should be left, so

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far as we are at present advised concerning the conduct of railway business in this State. And the instances I am about to cite are only a few among a great many which might be enumerated.

Two or three Summers ago a special committee, representing the farmers of Solano County, who desired a modification in their favor of the then prevailing rates of transportation on the California Pacific Railroad, presented their demand to the managers of that road, and, after mutual consultation upon the subject, their demand was promptly acquiesced in. Soon after this a similar committee, representing a like class of citizens in Yolo County, presented to those gentlemen a similar demand, except that the reduction asked in their case was larger than that asked in the other, and their demand was also promptly acceded to. Soon after this another committee, representing the farmers of Colusa County, made a like request of those managers, and it was cordially granted.

I have before me an extract taken from a public journal published in the City of Stockton, under the caption, "Central Pacific Railroad and the Stockton Wheat Market:"

"The Central Pacific Railroad Company have made an important concession to the warehousemen of Stockton—a concession that will be mutually advantageous to the company and to the warehousemen. The committee of citizens, consisting of General George S. Evans, I. R. Wilber, J. D. Peters, and Andrew Wolf, visited the railroad authorities on the twenty-sixth ultimo, and made representations and asked relief. The railroad authorities stated that it was worth ninety cents a ton more to carry the wheat to San Francisco from the stations on the Oregon Division than to Stockton, and the committee asked to have that sum divided between the railroad, company and the grain men. The railroad company have consented, and granted to the grain men a reduction of fifty cents per ton, as will be seen from the following letter received yesterday:

CENTRAL PACIFIC RAILROAD COMPANY,
GENERAL FREIGHT AGENT'S OFFICE,
San Francisco, July 3, 1877.

GENERAL GEO. S. EVANS, Stockton—Dear Sir: Referring to the interview between yourself and associates of the committee appointed for the purpose, and Governor Stanford, President of this company, I am instructed to say that the company will grant your request, and make the rate on grain in car-loads, from points between Tehama and Lincoln, on the Oregon division, to Stockton, fifty cents per ton lower than to San Francisco. Very truly yours,

J. C. STUBBS,
General Freight Agent.

These, sir, are only a few of almost numberless instances that might be cited, which show that there is a silent legislation constantly going on between the people and these great corporations, which, if left to itself, will much more satisfactorily adjust the relations between them, than will any number of "force bills" and Constables. The Act of eighteen hundred and sixty-one concerning railroad corporations, fixed maxima for transportation at ten cents per mile for passengers and fifteen cents per ton per mile for freight. As, in the progress of time, the railway system of the State became perfected, as the volume of business increased, the classifications of freight became more and more liberal, the rates of transportation were from time to time reduced, and at the session of the Legislature of eighteen hundred and seventy-five and eighteen hundred and seventy-six, when the Senate Committee on Corporations caused to be published in the public journals invitations which were spread broadcast all over the land, calling upon any and all persons to bring forward their complaints, if any they had, against the railway corporations, not a single individual responded. The Legislature at that session adopted the classifications of freights and the rates of charges of all the railway companies in the State in force on the first day of January, eighteen hundred and seventy-six, and fixed them in what is known as the O'Connor bill as maxima rates. At the session of eighteen hundred and seventy-six and eighteen hundred and seventy-seven the Hart bill became a law. During the interval of two years the classifications were adjusted upon a basis still more favorable to the public, the rates of charges were still further reduced, and the Legislature again fixed the rates and classifications in force on the first day of January, eighteen hundred and seventy-eight, as maxima rates. The legislation to which I refer had the sanction of some of the purest and most eminent men in your State, and was the result of their investigation and study in their capacity as members of your Legislature. Among them were your present Governor, Miles O'Connor of Nevada, and a gentleman now a member of this body. I allude to Mr. Laine, of Santa Clara, himself a member of the Senate Committee on Corporations at the time to which I refer, and than whom a more patient, honest, industrious, and valuable legislator has never been a member of a legislative body since the Commons sat.

Mr. Chairman, there seems to be an intense prejudice against corporations in this body, and I cannot forbear to say that, in my judgment, it is as unfounded and unjust as it is intense. What is a corporation? It is a number of persons united in one body, under an artificial form, designated by a common name, having succession, and the capacity to sue and be sued, to acquire and hold property. It is the purpose of a corporation to secure a concentration of the brains, the will, and the capital of a number of individuals, in order to carry on great enterprises. These corporations, sir, have jerked this State a hundred years ahead of the point of progress at which it would have stood without them. They have been potent and beneficent instrumentalities for the diffusion of literature, of science, and art; for the spread of education; for the encouragement of commerce, of agriculture, and of manufactures. Occasionally, to be sure, one of them goes down, and then there goes up a general howl against corporations. It is to be admitted, that some evils are incident to this form of organization, but I know of no human institution that is altogether exempt from evil, in some form, unless it be this immaculate body. Of course, everybody looks for a general ascension from this hall at no distant day, but no one expects it, I believe, until all the money is gone.

Mr. Chairman, I confess that I have addressed this Convention not without some misgivings. I am a lawyer, and have been a legislator—two employments that seem to have come under the ban of this house. I have a realizing and saddened sense that the profession to which I belong does not enjoy the confidence, the respect, the homage of the people, in that high degree that it once did. But, sir, for this the people are themselves to blame. From what I cannot but regard as a most mistaken notion, they have done everything in their power, for the last forty years, to popularize, to *democratize*, that profession. And its better representatives have not made an effort during that period to close up its ranks against charlatans and pretendents, that has not been thwarted by the people. For example, a provision was placed in the Codes, which became the law in eighteen hundred and seventy-three, prohibiting any person from practicing in any Court of record in this State who had not been admitted to the Supreme Court. It was a salutary provision, and a security to the citizen. But at the next session of the Legislature a bill was introduced to repeal it, and though the lawyers made every effort to preserve it, the farmers and mechanics in that body opposed it, and it was repealed. But, sir, granting all that now may be said to the disadvantage of that profession; concede, if you please, that, as is alleged, it is somewhat conservative, somewhat aristocratic in its tendencies: as I look over this body and realize how large and predominating is the democratic element in it, I cannot but think it a fortunate circumstance that there is a good number of lawyers in it, and among them the best in the State; some, indeed, who rank with the best in any State. And I do not think the excellence of the work of this body will be at all impaired if a very wide scope is given to the influence of the lawyer in it. One of the profoundest of political philosophers—and a very close observer of our American institutions—in his great work entitled "Democracy in America," wrote thus of my profession:

"The profession of the law is the only aristocratic element which can be amalgamated without violence with the natural elements of democracy, and which can be advantageously and permanently combined with them. I am not unacquainted with the defects which are inherent in that body of men; but without this admixture of lawyer-like sobriety with the democratic principle, I question whether democratic institutions could long be maintained; and I cannot believe that a republic could subsist at the present time, if the influence of lawyers in public business did not increase in proportion to the power of the people."

Sir, it was the skill and wisdom of lawyers that laid the foundation and reared the superstructure of that benign Government under which we sit in this hall. It was an immortal company of lawyers whose statesmanship, supported by the deathless valor of its heroic armies, kept that Government firm on its foundations in the most tremendous shock of war the universe has ever felt. It was a lawyer, who, at the call of his country in the hour of its direst peril, left the walks of his profession and became the greatest organizer of war the world has ever seen. But, sir, I need not stand here and call the roll of its heroes. In the Senate, upon the bench, at the bar, in the camp, in the stricken line of battle, always and everywhere when civilization and the rights of mankind have been assailed, that profession has been in the vanguard of their defenders. The bones of its martyrs are at the base of every great monument which marks the progress of the race, and there is not a legal security, nor a constitutional guarantee of liberty or labor that is not illustrated by their genius, or consecrated and cemented by their blood.

Mr. Chairman, I cannot resume my seat without admonishing members that we are daily wandering further and further away from these great organic principles which alone ought to engage our attention in compounding a Constitution; that a torrent of radicalism has set in upon us which threatens to overwhelm our work; that we have already lost much of the public confidence. Let us curb the last innovation that has taken possession of us, this *rerum novarum lubido*, which the great Latin philosopher said was the bane and destruction of all republics, and come back to sound principles. Let us adhere as near as may be to the present Constitution. Under it there has been consummated more of general progress, more generally diffused happiness and prosperity, than has ever before been realized in the same period of time by any other people on the globe. For more than a quarter of a century it has held in equilibrium, like an elemental force, the rivalries of sections, the antagonistic customs, the clashing prejudices and passions of all the alien races of the earth. Believe me, sir, when I say it has the affections of this people, and that they will not tolerate any very radical changes in it. Let us amend it in a few particulars, adding a little to the judicial force, changing a little its provisions regarding taxation, and putting a few more restraints upon legislative power. Do this, and we shall regain the public confidence; do this, and we may return to our constituents confident of being greeted with that most inspiring of all salutations to a public man, "Well done, thou good and faithful servant."

MR. AYERS. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again.

ADJOURNMENT.

MR. VAN DYKE. I move that the Convention do now adjourn.

Carried.

And at five o'clock P. M., the Convention stood adjourned until to-morrow morning at ten o'clock.

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FIFTY-SEVENTH DAY.

SACRAMENTO, Saturday, November 23d, 1878.

The Convention met in regular session at ten o'clock A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Harvey,	O'Sullivan,
Ayers,	Heiskell,	Overton,
Barbour,	Herold,	Porter,
Barnes,	Herrington,	Prouty,
Barry,	Hilborn,	Reddy,
Barton,	Hitchcock,	Reed,
Beerstecher,	Holmes,	Reynolds,
Bell,	Howard,	Rhodes,
Blackmer,	Huestis,	Ringgold,
Boggs,	Hughey,	Rolfe,
Boucher,	Hunter,	Schomp,
Brown,	Johnson,	Shoemaker,
Burt,	Jones,	Shurtleff,
Campbell,	Joyce,	Smith, of San Francisco,
Caples,	Kelley,	Stedman,
Chapman,	Keyes,	Steele,
Charles,	Kleine,	Stevenson,
Condon,	Laine,	Stuart,
Crouch,	Lampson,	Sweasey,
Davis,	Larkin,	Swenson,
Dean,	Larue,	Swing,
Doyle,	Lavigne,	Terry,
Dudley, of Solano,	Lewis,	Thompson,
Eagon,	Lindow,	Tinnin,
Edgerton,	Mansfield,	Townsend,
Estee,	Martin, of Santa Cruz,	Turner,
Evey,	McCallum,	Tuttle,
Farrell,	McComas,	Vacquerel,
Filcher,	McConnell,	Van Dyke,
Finney,	McCoy,	Van Voorhies,
Freeman,	McFarland,	Walker, of Tuolumne,
Freud,	McNutt,	Waters,
Garvey,	Mills,	Webster,
Glascock,	Moffat,	Weller,
Gorman,	Moreland,	Wellin,
Grace,	Morse,	West,
Graves,	Murphy,	Wickes,
Gregg,	Nason,	White,
Hager,	Nelson,	Wilson, of Tehama,
Hale,	Neunaber,	Wilson, of 1st District,
Hall,	Noel,	Wyatt,
Harrison,	Ohleyer,	Mr. President.

ABSENT.

Belcher,	Dunlap,	Schell,
Berry,	Estey,	Shafter,
Biggs,	Fawcett,	Smith, of Santa Clara,
Casserly,	Inman,	Smith, of 4th District,
Cowden,	Martin, of Alameda,	Soule,
Cross,	Miller,	Tully,
Dowling,	O'Donnell,	Walker, of Marin,
Dudley, of San Joaquin,	Pulliam,	Winans.

LEAVE OF ABSENCE.

Leave of absence for one day was granted Mr. Dowling.

Two days' leave of absence was granted Mr. Schell.

THE JOURNAL.

MR. TINNIN. I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

ADJOURNMENT.

MR. MARTIN, of Santa Cruz, offered the following resolution:

Resolved, That when this Convention adjourns to-day, it shall be adjourned till two o'clock P. M. on Monday, December second, eighteen hundred and seventy-eight.

MR. KEYES. I second the resolution.

MR. GRACE. I move to lay the resolution on the table.

Carried.

MR. CAMPBELL. I desire to call up my resolution amending Rules One and Two, as to the time of meeting of this Convention.

THE PRESIDENT. The gentleman is out of order at present.

PETITIONS—MECHANICS' LIENS.

MR. REYNOLDS presented the following memorial, signed by a large number of mechanics and others, citizens of California, asking for a provision in the Constitution for a lien law:

To the President and Members of the Constitutional Convention:

GENTLEMEN: The undersigned respectfully represent that the practical working of the present legislation, and decisions of the Supreme Court based thereon, regarding the rights of mechanics, material-men, and laborers to a lien for their labor and material furnished, is such that those who in a measure depend upon such law for just protection, fail in nearly all cases to obtain it, because of the inefficient working of said law.

Wherefore, we pray you to declare in our organic law the right of every mechanic, material-man, and laborer to a perfect lien on the thing whereon his labor has been expended, or for which his materials have been furnished.

Moreover, we would state that we would be satisfied with amendment number one hundred and sixty-seven, introduced by Mr. Van Dyke on October tenth, eighteen hundred and seventy-eight, and read and referred to Committee on Miscellaneous Subjects, as follows:

"SEC. —. Mechanics, material-men, artisans, and laborers, of every class, shall have a lien upon the property on which they have bestowed labor or furnished materials, for the value of such labor done and materials furnished, and the Legislature shall provide by law for the speedy and efficient enforcement of said liens."

And your petitioners will ever pray.

Referred to Committee on Miscellaneous Subjects.

MR. FREUD presented a similar petition.

Referred to Committee on Miscellaneous Subjects.

THE SUPREME COURT.

MR. BLACKMER presented the following petition from members of the bar of San Diego, in regard to sessions of the Supreme Court at Los Angeles:

To the honorable the President and Members of the Convention to amend the Constitution of the State of California:

The undersigned memorialists, as citizens and members of the bar of San Diego County, respectfully represent to your honorable body:

That we have been unable to discover any hardship in the operation of the law requiring the Supreme Court to hold certain of its sessions at points outside of the capital of the State. Nor have we been able to discover any good or even plausible reason, either from the arguments of the advocates of the proposed restrictive amendment or from our own investigations, why a term or terms of the Supreme Court should not be profitably and conveniently held at points other than the capital.

That no popular discontent has been manifested on the part of the people of the State at the action of the Legislature in providing for the holding of certain terms of the Supreme Court in San Francisco and Los Angeles; and that the suggested change in limiting the sessions of the said Court exclusively at the capital by the organic law, is uncalled for by any public demand on the part of the people of the State.

That for ourselves, as citizens and members of the bar, and as far as public opinion has been manifested upon this subject within the sphere of our observation, we are convinced that the sentiment of the people of the State, and especially of the central and southern portions, is manifestly opposed to the adoption of any clause which would prevent the people of the State from legislating upon this subject as the future growing and changing interests of the people might demand.

That the rapid increase of population and wealth, involving a proportionate increase of business in the southern part of the State, requires that the Legislature should at least be left at liberty to give us such terms of the Supreme Court as our future exigencies shall demand. Even at the present time our Supreme Court business is very large, as shown by the fact that the term just held at the City of Los Angeles has consumed three weeks of constant and arduous labor on the part of the Court and counsel, and was yet insufficient to dispose of the business before the Court.

That, at the southern part of the State, sessions of the Supreme Court are required as a necessity, saving much time to counsel and to litigants, besides the expense incident to more than a thousand miles of travel from points in the southern counties to the capital. And upon these grounds, and because no rights or privileges of others are infringed upon, we would hereby ask your honorable body to take such action as may prevent the incorporation of any such restrictive provision in the amended Constitution.

LEVI CHASE,
W. T. McNEALY,
E. W. HENDRICK,
WALLACE LEACH,
WILL M. SMITH,
W. J. WALKER,
W. J. HUNSAKER,
W. J. GATEWOOD.

Ordered to lay on the table, to be printed, and referred to the Committee of the Whole with the report of the Committee on Judicial Department.

COMMUNICATION.

THE PRESIDENT. I have received a communication which the Secretary will read.

THE SECRETARY read:

THE SAN FRANCISCO GASLIGHT COMPANY,
SAN FRANCISCO, November 21st, 1878.

J. P. Hoge, Esq., President of the Constitutional Convention, Sacramento:

DEAR SIR: Copy of resolution number eighty-nine came to hand, and in reply have to say that the San Francisco Gaslight Company, since its organization, has furnished to consumers an immense number of meters, averaging between three thousand and four thousand annually, all of which are kept in perfect repair by the company without charge to consumers. There has also been a large number discontinued on account of removals, etc., leaving in use at the present time about thirteen thousand one hundred meters at customers' premises. The average life of a meter is about five years, and its destruction is a total loss to the company, as they are not sold to consumers of gas, and no deposit is ever required, nor any rent charged for them while in use, as is the custom in England and the Eastern States.

Very respectfully,

WM. G. BARRETT,
Secretary for San Francisco Gaslight Company.

Laid on the table.

REPORT—PUBLIC BUILDINGS AND GROUNDS.

MR. OVERTON presented the following report from the Committee on State Institutions and Public Buildings:

MR. PRESIDENT: Your Committee on State Institutions and Public Buildings, to whom was referred proposed amendments number three hundred and fifty, by Mr. Campbell; number eighty-four, by Mr. Cowden; number four hundred and sixty-five, by Mr. Freud; number three hundred and eighty-three, by Mr. Webster, have had the same under consideration. Number three hundred and eighty-three, by Mr. Webster—we recommend its reference to the Committee on Education; number four hundred and sixty-five, by Mr. Freud, to the Committee on Labor and Capital; propositions number three hundred and fifty, by Mr. Campbell, and number four hundred and sixty-five, by Mr. Condon, containing the principles which your committee have embodied in the following sections, and recommend their adoption.

A. P. OVERTON, Chairman.

ARTICLE —.

SECTION 1. There shall be a State Board of Prison Directors, to consist of five persons, to be appointed by the Governor, with the advice and consent of the Senate, who shall hold office for ten years, except that the first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years, and vacancies occurring shall be filled in like manner. The appointee to a vacancy, occurring

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before the expiration of a term, shall hold only for the unexpired term of his predecessor. The Governor shall have the power to remove either of the directors for misconduct, incompetency, or neglect of duty, after an opportunity to be heard upon written charges.

SEC. 2. The Board of Directors shall have the charge and superintendence of the State Prisons, and shall possess such powers, and perform such duties, in respect to other penal and reformatory institutions of the State, as the Legislature may prescribe.

SEC. 3. The Board shall appoint the Warden and Clerk, and determine the other necessary officers of the prisons. The Board shall have power to remove the Wardens and Clerks for misconduct, incompetency, or neglect of duty; all other officers and employés of the prisons shall be appointed by the Warden thereof, and be removed at his pleasure.

SEC. 4. The members of the Board shall receive no compensation other than reasonable traveling and other expenses incurred while engaged in the performance of official duties, to be audited as the Legislature may direct.

SEC. 5. The Legislature shall pass such laws as may be necessary to further define and regulate the powers and duties of the Board, Wardens, and Clerks, and to carry into effect the provisions of this Article.

MR. CONDON. Mr. President: I move that the report lay on the table until such time as the minority report is submitted, and that they both be printed together.

Carried.

PAY OF GAS PORTER.

MR. O'SULLIVAN offered the following resolution:

Resolved, That the Controller of State be and he is hereby authorized to draw his warrant in favor of Patrick Leavy, for thirty-eight dollars, for services as Gas Porter prior to October seventeenth, eight hundred and seventy-eight, payable out of the appropriation for the expenses of this Convention.

Referred to the Committee on Contingent Expenses.

AMENDMENT TO RULES.

MR. CAMPBELL. I now ask to call up my resolution to amend Rules One and Two, in relation to the hour of meeting.

THE PRESIDENT. The Secretary will read.

THE SECRETARY read:

Resolved, That Rule One be amended so as to read as follows:

The Convention shall meet each day of sitting at half-past nine o'clock A. M., unless it shall adjourn to some other hour.

Resolved, That Rule Two be amended so as to read as follows:

The Convention shall take a recess each day from half-past twelve o'clock P. M., to two o'clock P. M., and from five o'clock P. M., or such earlier hour as the Convention may determine, until seven o'clock P. M.

THE PRESIDENT. The question is on the adoption of the amendment to Rule One.

The amendment was adopted, on a division, by a vote of 80 ayes to 20 noes.

MR. BEERSTECHER. I desire to sit from one o'clock in the evening until one o'clock next morning.

THE PRESIDENT. The next question is on the amendment to Rule Two.

MR. REYNOLDS. Has the vote been announced on the last?

THE PRESIDENT. Yes, sir: 80 ayes to 20 noes. The amendment was adopted.

MR. REYNOLDS. I rise to a point of order.

THE PRESIDENT. The gentleman is too late with his point of order.

MR. REYNOLDS. I don't know that——

THE PRESIDENT. The gentleman is too late with his point of order.

MR. REYNOLDS. I don't know that it is ever too late to refer to a rule or correct a mistake. Rule Sixty declares that "no standing rule or order of the Convention shall be rescinded or changed without a vote of two thirds, and one day's notice being given of the motion therefor; but a rule or order may be suspended temporarily by a vote of two thirds of the members present, except Rules Fifty, Fifty-one, Fifty-two, Fifty-three, and Fifty-five." Under that rule it requires one hundred and one votes to change a standing rule, and if it is the decision of the Chair that this rule has been changed by the vote of eighty members, why I appeal from the decision of the Chair to the Convention.

THE PRESIDENT. The Chair decides that the point of order is not well taken.

MR. REYNOLDS. From that decision the gentleman from San Francisco appeals. [Laughter.]

THE PRESIDENT. It takes three to appeal from the decision of the Chair.

MR. SWEASEY. I second the appeal.

MR. SMITH, of San Francisco. I appeal from the decision.

MR. BEERSTECHER. I respectfully ask the Chair to state the grounds of his decision; whether it is that the gentleman from San Francisco is too late in raising the point of——

MR. REYNOLDS. It seems to me that the mover of the appeal is entitled to the floor.

THE PRESIDENT. The gentleman from San Francisco, Mr. Beerstecher, is on the floor. Go on.

MR. BEERSTECHER. I ask that the Chair state the ground of the decision—whether it is that the gentleman from San Francisco rose too late, to make his point, that is, after the Chair had stated its decision, or whether the Chair bases his decision upon the construction of Rule Twenty—because it will make a difference in my vote.

MR. REYNOLDS. Mr. President: The reason that I appeal from the decision of the Chair is to obtain a construction of this rule. There can be no doubt as a rule of law. The latter part of the rule distinctly states that, "a rule or order may be suspended temporarily by a vote of two thirds of the *members present*." The former part of the rule provides that no standing rule or order of the committee shall be changed or rescinded without a two-thirds vote. It undoubtedly means two thirds of the whole Convention. No lawyer would pretend in a Court of law that there could be any other construction put upon a statute or rule adopted by the Court, and no Court in Christendom would pretend to put any other construction upon it. We violate this rule every time we attempt to change a rule by the vote of two thirds of the members present. The farthest we can go by a vote of two thirds of the members present is to temporarily suspend a rule. And what is the reason of this rule? It is that there may be something like permanency to your rules. If you adopt any other construction of it, why a two-thirds majority of a bare quorum of the Convention can turn the rules upside down, as they have done several times, and the next day you are all at sea, and the members of the Convention know not what the rules are. And further: at the time the Committee on Rules were constructing these rules, and I appeal to the Chairman of the Committee on Rules if he did not distinctly state that that was the construction, that it required two thirds of the members elected to the Convention to change a rule, but that two thirds of the members present could temporarily suspend a rule. But two thirds of those present could not go at it and change the whole code we have adopted. There can be no other construction. It comes under the rule that the expression of one thing excludes the other. That applies to this case, perhaps not perfectly, but it applies. It applies to this extent, that we have said in the rule that a rule or order cannot be changed except by a two-third vote. I hold that that means two thirds of the Convention. Why? Because in the next clause the expression is, "two thirds of the members present." The first part of the rule does not say two thirds of the members present, and it certainly means two thirds of the whole Convention. There can be no doubt about this. There can be no two opinions about it.

MR. ROLFE. Mr. President: Rule Three says that not less than seventy-seven members shall constitute a quorum. Therefore, I say if seventy-seven members are present that constitutes the Convention, although forty or fifty may be absent. Those present constitute the Convention if there are seventy-seven. Then Rule Sixty says that no rule or order shall be changed without a two-third vote. What does that mean? It means two thirds of the Convention, and if there is a quorum present, and two thirds of that quorum vote in favor of changing a rule, it is a vote of two thirds of the Convention. I cannot put any other construction upon it. I know that in every instance in our constitutional provisions where it is required that a certain majority of all the members elected to either branch of the Legislature, must vote on a certain proposition to carry it, it is so distinctly stated, as, for instance, creating or changing a judicial district. Our Constitution says it can be done only by a vote of two thirds of all the members elected, whether they are present or not. No other construction can be placed upon this rule where it says that a rule may be changed by a two-third vote. No other meaning can be put upon it, than that it means a two-third vote of those present, provided a quorum be present.

MR. TINNIN. Mr. President: I was a member of the committee that framed this rule, and I claim that when that body made this rule they intended it to mean what it said. If they had intended that a two-thirds vote of all the members elected were required to change a vote they would have said so. I think if they had meant that two thirds of the members elected were required to change a rule they would have said so. So far as the gentleman from San Francisco, Mr. Reynolds, is concerned, I give him credit for his perseverance in this great struggle, and I will say that he is entitled to a patent on his idea. I have served in the halls of legislation here for many years, and in all that time no member before him, to my knowledge, has ever contended for this peculiar idea. I think that he deserves credit for his persistency in giving forth an idea that is peculiar to himself. It was evidently the intention of the Committee on Rules that a two-third vote of those present should control this body in a vote of this kind, and I contend that the change was properly made by this body some weeks ago when they amended Rule Fifty-six.

MR. STEDMAN. Mr. President: Perhaps I am one of the peculiar ones, too, and perhaps I do not understand the English language. I do not know much, but certainly I must agree with Mr. Reynolds in his construction of this rule. And the Chairman of the committee under stands the rule in the same manner.

MR. ESTEE. Who told you I did?

MR. STEDMAN. Well, the Chairman told me he did. "No rule or order of the committee shall be rescinded or changed without a vote of two thirds, and one day's notice given of the motion therefor; but a rule or order may be suspended temporarily by a vote of two thirds of the members present, except Rules Fifty, Fifty-one, Fifty-two, Fifty-three, and Fifty-five." Why do they say that? The gentleman from San Bernardino, Mr. Rolfe, says that evidently the first clause means seventy-seven members—two thirds of seventy-seven members. Following that argument out, less than two thirds of seventy-seven could change a rule temporarily. I do not understand it so. I think it is very plain that only two thirds of the whole Convention can change a rule. I do not care much at any rate. [Cries of "question."]

MR. HAGER. Mr. President: I just want to say two or three words. I presume this rule must be construed in connection with the others. Rule Three provides that not less than seventy-seven members shall constitute a quorum for the transaction of business. That constitutes a quorum. If two thirds of a quorum vote that ends the matter according to my notion. That is my interpretation of Rule Sixty as construed with Rule Three. I think the decision of the Chair is right.

MR. REYNOLDS. Mr. President: I understand now that the Chairman of the committee does not hold to the opinion that it requires a two-third vote of the whole Convention to change a rule. Now, Mr. President, my recollection is perfect as to the debate in the Committee on Rules, that took place on the adoption of Rule Sixty, and in answer to my question ——

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MR. TINNIN. I call the gentleman to order. He has no right to refer to the debates in committee. It is contrary to parliamentary rules.

THE PRESIDENT. It certainly is out of order to refer to anything that took place in the committee.

MR. REYNOLDS. Out of order? As usual! [Laughter.]

THE PRESIDENT. The Chair holds that the point raised by the gentleman from San Francisco, Mr. Reynolds, not well taken, for the reason stated by the gentleman from San Bernardino. Two thirds of the members present—there being a quorum present—can change a rule after one day's notice of the motion thereof.

MR. MURPHY. Mr. President: I move that the gentleman from San Francisco be laid on the table.

THE PRESIDENT. Too heavy. [Laughter.]

THE PRESIDENT. The question is: Shall the decision of the Chair stand as the judgment of the Convention?

The Chair was sustained.

MR. ROLFE. Mr. President: I ask that the motion to change Rule Two be divided, so that we can vote upon the two propositions.

MR. LARKIN. I move that the question be divided.

THE PRESIDENT. The first question is on the first clause of the rule.

MR. GRACE. Why not say perpetual session from two o'clock until ten o'clock in the evening? I move to amend, so that it shall read from two o'clock to ten o'clock.

THE PRESIDENT. The motion is not in order now. We are voting on a division of the question.

MR. O'SULLIVAN. Mr. President: I move to amend, so as to read: "The Convention shall take a recess each day from twelve o'clock M., to half-past one o'clock P. M."

Lost.

THE PRESIDENT. The question is on the adoption of the first division of the amendment, that the Convention take a recess from half-past twelve M. to two o'clock P. M.

Adopted.

THE PRESIDENT. The question recurs on the second division of the amendment, that the Convention take a recess from five o'clock P. M., or such earlier hour as the Convention may determine, until seven o'clock P.M.

MR. O'SULLIVAN. I have an amendment to offer to that: "The Convention shall take a recess each day from five o'clock P. M. until seven o'clock P. M., and from one o'clock A. M. until eight o'clock A. M.

Lost.

THE PRESIDENT. The question recurs on the second division of the amendment offered by the gentleman from Alameda.

MR. WILSON. Mr. President: I think it would be a great mistake for this Convention to meet at night. We are coming here to some very important questions. We are upon some very important questions. Now, I would like to know what time any gentleman will have for the study and examination of the great questions under discussion. Suppose we go into this discussion on corporations, and sit here morning, noon, and night, what time has any gentleman for that reflection and study which each should give to the subject? It would be a great mistake. This Convention wants to do its business well. Everybody, it seems to me, has been working pretty hard. I think this Convention has been as industrious and hardworking a body as any Convention that ever sat. I do not think any complaint can be made of the progress we have presented.

MR. CAMPBELL. Mr. President: In view of those considerations, with the permission of the Convention, I will withdraw that part of the amendment.

THE PRESIDENT. There being no objection, the gentleman has leave.

CORPORATIONS.

MR. ESTEE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question before the committee is the amendments offered to section eighteen of the original report of the Committee on Corporations other than Municipal.

SPEECH OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I shall endeavor to be concise in what I have to say. I can assure you, sir, that the Committee on Corporations, of which I am a member, has been in nowise surprised or moved from their purpose by the flood of vituperation and abuse which has been poured upon us by the salaried officers and pensioned press of the corporation. We anticipated, sir, when we presented this report, that the henchmen of the railroad would sound the bugles of monopoly—hasten to lick absurd pomp and "crook the pregnant hinges of the knee where thrift may follow fawning."

Mr. Chairman, this is a question of no ordinary magnitude. The control of the Legislature over corporations has agitated not this country alone, but England also, and their reviews state that the railroads, even in England, are too strong for Parliament, and that they control the Legislature of that country; and the thinking men of Great Britain are endeavoring to frame such rules in Parliament as will relieve the country from their oppressions. And here, sir, it is the same. The corporations rule the country. It is the whisky ring, it is the bank ring, it is the railroad ring, it is the manufacturers' ring, but ring always. Now, sir, for my part, I intend to maintain, as far as I can, the legislation in England and in this country for two centuries in relation to common carriers, and to follow the judicial sentiment and the decisions of the Supreme Court of the United States. And standing there, sir, with that line and plummet in hand, and not going beyond these soundings, so far as I am concerned, I intend to apply the knife of reform to the putrid excrescence of existing abuses.

The committee has been assailed for copying provisions from other Constitutions of other States, and has been charged, even, with mutilating them. It cannot reasonably be objected to the report of the committee, that we have availed ourselves of the wisdom of others. We have reported nothing here but what is to be found in the Constitutions—the latest Constitutions—of other States. If there is any objection to the report, it is that we have not gone far enough, in borrowing the most stringent provisions—that we have not embraced all the late reforms. They have been briefly summarized in a late number of the International Review. I will read a brief paragraph, that it may be seen that we are not groping in the dark, but that we are availing ourselves of the light and wisdom of others:

"Railroad and canal corporations are common carriers and their ways public highways; they shall be chartered under general and uniform (in each State) laws; each shall have the right to connect with any other, and transfer and receive freight without delay or discrimination, but no corporation shall consolidate, directly or indirectly, with a parallel or competing line. Rates may be regulated and shall never be higher from a given point to another, than from the first point to one more distant, except the latter be on excursion or commutation. Discrimination in rates between individuals or corporations asking to be served is prohibited, and railroad officers are not permitted to become privately interested in transportation or furnishing supplies. Common carrying corporations are forbidden to engage in mining or other business. Every corporation is required to have an office in the State (for transfer of stock), and annual reports are required to be made to some State authority."

Now, sir, there is not a line in that summary which our report does not present.

Now, sir, the report falls short of many of these provisions, because we have not declared that they are public highways, and we have not provided—as the gentleman from San Francisco, Judge Hager, probably correctly contends—that a violation of the law shall work a forfeiture of charter. We are dealing with common carriers, and ever since the subject has been known, from the Year Books down, it has been a principle that a common carrier is bound to carry for all, without discrimination, for a just compensation; and all the elementary books, and all the cases, show that the determination of what is a just compensation is a matter for the Legislature, and, in the absence of legislation, for the Courts. I read a brief paragraph from Judge Story, on bailments:

"One of the duties of the common carrier is to receive and carry all goods offered for transportation, by any person whatsoever, upon receiving suitable fare."

That, sir, is and always has been the law. It is crystallized with time. It is the law of the ages. But here it is contended that the corporation alone has the right to fix the compensation and to regulate the freights and fares. If there is any law for that; if there is any book so crude as to maintain such a proposition, I would be much obliged to any gentleman if he would produce it. Sir, upon what conditions does the railroad receive its charter? What is it organized for? Gentlemen say it is created for the private stockholders—for their own gain and emolument alone. Such is not the law. I refer to a recent Illinois case, where this matter is briefly stated. It is the case of the Peoria and Rock Island Railway Company vs. The Coal Valley Mining Company, 68 Illinois, 489.

"The primary consideration and principal object in the creation of railroad corporations, and in conferring upon them privileges not enjoyed by private citizens, was the accommodation of the public and the promotion of their interests. It was not merely to aggrandize and enrich stockholders. The benefit to be derived by the stockholders was only incidental to accomplishing the primary object."

That is the rule, sir. It is a mistake to say, and it is a false principle to assert, that these railroad corporations are for the private cupidity of the private stockholder, alone. Sir, I maintain that the right to regulate fares and freights in this State by the Legislature, by legislative authority, is, in the first place, based on contract; that the railroad itself, under the Act of eighteen hundred and sixty-one, agreed and stipulated that the Legislature might prescribe and regulate, might alter, might change the rate as to freights and fares, at pleasure. Let us look then at the history of this thing in California. It is not what the gentleman from Marin—and I am sorry he is not in his seat—said on yesterday; it is not true that the corporate powers of this Act were forced upon the stockholders by the State or by the Federal Government. The truth is, as every one knows, that Mr. Stanford and the other corporators in the Central Pacific Company, inspired the Act of eighteen hundred and sixty-one. It was passed on the twentieth of May. In June they filed their articles of incorporation. They let no grass grow under their feet. They knocked at the door of the next session of the Federal Legislature. They solicited and obtained a grant, on the first of July, of land and money. There was no forcing of them. They were ripe for it and were all too willing to grasp the extended hand of subsidy, of national bounty. Sir, what is that Act? It is said by the President of the Central Pacific Company that it is impossible to form a maximum of freights and fares. Why, this very Act, in the fifty-first section, declares a maximum for freights and fares of ten cents per mile for passengers, and fifteen cents per ton for freight, per mile. But the eleventh subdivision of section seventeen declares the power said roads shall have:

"The corporation shall have power to regulate the time and manner in which passengers and property shall be transported, and the tolls and compensation to be paid therefor, *within the limits prescribed by law.*"

This provision gives to the Legislature the power, and the sole power, whenever they see fit, to control this matter. It was a compact; it is a contract; it is a covenant, by the railroad, and its officers and their minions cannot rail the seal off the bond. It stands there, and will

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stand there. Nay, more, sir; when they appeared in Washington, they appeared with the articles of incorporation in one hand and the Act of eighteen hundred and sixty-one in the other, and the grant was made to them upon the conditions that the Legislature of California should control the freights and fares precisely as much as though it had been recited *in hæc verba* in the Act. They were paid for it—richly paid, thrice paid—by the State and Federal Governments and the municipalities. Now, is it not extraordinary that the President of the Central Pacific Company should come and tell us that the Legislature has no power to regulate the freights and fares; that the company alone can accomplish it; that for the Legislature to attempt it is an act of confiscation, a war upon property, and, as its pensioned organs say, "communism." Mr. Chairman, if it is a war upon property, it is a war which they have created; if it is communism, it is their communism; if it is confiscation, it is a confiscation which the incorporators provoked. It is too late for them to come and say that we cannot regulate this matter. It is a degree of effrontery and impudence which would overwhelm any natural person with shame; which would cover him with his own blushes. It is a position which could only come from a person without a soul, and therefore comes from the corporation. And now, sir, in that letter of the President of the Central Pacific Company, which has been so bespattered with praise by his peculiar set—a letter which, beyond a few wise saws and aphorisms which no one disputes, which have no application to the subject in hand—it is a bundle of sophistries from beginning to end. He answers, when asked to comply with his contract to permit the Legislature to regulate freights and fares: "Oh, that is confiscation, that is a war on property;" and he pleads that in bar of his contract. If any such plea, in such a manner, was ever preferred in any Court, or in any tribunal, or any legislative body, before, I would like to see the antiquarian who would produce it.

Now, let us apply this principle to the railroad itself. Suppose some purchaser—for they sell their land on time—suppose the purchaser of one of their odd sections, granted by the United States Government, had given his note and his mortgage for the purchase, and that the Central Pacific Company, happening to need a little of the legal coin of the realm, in convention times or in legislative times, should call on this purchaser to comply with his contract, and he was to say, "Why, that is confiscation; that is communism, to ask me to comply and to pay my mortgage. That is a war on property." Could he not say, as well as Stanford—he would say—"I am the legal owner of that land; the fee is in me; and don't you know, that, according to your letter, the owner is the man to run the thing? The owner is the man to control it; the owner is the man alone that can manage the affair; and therefore I shall not pay." That would be a personal application of Governor Stanford's own argument; and I think he would be apt to turn round to the railroad attorney who indited his epistle, and exclaim with Hamlet to Polonius: "All of which, sir, though I most powerfully and potently believe, yet I held it not honesty to have it thus set down."

Mr. Chairman, what of this clamor about war upon property? Who is to war on property? It was said by the Secretary of the Treasury the other day, in his speech at Toledo, that two thirds of the voters in this country are property holders. Are the people to war on themselves? Are they to war on their own property? There is no danger from the people. The people are to be trusted, so far as property is concerned. They pay the taxes in peace, and they bear the flag of the country in war. Then, it is said that regulation is communism. The railroad organ—for the railroad is in all sorts of business, it runs newspapers, it runs steamboats, it speculates in town lots, and it would establish a Methodist Church South and a Methodist Church North, if they thought it would pay in this materialistic age—the Record-Union, has denounced this report as communism. It is not long since it denounced Jesus Christ as a communist. Only two or three days ago it denounced the decision of the Supreme Court of the United States in the Elevator case as communism. Well, sir, I think, as the committee are classed in company with Jesus Christ and the Supreme Court of the United States, they can survive all these attacks. [Laughter.] Sir, I question no man's religion. The editor has the right to promulgate his own views of religion in his own way, and he is responsible for it only to his God; but when the corporation undertakes to set up a press to assail the religion of the country, and to divert in that direction subsidies which have been given it for a railway, it becomes a question of what lawyers call *ultra vires*. They are going a little out of the charter. If it is not *ultra vires*, it is certainly ultra vile.

Yet this cry of confiscation, war on property, and communism, raised by the President of the Central Pacific, is in the mouth of all his lieges. It is a common observation, that when the President of the Central Pacific takes snuff, all his pensioned presses and his retainers, in the Convention and out, sneeze along the whole line.

Sir, I assume again that the Legislature has the right to regulate this matter of freights and fares, for the reason that it stands on higher ground even than the solemn compact with which this corporation received its charter—it stands, sir, on the principle asserted in England and in this country for over two centuries, that the Legislature has the right to regulate the occupation of common carriers; that for all that time legislation has exercised it, and that the power admits of no controversy; and I maintain, furthermore, that the decisions of the Supreme Court of the United States in the Elevator cases expressly go upon that ground—the principle that the Legislature has the right to regulate the compensation of common carriers, for the reason that wherever their business touches a public interest, it was held in the Elevator cases (and they were not corporations), that the Legislature had the right to regulate their business and prescribe their compensation. And let me say, sir, the opinion of the Supreme Court of the United States, as given in the opinion of Chief Justice Waite, will stand the test of the scrutiny of time and of human talent; and, although I agree with most of what the learned gentleman said on yesterday evening in commendation of lawyers, I want no greater eulogy of lawyers for their patriotism, their attachment to the liberties of the country, to the rights of the people, than the opinion of Chief Justice Waite. It is an opinion that will hand his name down to posterity with that of Sir Edward Coke, that rough old lawyer of liberty, of Marshall, and of Taney. And now, sir, what is that decision? I will ask the Secretary to read two short paragraphs from it, that it may be seen that I do not seem to misrepresent it.

Mr. THORNTON, Assistant Secretary, read as follows:

"A 'body politic,' as aptly defined in the preamble of the Constitution of Massachusetts, is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. This does not confer power upon the whole people to control rights which are purely and exclusively private (Thrope vs. the R. and B. Railroad Company, 27 Vt. 143), but it does authorize the establishment of laws requiring each citizen to so conduct himself and so use his own property as not unnecessarily to injure another. This is the very essence of government, and has found expression in the maxim, *sic utere tuo ut alienum non lædas*. From this source come the police powers, which, as was said by Chief Justice Taney in the License cases (5 How. 583), 'are nothing more nor less than the powers of government inherent in every sovereignty. * * * That is to say * * * the power to govern men and things. Under these powers, the government regulates the conduct of its citizens, one toward another, and the manner in which each shall use his own property, when such regulations become necessary for the public good. In their exercise, it has been customary in England, from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold. To this day statutes are to be found in many of the States upon some or all these subjects, and we think it has never yet been successfully contended that such legislation came within any of the constitutional prohibitions against interference with private property. With the fifth amendment in force, Congress, in seventeen hundred and eighty, conferred power upon the City of Washington to regulate * * * the rates of wharfage at private wharves * * * the sweeping of chimneys, and to fix the rates of fees therefor * * * and the weight and quality of bread (3 Statutes, 587, Section 7), and in eighteen hundred and forty-eight, to make all necessary regulations respecting hackney carriages and the rates of fare of the same, and the rates of hauling by cartmen, wagoners, carmen, and draymen, and the rates of commission of auctioneers. (9 Statutes, 224, Section 2.)

"This brings us up to inquire as to the principles upon which this power of regulation rests, in order that we may determine what is within and what without its operative effect. Looking, then, to common law, from whence come the rights which the Constitution protects? We find that when private property is affected with a public interest it ceases to be *juris privati* only. This was said by Lord Chief Justice Hale, more than two hundred years ago, in his treatise 'De Partibus Maris,' and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he in effect grants to the public an interest in that use, and must submit to be controlled by the public, for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to control. Enough has already been said to show that when private property is devoted to a public use it is subject to public regulation."

Mr. Chairman, it would be presumption in me to attempt to add to the force of that reasoning. It stands boldly out; it has never been and never can be refuted. The law as stated by the Supreme Court, and the reasons given for it by Chief Justice Waite, will never fail, perish, or be destroyed. Then, sir, we place our power to regulate these corporations on two grounds: First, upon the contract which the corporation cannot go behind without dishonor and disgrace; and, second, upon the general law of the subject, as announced by the Supreme Court of the United States; and it is quite idle for the President of the Central Pacific Railroad to come and say in answer to all this, that control is confiscation. But the President of the railroad goes still further. He says there is only one way in which the State can control his corporation, and that is to purchase it—to buy it out; and he intimates that he is open to a bid. It leaked out, sir, nearly a year ago, after the supposed collapse of the Texas Pacific, that the Central Pacific would push for the Mississippi, and it also became apparent that if the Southern road was completed below the snow line at the distance from the Atlantic to the Pacific of only fifteen hundred miles, that the Central Pacific as a trans-continental road would become a useless elephant in the hands of the present corporation. It is now said that the railway managers are pushing for New Orleans. It is known that they have now on the bar, twenty-three feet of water at the mouth of the Mississippi, and the engineers confidently expect to obtain thirty; and when that is done, the great trans-Atlantic transportation, as a matter of expedition, as a matter of cheapness, will give the southern road, by whomsoever owned, the trade and commerce. I trust the State will never purchase this useless elephant, if it becomes so by the construction of this southern road. It should be content, I think, that they shall keep their elephant; that they should feed him, and travel him, and show him, according to their own pleasure—the State of California having the power to regulate the price of the show. [Laughter.] It has been more than surmised that, after the owners of the Central Pacific have extended their road, the Southern Pacific, to the Mississippi, they will abandon the northern road to the General Government in payment of their bonds and interest due. The Mississippi has been well termed a

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great inland sea. If the depth of water on the bar anticipated is attained, first-class ocean steamers loaded with merchandise can ascend as high as Memphis, and return with cargoes of cotton and Western produce. It is easy to see that such a result will revolutionize the commerce of half the continent. The managers of the Central Pacific exhibit sagacity in preparing for that result. The result of the decision of the Supreme Court of the United States is that whenever a use so affects the public interest and the public business that the public becomes interested in it, then the Legislature has the right to control the use. Now, sir, I will read from the book which the gentleman (Mr. Edgerton), referred to on last evening—Part two of the Internal Commerce, the chief, Nimmo, of that division of the bureau, who discusses the whole question of railways and freights and fares, and discusses it with affluence of learning which has never been bestowed upon it by any one else, and he gives the amount of the internal commerce of the country. It never has been doubted that Congress, by legislation, had the right to control our foreign commerce, and yet the internal commerce is sixteen times larger—and it is denied that we can control our own internal commerce. Sir, I dispose of that sophistry by reading this:

"The value of the commodities embraced in our foreign commerce, and the estimated value of commodities transported on railroads, are as follows:

Value of imports and exports (foreign commerce)	$1,121,634,227
Estimated value of commodities transported on rail (internal commerce)	18,000,000,000

"It appears from these estimates that the value of the railroads of the country is about twenty-three times the value of the shipping engaged in our foreign trade, and that the value of our internal commerce or railroads is about sixteen times the value of our foreign commerce," and yet gentlemen tell us that this vast internal commerce, this vast necessity, this great absorbing and overwhelming interest of the country, is beyond the reach of legislation.

It is said by the Railroad Commission of California, and by Mr. Adams, and by everybody acquainted with the subject, that the railway is a practical monopoly. It is a practical monopoly because it runs off, wherever established, all other means of transportation. It is under the control of a few men; on the Atlantic side of some four, on this side at most, I believe, of some six, and those men have a right, or at all events they exercise the power by controlling the price of transportation, they exercise the power of fixing the price of agriculture, labor, and, incidentally, the price of land and the price of farms, the profits of all industrial and commercial business. It was said in the Fortnightly Review, a couple of years ago, that whether the manufacturer or other producer can market at a particular place depends upon the rates of charges of the railroad. I will ask the Secretary to be kind enough to read a paragraph that I have marked, from the pen of Mr. Grosvenor, a distinguished railroad man, published in eighteen hundred and seventy-three:

"Three men meet in a room in New York. They are not called kings, wear no crowns, and bear no scepters. They merely represent trunk lines of railway from the Mississippi to New York. Other points settled, one says, 'As to the grain rate; shall we make it fifty from Chicago?' 'Agreed; crops are heavy, and we shall have enough to do.'

"Business finished, the three enjoy sundry bottles of good wine. The daily papers presently announce that 'the trunk lines have agreed upon a schedule of rates for freight, which is, in effect, a trifling increase; on grain, from forty-five to fifty cents from Chicago to New York, with rates to other points in the usual proportion.' The conversation was insignificant, the increase 'trifling.' But to the farmers of the Northwest, it means that the will of three men has taken over thirty millions from the cash value of their products for that year, and five hundred millions from the actual value of their farms. The conversation is imaginary, but the startling facts upon which it is based are terribly real, as Western farmers have learned. The few men who control the great railway lines have it in their power to strip Western agriculture of all its earnings—not after the manner of ancient highwaymen, by high-handed defiance of society and law, the rush of swift steeds, the clash of steel, and the stern 'stand and deliver!' The bandits of modern civilization, who enrich themselves by the plunder of others, come with chests full of charters; Judges are their friends, if not their tools; and they wield no weapon more alarming than the little pencil with which they calculate differences of rate, apparently so insignificant that public opinion wonders why the farmer should complain about such trifles.

"An increase of five cents per one hundred pounds in the cost of transportation from Western States to New York or other Eastern markets, is equivalent to three cents a bushel on wheat, two cents and eight tenths on rye and corn, one cent and six tenths a bushel on oats, and (allowing for convenience, forty-nine pounds to the bushel of barley and buckwheat, laws of different States varying widely) two cents and four tenths to the bushel of barley or buckwheat. At these rates, supposing the change in rates to affect the whole crop of all the Northwestern States alike, the loss in value to the farmer upon the crop of eighteen hundred and seventy-one, as given in the latest agricultural report, may be thus stated:

	Quantity Produced.	Loss in Value.
Wheat	149,600,000 bushels	$4,488,000
Corn	690,900,000 bushels	19,345,000
Hay	10,915,000 tons	10,915,000
Oats	153,789,000 bushels	2,460,000
Rye	6,625,000 bushels	185,000
Barley	10,019,000 bushels	245,000
Buckwheat	1,694,000 bushels	41,000
Total		$37,679,000

"This loss of over thirty-seven million dollars in the selling price of the products of forty-four million three hundred and seventy-five thousand one hundred acres cultivated, is about eighty-four cents an acre. It is a loss, not of valuation, but of the yearly income or profit upon which valuation is based. The actual value of land for farming purposes is that sum upon which the net profit of the yearly crop will yield a fair interest. At seven per cent interest, whatever reduces the net profits seventy cents per acre, reduces the actual value of the land ten dollars per acre. Hence the loss of thirty-seven million six hundred and seventy-nine thousand dollars, in the yearly income from certain lands, is equivalent to a loss of five hundred and thirty-eight million two hundred and seventy-one thousand dollars in their actual value. Such is the result of a 'trifling' change of five cents per cental in rates of freight!"

From these facts, we learn what is the condition of the farmers in this country. We see that they cannot, when transportation is at such a figure is at present, send their produce with any profit to market; and if the five cents per bushel increase in grain produces that result in the West, what must it effect here, where it is changed and increased, from time to time, twenty-five, and, in some instances, even fifty per cent. I shall also ask the Secretary to read from the recent report of the United States Senate Committee of the Forty-first Congress, a single paragragh:

"In the matter of taxation, there are to-day four men, representing the four great trunk lines between Chicago and New York, who possess, and who not unfrequently exercise, powers which the Congress of the United States would not venture to assert. They may at any time, and for any reason satisfactory to themselves, by a single stroke of the pen, reduce the value of property in this country by hundreds of millions of dollars. An additional charge of five cents per bushel on the transportation of cereals would have been equivalent to a tax of forty-five millions of dollars on the crop of eighteen hundred and seventy-three. No Congress would dare exercise so vast a power, except upon a necessity of the most imperative nature; and yet these gentlemen exercise it whenever it suits their supreme will and pleasure, without explanation or apology. With the rapid and inevitable progress of combination and consolidation, these colossal organizations are daily becoming stronger and more imperious."

Now, gentlemen of the Convention, you observe the power, aggression, and oppressions of these corporations, and can it be said that we have no control by legislation; that we are powerless to protect the country? I deny the premises and the conclusion. It has no foundation. The proposition is monstrous. Be sure of one thing: the people here in this Convention may be baffled now, as they have been baffled and betrayed for the last six years, but this cause cannot fail. It is the cause of the people; it is the cause of the country; and justice and power are with the millions. This question for the next ten years will dominate all others in this country, and any party that places itself in the route of the people to reform will be shivered like a staff at the fountain; it will be wiped out and will pass into oblivion. For my part, I have been a tolerably strict party man. I was reared in the school of Jefferson; I have voted for every Democratic nominee for President from the reëlection of General Jackson to the nomination, and I like to have said the election—though I would not have got far wrong if I had—of Mr. Tilden; but I would not hesitate to trample down all party allegiance in the cause of this party of reform. The time has come when the running of party conventions of both political parties by these corporations must cease. For one I shall vote for no Democratic railroad man. I do not acknowledge the democracy of any such white blackbird.

Heretofore, the managers of the railroad have controlled the political organization and conventions of both parties. On each ticket were their own instruments, and it was immaterial to them which succeeded. A writer in the North American Review, two or three years since, declared the railway no longer purchased the votes of Senators in detail, but furnished funds to elect their man, and had title to him and all his votes for his term. Of late the Central Pacific has fallen in with that policy; elects their man, and sends him to Washington with a collar around his neck, on which is inscribed in golden letters "Central Pacific," so that if he is lost or strays he may be recaptured and returned to his lawful owners. I trust that in this Convention we shall inaugurate measures of reform which will put an end to this national infamy and disgrace.

There are suggested two means of control, two remedies for this evil. One is to leave it absolutely to the Legislature; the other is to take it out of legislative control and place it in the hands of a Commission. The latter is the course which the committee has recommended. I shall indulge in no reflections upon the Legislature. I have not seen it more than once or twice for the last ten years. I only know it from public report and public disgust, and thus judging it, I say it is an unfit place, morally, for the repository of this power. It is objected, sir, that we have no right to delegate this function to a Commission. I so understood the learned gentleman from Marin, yesterday—that it is giving to one body legislative, judicial, and executive power. Well, sir, suppose it is. Have we not the right in this Convention to do so? Is there anything over us but the Constitution of the United States and natural justice? And does that impede us? Everybody knows that the Constitution of the United States has no application to this subject. But it is not true that any sound objection can be interposed to it on the ground that the Commission would possess legislative, executive, and judicial functions. There is nothing in that objection. It has been decided not only by the Supreme Court of this State, but by the Supreme Courts of various other States, that the delegation of powers like these is perfectly regular and constitutional. It was decided in this State, first, in construing the powers of the Boards of Supervisors, not a constitutional body, but a mere creature of the statute, and the Courts held there was

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no objection to it; that it exercises legislative, judicial, and executive powers, and in a more recent case, the Court has discussed the principle more at large, going over the decisions of the Supreme Court of the State of Illinois and other Courts, in which they hold that to delegate powers like these is perfectly regular and consistent with republican government, and free from any objection of any character. I refer to the decision in the case of the Savings and Loan Society vs. Austin, 46 Cal., and that case, so far as this principle is concerned, is unreversed, is unqualified, is unaffected by any other decision. I will ask the Secretary to read for me a couple of short paragraphs:

"That the Legislature cannot, in a general sense, delegate its legislative authority—its power to enact laws—is a proposition which, at this day, no one will question or deny. But, whilst the proposition is undoubtedly true in its more general sense, it cannot be maintained in its most restricted sense. As was observed by Mr. Justice Caton, in delivering the opinion of the Supreme Court of Illinois, in the People vs. Reynolds, 5 Gilman, 12: 'We may well admit that the Legislature cannot delegate its general legislative authority; still it may authorize many things to be done by others which it might properly do itself. All power possessed by the Legislature is delegated to it by the people, and yet few will be found to insist that whatever a Legislature may do, it shall do, or else it shall go undone. To establish such a principle in a large State would be almost to destroy the government. The Legislature may grant ferry privileges, or it may lay out roads, and specify their metes and bounds; and yet who will deny that it may delegate this power to others, either by general or special laws? So, also, it may pass all the laws requisite for the government of a particular city, or township, or school district, and who will doubt the propriety of its authorizing this to be done by the people within limits of the city, town, or district, by their local representatives, or even directly? This is making laws, and laws, too, of as binding efficacy as if passed directly by the Legislature. They are dependent upon the Legislature for their vitality and force through the act of incorporation or law under and by virtue of which they are made. Necessarily, regarding many things, especially affecting local or individual interests, the Legislature may either act mediately or immediately. We see, then, that while the Legislature may not divest itself of its proper functions, or delegate its general legislative authority, it may still authorize others to do those things which it might properly, yet cannot understandingly or advantageously, do itself. Without this power, legislation would become oppressive and yet imbecile. Local laws almost universally call into action, to a greater or less extent, the agency and discretion either of the people or of individuals, to accomplish in detail what is authorized or required in general terms. The object to be accomplished, or the thing permitted, may be specified, and the rest left to the agency of others, with better opportunities of accomplishing the object or doing the thing understandingly.'"

These decisions, sir, dispose of that objection if it ever amounted to the dignity of an objection, that the Legislature cannot delegate these powers to a Commission. It is settled by a weight of judicial authority which admits of no controversy, and I shall pursue that subject no further.

And then, sir, it is alleged that the regulation of railroads by Commissions has been a failure. I deny it, sir. I will prove by the book to which the gentleman, Mr. Edgerton, referred, that, so far from being a failure, if it has not operated precisely as it was intended in all cases, that on the whole, it has been a success and has led to salutary reforms. I refer to page one hundred and seventy-three of Mr. Nimmo's report, which states:

"It is undoubtedly true that some of the expedients adopted for the regulation of railroads have been ill-advised, and in the face of economic principles, but the effect of such regulations is believed to have been, on the whole, salutary. * * * The moral effect of public vigilance alone exerts a wholesome influence. The very crudity of some of the remedial measures adopted has, perhaps, led to the more speedy correction of abuses, and to the diffusion of useful knowledge in regard to the circumstances which environ the railroad problem. Although the regulations and restraints which have been adopted may have subsequently been set aside, yet they have had their desired effect, and the people have been brought to a better understanding of the relations of the railroad to the State and to the commerce of the country. Thus many erroneous impressions in regard to supposed acts of injustice on the part of railroad companies have been corrected. The railroad companies have also been led to a knowledge of their responsibilities and duties to the public, and to realize the limits of their power. As reformatory measures, acts of Legislatures have in a great measure effected the purpose for which they were enacted, although not always in the way intended. * * * It is now quite generally conceded that laws for regulating rates, are useful mainly for the prevention of exorbitant charges and unjust discriminatiens when the effective competition of rival lines does not exist, and for the correction of other abuses."

Let us glance at one consideration here; we have no competing rival lines, we have narrow valleys, we can have no competition; the company that first gets position holds it against the whole world for an age—a monopoly. But yet it is said that we cannot regulate it. I refer to the case of Illinois to which the gentleman has referred, page one hundred and eighty, Report of the Chief of the Bureau of Statistics:

"In May, eighteen hundred and seventy-three, another law was passed prescribing what should be prima facie evidence of extortion and unjust discrimination, the burden of proof being thrown upon the railroad company. Under this law the Railroad Commissioners are required to prepare certain schedules of rates which shall be deemed reasonable until overruled in specific cases by a jury. The workings of the new law have not been in all respects satisfactory to the people of the State, although it is believed, that, on the whole, its operations have been beneficial."

And, in relation to the Wisconsin Act, the "Potter Law," the same authority says:

"A better understanding of the railroad question in the State of Wisconsin has resulted from the experience acquired under the Potter law. The information which has been gained has tended to correct many erroneous views, and the disposition manifested by the railroad company to comply with the legitimate demands of the people, with respect to their industrial and commercial interests, has also tended very much to bring about a change in public sentiment."

I understand the same report goes on to the same effect with Ohio and various other States, somewhat too much in detail for me to read, but the report establishes beyond controversy, the report of the head of the internal commerce in the United States, that all these laws, crude as they have been, and which give the regulation of this matter or supervision of it to Commissioners, has proved beneficial, has led to reforms, has corrected railroad abuses.

The gentleman from Marin said, also, that he objected to the mode of election; he thought the railway might elect the Commissioners. Well, sir, Governer Stanford didn't think so. He has written his letter mainly to assail this report so far as it recommends a Commission, and he says it would place the affairs of the road in the hands of a hostile Commission elected by the people. He does not agree with the gentleman from Marin. He has had experience; he has tried the Legislature, and from repeated success, he knows what he can accomplish there, but he does not know what he could do with a Commission of three men elected by the people. Again, in many affairs of government it is safer to trust to the honesty of the people, the honesty of the many, than to the intelligence of the few, and I advocate the many instead of the few, because the many have no interest except the public interest; they have no cupidity to gratify; their interest is the interest of all.

Again, the gentleman objects—and, as my memory serves me, the gentleman from Sacramento followed in that objection—he objects that it is placing the property of this company in the hands of three irresponsible men. Sir, it is an unfounded argument. It would apply just as well to the Supreme Court; that is elected by the people, and yet gentlemen do not hesitate to place their property, their lives, and their fortunes in the hands of seven Judges, elected by the people. It is, therefore, no sound objection to say the Commission is elected by the people; it is no argument to object that it gives great power to three men, because the power is limited, and if abused the country knows who to look to. If abused by the Legislature, the responsibility is so divided that it amounts to nothing. Again, sir, some of the Commissioners, with full experience, in their reports have recommended that this control over railroads should be by Commission. Our Commissioners in their report recommended that there should be a permanent Commission. Even Mr. Adams states that where a Commission existed and the Commissioners stated an abuse to the railroad companies, they were ready and willing to correct it. It is the only body that can, by possibility, have the necessary knowledge. Is there any one in this Convention, is there any one in the Legislature, or any number of Legislatures, who could form a suitable tariff of rates of freights and fares in the time of an ordinary session? It requires time; it requires investigation; it requires, where abuses are alleged, the going upon the ground; it requires the devoting to it of special care. No Legislature, and no part of any Legislature, can have sufficient time and opportunity to effect it. They cannot acquire the knowledge, even if they were sufficiently intelligent, and came with sufficient information. Then, I maintain, sir, that the Commission is the true if not the only remedy, and that those who oppose a Commission oppose any regulation practically, whatever may be their purposes, and that they leave the whole thing where the President of the Central Pacific Railroad Company and his clacqueurs wish it left—in the hands of the Legislature, or rather, in the hands of the corporations, uncontrolled, unadministered, unsupervised.

And now, sir, this brings me to the language of this nineteenth section, and it has been made the subject of strange criticism. I will read the first clause:

"No discrimination in charges or facilities for transportation shall be made by any railroad or transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State."

Every railroad report in other States that has spoken upon this subject, including Nimmo, denounces as monstrous all discrimination as to persons and places, and that is the whole effect of that section. It prohibits all discrimination as to persons and places, and yet this is subjected to an extraordinary kind of carping criticism, which, I confess, I was unable to understand. The second clause is this:

"Persons and property transported over any railroad, or by any transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates."

This is a declaration contained in every Constitution that has been formed within the last ten years, that there shall not be charged more for carrying freights or passengers a short distance than a long. It is difficult to see what the gentleman from San Francisco complains of; I don't comprehend from his speech what he understands by it. It is to destroy a thing that occurs here every day; it is to cut off a charge, for instance, more for carrying a passenger from Davisville to San Francisco than from Sacramento to San Francisco—a manifest fraud; and yet the gentleman objects to it. He criticises it verbally; he don't like the commas and the periods; he don't like the grammar or the collocation of the words; and neither he nor Mr. Stanford likes anything about it, because it would save to the people a large sum of the ill-gotten gains of this corporation. The corporation claims—it was so testified by Mr. Tuttle in his testimony before the committee the other day—that the average charge of the Central Pacific Railroad was two cents and one hundred and seventy-seven thousandths of a cent per ton per mile. Now, one of

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two things is true, and true beyond controversy, that the road is doing what Mr. Nimmo in his report denounces—that is, publishing one rate of charges and charging another—or Mr. Tuttle is mistaken in his statement. I have here in my hand a statement which was handed me, and which is vouched for as coming from one of the largest and most respectable houses in the West, as to the actual charges now made by the Pacific Railway, and by which it appears that for freight to Reno they charge the price of bringing it from wherever it is embarked to Sacramento and back again to Reno, although they never actually carry it to Sacramento or retransfer it to Reno. I will ask the Secretary to read this statement. I will have it read publicly, because, if it is true, it is monstrous, and if it is untrue, the officers of the road ought to have an opportunity to correct it:

Present rates of railroad freight charges on drygoods in cases or bales from New York to Reno Station:

Drygoods in cases from New York to Council Bluffs	$4 08
Drygoods in cases from Council Bluffs to Sacramento	7 96
From Sacramento to Reno	1 14
Total from New York to Reno, per 100 lbs.	$13 18
On bales from New York to Council Bluffs	$3 06½
From Council Bluffs to Sacramento	5 97
Sacramento to Reno	1 19½
Total from New York to Reno, on 100 lbs	$10 23

The above is about double the former rates charged on the above class of goods, and nearly or quite double the present rates charged on many goods which seem to be much more hazardous to transport. In order to secure the above rates, shippers are required to sign a contract releasing the companies from damages from chafing while in transit.

There is the same discrimination and extortion in the charges for fares. More is exacted for passage East from Reno than from San Francisco.

The gentleman objects to the section, because it declares that no more shall be charged for a short distance than a long one, and that a shipper shall be compelled to pay no more for goods landed at an intermediate point than at the final destination.

Another objection has been interposed, which is that this section and the section following (section twenty) furnish no remedy, and the gentleman from Marin says that it does not define what abuses are. I take issue with him. It does define what abuses are; it does, however, say that a discrimination between persons is an abuse; it does say that the charging more for a short distance than the whole is an abuse; that discrimination against places is an abuse; and it says it plainly, and it furnishes a remedy, and a remedy which cannot be mistaken, for it declares that the Commission may fix the penalty, and they may prosecute for its enforcement in the Courts of justice, and there is nothing in all these declamations about no hearing, because in the Courts the railroad could call a jury and put itself upon the country. Nay, more, sir; it is provided that any private party injured may also sue the railroad, and the result would be that if it discriminated between places, managing them unjustly, that if it charged more for a short distance than for a long one on the same line, the party might pay under protest and sue the company for a return of the money and his damages. Therefore it is a misstatement, or a gross misunderstanding of that section, to say that it furnishes no remedy. Nobody knows better than the learned gentleman from Sacramento, that a private party who is injured could pay under protest and bring his action for a return of the money and damages. The objection has also been taken by my learned friend from San Francisco, Judge Hager, that the remedy contained in the Illinois Constitution, of the forfeiture of charter, is left out. There is some force in that objection. I introduced into the committee a proposition preserving that provision. It was not adopted by the committee, because the committee thought, what was true, that if the corporation committed these acts they incurred a forfeiture under the general law for a misuser of their charter, and therefore this specific and exact declaration was not necessary in the Constitution; and that, also, is true, sir. For, if this thing is enacted, if the railroad is guilty of any of these acts here prohibited, it incurs a forfeiture at common law, and the Commissioners or any private individual may institute a proceeding in the Courts, and have a forfeiture declared. It is said—and I will dispose of that here—by Mr. Stanford, that the railroads pay five hundred thousand dollars in taxes, and it is shown by their official documents and reports that, if they were taxed as other people are taxed, on the value of the property, that they would pay annually over three million dollars. But they are not taxed as other people are taxed. In my county, and in others, they elect the Assessor, and in my county the road that cost on the average twenty-five thousand dollars per mile, was assessed at six thousand dollars per mile; and land which they are selling sometimes for ten dollars per acre, which they received in subsidy from the government, they have taxed at less than one dollar per acre. Sir, they fraudulently escape the just burdens of the State; they avoid the law; their influence pervades everywhere; it extends to the halls of Congress, to the State Legislatures, and to the officials of the State; and, in this State, no tribunal except the judiciary, has escaped untainted from their pernicious practices.

Mr. Chairman, the organs of the railroad here have expressed great apprehension that this Convention would not do justice to other corporations or to their abuses. They say the water monopoly is an immense abuse; the land monopoly is a terrific abuse; the gas monopoly is a monstrous fraud. In fact, they are very virtuous when their own ox is not gored, but when they are hit they cry "confiscation" and "communism"—communism in the United States Supreme Court, communism in the Convention, communism in the whole world. I entertain the opinion that the monopolists are the real communists. They are communists, and the worst communists of the country, who endeavor, under the pretended law, to filch from toil its hard-earned rewards, and from the production of the country all the profits of capital. But I doubt very much whether this solicitation of these people on account of the corporations other than their own is entirely patriotic and disinterested; for this reason: not long since one of the magnates of the Central Pacific Company declared to a friend of mine that they had been compelled to make all the fights in the Legislature for the corporations, and that they were getting tired of it, and they wanted these other people, these other companies—the Spring Valley Water Company and the gas people—to put something into the fund of common defense; and I think they are now passing round the black box for a contribution for the fight, instead of any honest effort to get justice done to these other delinquents.

The eloquent gentleman from Sacramento, on last evening, mourned the poor profits of the poor Southern Pacific Railroad; and I see that a writer in the Union this morning is most lachrymose on the same subject. He says that the profits of the Southern Pacific do not pay the expenses and interest on their bonds. Mr. Chairman, nobody knows better than the gentleman from Sacramento that the Southern Pacific and the Central Pacific are one thing; that the Southern Pacific is a mere bob to the kite of the Central Pacific; that the same owners, or nearly so, own both practically; and that the Southern Pacific is run under the vaguely extended lease to the Central Pacific. Sir, it is one road from Ogden to the Colorado, and when we look at the profits, we are to look at the nine or ten millions paid to the Central Pacific by this speculation; for, according to the report of the Commissioners of eighteen hundred and seventy-five, it was nine million six hundred thousand dollars. The road south was started specially as a continuation of the Central Pacific to the Mississippi, because the managers of the Central Pacific had wisdom to see that if the southern road, below the snow line, connected with the Mississippi unimpeded, that their road would be valueless; and therefore, as a part of their system, and to head off the Texas Pacific and Tom Scott, and not for the benefit of the people of the southern counties, they run this road to the Colorado.

I see that another thing is stated in the public press, as to the people of Los Angeles—that the railroad managers did not intend to go to Los Angeles, but the people of Los Angeles begged them to run there, and gave them seven hundred and fifty thousand dollars to connect there. But the truth is, the Act of Congress compelled them to extend their road to Los Angeles, and if they had attempted to change their track and gone elsewhere they could have been forced by legal proceedings to go to Los Angeles. But, under the fraudulent pretense that they would construct north of the mountain and into the desert, they operated upon the fears of the people of Los Angeles, and extracted from them this immense subsidy. Sir, their conduct does not bear examination; their record in Los Angeles is a record of abuses, of violated charters, of violated laws, of extortion and false pretenses.

Mr. Chairman, there are several other topics that I wish to touch upon in connection with this subject, but I see that the hour is getting late, and I know that the Convention is anxious to adjourn, and if it is agreeable to the Convention I will give way to a motion that the committee rise.

MR. AYERS. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. MCCALLUM. I move that the Convention do now adjourn.

Carried.

And at twelve o'clock and thirty-two minutes P. M., the President declared the Convention adjourned until Monday, November twenty-fifth, at two o'clock P. M., in accordance with the resolution adopted on yesterday.

FIFTY-NINTH DAY.

SACRAMENTO, Monday, November 25th, 1878.

The Convention met pursuant to adjournment, at two o'clock P. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Davis,	Grace,
Ayers,	Dean,	Graves,
Barry,	Dowling,	Gregg,
Barton,	Doyle,	Hale,
Beerstecher,	Dudley, of Solano,	Harrison,
Belcher,	Dunlap,	Harvey,
Bell,	Eagon,	Heiskell,
Blackmer,	Edgerton,	Herrington,
Boggs,	Estee,	Hilborn,
Boucher,	Estey,	Hitchcock,
Brown,	Evey,	Holmes,
Burt,	Farrell,	Howard,
Campbell,	Fawcett,	Huestis,
Caples,	Filcher,	Hughey,
Chapman,	Finney,	Johnson,
Charles,	Freeman,	Kelley,
Cowden,	Freud,	Keyes,
Cross,	Garvey,	Kleine,
Crouch,	Gorman,	Laine,

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Lampson,	Prouty,	Tinnin,
Larkin,	Pulliam,	Townsend,
Larue,	Reed,	Tully,
Lavigne,	Reynolds,	Turner,
Lewis,	Rhodes,	Vacquerel,
Lindow,	Ringgold,	Van Dyke,
Mansfield,	Rolfe,	Van Voorhies,
Martin, of Santa Cruz,	Schomp,	Walker, of Marin,
McCallum,	Shafter,	Walker, of Tuolumne,
McComas,	Shurtleff,	Waters,
McConnell,	Smith, of 4th District,	Webster,
McCoy,	Smith, of San Francisco,	Weller,
Moffat,	Soule,	Wellin,
Moreland,	Stedman,	West,
Morse,	Steele,	White,
Nason,	Stevenson,	Wickes,
Noel,	Stuart,	Wilson, of Tehama,
O'Donnell,	Sweasey,	Wilson, of 1st District,
Ohleyer,	Swenson,	Winans,
O'Sullivan,	Swing,	Wyatt,
Overton,	Thompson,	Mr. President.
Porter,		

ABSENT.

Barbour,	Herold,	Murphy,
Barnes,	Hunter,	Nelson,
Berry,	Inman,	Neunaber,
Biggs,	Jones,	Reddy,
Casserly,	Joyce,	Schell,
Condon,	Martin, of Alameda,	Shoemaker,
Dudley, of San Joaquin,	McFarland,	Smith, of Santa Clara,
Glascock,	McNutt,	Terry,
Hager,	Miller,	Tuttle.
Hall,	Mills,	

LEAVE OF ABSENCE.

One day's leave of absence was granted Messrs. Barbour and Hall.

Mr. Jones was granted three days' leave of absence.

Mr. Graves was granted indefinite leave of absence, on account of sickness.

THE JOURNAL.

MR. ROLFE. I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

EVENING SESSIONS—ADJOURNMENT.

MR. CROUCH offered the following resolution:

Resolved, That this Convention hold sessions on the evenings of Monday and Tuesday, November twenty-fifth and twenty-sixth, eighteen hundred and seventy-eight, commencing at seven o'clock; and that this Convention will, on Wednesday, November twenty-seventh, at twelve o'clock M., adjourn until Monday, December second, eighteen hundred and seventy-eight, at two o'clock P. M.

MR. WEST. Mr. President: I call for a division of the question—first, on the proposition to have evening sessions; and, second, that we adjourn from Wednesday until Monday.

MR. LARKIN. I am in favor of the first proposition, and not the second.

MR. AYERS. While I am fully in favor of the first proposition, I am opposed to an adjournment for that length of time.

THE PRESIDENT. The Chair is of the opinion that the question is not capable of division.

MR. AYERS. Then I shall have to vote against the whole resolution.

MR. LARKIN. Mr. President: The majority of the members of the Convention cannot get home and stay any length of time in the time specified in the resolution. Those that have railroad connections may go home, and many of the members have just come from home. I think it is time enough to adjourn on Thanksgiving day. So far as I am concerned, I desire to proceed with the work. We may have something else to do for the balance of our lives besides attending the Constitutional Convention.

MR. BROWN. Mr. President: It appears to me that it would be decidedly wrong to adjourn and lose time as wished for in that resolution. Now, it is evident that the people of this State are looking to this body, and they expect this Convention to attend to business carefully, and they know full well—as well as this body knows—that it is almost a matter of impossibility to get through with the business in the proper time. It is very gratifying to see gentlemen anxious to go home and give thanks with their families, and open their hearts large as they ought to be; but it is not necessary. Now, to conclude that we should go to adjourning when there is so much business before this body, it appears to me that it must show itself to every mind as being decidedly improper. That it will make this Convention appear to disadvantage before the people of this State, and they will not approve of it. I hope that the resolution will not be adopted.

MR. ESTEE. Mr. President: I hope that the resolution will be adopted, and I am free to say to this committee, so far as I am concerned, that I am willing to assume the responsibility with my constituents of adjourning over Thanksgiving day. An adjournment merely over that day, without allowing us to go home to our friends, amounts to nothing at all. With many of us it is a time-honored practice to be at home with our families on Thanksgiving day. It is *the* day of the year. It is made a *dies non* by the laws of this State. No Courts are held on that day, and when gentlemen get up here and attempt to tell us that our constituents will not approve of our adjourning over Thanksgiving day, I think they mistake the temper of the people of this State. I think I work as many hours as any gentleman on this floor, but I do not believe that the people expect us to work at times when under the laws and under the customs of the country we are expected to adjourn. Now, what will be the result?

MR. LARKIN. I made no objection to adjourning on Thanksgiving day.

MR. ESTEE. Unless we adjourn beyond that day we cannot go home.

MR. HUESTIS. The gentleman must be aware that it is impossible for some of us even to get home on the time allotted in the resolution.

MR. ESTEE. It is true that there are a few members of this Convention who cannot reach home. It is a misfortune. It is to be very much regretted, but let me say that a very large majority of this Convention can reach home, and they want to go home. If you adjourn over for Thanksgiving day, you will adjourn until two o'clock, and you will only have the half day of Friday and a part of Saturday. If you adopt the resolution you will have evening sessions, and the people will be perfectly satisfied with what we do. I sincerely hope that this Convention will adopt the resolution.

MR. WHITE. Mr. President: I trust that the Convention will not adjourn. We can work on Friday and Saturday. I suppose everybody is willing to adjourn Thursday. But if this resolution is adopted the arrangement will be that we will really lose four or five days. I am willing to lose Thanksgiving day, but by this resolution we will lose four days.

MR. CAPLES. Mr. President: I am opposed to the resolution. We have already spent something more than half of the time allotted to us to make a Constitution, and we have performed but very little. We have merely made a beginning; and if it be the intention and the desire of this Convention to perform that function for which they were sent here, it certainly does seem to me that we should proceed with all dispatch. Now, the excuse offered by the gentleman for this adjournment of four or five days is that it is Thanksgiving. Now, Mr. President, we have very little to be thankful for, so far as anything that has been accomplished in this Convention is concerned. I sympathize with gentlemen who desire to go home, but they should have thought of that necessity before they took upon themselves the public trust that they have assumed in this body. I hold them to the bond, at least so far as my vote can go; to the faithful performance of that duty that they have assumed in coming here. I do sincerely hope that in view of the absolute necessity that exists that we shall refuse this adjournment.

MR. BARTON. Mr. President: Over half of the time has been spent, let us say, and it has been said that nothing has been done. I deny the charge. This body has been the hardest worked body, deliberative and legislative in its character, that has ever sat in the State of California. I am in favor of the adoption of the resolution so far as I am concerned. I deny that we make haste by overworking ourselves. There has never been a Legislature, even in the State of California, where during the holidays members did not go home, those that could get to their homes, and enjoy the holidays with their families, and the people never said anything in regard to that. They were perfectly willing that these hard worked men should go home. I shall vote for the resolution, and hope it will be adopted.

MR. CROSS. Mr. President: It seems to me that this question of the adjournment is not thoroughly understood. Some of the gentlemen who live at a great distance from the State Capitol do not understand the programme. We who live near by will be able to go to our homes, and we have a programme. First let me say that this State will lose nothing by the adjournment, as during that time, by law, we draw no salary. These gentlemen who live near here are to invite such members of the Convention who live at a distance to go home with them and spend Thanksgiving day with them; eat Thanksgiving day dinners. They will be treated so well that they will not feel like work again until about Monday. Take these matters into consideration, and vote for the resolution.

MR. HILBORN. Mr. President: I feel called upon to oppose this resolution. We must not follow this infamous Legislature that we have here each two years. The thing that has brought the most discredit upon the Legislature is their adjournments for the holidays. When we come to the Legislative Department we propose to change the time of the meeting of the Legislature, so that we can get rid of this infamy. Now here is a proposition that puts this body on the same plane with these infamous Legislatures. We propose to lose just about as much time as these corrupt Legislatures. I think we ought to set a better example, and I am opposed to the resolution.

MR. KLEINE. Mr. President: I move that the professional men be left here to make their speeches.

MR. MCCALLUM. Mr. President: I wish to call attention to one thing. If we adjourn for one day, Thanksgiving day, the State will lose one day's pay. If we adjourn from Wednesday until Monday, which is over three days, the State will lose nothing whatever. From Wednesday until Monday will be over three days, and the law says that if we adjourn over three days there is no compensation whatever. It is different in this case from the Legislature. They were always paid for the time. On the other side, the members lose nothing, as the time of this adjournment would be put in at the end of the one hundred days, so it is a case where there is no loss on either side. I shall vote for the resolution.

MR. WHITE. Mr. President: I move to amend so as to adjourn until the first Monday in January, because we have got Christmas and other holidays coming.

MR. TULLY. I second the motion.

The amendment was lost.

THE SECRETARY read the resolution.

THE PRESIDENT. The question is on the adoption of the resolution.

MR. LARKIN. I wish to correct the gentleman from Alameda. This Convention held that they were not under a law.

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The ayes and noes were demanded by Messrs. Larkin, Huestis, Dean, White, and Evey.

The roll was called, and the resolution adopted by the following vote:

AYES.

Barry,	Grace,	Overton,
Barton,	Gregg,	Pulliam,
Belcher,	Harrison,	Schomp,
Boggs,	Harvey,	Shafter,
Boucher,	Heiskell,	Shurtleff,
Burt,	Hughey,	Stedman,
Campbell,	Johnson,	Steele,
Chapman,	Keyes,	Stevenson,
Charles,	Larkin,	Stuart,
Cross,	Lindow,	Sweasey,
Crouch,	Mansfield,	Swenson,
Doyle,	Martin, of Santa Cruz,	Thompson,
Edgerton,	McCallum,	VanVoorhies,
Estee,	McComas,	Walker, of Tuolumne,
Estey,	McConnell,	Weller,
Farrell,	Moffat,	Wellin,
Fawcett,	Moreland,	Wilson, of Tehama,
Filcher,	Morse,	Wilson, of 1st District,
Garvey,	Noel,	Winans,
Gorman,	Ohleyer,	Mr. President—60.

NOES.

Andrews,	Herrington,	Rolfe,
Ayers,	Hilborn,	Smith, of 4th District,
Beerstecher,	Holmes,	Smith, of San Francisco,
Bell,	Howard,	Soule,
Blackmer,	Huestis,	Swing,
Brown,	Kelley,	Tinnin,
Caples,	Kleine,	Townsend,
Cowden,	Lampson,	Tully,
Davis,	Larue,	Turner,
Dean,	Lewis,	Vacquerel,
Dowling,	McCoy,	Walker, of Marin,
Dudley, of Solano,	Nason,	Waters,
Dunlap,	O'Donnell,	Webster,
Eagon,	O'Sullivan,	West,
Evey,	Porter,	Wickes,
Finney,	Reed,	White,
Freeman,	Reynolds,	Wyatt—55.
Freud,	Rhodes,	
Hale,	Ringgold,	

MR. LARKIN. I change my vote from "no" to "aye," for the purpose of giving notice of a motion to reconsider. I now give notice that, on to-morrow, I will move to reconsider the vote by which the resolution was adopted.

MR. GRACE. Does that apply to a night session this evening?

THE PRESIDENT. Yes, sir.

TEXT-BOOKS.

Mr. O'Sullivan offered the following resolution:

Resolved, That the Superintendent of State Printing be requested to furnish to this Convention an estimate of the cost of composition, paper, and binding of a series of Readers, such as the Pacific Coast Readers, and McGuffey's Series of Readers, the work to be done by the State, under its present system. That he be requested to estimate the cost of the first edition of one thousand, and also the cost of each succeeding thousand.

MR. LARKIN. I move to lay the resolution on the table.

The motion prevailed, on a division, by a vote of 57 ayes to 49 noes.

MR. ESTEE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section eighteen and amendments were under consideration when the committee rose. The gentleman from Los Angeles, Mr. Howard, has the floor.

SPEECH OF MR. HOWARD (CONCLUDED).

MR. HOWARD. Mr. Chairman: Before I pass to the consideration of what I have to say in relation to the nineteenth and twentieth sections, I propose to allude to a point made by the gentleman from Sacramento, on the eighteenth section of this report. He argues that the eighteenth section is unconstitutional, because it attempts to regulate foreign commerce. I do not agree with that position. There is no attempt in the report to regulate foreign commerce. The whole purpose is to regulate the internal commerce of the State and the rivers and harbors of the State, for which State legislation and State government is entirely competent. I have not time, sir, to analyze the decisions of the Supreme Court of the United States; that has been done in a recent work by Mr. Pomeroy, in a very able manner, and which is a book that has commended itself to the approbation of the profession. After giving his close analysis of the cases, he says:

"So far as the decisions of the ultimate tribunal upon constitutional interpretation now stand, the following propositions seem to be established: First, the several States have power to pass laws regulating the internal police of their own territories, which territories include navigable rivers and harbors, as well as unnavigable streams, and the land itself. These police measures are not, in any true sense of the term, regulations of commerce, although they may sometimes have direct reference to shipping, to the condition of harbors, and other instruments by which commerce is carried on, or to the commodities themselves which are the objects of interchange or traffic. They are simply a part of the general system by which each State endeavors to protect the good morals, lives, health, persons, and property of its inhabitants."

The decisions of the Supreme Court of the United States bear him out fully to the effect that the State, through its Legislature, has the right to control its rivers, its harbors, its streams, its internal commerce. It is extraordinary that all the advocates of monopoly on this floor find it necessary to trample down all the rights and powers of the State as they are acknowledged and enforced by the decisions of the Supreme Court of the United States.

This pooling of freights and fares, which the report forbids, between railroads and steamers, when only one party does the carrying, for the purposes of enhancing prices and running off competition, is a most flagitious abuse which calls loudly for reform. It exists to a greater or less extent throughout the Union. Mr. Nimmo, in his report, gives the names of more than twenty railways and steamers in the Southern States, who are united in an extended combination for this purpose. The ring formed by the Central Pacific, the Union Pacific, and the Pacific Mail Steamship Company for this purpose, is well understood by the people of California. It is confessedly an effort to prevent the New York and San Francisco merchants from shipping by the way of Cape Horn. There is a contract between them by which the steamers, as a consideration for allowing the railroad managers to regulate their freights and fares, receives a bonus for every ton of freight and each passenger, which is said to amount to between six hundred thousand and seven hundred thousand dollars a year. Such is the tax which this combination imposes upon the people, production, and commerce of California.

And, now, sir, I proceed to say a word on the pending amendment to this eighteenth section. Mr. Clerk, I will ask you to read the amendment offered by the gentleman from Alameda, Mr. Campbell: "And whenever a railroad corporation shall, for the purpose of competing with any railroad constructed, or in process of construction, lower its rates for transportation of freight from one point to another, it shall not again raise its rates without the consent of governmental authority in which shall be vested the power to regulate fares and freights on railroads, nor shall such other railroad raise its original rates without similar consent."

Now, sir, I have a word to say in regard to what fell from the gentleman from Marin, Mr. Shafter, the other day, in relation to this subject. He says, substantially, that this proposition is offered to enable the people of Los Angeles to go back and to maintain the standard of freights and fares that existed formerly. That is quite a mistake. He alleges the people of Los Angeles have asked here for action of that sort. That is equally unfounded. The people of Los Angeles have asked for nothing. My colleague has offered an amendment which covers the whole case, without any particular reference to Los Angeles. It is the case of Sacramento; it is the case of Marysville; it is the case of Santa Cruz; it is the case of Monterey; it is the case of Santa Barbara; it is the case of Ventura; and the case of San Diego. It seems to me that the gentleman is quite gratuitous when he arraigns here the people of Los Angeles as wanting something in this Constitution for their own particular and peculiar benefit. Again, sir, the gentleman treats this subject as though it were a proposition to engraft something in the Constitution which was improper. Not only that, sir, he assumes that the people of Los Angeles are making a false clamor. In other words, he seems to say that the railroad served them right when it refused to obey the law of the country, and afflicted them with the discrimination which the Railroad Commissioners condemn. That it may appear that the Commissioners have condemned it, I shall ask the Secretary to read from their report a single paragraph which I have marked:

"Quite recently, the active competition between the railroad and steamer lines carrying between San Francisco and Los Angeles resulted in an arrangement for pooling and dividing the earnings of the two lines, at rates of freight, etc., to be agreed on. The Southern Pacific Railroad not having been completed to Los Angeles at the time of the passage of the Act of April third, eighteen hundred and seventy-six, and no tariff of freight or fare adopted over it, the railroad rate between the two cities was not affected by that Act, and remained within the control of the company. Merchandise going by sea had, before January first, eighteen hundred and seventy-six, been taken from steamers' decks (by lighters, via Wilmington, and over the wharf at Santa Monica), and delivered at Los Angeles by the railroad company at schedule rate. Since the pooling arrangement, this rate has been increased, on the suggestion that no charge was then made for the lighterage in the one case or wharfage in the other, and that the increase consists of only a reasonable charge for these two independent services. The merchants of Los Angeles regard this enhancement of the price of transportation as a violation of the sixth section of chapter first of the Act, and we are of the opinion that they are right. At all events, the principle is too important to be allowed to rest on the decision of the railroad company alone. We have, therefore, formally requested a return to the former tariff by the company, and if its directors persist in refusing this, shall feel it our duty to institute legal proceedings to enforce it."

Thus, Mr. President, you will see that the Commissioners say that this Act was illegal, and that they have directed proceedings, or would direct proceedings to be instituted to correct this evil; in other words, to recover the penalties imposed by this Act. They did so direct, but, before the suits could be brought, the railroad came here, passed the Hart bill, as everybody knows, and repealed the Act, and, of course, repealed the penalties and dismissed all the suits that accrued under them. The Act briefly was this: "It shall not be lawful for any of said corporations to increase any rates of freight or passage, or to raise the classification of any species of goods, or to change any rule or instruction to employés, in such a manner as to increase the cost of transportation over and above the rates charged in such tariff, or in use on the

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first day of January, eighteen hundred and seventy-six; provided, nevertheless, that any such railroad company may issue excursion tickets at reduced rates, for special trains between certain places and for a fixed time." And the Act denounces heavy penalties, denounces that it is extortion, declares it unlawful discrimination, and makes it a crime, and the gentleman from Marin will allow me to express some astonishment that a member of the bar of his prominence should stand up here and defend crime, and say that when the railroad commits a crime against the people of a particular locality, that it served them right, and they have no reason to complain. It strikes me that it is an extraordinary position for any friend of the railroad and any member of the bar to occupy on this floor. Now, sir, I understand him to justify the railroad in its combination with the steamer for the purpose of running off competition. If that is his position, sir, I disagree with him altogether. I maintain there is no law for such a position; I say, furthermore, that it is a violation of the Act of eighteen hundred and seventy-six. It is not a case of the railroad endeavoring, by a legitimate running of its own cars, and by the competition created by its own cars, to keep down rates or run off an opposition line of steamers, but it is a case of a railroad buying up steamers, a railroad leasing steamers, or of a railroad combining with steamers for the purpose of buying up wharves, fronts on the ocean, for the purpose of monopolizing the ocean and preventing all competition by sea. If such a practice can be indulged in and defended, then the ocean ceases to become a highway of commerce and the highway of nations. I maintain, therefore, that this amendment is necessary, is proper, and that with it we take from the railroad the means of purchasing and owning steamers, and its absolute control of all transportation without competition, and that there can be no competition with the railway whatever; if it is not adopted, and this is the language substantially of the Railroad Commission, and it is the language of experience, for the Commission says there is no competition, and none can be had with the railroad except by the ocean; and this the railroad has assumed, and is assuming sole control, and does control the steamers and transportation of the ocean—takes property on sea and land. It has a practical monopoly of all transportation in California. If we cannot protect ourselves against this abuse—if it is not the purpose of this Convention to arrest this abuse, we had better adjourn sine die, and go home. I read from a case the other day, which I will again refer to. It states a principle of law in relation to this matter which is sound. It decides that a railroad, being organized for the purpose of transportation by rail, has no right to own or lease steamers; has no right to combine with steamers; has no legal right to do any thing but to transport overland by rail. That also is the law, as stated by Mr. Brice in his work on *ultra vires*, in which he collects the authorities fully, and the decisions of the Supreme Court of the United States. I will read it:

"Where two separate corporations are created to make railroads, they had no right to unite and conduct their business under one management, nor had they a right to establish a steamboat line to run in connection with the railroads."

There is no doubt that a violation of the above principles is such a willful misuser as works a forfeiture of charter. There are several other English cases to the same effect. Does the learned gentleman from Marin intend to defend this practice by the railroads of this State of buying, of owning, steamers, of monopolizing the ocean, and thrusting all competition whatever away? I take it that he does not, because he told us that he was in favor of controlling railways by reasonable regulation. But what does he conceive to be reasonable regulation in connection with this subject? Does he conceive it to be reasonable for a railway thus to put competition out of the way, and thus to monopolize the rivers and the ocean, and thus to hold society in the iron grasp of one monopoly?

Now, sir, as the railroad is a corporation of our own creation, we have a right at least to put our hands upon the railroad, and say, "You shall not practice this abuse." And it is for that reason that the section is eminently necessary and proper, for the result of that practice is clear. Passage is so kept up on the steamer and on the railroad, by this combination with and the regulation between the two, that the passage is so high on the overland train for overland emigrants that it is very seldom that any laborer has saved up money enough to pay his way to this State. I understand that the passage on the overland train from New York to San Francisco or Sacramento is nearly seventy dollars; between sixty and seventy; while the ocean steamers, over which the President of the Central Pacific Company presides, brings Chinamen laborers here for about twenty dollars, and therefore it is that the Federal Government has subsidized the railroad to employ Chinamen; it has subsidized the steamer to bring them, and by arrangement between the two, it holds fares at such a rate that the Chinamen preoccupy the ground. That may be public policy, that may be right to the laborer, that may be right to commerce; but if it is I mistake justice, and I mistake the sentiment of the people of this State. The gentleman from Sacramento defends discrimination by the railroad; he defends the discrimination against which the nineteenth section is aimed; that is, the discrimination as to persons and places, and he reads from the one hundred and sixty-seventh page of Mr. Nimmo, from the report of the Bureau of Internal Commerce. He read a paragraph, but he omits to read the paragraph which precedes it. I shall read it for him, and he will remember that Algernon Sidney, when he was on his trial, said: "If you begin at one place you may prove atheism by the Bible, because in one place it says, 'there is no God;' but if you read further you will find it says 'the fool in his heart hath said there is no God.'" I will ask the Secretary to read that paragraph:

"The discrimination complained of in the Western States relates chiefly to 'local rates,' which are the proper subjects of inquiry and of relief by State authorities. Already the question has received the earnest attention of the Legislatures, of the Courts of justice, of Railroad Commissioners, and of others whose attention has been called to the subject, from duty, from interest, or from the force of personal inclination. Many unjust discriminations with respect to freight rates have undoubtedly been made ignorantly by managers of railroads, from the fact that they had no knowledge of the cost of performing the various classes of service of the roads intrusted to their care. A few able men in this country have investigated the economy of transport by rail, and other important conditions which necessarily exert an influence in determining freight charges. These men have pursued the subject in a thoroughly scientific manner, and have brought to the task great ability and patient research. It is their opinion that many freight tariffs have been framed by railroad managers in violation of economic and commercial principles. This was especially the case during the first twenty-five or thirty years of the history of railroads."

Now, sir, in every paragraph (and I might read others in which Mr. Nimmo speaks of this discrimination) he condemns, in the most marked terms, discrimination between persons, discrimination between places. And he declares that discrimination between places is of the most mischievous character—is a violation of all law and of all justice. He says: "For several years railroads have discriminated to such an extent against the commercial and industrial enterprises of certain cities in this country, that fears have been entertained of the practical confiscation of hundreds of millions of capital invested in productive enterprises. Such a result is not only to be deprecated, but if possible, to be prevented. If such destruction of values should be brought about, either by the voluntary or involuntary action of railroad managers, a doubt might arise in the public mind as to the security of property in all commercial cities."

And therefore it is that this beneficent thing which this coöperative society—as it is termed by the President, this coöperative society, I believe he calls it—has been and is now discriminating between places in a most unauthorized and unjustifiable manner, according to all notions of right and by the rules of commerce. And yet the gentleman from Sacramento sees something in this to admire. It was suggested the other day, rather than stated, that Congress had something to do with the regulation of these freights and fares on the Central Pacific. It was intimated, I think by the learned Chairman of the Judiciary Committee (Mr. Wilson), though he approached it very gingerly, and rebounded from it with commendable prudence. The fact is, that Congress has nothing to do with the freights and fares of the Pacific Railroad, because it has agreed, in accepting the Act of eighteen hundred and sixty-one, and making a grant of subsidy of land and money to these incorporators on the faith of that Act; it has agreed to the seventeenth section of that Act, which says that the State, and the State alone, shall regulate the freights and fares; and I am informed that the railroad was sharp-sighted enough to see it, and that they introduced a bill into the Legislature to change it; that the bill passed both houses of the Legislature, and was vetoed by Governor Low, on the express grounds that the State had that right and ought to preserve it. All that Congress can do on the subject would be to regulate the national fares connected with the road as to the matter of the transportation of the mails, troops, and military stores, and the telegraph, and there its power ceases; for, in the Act of Congress, which gives to Congress the right to alter or amend or repeal the laws of Congress, that right is confined entirely and exclusively to the subsidy granted under the Act of Congress. Therefore it is that Congress has no power on the subject, but it is exclusively a matter for State regulation. It has no power except that it might, with regard to this State, as it can with regard to every State in the Union, regulate freights and fares as to inter-State commerce. It might pass a law regulating freights and fares, but not in consequence of the Act of Congress of eighteen hundred and sixty-two, but in the exercise of its power under the Federal Constitution, to regulate commerce between the States. That is the whole extent of its power; and I imagine that no lawyer who looks at it seriously will maintain the reverse.

Mr. Chairman, if we do not create a Commission for the regulation of freights and fares, we are bound to deal with what the Act of eighteen hundred and sixty-one declares we may control and may regulate, the maximum of freights and fares. I understand the gentleman from Marin to say that we ought not to regulate freights and fares by a Commission, because, he maintained, that while the people cannot find three honest men in the whole State to elect, that they may easily find an honest tribunal in a Legislature elected by the people. That is his proposition. Three honest men among all the people of the State cannot be found, and yet the Legislature may become a disinterested, an intelligent, and honest power of regulation. It seems to me that that proposition carries upon its face its own refutation, according to his own argument, because he admits that the Legislatures are no better nor worse than the people.

If we come to the regulation of freights and fares here, what is the rule? What ought we to do? What is the first element in freights and fares? It is stated by Mr. Nimmo, in this very able report, at page thirty, he says it is: "First, gradients; second, cost of roads; third, cost of labor and materials; fourth, cost of fuel; fifth, effects of frost and snow; sixth, volume of traffic; seventh, distance; eighth, alignment of road; ninth, distinction as to bulk or package traffic; tenth, regularity of movement; eleventh, nature of commodities, as to their being perishable or fragile; twelfth, speed; thirteenth, quantity transported of one kind; fourteenth, dead weight; fifteenth, maintenance of road; sixteenth, skill in management."

These, he says, are the elements. And now, as to the cost of the road; and the gentleman from Marin makes a statement, with which I concur, that in point of law it makes no difference whether the subsidies were given or not to the road; that if given, it is as much their property as though it had been put in by themselves. I admit that this is so; but another element is this: all the books hold that when we come to estimate a thing for dividends and for profits—that the railroad has no

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right to anything but fair dividends—the cost of the road is an element to be counted. And when it comes to a question of profits, if this road has been built by gratuities from the Government, as we know it has, to a large extent, with gratuities and subsidies from the Federal Government, with gratuities and subsidies from the State Government, with gratuities and subsidies from municipalities, then it is that we have a right in controlling the profits to look at the cost. I am for appointing a Commission, for giving them time for framing them, time to investigate and visit the localities that complain, and to adjust the rates. And Mr. Adams says, and Mr. Nimmo, substantially the same thing, that wherever it has been done, upon the suggestion of the Commissioners to the railroad that there is an abuse, and that some power will reach for them if they don't correct it, that they have always corrected it. Now, sir, I have already read a letter from one of the largest shippers of the country, which shows what their charges are; and now, sir, let us see what they are in other countries, and in other States, for from that we may approximate at least what would be a fair charge here. It appeared from the letter of a shipper, which I have already referred to, that on some articles of commerce nearly two hundred dollars per ton, through freight, is charged by the Central Pacific. These charges are more than a fair compensation, and result in larger profits than the railroad should receive. The railways have divided large profits, as a general thing, notwithstanding the late commercial revulsion. It is said in a recent issue of the Banker's Magazine, a publication of high authority:

"If railroads built with greenbacks worth only fifty per cent. in coin, are now worth fifty per cent. of their greenback cost, they are worth precisely what they cost. On the whole, admitting that the direct profits of railroads to their owners are less conspicuously clear than their effects in advancing the general interests of the country, and while admitting, also, that these profits have been in some instances inequitably divided, and in other cases diverted into unworthy channels, we believe that in the aggregate, and after allowing for all losses, they much exceed the average rate of profits upon their investment."

The great loss of the railways, whenever any has occurred, has arisen mainly from the fact that they have been run in the interest of the managers rather than that of the stockholders. It appears from Poor's Manual, that the very roads which, by reducing the wages of the operatives, produced the great strike of eighteen hundred and seventy-seven, were at that time dividing a profit of about seven per cent. The managers endeavored to compensate themselves for a shrinking of business by a reduction of the wages of the employés. It was right and commendable in the State and Federal Government to put down these riots at all hazards, because the true remedy in this country for all political evils is the ballot box, and not the torch. Still the course of the railways can no more be defended than that of the mobs. What are sources then from which a fair tariff of freights and fares may be derived? A learned engineer in New York, writing for the November Scribner for eighteen hundred and seventy-seven, says:

"Before the war, the cost of movement on leading main lines was about a cent and a third per ton per mile. From eighteen hundred and sixty to eighteen hundred and seventy, it was a cent and a half. In view of the advance of labor and materials, this was practically a reduction. Since that date, the cost has gradually decreased. In eighteen hundred and seventy-five, on the trunk lines, the rate averaged about eight mills, and in eighteen hundred and seventy-six, only six—the Pennsylvania road reporting under six, and the Philadelphia and Erie at five, the New York Central being stated at seven, and the Lake Shore at five and a half. The Baltimore and Ohio furnish no data on this subject. It will be remembered, moreover, that the above applies to the whole tonnage, both through and local, and that the former costs less to move than the latter, being exempt from large terminal expenses—cars not fully loaded, trains not filled up, and other unfavorable conditions that affect the purely local trade. It is the opinion of the managers of the New York Central and Pennsylvania roads that the net cost of through freight will not exceed four mills."

Now, sir, that is the statement of freights and fares as it then existed. It is true that within the last two months they have made another combination and have run them up, it is said by some, fifty per cent. Mr. Grosvenor, writing again on this subject in eighteen hundred and seventy-seven, in the International Review for September, eighteen hundred and seventy-seven, page five hundred and ninety-three, says—it is an article to prove that competition has run down rates too low, and with that I am inclined to agree; he says:

"The average receipts in cents and decimals for all freight per ton per mile during each of the years named, on six roads which moved in eighteen hundred and sixty, and now move, a very large proportion of all freight between the West and the East, have been as follows:

	1860.	1873.	1876.
New York Central	2.06	1.572	1.051
Lake Shore	2 02	1.335	.817
Michigan Central	1.97	1.57	1.03
Erie	1.84	1.453	1.09
Pennsylvania	2.06	1.415	.892
Pittsburgh, Ft. W and C	1.90	1.414	.928
Average of all	1.96	1.490	.968

"These roads, not only on grain, and not only on through freight, but on all freight business done, have reduced their average charges per ton per mile, more than fifty per cent. since eighteen hundred and sixty, and more than one half of that reduction has been made within the past four years. On most of the other important roads the reduction has been fully as great."

Taking the official data for a basis, it is true that the railroads of California are charging two or three times as much as the trunk railroads. Now, it seems to me, that it would not be difficult, certainly, for the Commission to take the data, to see what is the average charge in other States, to see what ought to be the increase here, for there ought to be some increase, to see how much that increase should be, and to form a maximum of freights and fares.

There has been a great deal of eulogy here upon the railroad—of what it has done for the country, of how much it has built it up, of how much it is doing for the commerce of the State, of how much it has benefited San Francisco. That may have been true to some extent, but it is not true as to present operations. On the contrary, it is well known that for the last twelve months the course of that railroad, by its extravagant charges for freight and passage, its unwise conflicts with other transportation companies, has driven immigration from Southern California to Oregon. It is now, by the extravagant freights and fares, driving commerce from California, and, in the place of attracting the whole commerce of the region of Arizona, and especially the northern part of it, which is the richest portion of it in minerals, to San Francisco, by their extravagant charges they have driven it, and are every day driving it from San Francisco. The merchants of San Francisco all know that, and yet they are under such a system of terrorism that they dare not complain. I conversed, just before I left home, with several merchants from Prescott, and they all concurred in the statement that it was in their interests, and they were actually pursuing that course of bringing freight from the East on the Denver road to points on the road nearest to them, and then transporting them by wagon to Prescott, and to other points in Arizona; and if the present policy of the railroad prevails, it will not be twelve months before nine tenths of that trade which belongs legitimately and fairly to San Francisco, will be driven from it. There are two sides to the pretended benefits of this monopoly. It is not a one sided thing at all, and if something is not done to control the freights and fares policy on that road, and done speedily, all the trade of Arizona and of Sonora, and of Chihuahua, which should be done in San Francisco, will go to Chicago and other places. Yet the gentleman from Sacramento says that competition is a bad thing, that consolidation is a beneficent thing, and that discrimination is a wise and good thing.

It is contended by some gentlemen that it is wiser to leave this subject to the Courts than to the Commission. I submit it is too large a question for the Courts, and that they have no time to study the subject sufficiently to control it. An English writer in the Fortnightly, to whom I have already referred, says:

"The power to adjust has been delegated to Courts of law, instead of some tribunal possessing practical acquaintance with the subject. Upon this point the following is the view of Lord Campbell, expressed during a debate in the House of Lords on the Canal and Railway Tariff Act of eighteen hundred and fifty-four: They were to form a just judgment on all matters of complaint relating to railway management that might come before them, and they were to lay down a code of regulations for the government of railways. The Judges, and himself among them, felt themselves incompetent to decide on these matters."

The writer continues: "The question of resorting to law with a great and powerful railway company has been far too formidable a one to be taken in hand by any single individual, and, as a result, grievances and over-charges have been submitted to rather than fight a battle with sides so unequally balanced."

The discussions in Parliament in eighteen hundred and fifty-four led to an alteration of the law in that country, and the creation of a Commission, a special tribunal for the regulation of transportation companies. Section fifteen of the Act of Parliament of eighteen hundred and seventy-three provides: "The Commissioners shall have power to hear and determine any question or dispute which may arise with respect to the terminal charges of any railway company, when such charges have not been fixed by any Act of Parliament, and to decide what is a reasonable sum to be paid to any company for loading and unloading, covering collection, delivery, and other services of a like nature. Any decision of the Commissioners under this section shall be binding on all Courts in all legal pleadings whatever."

The Act further provides: "Where a railway company use, maintain, or work, or are a party to an arrangement for using, maintaining, or working, steam vessels, for the purpose of carrying on a communication between any towns or ports, the provisions of this section shall extend to such steam vessels and to the traffic carried thereby."

"Section 12. Subject to the provisions in the last preceding section contained, the Commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly."

The English experience on the subject, and the present English law, is in favor of a Commission.

I owe an apology to the Convention for detaining it for so long a time. The magnitude of the subject must be my excuse. Gentlemen of the Convention, the country expects, and has a right to look to us for reformation on the subject of railways and transportation companies. Nelson placed at the masthead of his ship, at the battle of Trafalgar, "England expects every man to do his duty." The people of California, on this great and vital question, expects every member of this Convention to do his duty, according to his best judgment and his conscience.

SPEECH OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: In the consideration of this subject, it seems to me, with due deference to the gentlemen who have spoken against the report of the committee, that with all a web of fallacies has been spun around this subject. Corporations have been considered as natural or private persons, and their rights and duties

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tested in the crucible of private rights and duties. Now, to me, Mr. Chairman, this is simply a fallacy. Corporations stand upon a wholly different footing than that of natural, private persons, and their rights and duties are wholly different. It seems to me proper—as it has been stated here that the regulation of corporations would be equivalent to confiscation, that it would be an interference with the rights of property, that it is contrary to the spirit of our institutions, and contrary to the spirit of the age—to examine briefly into the subject of corporations.

First, Mr. Chairman, I will call the attention of the committee to the language of Chief Justice Marshall, in the celebrated Darmouth College cases, in which the Chief Justice, in describing a corporation, uses the following language:

"A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly or as incidental to its very existence."

I call the attention of the committee particularly to the effect of the words of the Chief Justice in saying that it is a mere creature of law. That it possesses only those powers which the charter of its creation confers upon it. And I propose to show what the charter of creation of the existing corporations have conferred upon them in the State of California, and what rights the people have to regulate these existing corporations. It seems to be necessary to do this to meet and controvert the allegation that is flung into our face repeatedly, that we intend to confiscate this property; that we are interfering with the rights of property.

I also call attention to Field upon Corporations, in which he says: "The power to confer corporate franchises and privileges has always been considered as vested in the sovereign authority of the State. It is an act of sovereignty." In section seventeen of the same work the author says: "The public benefit to be derived is the consideration on the part of the State for the creation of private corporations. The motive of the sovereign creating it is supposed to be some good that the public will derive from it. This advantage has been considered sufficient to bring their creation, by the Legislature, within the scope of their general powers to legislate for the public benefit, and it seems now to be universally recognized."

It is the public benefit that is to be derived that is the consideration on the part of the State for the creation of private corporations.

MR. REYNOLDS. Mr. Chairman: I am very sorry to have to refer to it, but it is very unkind of the gentleman to interrupt these gentlemen in the lobby here who want to converse. His speech gives them a great deal of trouble.

MR. BEERSTECHER. Mr. Chairman: I further call attention to section twenty-eight of Field upon Corporations. This work of Mr. Field is the latest work upon the subject of corporations published in the United States, and it is recognized authority upon the subject. He says in section twenty-eight:

"A charter, or act of incorporation, for private purposes and personal objects, if accepted, becomes a contract between the parties accepting and the State, and an offer of corporate privileges, on one side, must be accepted on the other, in order to give the contract full force and virtue."

In section thirty-one of the same work, he says:

"If a charter is offered, it is only necessary, as a general rule, that it be accepted by a majority of the persons mentioned as corporators. But it must, in all cases, if accepted, be taken unconditionally; and by accepting the privileges conferred, the corporators will be required to perform the conditions imposed by it. Nor can the corporators claim the benefits of the charter unless they perform all the precedent conditions required by it in order to constitute the corporation. These conditions precedent are anything which, by the express provisions of the charter or Act, are required to be performed by the persons claiming the benefit of it, as a preliminary to incorporation, or the foundation for the exercise of the powers and privileges of the grant."

In section thirty-three he says:

"Where persons proceed to incorporate under general statutes enacted for this purpose, the signing of the preliminary articles of association, or the certificate required by the statute, and a compliance generally with the requirements of the law, would undoubtedly be deemed an acceptance of the grant and the conditions of it."

But I propose, Mr. Chairman and gentlemen of the committee, to show to you that the Central Pacific Railroad Company have, by a writing under the hands of their directors and signed by the President and Secretary of that company, directly accepted the provisions of the Constitution of this State and the statutes in force at that time. I call attention to section thirty-one of article four of the Constitution of this State:

"Corporations may be formed under general laws, but shall not be created by special Act except for municipal purposes. All general laws and special Acts passed pursuant to this section may be altered from time to time or repealed."

The corporations in this State are therefore formed under general laws, and those laws, by the organic law of the land, are subject to alteration or repeal, and every corporation accepting a corporate charter in this State, accepts it under this constitutional provision, and therefore its charter is subject to alteration or repeal. It is in nowise an unlawful interference. It is in nowise an unjustice on the part of the State if they do alter, repeal, or change the charters of these companies. Because the law in existence at the time the contract is entered into becomes a part of the contract. And every man and every person who is bound by that contract is bound by the law in existence at that time, and has no right to complain.

Mr. Chairman, I hold here a copy of the acceptance of the Act of the Legislature of the State of California by the Central Pacific Railroad Company, filed in the office of the Secretary of State on the twenty-sixth of November, eighteen hundred and sixty-two. I read from that document:

Know all men by these presents: That the Central Pacific Railroad Company of California, a corporation duly incorporated under and in pursuance of the laws of the State of California, by filing their articles of association in the office of the Secretary of State, of the said State of California, on the twenty-eighth day of June, eighteen hundred and sixty-one, hereby accepts of the Act of the Legislature of said State, entitled "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," approved May twentieth, eighteen hundred and sixty-one, and of all the provisions, terms, stipulations, and conditions thereof, and also of all other Acts amendatory of said Act, passed since said Act, and which are now in force.

In testimony whereof, the Directors of said company have hereunto signed their names, attested by the President and Secretary of said company, and have also affixed hereto the corporate seal of said company, this twenty-sixth day of November, eighteen hundred and sixty-two.

LELAND STANFORD,
JAMES BAILEY,
CHARLES MARSH,
C. P. HUNTINGTON,
C. CROCKER,
D. W STRONG,
MARK HOPKINS,
THEO. D. JUDAH,
JOHN F. MORSE,
} Directors of the Central Pacific Railroad Company of California.

Attested by:
LELAND STANFORD, President of the Central Pacific Railroad Company.
JAMES BAILEY, Secretary of the Central Pacific Railroad Company.

The Act of the Legislature under which the Central Pacific Railroad Company was incorporated, and to which reference is had in the instrument I have just read, contains the following regulation. After stating what powers are conferred upon any company incorporating under this Act, it contains the following regulation: Subdivision eleven, of section seventeen, says that every railroad corporation shall have power "to regulate the force and speed of their locomotives, cars, trains, or other machinery used and employed on their road, and to establish, execute, and enforce all needful and proper rules and regulations, fully and completely, for the management of its business transactions, usual and proper for railroad companies." Leaving the matter with the people—with the Legislature. Leaving the matter to be prescribed by law. This law was in existence at the time that the Central Pacific Railroad Company went into existence. It was in existence at the time every railroad doing business in the State of California to-day went into existence. It has not been altered or modified, to any extent, in the Codes in force to-day. And the people, at all times, retained, in accordance with the constitutional clause that I have read, and in accordance with subdivision eleven of section seventeen of the Act of the Legislature of eighteen hundred and sixty-one, the right to prescribe how trains should be run upon the roads in the State of California, and how much the railroad companies should be entitled to charge for the carriage of freight and passengers. I again call attention to Field on Corporations, in which he speaks of the subject of legislative control:

"SEC. 43. The general principle which allows legislation in these cases, on the ground of the public nature of the property or business in which the person is engaged, would be particularly applicable to common carriers; and especially to that class of them which operates our railroads. Their business is particularly 'affected with a public interest.' Their property is employed in a manner that directly affects the body of the people. The corporate franchise is granted, and extraordinary powers conferred on such corporations, in order that they may the better serve the public in the capacity of common carriers; they are certainly engaged in a public employment which affects the public interest, and are within the reasoning of that class of cases where the right of legislative control and regulation has uniformly been recognized."

I call attention to the opinion of the Attorney-General of Wisconsin, as reported in the Ninth American Law Review, page sixty-three, in which he says:

"The corporations cannot justly complain of this. They have accepted their charters subject to this express reservation, and, having so accepted, they hold them upon the faith of the State only, taking care to deserve its favor or command its justice by the manner in which they exercise the power conferred."

I also call attention to the opinion of the Court in the Wisconsin Granger cases, reported on page seventy of the same volume, in which they decided that the charters of railroad corporations, under the Constitution of Wisconsin, which is a similar one to that which I have read in the Constitution of California.

"That the charters of railroad corporations under the Constitution of Wisconsin may be altered or repealed by the Legislature at any time after their passage. In legal effect, therefore, there was incorporated in all the numerous grants under which the Chicago and Northwestern Railway Company now claims its rights of franchise and property in this State, the foregoing condition contained in the Constitution. It became a part, by operation of law, of every contract or mortgage made by the company or by any of its numerous predecessors under which it claims. All share and bondholders took their stock or other securities subject to this paramount condition, and of which they in law had notice. If the corporation, by making a contract or a deed of trust of its property, could clothe its creditors 'with an absolute, unchangeable right, it would enable the corporation by its own act to abrogate one of the provisions of the fundamental law of the State."

It has been argued here, Mr. Chairman, that if we attempt to throw this matter into the hands of the Legislature, or if we attempt to establish a Commission here, that we will be confiscating property; that we will be prejudicing the rights of third parties; of the innocent purchasers of the stocks of the company; of the holders of the mortgage bonds that have been issued; but, as aptly said by the United States Supreme Court and the opinion which I have just read, this constitutional provision and this statute which was in force at the time the company took its charter

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from the State, was a part of the contract and entered into that contract, and every man that took a mortgage, and every individual that took a bond, and every individual who took a dollar's worth of stock, knew that the mortgage, bond, and stock were subject to the constitutional provision and subject to the law that existed at that time, because that law and that Constitution form a part of the contract, and, therefore, when we say to these men, "We desire to change the laws under which you exist," they say to us that you cannot do it, because it is an injustice, we reply to them that, "It is a part of the contract that you voluntarily entered into." And can a man groan at the bond that he himself signed?

It has been said that we propose to confiscate—that we have no right to regulate. We do not propose to confiscate, and we have the right to regulate. These men, if they had private property, if they had individual property, they saw fit to take that individual and private property and subject it to the regulations of the public. No one compelled any of the railroad magnates of this State to turn their private property into railroad property. But when a man takes his private money, his private property, and places it into a certain institution and into a certain position, then he cannot complain if the law steps in and places regulations upon him. No one asked these men to take their money and build railroads, and when they voluntarily built these railroads they are subject to the laws of this State that control railroads; and they have got nothing to grumble at.

I have heard gentlemen state upon this floor that these corporations were beneficent institutions; that they were charitable institutions, and that they never were created for sordid or selfish purposes. Mr. Chairman, I deny the assertion. And I do say to the gentlemen of this committee, that all these corporations, be they railroad or be they private corporations, were formed by the corporations for the purpose, not of being charitable to the public, not of benefiting the public, but for the purpose of benefiting the individuals that incorporate them; for the purpose of making money; for the purpose of placing money into the pockets of the men that manipulate these concerns. But it has been said that they were not made for this purpose, and that they should not be looked upon as having been created for any private or selfish purpose. The argument seems to me ridiculous in the extreme. Every one knows that they are a money-making enterprise; that these men who incorporated those institutions incorporated them with the express design and for the express purpose of increasing their private fortunes.

Mr. Chairman, without entering into the subject as to where and how much of the corporation property in this State—as to when and how much of the corporation property of this State—came from the State, it would not be difficult, if desired, to establish the fact that not only the authority to associate in corporations, but also the means by which these California corporations have been created, have been called into existence, and have been carried on, came from the State. But, as a gentleman on the other side of the house said, it is not for us, at this late day, to say that it was not proper that this money and these donations should be given to those companies. All I desire to say upon that subject is, it only again proves to us how a child can be ungrateful to its parent, as these corporations have become ungrateful to the people who contributed towards their establishment.

I read from the opinion of Breese, Chief Justice, in the case of Munn vs. The People, decided in the Supreme Court of Illinois. It was argued that it would deprive them of anticipated profits, and that is the argument, and the only argument, that can be used on the other side; what they expect to make by the monopolies of these corporations. The Judge says:

"Anticipated profits are not, and cannot, be held and regarded as property in the ownership or possession of him who owns the article out of which profits are expected to flow. The property is one thing, and remains untouched—the profits are not *in esse*, and cannot be claimed as property."

We do not desire to confiscate by these provisions, but we desire to regulate, and we merely regulate the property; and the Chief Justice of Illinois, touching upon that subject, says that it is not confiscation of property, because contemplated profits which are not yet in existence cannot be regarded as property. He continues:

"When it is said one is deprived of his property, the understanding is, it has been taken away from him; he is divested of title and possession. This provision in the Bill of Rights has never been so construed by the Courts of any State whose Constitution has such a provision, as to deny to the Legislature the power to make all needful rules and regulations respecting the use and enjoyment of property."

I call attention to page ten of the report of the Commissioners of Transportation of this State, commencing at section twenty-two:

"Over the great plains which form the valley of the Mississippi River, a network of railroads is spread, affording various means of transit between any given points, and the whole are in communication with the great seaports by five great trunk lines of railroad, as well as the Erie Canal and the Mississippi River. No combination of so many interests as these can entirely suppress competition, for even if prices be agreed on, it will still exist in the effort of each party to secure the greater share of business by superior facilities, greater dispatch, and the like. Combinations, too, so extensive in their ramifications, break down of their own weight, and are succeeded uniformly by periods of active competition. Local interests and the competition of the seaboard cities for the trade of the great West, conduce, by increasing terminal and shipping facilities, to the same result. Here, our condition is quite different. The great interior valley of the State, extending from the Oregon line to the Tulare Lakes, forms a single geographical feature, communicating with the sea by the Sacramento and San Joaquin Rivers, and by the roads controlled by the Central Pacific Company. The Valleys of Los Angeles, of San José, of Napa, Petaluma, Russian River, etc., have each its separate railroad to the seaport. None of these various lines, by any possibility, compete with the other. No reduction of prices, not even free transportation on one of them, would have any necessary effect in reducing prices on the others. The only competition to which our railroads are subject, is such as may arise on the ocean, or the interior waters of the State, and the railroad companies have become the owners or acquired control of the steamer lines which navigate these. These circumstances, while they increase the difficulties of the question in our State, render all the more necessary a constant and vigilant supervision of the management of the corporations which practically enjoy a monopoly of transportation business of this State.

"Among all civilized nations the construction, supervision, and care of highways has, until the beginning of the present century, been exclusively an affair of government. The extent of civilization of any country has been indicated by the character of its roads. The most striking and characteristic monument of the civilization and power of the Roman Empire, that which distinguished it from that of the Egyptians, Assyrians, and Greeks, was its great system of highways, 'marvels of conception and execution, which are still preserved, and which, even at the present day, traverse all those parts of Europe that acknowledged the sway of the Roman Emperors.' To devolve the construction of public roads upon private corporations is a modern idea, which first found expression in the creation of turnpikes, and afterwards, with the progress of invention, in railroads. The latter were at first designed to be operated as turnpikes are, every one putting on his own conveyance and paying a toll to the owners for the use of the road. Afterwards, from the advantage of a peculiar form of carriage, and more especially from the adoption of steam as a motor, it came about that the owners of the road first supplied the moving power, and presently became themselves the carriers, and, finally, the exclusive carriers over them. Yet the traditional policy of confining the grant of such franchises to corporations (over which, as creations of positive law, the control of the sovereign was complete), illustrates the proposition that they have ever been regarded as public highways, and designed to be kept entirely within the control of the government.

"The power of the State over corporations of its own creation is undoubted, and, for all practical purposes, unlimited; for, having created, it can destroy them; and, having the power to destroy, it may impose, as conditions of their continued existence, such terms as it sees fit. If, therefore, abuses have grown up in the railroad system, it is in the power of the Legislature to reform them; provided any form of enactment capable of expression in general language, any general rule, can be made adequate to the purpose."

Again, I call attention to the decision of the Supreme Court in the case of Munn vs. The People, upon appeal in that case. This case was a suit brought by Munn and others, to restrain the State from interfering with the regulation of the rates of storage in the warehouses of the plaintiffs. Now these warehouses were private buildings. They were not built under any charter of the State. They were private buildings, built by private capital—entirely a private enterprise—and yet the State of Illinois undertook to regulate this private enterprise not having the relations of the railroad toward the people of that State. As the Supreme Court of the United States held that it was perfectly competent for the State to control the rates to be charged in the warehouses, so the Supreme Court of the United States sustained the decision of the Supreme Court of the State of Illinois. And in sustaining that decision the Chief Justice, in giving the opinion of the Court, made use of the following language:

"It matters not in this case that these plaintiffs in error had built their warehouses and established their business before the regulations complained of were adopted. What they did was from the beginning subject to the power of the body politic to require them to conform to such regulations as might be established by the proper authorities for the common good. They entered upon their business and provided themselves with the means to carry it on subject to this condition. If they did not wish to submit themselves to such interference, they should not have clothed the public with an interest in their concerns."

And that is the secret of the whole matter. If these owners of corporation property do not desire to have it controlled by the public, then, in the words of the Chief Justice, they should not have clothed the public with an interest in their property, which they did. And although it has been claimed that these were new theories; that they were startling theories; that they were theories first advanced and carried beyond anything that has existed heretofore; and as it has been claimed that certain members having seats upon this floor are given to the advancement of startling theories having no foundation, I desire to call attention to section forty-one of Field upon Corporations:

"The learned Chief Justice, in delivering the opinion of the Court in this case, observes: 'Looking, then, to the common law, from whence came the right which the Constitution protects, we find that when private property is affected with a public interest it ceases to be *juris privati* only.' This was said by Lord Chief Justice Hale more than two hundred years ago, and has been accepted, without objection, as an essential element of the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, and to the extent of the interest thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to the control."

Consequently, this doctrine does not seem to be an innovation. It does not seem to be something that was first brought out in the Constitutional Convention of this State, but, as the authority says, quoting from Chief Justice Hale, who delivered a decision upon this subject, and perhaps numbers of subjects of this nature, over two hundred years ago,

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he held that when private property was put into certain positions the public had an interest in that property, and had a right to control the property. I call attention to section forty-six of the report of the Railroad Commissioners:

"On the whole, therefore, while we think the public complaint as to existing railroad charges well founded as to some of the roads, we are forced to conclude that a general law classifying merchandise and prescribing rates of freight thereon, is not, at present, a practicable remedy for the evil. It is also to be considered that such a law could not do more than prescribe a maximum rate on each class of freight. Embracing as it must an almost unlimited variety of commodities, it is not within the range of probability that it should fail to operate harshly upon some of the roads or parties affected, unless the maximum were left so high as to be ineffectual as a restraint upon charges. Hence, if enacted, there could be no hope of its permanence. At every succeeding session, the Legislature would be wearied with applications to change the classification of this or that commodity, or to establish new classes of unenumerated ones, or to alter rates. Amendments to the Freight and Fare Act would recur annually in the statute book with the regularity of amendments to the Practice Act."

The Commissioners also say, in section sixty-three:

"Experience has so fully shown the advantages of requiring the business of great corporations, which enjoy practical monopolies, to be done under public inspection, and the vast influence of public opinion on their action, that there is good ground to hope that the mere public disclosure of all the facts bearing on the question, would lead them to meet, by voluntary concessions, the just demands of an enlightened public opinion.

"Before concluding the consideration of rates of freights, the subject of competition calls for some remarks. Without seeking to depreciate the great benefits derived from the construction of railroads, one evil, incident to their construction, which cannot be denied, is their tendency to destroy all other means of communication, especially in a new and sparsely settled country. The almost unlimited capacity of the railroad, its superior speed, safety, and punctuality, give it a natural preference over all other modes of communication for certain purposes. The passengers, to whom time is always important, invariably prefer it, and the stage coach infallibly disappears on its construction. So, also, does the old-fashioned carrier's wagon, which cannot possibly compete with it in price and speed. So far, its operation in displacing previous modes of conveyance is normal, and consequently beneficial to the public. But the greater cheapness of water-borne freights, especially over natural waters, secures a preference to it even over the railroad for many purposes, and this incidently tends to keep down railroad rates. This natural and healthy competition, however, the railroad managers invariably seek to destroy.

"The history of all competing lines of transportation is nearly, if not quite, uniform. It commences with a reduction of prices by the railroad company, responded to in the same way by the other party, and followed up on both sides until rates are reached which resolve the contest into a single question—which party has the longer purse? When that point is reached, the railroad, which, once constructed, is as much a permanent feature in the geography of the country as a river, buys off the opposition line, and prices are raised to a point sufficiently high to indemnify the company for its previous concessions, for which, probably, indemnity has already been found in the augmentation of charges to points not reached by the water line. As the organization of transportation lines by water necessarily calls for the outlay of considerable capital, new parties are little likely to recommence the enterprise after the old line, with established connections and trained employés, has been fairly beaten off the route, and thus the railroad secures an absolute monopoly of the carriage, even between points possessing navigable water routes, and at higher prices than would be charged over the latter. In this way the steamers which formerly navigated the interior waters of the State have passed into the possession or control of railroad companies, and recently the steamers plying on the coast have been compelled, by the low, and evidently losing rates of the Southern Pacific Road, to come into an arrangement to pool their earnings with that road.

"Now, it is no part of the normal functions of a railroad to destroy other means of transportation, or supersede their use, *except so far as it is permanently more advantageous or cheaper than they.* That in the hands of private owners and under the spur of individual gain it does so, is one of the fruits of the system of committing to private hands that which is a natural function of government.

"Such proceedings as we have adverted to are a public evil. They affect vitally the interests of whole communities, and lead to the decay of flourishing interior towns, and this without permanently cheapening the cost of transportation to producers or benefiting any one, except the owners of the railroad. If legislation can prevent them, they should be prevented.

"It is, however, vain to denounce as illegal the contracts by which they are effected, for evasion of such enactments is easy. We believe it can best be accomplished by laws which will require the management of the railroads to be as permanent in its character as their structure is, and forbid, without the consent of the public authorities, the retraction of any concession once made by them to the public. This rule has the advantage of being just in itself, easily enforced, and in harmony with the rules that govern the management of such enterprise in the hands of enlightened self interest."

MR. NOEL. I would suggest that there is no quorum present, and move a call of the house.

THE CHAIRMAN. It cannot be done. There is a gentleman on the floor.

MR. BEERSTECHER. Mr. Chairman: I do not desire to weary the house, and I will simply call attention briefly in review to the fact that there is a constitutional provision; that there is a statute law enacted under that constitutional provision; that these railroad companies all accepted their charters subject to the organic constitutional law, and subject to the statute in force at that time; that the Central Pacific Railroad Company expressly filed an acceptance of the terms of the statute, and agreed to conform to the terms of the statute; that the Courts have uniformly held, even in the absence of any statute of that character, that the people had the right to control enterprises of this character. As to the feasibility and as to the propriety of the control, there can be no doubt. If the members will take the trouble of reading the report of the Transportation Commissioners—and I would state that I am positive that the Transportation Commissioners were in nowise the enemies of the railroad company, and that they represented truly and without exaggeration the condition of this State—they will see that if the Legislature attempts to establish a maximum rate of fares and freight, that it will operate unjustly; that it will be either too high or too low; and that it will be necessary to amend these rates of fares and freight, as established by the Legislature, continually. It seems to me that it will be proper to establish a Commission. The Commission, as it stands now, I think has too much power vested in it; but I understand that it is intended that the section will be modified, and if the section is modified to some extent I certainly propose to vote for it, because in no other way can railroads be justly regulated than through the medium of a Commission which will be in session at all times; a Commission composed of men who can travel over these railroads; who can personally inspect these grievances; who can daily—yea, hourly—change the rates of freight, which the Legislature can never do. As to vesting the power in the hands of three men, I believe that the three men would more faithfully execute and more honestly carry out the will of the people, would be more equitable and honest between the railroads and the people of this State, than what the Legislature possibly can be. I do not desire to throw any reflection upon the Legislature; not at all. But these men come here and they expect to remain but a short time; they desire to conclude their business in as few days as possible, and to go again to their homes. One man comes from the northern part of the State, another from the southern part of the State, and another from the central part of the State, and each one of them has got an axe to grind. Now the man from the north says to the man from the south, we will unite our interests, but you must vote upon the railroad bill in order to do it. And it is a well known fact that many of these local axes have been ground upon the railroad bills as the only means of uniting men, saying: "If you vote for this railroad bill we will vote for your pet hobby that you have brought down from your district." No money need be used in these matters at all, but we know that the Legislature of this State, and that the Legislature of every State in the Union, has been paralyzed and been unable to cope with the great powers of these corporations.

It seems to me that the report of the committee is eminently a just report; that it is a report that should be promptly acted upon, and should be carried through this Convention and become a part of the new Constitution. I believe in the three Commissioners, but I believe that the section should be somewhat modified, and I think that when we reach section twenty it will be modified. But so far as the justice, and so far as the legality of the control is concerned, there can be no manner of doubt, because these men, these individuals composing these companies, entered into a specific contract, and if we control them we are only carrying out our part of the contract, and there is no injustice and there is no confiscation in it at all.

MR. O'DONNELL. Mr. Chairman: I desire——

MR. ESTEE. Will the gentleman give way to a motion that the committee rise so that we can take a recess until seven o'clock. The gentleman can then claim the floor.

MR. O'DONNELL. I understand there is a motion to reconsider. I would like to know whether there will be a session to-night, Mr. Chairman. I would like to know the decision in regard to the night session, whether we are to meet here to-night.

THE CHAIRMAN. The committee adopted a resolution to hold the next session of this body at seven o'clock this evening, and when we adjourn it will be to meet at seven o'clock. The notice does not suspend the operation of the resolution.

MR. O'DONNELL. Then, under those circumstances, I will give way until to-night.

MR. NOEL. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress, and ask leave to sit again.

The Convention, at four o'clock and forty-five minutes P. M., took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention reassembled at seven o'clock, P. M., President Hoge in the chair.

Roll called and quorum present.

THE RAILROAD COMMISSION.

MR. ESTEE. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

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IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on section eighteen and amendments.

SPEECH OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: It is with a good deal of hesitation that I arise to discuss the questions which are presented here in a general way for our consideration, particularly after having listened to the able arguments that have been presented in this committee, both pro and con. And certainly I cannot hope to present to the committee arguments as scholastic, as fantastic, perhaps, as those to which we have listened; but I desire to say a few words as to the reasons that will govern me, and induce me to vote as I shall upon the propositions which are now before the committee. I must confess I have been both edified and instructed by the arguments presented here. It has been a feast to me in many respects, and in some respects it has exceeded my expectations. In fact, I believe some of the arguments have finished my education in one direction at least. It has been growing on me during my five years residence in this State, that this is the finest land—for railroad purposes—that the sun ever shone on. I have believed that no State could compare with this in the extent of its territory, and in the variety of its products, the climate, in the industry and progress of its people; and I have almost come to believe that there is no place under the sun like this glorious State of California. And, sir, I have been confirmed in that belief, and my education has been finished in that direction, by the very able argument of the gentleman from Marin, Judge Shafter; for he has told us the grand moving cause of all this success. He told us in his speech, yesterday, that railroads had taken the State from a wilderness and made it what it is. And, sir, when we have discovered the prime cause of the success in this State, certainly we can go no further. He says the railroad has made us what we are. Now, sir, I believe the railroad has done much for this State—as it has for every State where it has gone—in the development of our resources. I am also further indebted to the very able speech of the gentleman from Sacramento, Mr. Edgerton, for he has led me to this conclusion—that hereafter it will be necessary to change the very first proposition in the catechism, and the answer to the first question: "What is the chief end of man?" will be—"to be born in or migrate to this glorious State, to live under the mild and beneficent and equitable government of the Central Pacific Railroad." We must stand at the nod and beck of this modern Jove, and be governed by his direction.

Now, sir, we all recognize the importance of this question. It is a question which not only engages the attention of the very best minds in this State, but it has also engaged the attention of the best minds in other States of this Union, and of other countries, and it has not been mastered yet. But, sir, we have our humble part to perform in endeavoring to arrive at a correct solution of this question, and, sir, we have the experience of other States and other countries to guide us in our action here. At first the railroad corporations were granted all the privileges they asked; and it has been proved that those privileges were such as they could not consistently exercise without restraint. The result has been here, as elsewhere, that those privileges have been used until the interests of the people have been lost sight of, and the interests of the corporation have overpowered all else. They have been granted subsides, not only under the Federal Government, but by States, cities, and counties; and they have been enabled to build their roads by reason of these subsidies. Then they exercised the right of eminent domain, and they have taken private property for their use, often against the will of the owner. But it was done upon the ground that it was for the public good, for only upon that ground could it be taken.

Now, sir, this Convention is called upon to provide a remedy for some of the evils and abuses which we all know to exist in this State. We are asked to restrain the wrongs which these corporations have been perpetrating upon the people of this State, under the guise of law and vested rights. We are peculiarly situated here. The entire carrying trade of this coast is under the control of one corporation. In regard to two of the largest corporations, one belongs to the other—the offspring of the other—while many others are controlled by it, either by lease, or some other process; and there is no question about it that the Southern Pacific Railroad is entirely under the control of the Central Pacific Company, and many of us know by experience that not only are those corporations identical in their control, but that the whole business of the transportation of freight and passengers is under the control of the men who are the directors of the Central Pacific Railroad Company. Why, sir, the men who control that corporation also control not only the entire carrying trade by rail, but they also have a controlling interest in all the steamship lines doing business on this coast, and also in the principal line of ocean steamers crossing the Pacific. And, sir, I wish here to call attention to the roads that are under the control of this corporation. The list contains all the standard gauge roads in the State, with the exception of four or five unimportant roads. Then, sir, if I am not incorrect in my statistics, and I do not think I am, they have the main line from San Francisco to Ogden, the Oregon division, the San José branch, Los Angeles and San Diego Railroad, Sacramento and Placerville Railroad, California Pacific and its branches, San Pablo and Tulare Railroad, Los Angeles and Independence Railroad, Visalia Railroad, the Southern Pacific and its branches, and some others. The same corporation also owns the Sacramento and bay steamship line, a line of steamers on the Colorado River, the Oregon steamships, the Pacific Mail steamship line, and the entire express business of this State is under the control of that same corporation. Now, sir, when we realize the fact that all the power concentrated in these corporations is centered in the hands of a few men, and that these very men, by reason of this combination, are able to control the entire carrying trade of this coast, we may well pause and ask ourselves the question whether it is safe to allow these corporations to go on increasing, and eventually absorb every road which joins them, without saying to them, "Thus far shalt thou go and no farther; from this time you shall be under restraint and regulation." In my judgment, sir, there is no safety to the State, and no protection to the people, without regulation. They have been allowed to take the property of private individuals for their own use, and that, too, without the consent of the owner. It is true they have paid for it, and having done so it becomes their property. But they have been permitted to exercise the right of eminent domain only upon the theory of the public good—when it is clear that the great mass of the country will be benefited by the taking; and before this power could be invoked in their behalf the Courts found it necessary to declare railroads a kind of public highway. They were considered quasi-public corporations before this right of eminent domain could be invoked in their behalf. And as such public corporations, or public highways, the public have a right to expect and demand at least that they shall not be oppressed by them. They have surrendered their property to them because the public good demanded it. And, sir, when the public good is lost sight of and ignored, it is time for the people to step in and exercise their right over these corporations—the right of regulation and control.

Now, sir, as an illustration of how these roads have grown, the Central Pacific Railroad Company had not capital enough of its own at the time it started to build fifty miles of road. They received aid from the Federal Government and from other sources to build this road, and in eighteen hundred and sixty-nine it was opened to public travel, and since that time, during the nine years that it has been in operation, the company has been able, over and above all expenses, which involves salaries, running expenses, and the interest upon the money invested, they have been enabled to collect from the people, over and above all these expenses, eleven million dollars. Now, sir, when we remember that this immense amount of capital has been further extended, influenced, and controlled, until it has absorbed the entire carrying trade, not only by rail, but of the whole ocean, we are forced to the conclusion that the concentration of this vast amount of capital, together with the influences that they employ, is a power that in the very nature of things must be a standing menace to this State.

Let us see how the managers of this corporation have been able to accumulate this capital which they have used to secure the entire carrying trade of this coast. It is a simple mathematical problem. They take the price of the produce which they are to carry, in the distant market, at its value in the market, as the minuend of the problem, and then estimate the price of the article where it was produced, as the subtrahend, and the remainder is taken for freight. Now there are plenty of instances of this very thing, and here is one: A gentleman living in the southern part of the State had a large amount of barley. He had advices from Yuma that if he would send one hundred tons there he could get two cents a pound, while at the place where it was produced it was only worth one. It took but six hours for the train to go from his place to Fort Yuma. He went to the agent of the company to inquire what it would cost, and he was informed that they would carry it for one dollar per hundred. There is the problem. It was worth two dollars at the market, and one dollar at the place where it was produced. One dollar from two leaves one, the price of carrying it. That is the problem, and that is the reason they are able to accumulate this immense amount of wealth, and secure the entire carrying trade of the country. Now, sir, this is a truth which cannot be successfully contradicted, that this has been and is to-day the policy carried out by the railroad corporations of this State; and they have been able to continue this policy for two reasons—first, because by their management the carrying trade has been monopolized; and second, because the Legislature—the only power known to the State whereby they could be controlled—has failed to regulate them.

It is claimed by many, and by the corporations, that the State has no right to regulate or control them in any way, but that the owners should be entirely at liberty to charge what they please; that the State has no more right to say what they may charge for freights and fares than it has to dictate to the merchant what he shall charge for his goods, or to the manufacturer what he shall charge for his wares. But, sir, there is this essential difference between the two cases: that in the case of the corporation, the people, through their Legislature, have granted it the privilege of doing a carrying business as common carriers, and allowed them to condemn the private property of individuals for their own use, because they believed it to be for the public good, and believed that the people would be benefited by such a course. But, sir, when the public good is not only lost sight of, but the public itself is discriminated against, then, sir, in my opinion, it is time that the State should step in and regulate it.

This doctrine of non-control by reason of vested rights cannot hold in regard to these corporations. I submit that we are driven to this position. If the corporations have the right to continue to commit these great wrongs against the people, then, sir, we come to this: that the people, through their Legislature, have a right to repudiate the privilege granted, and regulate and control them. These corporations exist by reason of the action of the Legislature, and certainly, to deny this right to control would be to say that the creature is higher than its creator. Now, sir, the private individual is compelled to live within certain prescribed limits. A corporation is an aggregation of individuals. And if the people do not possess the right to go beyond these prescribed limits and commit these wrongs against the public, why should a number of individuals, banded together as a corporation, or in partnership, have a right to commit these wrongs; and how can it be said that the Legislature has not the right to control them?

Now, Mr. Chairman, though it has been very aptly said that corporations have no souls, yet they are, in a certain sense, immortal. Men who accumulate large properties die, and the estates are distributed. Partnerships, though the accumulations may grow, are dissolved, and the property is again distributed. But these corporations go on almost

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forever, though I know they are usually restricted in their first charter to a certain number of years, but their accumulations are accumulations for all time, and the power once in their grasp is never relaxed. There is no remedy for these wrongs but regulation and control. As has been well said in this discussion, competition fails, because the corporations have been able to combine and defeat it. The Courts are powerless, for the reason that corporations are indifferent to individuals when suits are brought by them. The individual may carry his grievance into Court, and the corporation is usually quite indifferent as to the result, for if they lose, they still have the power to fall back upon the people and saddle the loss upon them; and even if the individual wins his case, it is generally after a long and protracted litigation, and he has a barren victory, and is generally ruined. They care nothing for any threatened danger to their charter, and very few individuals care to come within their reach. Now, sir, these privileges have been granted by the people; these corporations are the creatures of the creators, and they must give way. It is not the sovereign people of the State that are to be controlled in the interest of the corporations, but it is the corporations that must be controlled in the interest of the sovereign people.

Now, sir, the question presents itself to us, how shall they be regulated, in what direction, and how far? In the direction, in my opinion, of not allowing them to exercise a dangerous discrimination. It should go far enough to restrain them from extorting rates unnecessarily oppressive, and from discriminating for or against any locality or individual. They should not be allowed to take money from the people without rendering a just compensation, but they should not be restricted to such an extent as to prevent them from doing a legitimate business. I believe corporations should be encouraged so long as they are doing a legitimate business. They are a necessity, and, honestly conducted, a benefit to the State. But when, by reason of the exclusive privileges that have been granted to them, they become oppressive monopolies, absorbing everything that comes within their grasp, then it is time they were regulated. We live in a country that is noted for corporations, and we live in a State that is to-day the home, the abiding place, of the most magnificent monopoly the world has ever seen. The means by which this monopoly has been established, and these extortions have been accomplished, and the manner in which they shall be regulated, are questions for us to take into account, and one must necessarily relate to the other in this question of regulation. The proposition before this committee is, in my opinion, the only means by which we can accomplish the result sought. While I should prefer the proposition changed in some particulars; while I shall, if opportunity offers, endeavor to so amend one or two of its sentences to meet the objections which I think are obvious, yet, in the main, the plan, I believe, to be a correct one. There are but two ways, in my judgment, to accomplish the regulation of corporations. One is by means of the Legislature, and the other by means of a Commission.

Now, sir, the history of legislation in this State upon this question is this—that it has been a broken reed in the hands of a giant. I believe the history of legislation in this State will bear me out in this assertion. The members have struggled manfully with the question until it came to the final vote; but in the end the corporations have always carried their point, and with it many other measures that the State would have been much better off without.

Now, it is claimed by some that we are conferring too much power on this Commission; that we are creating a Board of autocrats that will be beyond the reach of any power within the State, and that this is unsafe. But there are two reasons why these extreme powers should be vested in the Commission. One is, because they would be powerless without them; and the other is, that it has been proven that it is not safe to leave this matter to the Legislature. Three years ago the people had a Commission appointed for this very purpose. They were able, honest, and earnest in the work they did, but they failed, because they had not power enough. And they came to the Legislature with their report, which was full, ample, and complete in most points; but, sir, they had this same complaint of a lack of power to accomplish what the Commission was designed to accomplish. They asked the Legislature to grant them the necessary power. But, sir, when their report came before the Legislature, they were quickly snuffed out of existence. That has been the history of almost every effort that has been made to control these corporations. I believe, sir, that we cannot, in justice to ourselves and to the people of this State, allow this opportunity to pass without taking the necessary steps to control these corporations by a wholesome regulation. The necessities of the case require it, and the people demand it; and if we would be true to the trust confided to us, we cannot ignore this demand. These corporations have had grants of special privileges, entirely in their own hands, which they have exercised to the detriment of the people. They have been allowed to exercise these privileges solely on the ground that the public good required it. But when, by reason of the exercise of those privileges, they commit great wrongs upon the people, they must not be allowed to continue these wrongs under the plea of vested rights and the obligation of a contract, else we shall be met with the anomaly of allowing a corporation to do a wrong, when neither the Legislature nor the people possess such power. These wrongs and oppressions on the part of corporations must be met and dealt with by this Convention. There are but two ways by which it can be accomplished: one is, by and through the Legislature; and the other by means of a Commission. The latter has had a practical trial, and had it not been bound hand and foot by the Legislature, would have afforded us some relief. We shall be recreant to the trust imposed upon us, if we do not deal with this subject with a firm hand.

MR. CAMPBELL. I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again.

ADJOURNMENT.

MR. AYERS. I move the Convention do now adjourn.

Carried.

And at eight o'clock and twenty minutes P. M., the Convention adjourned until to-morrow morning at ten o'clock.

SIXTIETH DAY.

SACRAMENTO, Tuesday, November 26th, 1878.

The Convention met in regular session, at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hale,	Porter,
Ayers,	Hall,	Prouty,
Barbour,	Harrison,	Pulliam,
Barnes,	Harvey,	Reed,
Barry,	Heiskell,	Reynolds,
Barton,	Herold,	Rhodes,
Beerstecher,	Herrington,	Rolfe,
Belcher,	Hilborn,	Schell,
Blackmer,	Hitchcock,	Schomp,
Boggs,	Holmes,	Shafter,
Boucher,	Howard,	Shurtleff,
Brown,	Huestis,	Smith, of Santa Clara,
Burt,	Hughey,	Smith, of 4th District,
Campbell,	Hunter,	Smith, of San Francisco,
Caples,	Johnson,	Soule,
Casserly,	Joyce,	Stedman,
Chapman,	Kelley,	Steele,
Charles,	Keyes,	Stevenson,
Condon,	Laine,	Stuart,
Cross,	Lampson,	Sweasey,
Crouch,	Larkin,	Swenson,
Davis,	Larue,	Swing,
Dean,	Lavigne,	Terry,
Dowling,	Lewis,	Thompson,
Doyle,	Lindow,	Tinnin,
Dudley, of San Joaquin,	Mansfield,	Townsend,
Dudley, of Solano,	Martin, of Alameda,	Turner,
Dunlap,	Martin, of Santa Cruz,	Vacquerel,
Eagon,	McCallum,	Van Dyke,
Edgerton,	McComas,	Van Voorhies,
Estee,	McConnell,	Walker, of Marin,
Estey,	McCoy,	Walker, of Tuolumne,
Evey,	McFarland,	Waters,
Farrell,	McNutt,	Webster,
Fawcett,	Miller,	Weller,
Filcher,	Moffat,	Wellin,
Finney,	Moreland,	West,
Freeman,	Morse,	White,
Freud,	Nason,	Wickes,
Garvey,	Nelson,	Wilson, of Tehama,
Glascock,	O'Donnell,	Wilson, of 1st District,
Gorman,	Ohleyer,	Winans,
Grace,	O'Sullivan,	Wyatt,
Gregg,	Overton,	Mr. President.
Hager,		

ABSENT.

Bell,	Jones,	Reddy,
Berry,	Kleine,	Ringgold,
Biggs,	Mills,	Shoemaker,
Cowden,	Murphy,	Tully,
Graves,	Neunaber,	Tuttle.
Inman,	Noel,	

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Bell, Glascock, and Edgerton.

Two days' leave of absence was granted Messrs. Neunaber and Shoemaker.

THE JOURNAL.

MR. BARTON. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

REPORT—WATER AND WATER RIGHTS.

MR. SMITH, of San Francisco, made the following report:

To the honorable President of the Convention:

A minority of your Committee on Water and Water Rights beg leave to report the following sections to be inserted in the new Constitution, recognizing that the right of water does not depend on the ownership of land, and as a natural element for the use of man, I question the right of the Legislature or of Congress, if such has been the case, to grant away that which belongs to the people.

SECTION 1. All lakes, except artificial reservoirs, shall be declared public property. All running water shall be declared public property, subject only to the control of the State.

SEC. 2. Three Water Commissioners shall be elected by the qualified voters of this State, at the gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any water company as stockholder creditor,

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agent, attorney, or employer, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the sole power, and it shall be their duty, to establish rates of charges for water, from what sources water shall be taken by such companies, report to the Legislature when in session their proceedings, and such other facts as may be deemed important.

H. W. SMITH.

THE PRESIDENT. The report will lie on the table, and be printed with the report of the Committee on Water and Water Rights.

REPORT OF COMMITTEE ON MINING.

MR. PULLIAM made the following report from the Committee on Mining:

MR. PRESIDENT: Your Committee on Mining respectfully reports that it has carefully considered propositions numbers ninety-one, three hundred and forty-five, and three hundred and fifty, and herewith return the same, and recommend that no further action be taken on them.

M. R. C. PULLIAM, for the Committee.

Laid on the table.

THANKSGIVING ADJOURNMENT.

MR. ESTEE. Mr. President: I move that the resolution by which this Convention agreed to adjourn to-morrow, at twelve o'clock, be reconsidered. I make this motion now, in order that it may be disposed of, so that we will know.

MR. LARKIN. Mr. President: I am really glad that the gentleman from San Francisco takes it upon himself to act as my prompter, but I think he will succeed better in some other line. That motion, as a matter of courtesy, I was entitled to make. If the gentleman has any ulterior object, I propose to give him full opportunity to explain it. I gave that notice in good faith. Not that I am opposed to the people being thankful; not that I am opposed to the institution. I believe in it. That institution has no reference to a day; it was to an event. The people of New England celebrated Thanksgiving day not on the twenty-eighth of November, but on any day. It was a harvest feast; a time that they returned thanks to their God.

MR. BARNES. Mr. President: I call the gentleman to order. He is speaking on a subject not germane to the matter under discussion. I do not know that the Supreme Ruler of the universe has anything to do with the adjournment.

MR. LARKIN. I don't think he has. But I am not certain but that some god has arisen that these men are worshiping who desire this adjournment. It may be, and I state here that we have spent one third of the time in delays and adjournments. I believe that these men are sincere in this motion. Many men are sincere in opposition to a Constitutional Convention, and men that voted against a Constitutional Convention. Men come here who represent the men who voted against a Constitutional Convention. They are satisfied with the old one. With all its evils, they prefer it to any Constitution this Convention may make. I have heard it said that they would go from this Convention and oppose any Constitution made here. These adjournments and delays have been perfectly in order. They are appreciated. So it is that one third of the time of this Convention has been taken up with unnecessary speeches and motions that tended to hinder the work of this Convention, if possible, and carry it over beyond the time to which this appropriation will extend. Then the people will demand an adjournment, leaving us with a Constitution partly made, and the people of the State disgusted with our action. A portion of the press has denounced this Convention and misrepresented us—actually misrepresented us before the people—and whatever Constitution is made by this Convention, be it as perfect as is possible, will be opposed by that element of the people of this State; and they are represented on this floor. These men who are satisfied with the present corporation laws of this State will oppose any new Constitution. These men who are satisfied with the present system of taxation, by which they escape their just share of the burdens of government, will oppose this Constitution; and some of them will seek that way to accomplish their purpose. I say that the bare majority that called this Convention, called it in the interests of the people, and not in the interest of these destructionists. Wait until we have gathered our harvest—a harvest to the people of this State, of equal taxation, of limited corporations—then we can hold a thanksgiving, and such a one as has never been held in California; not until then. Wait until the people have gathered that harvest—a harvest that was sown by the good will of the people—then we are ready to adjourn!

MR. BARNES. A-a-men. [Laughter.]

MR. LARKIN. On this question I call for the ayes and noes.

MR. ESTEE. Mr. President: I did not interfere, or intend to interfere with any of the duties that devolve upon the gentleman from El Dorado, in this Convention. I did not suppose that I would effect anything great by making this motion. If I moved to go into Committee of the Whole I knew that he would have no opportunity to press the motion, and knowing that the notice had been given, I thought it was no more than just and fair that it should be decided this morning before going into Committee of the Whole. As to any insinuations that the gentleman may express, I do not wish to respond to them, or make any remarks about them; but I will say this, and I appeal to the Convention to verify my statement, that the gentleman from El Dorado has taken up more time on the floor of this house in calling for the ayes and noes on different questions, in order to make a record, than any five gentlemen on the floor of this house.

MR. HALE. Mr. President: I desire to say one word. I trust that the vote to reconsider will prevail, and that upon the final vote the resolution will be rejected. So far as I am individually concerned, it will not inconvenience me materially. I reside only thirty-six miles from this Capital. I can go home. I can spend the time very pleasantly with my family and friends, and I enjoy a Thanksgiving dinner as well as most of you, and I heartily sympathize with those gentlemen here who are anxious to return home for that purpose. But I submit two considerations. One is, we propose to adjourn over from Wednesday noon until Monday. The result will be that it will be a discontinuance of the period of the Convention, so that those who are forced to remain not only will be unable to attend to any of the business which called them here, but they will not even be permitted to receive any compensation for the time they stay here. It is true that there are many gentlemen who could return home and doubtless enjoy a very pleasant time. But I think, sir, it is decidedly an unfair thing to those who cannot go, who are residents so far from this Capital that they cannot go, and enjoy this Thanksgiving day, to require them to make this sacrifice. I think it is not fair to them. Besides, sir, I believe it will be found that we are all of us very anxious to make a final completion of the work of this Convention. We know the difficulties that surround us here. We know that there is a large amount of our work not accomplished. We know too that there will be much hardship upon members because the compensation which has been provided by law will soon be exhausted. I think it is not fair that we should fritter away our time. I think we can in no manner show our thankfulness more effectually, more sincerely, more rationally, than by sitting here in our places on that day as well as the days of this week, and attend to our duty. They say this is a non-judicial day, but that is no reason why we cannot sit in this Convention on that day as well as any other day of the session. For myself I think it will be found true that those who are in private business wish to conclude their labors here. It is important that we should conclude. We do not want to do things halfway. Let us stay here and work in this Convention until we get through—whether it is one week, or four weeks, or six weeks, at our own expense. We have been sent here by the people to perform a duty, and I think every member on this floor will see the performance of it accomplished. I trust that this motion to reconsider this vote will prevail, and that we shall come to the conclusion to stay here and perform our duties, Thanksgiving day or no Thanksgiving day, until we have completed the work for which we came here.

MR. SMITH, of Fourth District. Mr. President: I am opposed to this adjournment. This is a work that only comes once in a quarter of a century. We have now passed through nearly two thirds of the time allotted to us by law, and we have not one quarter of the work accomplished. Now it is proposed to adjourn and have a little play. A few members in their minds hoping to put into their stomachs good dinners want to draw the balance of the members from this Convention. I think it is unfair. I think it looks too much like child's play on an extraordinary occasion. Now, when the members of the bar have any extraordinary work on hand they work at it night and day until it is finished; when the farmer has a press of work he works out in the rain and hail until it is done; and now that we have got much more perhaps than we can do in the time left to us, I say that we should sit here and do it. Wait until Christmas and New Years come on. I propose to stay here on Thanksgiving day at least, and if we have to adjourn on Christmas and New Years, let us leave our play until that time.

MR. McCONNELL. Mr. President: I am in favor of not rescinding the resolution.

MR. BARNES. Mr. President: In accordance with a time-honored custom as old as Plymouth Rock, the Governor of this State has issued a proclamation calling upon all people to refrain from their usual occupations and spend some hour of the day in suitable religious exercises, and the balance of it in social pleasure. We may not all meet him on the first, but we can meet him on the other. We can lay aside our usual vocations, as I think we ought to do. It would be a most remarkable spectacle to see this body in session on that day. The gentleman from Kern says this is an extraordinary occasion. It would be most extraordinary of this Convention, at a time when all the rest of the people of the State had suspended their usual vocations, when your stores are closed, commerce is suspended, and business, for the hour, all over the country, from one end to the other, is paralyzed, should sit here and go on with the business it has in hand. For one, I hope that no such idea as that will be entertained. I believe in these holidays. Thanksgiving day is a *dies non*, by law, the same as Christmas and New Year, and I would like to see the man who would say that we ought to sit here on Christmas. I would like to see the man who would say that we ought to sit here and work on Sunday. There is just as much reason for it. It seems to me, sir, that there is something else than economy in these speeches on this subject; something behind it. If gentlemen would lay aside those considerations, I think we would get along better with the work. We have got to adjourn over Thanksgiving day! We have got to! The gentleman from Placer to the contrary notwithstanding.

MR. HILBORN. Will he bring out the military to effect that result? [Laughter.]

MR. BARNES. I do not know what that remark was. I could not hear my fat friend from the country, but I have not the slightest doubt, although I did not hear it, from the smirk on his countenance and the titter around him, that he made some allusion to the Military Committee. That seems to be the end and aim of some of the gentlemen on this floor. Whenever there is anything occurs that offers the slightest opportunity, they bring up the military. When the report of that committee is taken up we will see how much there is to laugh at about it. But apart from my warlike character I am in favor of observing Thanksgiving day, and Christmas, and New Years. This day is a *dies non*, and except with a certain class of people who do not believe in Christian thanksgiving, all business is suspended. So far from the gentlemen losing their pay for all this time, I hold that they will be paid for three of the days. I wish to heaven there was no pay about it, but so far as the pay is concerned I think the gentleman from Placer is in error about that. We can adjourn for any period greater than three days. The law says "the delegates to the Convention shall receive ——

MR. LARKIN. A majority of this Convention has decided that the law has no bearing upon this Convention. I rise to a point of order.

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MR. BARNES. "The delegates to the Convention shall receive the same per diem and mileage as members of the Legislature; *provided*, no compensation shall be allowed delegates after the expiration of one hundred days. No pay shall be allowed for any recess longer than three days at one time." We are entitled to pay for Wednesday, Thursday, and Friday, and we may lose a day. We have got pay for every Sunday. I am in favor of the adjournment. Some of these gentlemen who have been speaking and who spend all their time here, would do better if they went home—a good deal better. They would see what their constituents think of them. Go home, as we do, and hear what people say, and I think some of them would come back with a large sized flea in their ear. It is awful! awful! [Laughter.] I move to lay the motion to reconsider on the table.

MR. BROWN. Mr. President, and gentlemen of the Convention: This question has assumed considerable magnitude, and we have heard the religious sentiment and patriotism of the members appealed to. The matter of keeping the Thanksgiving day has been spoken of, and that this must be done, and that this shall be done. Now, perhaps this is all right, but when it comes to keeping four or five Thanksgiving days in one week for a Thanksgiving day, it is necessary for the members of this body to take into consideration that the Governor never proclaimed these four or five days. Now, the fact of the matter is, we have a vast amount of work to do, and I am under the impression that the members of this body are well convinced that it is necessary for them to work. They know the sentiments of the people that sent them here. They know what they wish of them. If certain members forget the wishes of those that sent them, that is no reason why all should. The great leading propositions, such as the one now before the house, have been discussed before the people, and they are not so vacillating as some members on this floor. If it is intended to carry these measures out, let us stay and do it. I was inquired of by my constituents, before I was elected, as to whether I would be opposed to this continual adjourning and going to San Francisco, and I told them I would, and consequently I have generally opposed everything of the kind. I will say to the Convention, if you wish to satisfy the will of your constituents, and carry out the great and grand purposes that they have in view, work. Work while there is work to do; complete that work; have your Thanksgiving day, but not days; and when it is all over there will be one of the grandest Thanksgiving days, as my friend from El Dorado has said, that ever delighted the State of California.

MR. WELLIN. Mr. President: I am in hopes that this resolution will not be reconsidered. The gentlemen all know that Thursday is a holiday by law, and we do not, under any condition, propose to occupy this hall or do any business. Then there are only three sessions left, because we adjourn at twelve o'clock on Saturday. How much economy is there in refusing to adjourn over Friday and Saturday? We agree to have three evening sessions, and that is supposed to make up the difference. I desire to know why these gentlemen proclaim so loudly that the people are watching us. I tell these gentlemen that I am not afraid to go upon the record in favor of this adjournment. I do not care who the gentleman referred to when he said that he wanted the ayes and noes. I am not afraid to go upon the record in favor of adjourning for Thanksgiving day and the balance of the week.

MR. FILCHER. Mr. President: The gentlemen opposing this adjournment seems to claim, as a point in their favor, the question of economy. I voted in favor of the adjournment, and feel disposed to do so again, on the ground that it will be economical to do so. As I reason the matter, Mr. President, it may be taken for granted that we will adjourn over Thanksgiving day. Adjourning over the day we would until two o'clock Friday. The next day being Saturday, we will not be likely to hold more than half a day's session. For those two parts of days, therefore, during which it is reasonable to suppose there will be not more than two thirds of the members present, we will draw, say for four full days, an expense of between six thousand dollars and seven thousand dollars, and, in reality, we will accomplish comparatively nothing. We may hear a few speeches, but there would be a strong argument against taking a vote on the presence of a thin house. It would be impolitic, and would not be just. Since the question has been raised as to whether we will receive pay, I would like to be satisfied about it. Some claim that we will receive pay. The gentleman from San Francisco, Mr. Barnes, claimed that we will receive pay for three days. If we are going to receive our pay whether we adjourn or not, I shall vote against the adjournment. I would put in at least the two small half days for the six thousand dollars.

MR. WELLIN. Whether we adjourn or not, do you think we will go home on Thanksgiving day?

MR. FILCHER. I expect to.

MR. WELLIN. Then give us the same chance.

MR. FILCHER. I would like, if it is possible, either by a ruling of the Chair or otherwise, to have that point settled, otherwise I shall ask to be excused from voting at all.

MR. SMITH, of Fourth District. Are you willing to remain here after the one hundred days?

MR. FILCHER. Mr. President: I believe that I am as poor as any man on this floor, but I came here to help make a Constitution and carry out the demands of the people who sent me, and as long as I have a horse to sell, or a newspaper to sell, or anything that I can turn into coin to pay my board, I shall stay here until that work for which we have come is accomplished. It is a matter of supreme indifference to me in that respect, whether we appropriate this money here for the adjournment or not, as I can readily foresee that we will be compelled to remain here on expense after this one hundred days expire. But there is no use of appropriating this money for adjournments and working hereafter for nothing. Yet I insist on the question, it can be conveniently decided, as to whether we draw pay for this time or not. The decision of that question will govern my vote.

MR. MCCALLUM. Mr. President: That very question is what would induce me to vote for this motion to reconsider. It remains, as it stands, for the President of this Convention to decide it. If the President issues the certificates, of course the per diem will be paid. In my judgment it is not a just thing, receiving compensation and the State receive no services. Now if the President sees proper to give his construction of this statute, and that should be in accordance with that entertained by the gentleman from Placer and myself, that there is no per diem for that five days, I am in favor of the adjournment, and will stand by the resolution, otherwise I propose to vote for this motion to reconsider, with a view to amending the resolution, so as to take the decision from the Chair, and have it read, "provided no certificates of per diem shall issue for the term of the adjournment." I think that ought to be the rule upon which this question should be decided. I cannot offer the amendment now.

MR. GREGG. Mr. President: I move to lay the motion on the table.

MR. BARNES. I made that motion myself.

THE PRESIDENT. The gentleman was not entitled to the floor when he made it.

MR. LARKIN. Mr. President: My very courteous friend from San Francisco made this motion, knowing that in the absence of fifteen or twenty persons it was likely to prevail, but I hope that the matter will be disposed of. If these gentlemen propose the common law from this time on, the common law goes. We will see whether the common law is the rule here or not. I call for the ayes and noes.

MR. GRACE. Ayes and noes.

MR. WHITE. Ayes and noes; ayes and noes.

MR. HERRINGTON. Ayes and noes.

MR. EVEY. Ayes and noes.

MR. REYNOLDS. Before the calling of the roll, and in consideration of the remarkable exhibition of piety on the part of the gentleman from San Francisco, Mr. Barnes, I move that we sing the Doxology.

THE PRESIDENT. The gentleman is out of order.

The roll was called, and the motion prevailed by the following vote:

AYES.

Ayers,	Garvey,	Pulliam,
Barnes,	Grace,	Schomp,
Barry,	Gregg,	Shafter,
Barton,	Hager,	Shurtleff,
Belcher,	Hall,	Smith, of Santa Clara,
Boggs,	Harvey,	Stedman,
Boucher,	Heiskell,	Steele,
Burt,	Herold,	Stuart,
Campbell,	Hughey,	Sweasey,
Casserly,	Johnson,	Thompson,
Chapman,	Keyes,	Van Dyke,
Charles,	Lindow,	Van Voorhies,
Cross,	Martin, of 2d District,	Walker, of Marin,
Crouch,	Martin, of Santa Cruz,	Walker, of Tuolumne,
Dudley, of San Joaquin,	McComas,	Waters,
Dudley, of Solano,	McConnell,	Weller,
Estee,	Miller,	Wellin,
Estey,	Moreland,	Wilson, of 1st District,
Fawcett,	Morse,	Winans,
Freud,	Overton,	Mr. President—61.
Filcher,		

NOES.

Andrews,	Hunter,	Rhodes,
Beerstecher,	Kelley,	Ringgold,
Blackmer,	Laine,	Smith, of 4th District,
Brown,	Larkin,	Soule,
Caples,	Larue,	Stevenson,
Condon,	Lavigne,	Swenson,
Cowden,	Lewis,	Swing,
Davis,	Mansfield,	Terry,
Dean.	McCallum,	Tinnin,
Doyle,	McCoy,	Townsend,
Evey,	McFarland,	Tully,
Finney,	McNutt,	Turner,
Freeman,	Nason,	Vacquerel,
Herrington,	Ohleyer,	Webster,
Hilborn,	O'Sullivan,	West,
Hitchcock,	Porter,	White,
Holmes,	Prouty,	Wickes,
Howard,	Reed,	Wilson, of Tehama,
Huestis,	Reynolds,	Wyatt—57.

MR. LARKIN (while the roll was being called). I move a call of the Convention.

THE PRESIDENT. It is out of order now, we are taking the ayes and noes.

MR. HUESTIS. I desire now, as one of the delegates who cannot go home to partake of a Thanksgiving dinner, to avail myself of the kind invitation to go home with the gentleman from Nevada to dinner. [Laughter.]

MR. MCCONNELL. I extend an invitation to any five or six delegates from distant parts, to go home with me and partake of an old-fashioned New England Thanksgiving dinner.

CORPORATIONS.

MR. ESTEE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

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IN COMMITTEE OF THE WHOLE.

MR. LARKIN. I desire to understand what proposition is under consideration.

THE CHAIRMAN. Section eighteen, and certain amendments.

MR. LARKIN. I move the previous question on the eighteenth section.

Seconded by Messrs. Evey, Hunter, Huestis, and Wyatt.

A division was called for, and the Chair announced the motion carried by a vote of 66 ayes to 52 noes.

THE CHAIRMAN. The first amendment was offered by the gentleman from Los Angeles.

MR. BARNES. Mr. Chairman: I would like to know whether it is proposed to take a vote upon this. My idea is that the motion did not prevail. It is a plain mistake.

[Cries of "Recount," "Recount."]

THE CHAIRMAN. There being some doubt on the matter, the Chair will order a recount.

A division was again taken, and the Chair declared the motion lost by a vote of 53 ayes to 54 noes.

THE CHAIRMAN. The committee refuses to order the main question. Section eighteen and these amendments therefore go over for one day. The Secretary will read section nineteen.

THE SECRETARY read:

SEC. 19. No discrimination in charges or facilities for transportation shall be made by any railroad or transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates.

MR. WILSON, of First District. Mr. Chairman: Several members around me, and myself, desire to know how section eighteen has gone over for one day?

THE CHAIRMAN. The Chair will explain it then. The previous question was called for and seconded. On the vote the committee refused to now put the main question, which necessarily carries over the whole section and amendments for one day. Therefore section nineteen is in order.

MR. WILSON. The explanation is satisfactory.

SPEECH OF MR. WATERS.

MR. WATERS. Mr. Chairman: Owing to the protracted debate upon this subject and the able manner in which it has already been discussed, I will state that I have very little to say, and shall detain the Convention but a few moments. It seems to be admitted on all sides that the State has the power to regulate the charges made by common carriers in this State. That, I say, seems to be admitted on all sides, and I do not propose to argue that question. I will state that I expect to vote for section nineteen, but I shall not vote for section twenty in its present shape. Now, as to this section twenty; the reasons that I cannot support it are: First, that I think the construction of that section is a violation of every principle of republican government. It sets up three men in this State, the selection of whom is left to chance, as the final and sole power to stand between the people and the corporations or common carriers. There is no restraint or limit placed upon them at all. They go into a dark room and bring forth a tariff sheet. That tariff sheet may be favorable to the company, it may be just, it may be reasonable, or it may be otherwise. No man can tell. No man is entitled under the section to a hearing before that Board in any respect. And, mind you, the people are not entitled to this hearing as that section now stands. I ask you to pause and consider what you are doing. I ask you who are in favor of having just rates of freights and fares established in this State, to pause before you give the unlimited power, the sole power, to any three men who are to be selected by chance, to go into a dark room and make up a tariff sheet without hearing any one upon the subject, without any citizen of this State having a right even to talk to them about it, and without the high power of this State, either legislative, judicial, or executive, having any supervisory power over them. I ask you to pause, you whose ancestors have been living under a republican form of government for one hundred and one or one hundred and two years—to pause before you again set up a monarchy as to the common carrier business in this State—absolute monarchy. I am not sufficiently acquainted with any form of government other than that under which we live, to say exactly what it would be, and I leave it to the gentleman from San Francisco to define. I am unable to define it. It is something so entirely out of my line of thought that I cannot define it, or even find words to classify it. It gives them the sole power.

Now, these gentlemen who favor this proposition may say, "The people will get it. The people will get the whip hand of this thing." Now I ask, is it safe to leave it to chance? Is it right to leave it to chance? Are you satisfied in your consciences—you who favor the regulation of common carriers—are you satisfied in your consciences when you leave it to chance? I cannot satisfy mine in that sort of style. You may say, it is not leaving it to chance; it is leaving it to the popular vote. Even that will not do. You may review the history of railroad regulation—of the regulation of freights and fares, especially in this State, and you will see if you go by the experience that the people have had in this State, that it is not safe to leave it to chance, even if you restrict them. Now, the prevailing idea is that all the elections in this State should be held at one time. We elect the Justices of the Supreme Court, or as many of them as are to be elected. We elect the entire State ticket from Governor down; elect county officers from the highest to the lowest; we elect all these innumerable members of Boards that these committees seem to desire to establish in some shape or another, and you will have seventy-five or eighty names upon the ticket.

Now, do you pretend to say that with the power that corporations have in this State, with the wire-workers and wire-pullers they have under their control and have had—do you pretend to tell me that out of these eighty men they cannot swap off enough to elect their Commissioners? All the people of this State are not farmers. All the voters of the State are not men who have the interest of the people at heart when they come to cast their ballots. You must recognize that fact, and deal with it. There is no use in being carried away with sentimentality; not every man in the State of California stands square up and perpendicular upon his rights as a voter. We cannot recognize that as being a fact. You must recognize the fact that there is a great element in this State that can be manipulated, that can be voted, and recognizing that fact, we must guard against the evil results which flow from it.

Now then, I say, in regard to these officers all being elected at once, that it will materially affect the election of these Commissioners. Then how shall we get around this and prevent the evil that will follow in that regard? I am in favor of electing these Commissioners, and I do not wish any gentleman on this floor to understand me as not being in favor of electing them by a popular vote, but I desire that they, as well as every other man in a republican government, shall have only limited and restricted powers—powers for good and none for evil. That is the safeguard. But this absolute power to be given to these Commissioners cannot be justified upon any theory. It is not justified even upon the only one upon which they press it—that the people have the election of the men. I would not announce my allegiance to a King, even if elected by the people. That is the principle I object to. I care not if every man in the State of California voted in favor of giving absolute kingly power over me to any one, I should vote against it. And I would not support anything merely because the people are to vote upon it. My principles are not based upon any such sandy foundation. Now, sir, I do not oppose this absolute power Commission because I am not in favor of regulation. I do not merely get up here and state that I oppose this, and leave it to be supposed that I do not wish corporations regulated at all; but I shall very briefly state the manner in which I think these things should be done, and some reasons for it.

Now, in the first place, this is comparatively a new question with the American people. This railroad system is one that has not yet worked itself fairly out. In other words, the proper regulation of freights and fares is a matter that must have the experience and practice of more generations than one or two before the problem is finally solved. It has been the experience of those western States that have attempted it, that they cannot grasp them with one strong hand, and with one blow, forge the iron into proper shape. It requires a continuation of strong blows, well directed—not strong blows given at random—in order to bring this thing into any kind of shape, no matter how public feeling, or passions, or prejudice, may be in favor of regulating them instanter. We have got to profit by the experience of other States. We have got to avail ourselves of their experience, and we shall do better than if we attempt to do this thing at one blow.

Now all this giving absolute powers to Commissioners has been, I think, a failure. I do not think it can ever be shown that anywhere it has worked well. To give to this Board of Transportation Commissioners the absolute power to fix rates of freights and fares announces no principle. In other words, can the man who favors giving this absolute power to this Board say that he is announcing to the people that he is in favor of low fares? Can you find it there? I say no. Upon the other hand, can one of those individuals who are opposed to it say that section twenty is against higher rates, or in favor of higher rates? No. It is not there. Can you point to section twenty, and does it say anywhere that it is in favor of reasonable freights and fares? I say no.

Secondly, you are setting up something here that is not founded upon any principle; it is a bare expedient; it does not rise to the dignity of announcing any principle. And I say that the principle is as old as the hills, and you will find it in most of the recent Constitutions, that a common carrier is entitled to a reasonable compensation, and no more than a reasonable compensation, for services rendered to the citizen. Now what would be the result of a clause declaring that? It would dissolve that lobby which crowds about every Legislature; it would enable the corporations in this State to disband their army of political corruptionists, if they have any such army, as so many seem to think they have. It would enable them to strike from their tariff the millions of dollars now collected from the people in order to reimburse themselves for the expenses they have to go to in order to defeat what they consider unjust legislation upon this subject.

Another thing, if you place in there a clause that common carriers shall receive a reasonable compensation for their services, and no more, you will prevent another evil that the people have suffered under in this State. That is the rule of the common law which I have stated. Some gentlemen say it is the law, anyhow. I deny it. That is the law as to interests other than railroad carrying to-day, and it even included railroad carrying until the passage of an Act of the Legislature in eighteen hundred and sixty-one, where they made a maximum. In the year eighteen hundred and seventy-six the railroad company brought into the Legislature its tariff sheet, and had it legalized—had it legalized with all these discriminations from one end to the other, and received the stamp of the State that they were entitled to charge these rates. In eighteen hundred and seventy-eight they did the same thing. Now, sir, I say that they are making their own law and rule of compensation which a clause in the Constitution to this effect would cut off wherever it was found to be unreasonable or unjust. The main danger in leaving it entirely to the Legislature is, that the Legislature having only a limited time the railroad company proposes its own tariff sheet and it becomes the law of the land, so that the common law rule is not in force. Now, sir, in order that such a provision should have the necessary machinery

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to carry it out, and in order to have some supervisory influence over them, let a Board of Transportation Commissioners be elected by the people, with power to make prima facie rates; with power to make a schedule of freights and fares, and the Courts can decide if it is reasonable and just. Then if the Transportation Commissioners make out a tariff which is thought to be unreasonable by the people, they can go into Court and have it modified before a jury of the people. If these Transportation Commissioners make the freights exceedingly low, so that no common carrier can carry, give the corporations the same right. And, gentlemen, if we have not got the moral courage to do right toward the railroad company, we will never get right done towards the people. We have got to have the moral courage to do right to them before we can have any hope of ever having justice done towards the people. I am not one of those who are so far carried away as to think that we will get the people protected and let the railroad bankrupt if they must. I do not think that to be statesmanlike. Let us do right, and in doing right let us come back to the principle that has been found safe to go by in every business in the world.

Now, they say that you can not tell what is reasonable. That is a question that has been solved thousands and thousands of times. It is just as easy to figure up what a company can carry a carload of freight from here to San Francisco for as it is to figure up how much it is worth to haul a load of that clay from the river bed over here to the Park. It is only that you look at it with a microscope, and the railroad wants you to look at it with a microscopic view. Now, that is the rule. But you cannot be microscopic when you come to the affairs of man. You must make allowances; you must estimate; or, as some people have called it, you must guess. And it is but a guess at the best. Now, when you come to figure freights and fares, you have got to consider the life of a car, how long a car will last, how long an engine will last, respecting the cost of each, the cost of keeping them repaired, etc. Gentlemen, you have to do the same thing in the case of hauling the clay to the Park. You must consider the cost of the horse and of the wagon, the amount you can haul, how long the horse and the wagon will last, the necessary repairs, how much the man who drives the team is worth, etc. That same rule has been in existence since the common law. But we cannot be so microscopic in anything except railroads, and I do not think it is reasonable that we should say that every trifle should be figured. It is not just.

Another thing they may say—that what would be a reasonable compensation must be estimated or weighed according to the prevailing mode of transportation before railroads came into existence. I deny it. That view of the case would contend that the human family had made no progress in the way of invention. These people, the owners of the Central Pacific Railroad, claim all this property as private property. So it is, but it is in the public use. They claim all the improvements that give them the advantage over the stage traffic, although they do not claim them as a matter of legal right. Go to the passenger train that arrives in Sacramento this morning—look at the cow-catcher on the engine—and you will find an inscription thereon that John Jones or some other man has taken out a patent upon it; go to the first wheel and you will see a similar inscription; go from there through the train, to the last timber on the last car, and you will see the stamp of invention everywhere. Do you wish to tell me that the railroad companies are entitled to the whole profits of the invention of the human family? Do they expect us to regulate freights and fares, on the assumption that these railroad companies are the inventors of every invention that places them above the stage coach? I say no. It is not theirs. The inventor is poor enough. These men who have given their inventions to the civilized world are poor enough. But mind you, the railroad stockholders are not the inventors. They are not entitled to the credit; but what they are entitled to is this—a just and reasonable compensation as considered with the expenses, as it is now considered with the advancement of improvements, and not considered from the standpoint of fifty years ago.

Now, sir, this plan, which I understand will be introduced, though not by myself, will prevent the Commissioners doing wrong toward the companies, and will prevent them doing wrong toward the people. And I think it will place this question of transportation and the difficulties that may arise in the business, as nearly as possible on a level with difficulties arising between corporations and others, or between individuals themselves. It will bring them just as near to the same course of procedure. It will take them out of being special classes just as nearly as it is possible to do. Now, sir, when you bring corporations down to the level of other men, I hold that you have achieved a great end. A corporation knows the way into the back room of a Railroad Commissioner's office; but when you bring them before a jury of the people of this State, it is the last tribunal before which they wish to be tried for their discriminations or extortions. I think this plan the best because it makes all equal before the law. They will not then be coming to the Legislature to redress their wrongs. One of the main causes of a great deal of this railroad trouble has been the fact that the railroad companies have been so placed that the individual could not get at them. They have been hedged about with all this Commission machinery so that the individual could not proceed. But just the moment you place them on the common law rule, give the corporation its rights and the people their rights, and they know that the Courts are open to punish these railroad companies, then the clouds of war will drift from the surface. As soon as the corporations find out that if they charge exorbitant rates—if they charge above the rates fixed by the Commissioners, or even if they charge the rates fixed by the Commissioners, if they are unreasonable they will be liable to complaint in the Courts, and have to pay the penalty—they will bring their rates down to reasonable ones. I think with the benefit of the experience of the States beyond the Rocky Mountains before us, we should adopt a system based upon that experience.

MR. ESTEE. Mr. Chairman: I send up an amendment which receives the approval of a majority of the Committee on Corporations.

THE SECRETARY read:

"Insert after the word 'no,' in the first line, the word 'unjust.'"

SPEECH OF MR. TERRY.

MR. TERRY. Mr. Chairman: I am in favor of section nineteen as it came from the committee, and I think that the interpolation of the word "unjust" would tend to raise questions upon every complaint of discrimination. The question of what was just or unjust discrimination would be constantly rising, and we would do better to stand upon the section as originally reported, and to allow no larger charge for a short distance than for a longer distance. There can be no justice in discrimination like that. If the railroad company, or any other transportation company, can afford to carry a ton of freight a certain distance for five dollars, they can carry it any less number of miles for the same price.

MR. ESTEE. The amendment does not affect that part of the section. This is as to the question of facilities for transportation.

MR. TERRY. Then, I assert that any discrimination against one place and in favor of another, or against one man and in favor of another, or against one corporation and in favor of another, is unjust upon the face of it, and not to be justified under any possible contingency, and, therefore, that the word has no place there. Any discrimination between persons is unjust—giving one man an advantage over another. Any discrimination between places—giving one place an advantage over another—is unjust upon the face of it. Therefore, the word ought not to be inserted, and they should be absolutely required to give every man the same facilities, and at the same price as other individuals.

Now, a great deal was said here upon this question by various gentlemen, who enlightened the committee with some ideas that were new and some that were not, about the rights of these corporations, and I believe that before the debates got through, it was pretty well understood by the Convention that "corporations," as used in the argument, meant the Central Pacific Railroad Company. As was said by Mr. Edgerton, it seemed to acquire a personality in the course of the debate. It was said by the distinguished gentleman from San Francisco, Mr. Wilson, and I confess to surprise at the statement from that source, that because of the fact that the United States was a creditor of this railroad company, and had a mortgage upon it, and because of the fact that other men had become creditors of this railroad and had mortgages upon its property, therefore the State had no right to interfere with the prospective profits of that company, and render it less able to settle with its creditors.

MR. WILSON, of First District. I used that for the purpose of showing that the Legislature, in view of that, might want to alter its policy. If we place it out of the power of the people to control, we might get into a position not contemplated.

MR. TERRY. That is a chance that the creditor takes who loans upon property, the title of which is subject to fluctuation of value. The creditor can stand in no better position than the debtor, and in no case can a man perfect his title by giving a mortgage or lien upon it.

MR. WILSON. I have no doubt of the power to regulate these things, and have not said anything of the kind.

MR. TERRY. I misunderstood it then.

MR. WILSON. It was in reference to the first amendment offered by the gentleman from Los Angeles, that if the rates of freight and fare were put down, they never could be raised, I said it might put the railroad in such a condition that it could not meet its obligations, and that the Legislature could not allow them to raise the rates in order to meet the exigencies of the case.

MR. TERRY. Well, if the railroad company, by putting down their rates, choose to commit hari-kari, for myself, I have no objections to it. I think that the amendment of the gentleman from Los Angeles is eminently proper, and ought to be adopted; that they themselves are the best judges of what they can afford to carry freight for, and if for any purpose they announce their willingness to carry for a certain rate, they should be held to their contract, and not be allowed to raise it.

Some allusions have been made to the magnificent donations of money, property, and credit which have been made by the Federal Government, by the State of California, and by several counties in the State. The gentleman from Marin asserted that these were free gifts, without any conditions; that after the property passed it became the property of the railroad, and that they were under no legal obligations to the donor. True, sir, the recipient of a gift is under no legal obligations to the donor, but the obligation of common gratitude is held to be an obligation by most natural persons. There was an implied understanding at the time when these donations were made to this corporation that the property which was given to them, and the money which they were endowed with, was not to be used as a weapon against the donors; not to be used for the oppression of the people by whom the money was given. It is true that it gave them an opportunity to increase the resources of the State, and it was supposed that they would use it so as to furnish employment for thousands of laboring men in building the roads, making cuts and tunnels, and laying down the rails. It was expected that thus a benefit would accrue to all. It was not expected that with these magnificent donations, the honest workingmen of the country would be thrown aside, and that hordes of Mongolians would be imported into the country to take the place of these working men. The parties that made the magnificent donations did it for their benefit, and not for the benefit of the corporation. How has it been? Go upon any of the lines, and you will scarcely see one citizen out of five hundred men employed. That, then, was a part of the implied condition of the gift that has not been kept by this corporation.

Again, something was spoken of the envy with which men looked

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upon the wealth acquired by these men; that they saw their magnificent houses, and they envied them the possession of them. Whether men look with pleasure or displeasure upon the accumulation of wealth, depends in some measure upon the manner in which that wealth is accumulated. Now, when this Central Pacific Railroad Company was organized there were many stockholders. I believe only six stockholders, who assumed the directorship, acquired wealth. I have not heard of any others reaping any very considerable profit from it. It is said that by forming a Contract and Finance Company, and taking a contract from themselves to build a road for themselves, that they put into their own pockets all of the money that came from the various sources into the corporation. However that may be, I know of some stockholders we never got rich from the profits of this corporation. The County of Placer became a stockholder to the extent of about three hundred thousand dollars—certainly more than twice as much money as any one of the present owners of that enterprise ever put into it of their own; and according to the wealth of these men, estimated at from eight to fifteen millions, the County of Placer ought to have had fifteen or twenty millions. I would like my friend from Placer, Judge Hale, to tell me how much that county made out of it. The County of Sacramento was also a subscriber to the stock to the extent of some three hundred thousand dollars. Certainly that was more than any one of these individuals put in; and while they have their fifteen or twenty millions, and are living in opulence, how many dollars has the County of Sacramento realized? The County of Santa Clara subscribed two hundred and fifty thousand dollars, and the County of San Joaquin two hundred and fifty thousand dollars, and as the owner of twenty-five hundred shares, according to the profits made by the directors, who certainly did not put in half that amount to the man, ought to have had twenty millions of dollars, and not one dime of it has ever gone into the treasury of that county. Now, is there not some reason why people should look with some displeasure upon the accumulation of these large sums in the hands of a few men who are charged with using it for their own interests, for a corruption fund in the Legislature, and perhaps, in some instances, in the Courts of justice.

It is our duty here to adopt some plan by which the people of California are to be protected against this tyrannical corporation, because it has just come to be this question: either you have got to govern that corporation or the corporation will govern you. That is the question which the Convention has to determine first and the people afterwards. I examined with a good deal of care the twentieth section of this report of the Committee on Corporations, and I could not bring myself, as I thought, to support it; but I must confess that my determination to vote against that twentieth section was very much shaken by what might have been a warning or threat, one or the other, held out by the gentleman from Sacramento, Mr. Edgerton, in his eloquent address upon this subject. He intimated that the passage of that section would drive this corporation into politics, and that they would probably be able to control the election of these Commissioners and owning these Commissioners. They could discharge five or six thousand Chinamen and employ voters in their stead. Now, gentlemen, if I was certain that even that much good would result from it, if I was certain that five thousand Chinamen would be discharged and that five thousand citizens would be employed, and thus be able to earn an honest living for their families, I should be almost tempted to vote for it with all its faults. If it secured the discharge of aliens and employment of citizens who have families to support which would add to the future prosperity of the State, it would go very far to counteract the evils which might follow from this power in the hands of three men. I have too much regard for the honesty and intelligence of the people of this State to believe that the elections can be controlled by such measures. The people have seen too much of that in the past. In spite of all their influence, a square vote of the people of this State will sustain any measure which is intended to curb the grasping avarice of that corporation, and prevent further oppression upon the people of this State.

It is said that they themselves are the best judges of what they can charge; that no information can be obtained which will enable the Legislature or Convention to fix the rates at which their roads ought to be run. And it is said, in the argument against the amendment of the gentleman from Los Angeles, that some man might get a stage line, have a parcel of old stages on the line, and blackmail the railroad company, and he might say, "If you don't come down with so much money I will run opposition to you," and they would be compelled, unless they could put down their freights and fares, to submit to blackmail. Well, gentlemen, I have always heard that one of the principal arguments in favor of fostering these railroad corporations was that it would secure a cheaper mode of transportation than stage coaches and mule teams. If that is not true—if the railroad company cannot afford to carry both freight and passengers at rates cheaper than stages and mule teams—then the sooner the corporations are destroyed the better for the future of California. If the freights are the same and the fares are the same when this work is being done by mule teams and stages, they are the best, for the profits of transportation are shared by the whole community. The farmers, in the first place, sell the animals, the wagon-makers make the wagons, the farmers raise the grain and hay to feed the animals, the blacksmith shoes them, the harness-maker makes the harness, and the money is scattered over the country to every class of people in it. Whereas, the profits arising from the freights and fares of the railroad company goes, most of it, into the hands of a few enormously rich men, and the balance of it into the purses of aliens who do not expect to become citizens of our country, and come here only upon the expectation of gathering as much as they can of the fatness of the land in the shortest possible space of time, and return with it to their own country. I say that unless the element of cheapness comes in they are an absolute curse to the country.

What effect have they had? It is said that they increase the prosperity of the State. Why, who ever heard of an able-bodied man in California going around and begging for a meal, or begging for the privilege of working, until these thousands of coolies were imported and employed by this company. What a spectacle was witnessed in San Francisco the other day, when one of these magnates gave notice that a certain number of men might be employed at one dollar a day and find themselves, to do some work, and hundreds of men were sitting there all day long, more having offered than could be employed, begging for an opportunity to earn even so small a sum. Is not that scene witnessed every day? Are there not hundreds of able-bodied men willing to labor, anxious to labor, who are absolutely deprived of the privilege of earning, by their own labor, the price of the food that is necessary to sustain life? Deprived of the liberty of carrying out the primeval curse which was placed upon man, to earn his bread by the sweat of his brow.

And we are told that this is private property; that we must not interfere with it; that the Central Pacific Railroad Company are the best judges of the price at which they can run. Well, so they are the best judges, and so they would be, if they were guided by the commonest principles of fair dealing. But their judgment is altogether exercised upon the side of self. It was shown by the statistics, read here the other day, that out of the gross earnings the profits were more than ten per cent. greater in California than any other railroad in the United States. I believe the highest was thirty-six per cent. in the other States, while it amounted in this State, according to the report of the Commissioners, to fifty-six per cent. Now, these men have made enough out of this magnificent corporation to be willing hereafter to deal fairly. We know that they won't deal fairly, and it is our duty to make them do it. It is our duty to prevent discrimination between places. They start out their railroad track and survey their line near a thriving village. Two or three cases of that kind happened between here and Lathrop. They would go to the most prominent citizens of that village and say, "If you will give us so many thousand dollars we will run through here; if you don't we will run by," and in every instance where the subsidy was not granted, that course was taken, and the effect was just as they said, to kill off the little town. Here was the town of Paradise, in Stanislaus County; because they did not get what they wanted they established another town four miles from there. In every instance where they were refused a subsidy, in money, unless their terms were acceded to; they have established a depot near to the place, and always have frozen them out. As stated by the gentleman from Los Angeles, General Howard, they blackmailed Los Angeles County two hundred and thirty thousand dollars as a condition of doing that which the law compelled them to do.

Now, it is for us to do something to prevent this discrimination. We can say to them, and it is our duty to say to them, "If you undertake to publish to the world that you are able to carry a car or ton of freight for five dollars a hundred miles, you shall not charge the same rate for fifty miles. If the price from Sacramento is two dollars, you shall not charge more to Davisville or to any intermediate point." This is doing them no harm. They say they charge less to San Francisco, because there is competition, because people can send it by another route and they lose the freight. Very good. If they are obliged to carry freight at a loss, then it is their interest to lose it. But they are not carrying at a loss. They certainly get pay for it or they would not want it. If there was a hundred tons of freight to carry, and they were going to lose money in carrying it, they would rather some other kind of conveyance would take it. So it is absolutely certain that they are not carrying freight anywhere at a price so low as to lose money. Then if they do not lose money, they can afford to carry fifty miles at the same price they do one hundred. They can afford to carry to any intermediate point upon the same road for the same that they do the whole distance.

I do not propose to detain this Convention any longer in what I have to say, and end as I begun, by saying that the amendment proposed by the Chairman of the Committee on Corporations ought not to be adopted; that in the very nature of things there can be no discrimination between individuals as to railroad facilities which is not unjust upon the very face of it, and we do not want any question raised or any trials had as to whether it was unjust or not. Say, "You shall not discriminate. If John Smith comes to you with a ton of freight, treat him the same as if Peter Jones came to you with the same kind of freight, and give him the same advantages." The putting in of that amendment, the insertion of that word "unjust" here, would give rise in every case to litigation and inquiry. Just have it understood that they shall not discriminate. We decide here in this Convention a fact that is patent to every man, and we say, "You shall not discriminate at all."

SPEECH OF MR. BARTON.

MR. BARTON. Mr. Chairman: I concur with the gentleman last on the floor, in regard to section nineteen. It reads, in my opinion, just as it should read. It is the proper interpretation, and meets the wants and demands of the people of this State to-day.

Mr. Chairman and gentlemen of the Convention, I confess myself at the present time in rather an awkward position. For several days I have had a desire to be heard upon the subject pending—the report of the Committee on Corporations—but having a degree of temerity, and a lack of courage, perhaps, to force myself upon this honorable body, I find myself with my manuscript totally routed and emasculated by the eloquent speeches and arguments offered by the very learned gentlemen who have addressed this Convention upon the subject; and when our old friend, General Howard, like an old Spartan, rose here and made his voice resound upon the side of the people, as against the oppression and encroachments of this soulless corporation, I felt as though the whole subject had been exhausted. I felt as though there was not a single word left for me to say; and I do say now, to the fullest extent, and with all sincerity and honesty of purpose, that Mr. Howard, the gentle-

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man from Los Angeles, has more than answered every argument and sophistry that has been introduced upon the floor of this house upon the part of the corporations. I do not say by their paid attorneys; but, gentlemen of the Convention, it grieves me very much when I find myself associated with what is considered the very brightest and best talent of the people of this State—the chosen, and selected as such—to find upon one side of this Convention men who are willing to come forth and fight the battles of the people, as against the oppressions and tyranny of the the corporations; and upon the other side, another class of individuals who have been elected and are entitled to seats upon this floor, who come here with the determination—arguing from their reasoning, or their standpoint of reasoning—with a full determination that the people shall be thwarted in their efforts to revise the fundamental law of this State. And, Mr. Chairman, being a farmer from the northern part of the State—from one of the cow counties of the north—I want it distinctly understood, that neither the imperial frowns nor the scorns of the hirelings of the corporations in this State, can deter me from my proper rights upon the floor of this Convention. I, too, am here for a purpose, and if I might be indiscreet enough to use indiscreet language or terms, if I should in haste use any language that would be indiscreet enough to call things by a proper name, I will hold myself personally responsible for every word I utter in behalf of the people upon this question, and against that soulless corporation that has crushed down labor to-day to the menial serfdom of the Mongolian slave.

Mr. Chairman, I came here with the determination of working for the interests of the people (the corporations will take care of themselves); and in making just laws for the people, we cannot refrain from making proper laws for every one; and when I have beheld the ridicule and the scenes that have been perpetrated on this floor, I have been reminded that if the people were to hear all about the burlesque and the unreasonable conduct of this body, they would exclaim, with all their vigor and power, "This Convention does fall short of our expectations." And I am fearful that that will be the verdict.

We find ourselves occupying a position here, as delegates in this Convention, to revise the Constitution of this State; and it bears a relation similar to that of a jury, as we discuss and pass upon each of the propositions which are proposed to the new Constitution. Therefore, sir, great care should be taken that we may arrive at just and equitable conclusions, and render such a verdict as will be just, alike to those who are interested in railroads and other corporations, and to the people at large. A spirit of fairness should, and I hope will, characterize our actions and our conclusions. That the best interests of the State shall be promoted, of all other conclusions, will no doubt be admitted on all sides. Yet, sir, there is a strong feeling in the minds of the people of this entire State, that the corporations control this Convention; and when we look around this chamber and find the array of legal talent which is pitted against adopting the report of the Committee on Corporations other than Municipal, we are not surprised that such a feeling exists in the minds of the people at large. We find, sir, the ablest lawyers in the State—many of them—battling here against that report. On the other side we find the farmer, the merchant, the mechanic, and, in a word, sir, the producing classes. Does not this state of things itself bring conviction to the unbiased mind? It would be idle, indeed, for the farmers and merchants and mechanics upon the floor of this house to cross blades, if you please, in debate with such distinguished advocates as Mr. Wilson, Mr. Edgerton, Mr. McFarland, and others. But, Mr. Chairman, we desire that our views shall be heard; and, sir, while we admit the ability, the skill, and the ingenuity of these gentlemen, we must still admit that the provisions of this report ask for nothing but what is fair and just, nothing but what the people of this State demand, when we find that the Central Pacific Railroad Company earn such profits with the magnificent donations of the Government and the people, and seem determined to dictate in all questions of State policy, from the election of a United States Senator down to the selection of a Warden of the State Prison.

Mr. Chairman, there seems to be a conflict between this monstrous corporation and the people, and it might just as well be determined at once, now and for all, which shall control. It is fair to presume that the Commission will be just to these corporations; and if they are, what is there in the provision proposed by the committee's report which these railroad people complain of. The people are just and fair, and the representatives of the people have, or should have, no other motive than to reflect their will. Have the railroad companies become so obnoxious to the people that they are afraid that justice will not be done them? Or are they afraid that justice will be done? It seems to me, sir, that the provisions of the committee report, when amended as proposed, will meet the demand which the people of this State have made of us; and, sir, nothing short of this will fill the measure of that demand.

Of the corrupting influence of this railroad I desire to speak a few words. They have robbed cities of their water fronts; they have ruled through highest styles of power and tyranny in the counties of this State, and by their gross system of colonization they have removed county seats, against the will and the wish of the people; they have subsidized the press of the State, and of the Nation; they carry the political destiny of almost every man in this State around in their pockets; they have driven out of our State almost all of the intelligent labor, male and female, by giving Chinese slaves the preference. Both they and their henchmen, and their organs, have slandered the intelligence of this State and Nation by the statement, namely: that had it not been for the Chinese, the great Central Pacific Railroad could never have been built. I brand that as an insult to the intelligence of the American people, and especially to the people of the State of California. I brand such a statement as a falsehood, and characterize it as a gross insult.

I am sorry Mr. Edgerton is not here, because I do not desire to say harsh things about a gentleman in his absence, but I shall only refer to him casually. He said the other evening, that the Southern Pacific Railroad was running at a loss of five thousand dollars a day, or one million five hundred thousand dollars a year. I believe that is about his statement. Why, sir, this is the man who, as a servant of the people, said that these gigantic railroad kings set themselves up over us as our masters. Now, sir, if they are losing five thousand dollars per day, or one million five hundred thousand dollars per annum, I must say that I am compelled to give them less credit than I have always given them, to invest their money in an enterprise that never will pay any better than that. I will guarantee, gentlemen of the Convention, that the Southern Pacific Railroad and the Central Pacific Railroad combined, will do nothing of the kind, to build a road where it will not pay them a percentage on their capital. In one breath, Mr. Edgerton says the railroad would discharge their Chinamen and employ white men, and thereby elect their Commissioners, and the next breath he says the result would be to utterly drive out and destroy the railroads of this State. Speaking of the lawyers and their efforts, he eulogizes that profession. So far as I am concerned, I think the lawyer is a necessary evil, to say the least of it. I have no unkind words to offer against the lawyers as such. It is possible that it is necessary that we should have that intelligent class with us. I have no objection to it; but when I find myself frowned down, or an attempt made to frown me down, because I am a farmer, forsooth, with their imperial frowns, then I claim it as my right to antagonize against that enormity, the profession of the law. And while upon that subject, allow me to say that the people of this great Nation do distrust the profession of the law. In our national Congress, out of about five hundred members, three hundred and ninety-seven of them are lawyers, twelve farmers, and the remainder are composed of bank Presidents, railroad directors, and so on, and so on. Now, this disparagement of representation upon the part of the lawyers, does not speak well for the Nation; and, take the history of this State and its legislative career, and it does not speak well, in my opinion, for the lawyers. What our friend, Mr. Howard, has said of the lawyers, covered nearly all the grounds, but what was left untouched, the gentleman from San Francisco, Dr. O'Donnell, finished up last night. Therefore, I may leave the lawyer to occupy precisely whatever position he desires to occupy in this life without any molestation upon my part whatever, because I accord to him, as I accord to every individual, the right to think and act for themselves, in accordance with his own will and conscience.

And, Mr. Chairman, while I am upon this subject, I desire to say that since I have been upon the floor of this Convention there has been a determination to cast their imperial frowns upon me and my friends to that extent that it is not pleasing in my sight nor to my feelings. Whilst I have endeavored to extend to the gentlemen every courtesy that was in my power, I have been branded with the sneering remark that I was a Kearneyite; that I was a communist; that I was an agrarian. I brand it as a falsehood. I am, sir, if I know myself, a representative of the people of this State, and of no individual. I bend the knee to no individual. I speak my sentiments clearly and boldly upon every subject, whether intelligently or otherwise, I will refer to the public to determine. But when a man rises upon the floor, and with his imperial frown attempts to drive me from my position in this body, by telling me, because I dare to be a Workingman, and cast my lot and my voice upon that side, I tell the gentlemen upon the floor of this Convention that it is an odium I am proud to wear, because of the fact that I find a majority of this Convention, gentlemen, upon the side of the people, and, God knows, they were not all elected upon my ticket. Thank God for it! I say all praise to those gentlemen who have dared to have the manly courage to come out here and assert their independence in behalf of the great fight and struggle they are called upon to perform here, and identify themselves with my side of the Convention, if you please, in defense of the people and the people's rights.

Why, sir, Mr. Edgerton, the gentleman from Sacramento, almost scandalized the Chairman of the Committee on Corporations, and the entire committee. And while I am upon this subject, allow me to call attention to the contrast in his position here to-day, and that which he occupied four years ago last Winter, when I was entitled to a seat upon the floor of this very chamber, from this county, then my own home. When we found that monstrous corporation in here with its representatives, and the great fight was being made for the United States Senator, I then found myself here upon the side of the people as I do to-day, and along with me was the honorable gentleman from Sacramento, Mr. Edgerton. The very manly fight that was made by that gentleman and his friends in behalf of the people, and against the corporation—for I had the honor of stumping the county with him and being with him during the campaign—a more honorable fight than he made was never made in the State of California. Yea, even the noble Haight never made a nobler fight than Mr. Edgerton. Then what has come over the spirit of this man's dream? We find him here to-day villifying, and scandalizing, and breaking down the report of the Committee on Corporations, and he does not offer to this honorable body one sentiment in argument that would lead to anything like an intelligent conclusion upon this subject, whereby this body might adopt some other report or some other means that would meet the people's demands in this State.

Why, sir, at that momentous time, four years ago last Winter, when the people were aroused from one end of the State to the other upon the subject of corporations, what do we find then? We find the honorable gentleman from Marin, Mr. Shafter, championed by one side of the house, and Mr. James Farley, of Amador, from the other side, and the people sandwiched in between these two great parties, attempted to be crushed out of existence, making a manly fight, as we are to-day making. What was the result? The manly courage of the people's representatives went on from day to day, and from week to week, and the Republican and Democratic parties pooled their issues, if you please,

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pooled their political issues, and were willing to cast aside all of their bickerings and wars of years, throw Mr. Shafter overboard, and cast their entire vote, as they propose to do in this Convention, for the corporations and against the people; and though in our infancy, in our weakness as an element standing up and daring to battle for the people, we came forth from our sandwiched position, claimed the dignity of men, and made a gallant fight, which resulted in the overthrow of the mandates of the corporations, and elected the people's choice of this State, Newton Booth, to the United States Senate. Then it was, sir, that a Democrat, like myself, who has been for thirty years in this State, rose above party and voted for Newton Booth. Then it was that a Democrat like me could cast aside every other consideration and support the measures and the demands of the people.

Mr. Chairman, it does vex my heart, it pains me, to see the bright intellect that the people have sent here pitted against the insignificant and lowly representatives of the people of this State. Coming here as we do, without any knowledge in parliamentary law, without any experience in legislative matters, to see these misled minds pitted against us, I tell you, gentlemen of the Convention, it does grieve my soul and my heart. For why? Because I claim, sir—because I brand them—I send it home to their hearts—their motives are sinister, and not in keeping with the demands of the people and of the times.

And, sir, this corporation, this Central Pacific Railroad corporation, has filled our land with tramps, and when one of them comes along—a white man—he may be a man of education; he may have been educated in the highest schools of the East; yet he has journeyed with his education to this shore, and when he knocks and asks for admission and employment, because he carries his blankets upon his back he is told, "Begone! you are a tramp; we prefer to employ Chinamen." I am sorry to say that this spirit has permeated not only the corporations, but it has permeated the body politic all through the State. We find it, if you please, in its ramifications deep down among the Grangers, where I belong. I scorn them and brand them as false to their professions; that they are not Grangers, and are not entitled to the appellation.

Mr. Chairman, I shall not weary the committee but a short time further. The ground has been so thoroughly covered and so much has been said, that I believe that the intelligent members of this Convention—and I claim they are all such, and God forbid that I should utter anything otherwise—are ready to vote, and I hope that they will, as nearly as possible, adhere to the report of the committee.

Now, in regard to the appointment of the Commission, which section twenty refers to. I am not willing, for one, to submit this matter to the Legislature, and I will not support any proposition that has a tendency to throw this question into the hands of the Legislature in any shape, form, or nature. It has been asserted by Mr. Shafter, that there are only three distinct branches of government in this State. Admit it, sir. I am perfectly willing to admit that there are but three, but when the time comes that a soulless corporation will even go so low and so contemptible as to control the two great (so called) political parties and their party machinery, so that three distinct branches of government will not run this State, I am in favor of making four, yea five, if it is necessary, in order to mete out the views and the demands of this people.

THE AMENDMENTS.

MR. LARKIN. Mr. Chairman: I would ask what amendments are pending to section nineteen? I think that after being discussed for the last three or four days this house should dispose of it, so that we can discuss section twenty. In section twenty there is a question involved in relation to the Commission, and if there are no other amendments, I will move——

MR. CAPLES. I have one.

MR. LARKIN. My objection to the amendment of the gentleman from San Francisco, Mr. Estee, is that it nullifies the section. We should provide positively that no discrimination in charges or facilities for transportation shall be made. That is clear and positive, and I believe that the Convention is ready to vote down that amendment and carry that section as it stands. Therefore, as soon as the Doctor has offered his amendment, I shall move the previous question.

MR. CAPLES. Mr. Chairman: I desire to offer an amendment to the amendment.

THE SECRETARY read:

"Strike out, in the first line, the word 'discrimination,' and insert the word 'robbery.'"

MR. CAPLES. Mr. Chairman: I do not desire to discuss this question at all, and I confess that the two terms are equivalent—discrimination and robbery—but I have a decided preference for the latter. Therefore I offer the amendment.

MR. BARBOUR. Mr. Chairman: If I understand it, the report, so-called, by the Chairman of the Committee on Corporations, to insert the word "unjust," purports to be a report of the committee.

MR. ESTEE. I did not say it was a report of the committee. I said I had submitted it to a majority of the committee. I do not think it makes any difference one way or the other. I offered it at the suggestion of members on this floor who were friendly to the proposition, and with a view to uniting the friends of the measure.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I seriously object to this manner of introducing amendments. Every morning the Chairman of the Committee on Corporations comes in with an amendment, and says it is by the action of a majority of the committee. Running up to a member whilst perhaps he is talking to a man, he asks him, "Have you any objection to this proposition?" The member has no opportunity to examine it. Then he hands it in here as the act of a majority of the committee. I object to that mode of procedure, and I rise now, not for the purpose of discussing this amendment, but to say, as one member of the committee, that I never did consent to it, and do not now. To insert the word, "unjust," there, destroys, or qualifies, the whole section. In the speech of the gentleman from Sacramento, no allusion was made to the misfortunes to which the people of Illinois run by inserting that word into the Constitution, or where they had finally to legislate down to the proposition that the discrimination must be considered prima facie unjust. The moment you proceed in this direction, the question is raised, what is unjust discrimination? and you go wrong altogether; you open wide the door for construing the section away. I say that there is no discrimination that is not an unjust discrimination—prima facie an unjust discrimination. And that is all that is necessary to be said. It is inferred that any discrimination is an unjust discrimination, and I have not one particle of doubt that if those Conventions that have employed the word had the work to do over again, that every single one of them would leave the word out of the section. This Convention, seeing the dilemma into which these Conventions run, should not insert the word and open the door for construing it away.

MR. GRACE. Mr. Chairman: I move that the committee rise.

MR. TULLY. I would ask if an amendment is in order?

THE CHAIRMAN. The gentleman can send up his amendment, and it depends upon what it is.

THE SECRETARY read:

"Amend section nineteen so as to read: 'The Legislature shall, after the adoption of this Constitution, establish and provide a system for the enforcement of an equitable tariff of rates to be charged for the transportation of freight and passengers by the railroad and transportation companies of this State, and all appropriate legislation to prevent undue and unwarrantable discrimination in such charges or in the facilities for the transportation of the same class of freight or passengers by such companies between persons and places, and shall compel the observance of the same by fines and forfeitures upon such railroad and transportation companies, and by imprisonment of the officers or employés thereof, at its discretion.'"

REMARKS OF MR. MCCONNELL.

MR. MCCONNELL. Mr. Chairman: I desire to occupy the time of the committee but a few moments, and I will first read a few lines from the speech of the gentleman from Marin, Mr. Shafter. He says: "Way back in eighteen hundred and sixty, this railroad excitement commenced. There was not a man in the State who would not turn his pockets wrong side out to help build a railroad. The people were willing to give them all they asked, and all they did was to take all the people gave them. You forced it upon them, and they scarcely had to ask for it. You gave it to them without any restriction whatever. Congress gave them fifty millions of dollars without scarcely inquiring what they were going to do with it. They did not even inquire where their probable terminus would be. It was mentioned as being at or near the Bay of San Francisco, and they stretched that as being at Sacramento. It was given to them without a solitary condition. All this was done by our delegation in Congress. The State itself gave them millions of dollars, and the people subscribed for millions of their stock. I voted against it in the Legislature, and would do it again. Another bill was passed granting them ten thousand dollars a mile for every mile the Pacific Railroad had built, or should build in this State. These subsidies amounted to about twenty million dollars. The people got cooled down a little, and sent me, with others, here to have that Act repealed. We did so; and what did the people do? They sent the man who introduced the bill and got it passed to the United States Senate. Talk about the people wanting this thing and that thing, here is an instance of it. I was sent here to repeal the bill, and I did so, and after I had done so I could not probably have got a vote because I was a monopolist, and the other gentleman was an anti-monopolist. The people are generally hasty and do not examine deliberately."

In view of the vast past experience of the gentleman—nineteen years as a legislator, and a great many years as a railroad builder—I expected we should hear from him something that would offer a solution to the whole question. I remember the time very well when the people of San Francisco opposed the building of the Central Pacific Railroad, and called it the "Dutch Flat swindle." It was at a time in its history when it was struggling for existence, without means, and in need of friends, and it was perfectly safe to oppose it. It was at this time that the gentleman, as he says, was sent up to Sacramento for the purpose of making a new bargain, in which he partially succeeded, by which the people are now, and have been ever since, paying the Central Pacific Railroad one hundred and eight thousand dollars a year. The people, as he tells us, failed to recognize his great services, and sent another gentlemen to the United States Senate, who had assisted the railroad. In course of time the struggling company accomplished the mighty undertaking, and its terminus was established at San Francisco. A few short years pass, and the people send the gentleman again to Sacramento to revise the fundamental law of the land. Behold! What a change has come over the spirit of his dreams! The struggling infant is now a giant, successfully contending with the people of the entire commonwealth; making Governors, Representatives, and Senators; controls the entire transportation of freight and passengers upon this coast, and threatens to enslave a free people. Where does the gentleman from Marin stand now? He has already answered. His speeches upon this floor too plainly tell on which side he is enlisted. This fight never will be settled, and it ought not to be settled, until it is settled upon the eternal principles of right and justice. The company will have a barren victory that ignores these principles. I desire information upon the following questions:

The distance from Winnemucca to Sacramento City is three hundred and twenty-four miles, and the return to Winnemucca, six hundred and forty-eight miles, and is over the high Sierra Nevadas, where the grades are high, the curves sharp, and often deep snow; and Mr. Edgerton

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says the cost of hauling is increased five times for every twenty feet of grade. Now, having two carloads of freight at Winnemucca ready for shipment, and desiring to send it to market—say to Boston, Massachusetts—is it necessary that it should be taken to Sacramento and then returned to Winnemucca before it starts on its destination? If the railroad should take your freight against your wishes to Sacramento and return it over the same road to Winnemucca, and charged you for that service one and one half cents per pound, or three hundred dollars per carload of twenty thousand pounds, would you not think it unjust and wrong? This is the management in eighteen hundred and seventy-eight. I find, in looking over bills of lading in eighteen hundred and seventy-three, that a different policy prevailed. Freight did not come over to Sacramento, but went directly east, and the charge was only one cent per pound, or two hundred dollars per carload, although it was three hundred and twenty-four miles nearer Boston than Sacramento. In addition to these charges through rates are added. Do you think such management in transporting produce to market a wise and just policy toward the producer? Should a person be punished because he is nearer market than his neighbor? Do you think that part of a thing is worth more than the whole of it? I cannot think of anything where such a rule would hold good, except it be upon the long speeches in this Convention. [Laughter.] I desire to know of the gentleman from Marin if his agent on his little farm in Marin should take his butter and cheese, the produce of his dairy of five thousand cows, and transport it to Ukiah—one hundred miles in an opposite direction and back again—before it took its departure to San Francisco, the market he wished it sent to, and charged him one and one half cents per pound for that kind of service, if he would retain him in his employ and think he was a good and wise servant? If he answers all these questions to the satisfaction of the Convention, I shall be disposed to assist him to the United States Senate the next time he is a candidate for that high and honorable position; for certainly no other man will be his equal in this State. And I would ask him further—he having been a lawyer for forty years, and a man of large experience and extensive practice, and familiar with legislation in California—if he can tell us what has become of the Contract and Finance Company? If so, was it a financial success? Also, what has become of the Western Development Company, and was that equally successful? And further, what is the name of the new company that has recently been formed, and are its objects the same as its deceased brethren.

MR. GRACE. I think we have a rule that we should take a recess from twelve o'clock to two. I am as much in favor of getting along with the business of this Convention as any gentleman on this floor, but I cannot see any use in sitting long after the usual hour and then having the balance of the time in the evening. We can take the recess at the usual hour. I therefore move that the committee rise, report progress, and ask leave to sit again.

Carried, on a division, by a vote of 73 ayes to 35 noes.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress, and ask leave to sit again.

The Convention then took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and quorum present.

RECONSIDERATION MOVED.

MR. TINNIN. Mr. President: On yesterday the Convention passed a resolution to adjourn until Monday, at two o'clock. A gentleman gave notice of a motion to reconsider. That motion was laid on the table. I now move to take it from the table.

MR. BARNES. I move that the whole matter be indefinitely postponed.

MR. MCCALLUM. That motion cannot be entertained until it is taken from the table. It is not now before the Convention. Until it is taken from the table it is not before the Convention.

THE PRESIDENT. The gentleman from San Francisco, Mr. Barnes, moves to indefinitely postpone the motion.

MR. HILBORN. I hope this motion will prevail.

MR. BARNES. I moved to indefinitely postpone the motion of the gentleman from Trinity, Mr. Tinnin.

THE PRESIDENT. The question is on that motion.

[Cries of "division," "division."]

MR. VAN DYKE. What will be the effect of that motion?

THE PRESIDENT. To indefinitely postpone the motion of the gentleman from Trinity.

MR. SMITH, of Kern. Will the Chair state the effect of that motion?

THE PRESIDENT. It will have no effect except to indefinitely postpone the motion made by the gentleman from Trinity.

MR. LARKIN. Ayes and noes.

MR. CONDON. Ayes and noes.

MR. WHITE. Ayes and noes.

MR. WYATT. Ayes and noes.

MR. HILBORN. Ayes and noes.

THE PRESIDENT. The Secretary will call the roll.

The roll was called, and the motion to indefinitely postpone prevailed by the following vote:

AYES.

Ayers,	Boggs,	Casserly,
Barnes,	Boucher,	Chapman,
Barton,	Burt,	Charles,
Blackmer,	Campbell,	Cross,
Crouch,	Johnson,	Shafter,
Dowling,	Joyce,	Shurtleff,
Dudley, of San Joaquin,	Keyes,	Smith, of Santa Clara,
Dudley, of Solano,	Lindow,	Stedman,
Dunlap,	Martin, of Alameda,	Steele,
Estee,	Martin, of Santa Cruz,	Stuart,
Estey,	McComas,	Thompson,
Farrell,	McConnell,	Van Dyke,
Fawcett,	Miller,	Van Voorhies,
Filcher,	Moreland,	Walker, of Tuolumne,
Garvey,	Morse,	Waters,
Gregg,	Noel,	Weller,
Hall,	Ohleyer,	Wellin,
Harrison,	Overton,	Wilson, of 1st District,
Harvey,	Pulliam,	Winans,
Heiskell,	Schomp,	Mr. President—61.
Herold,		

NOES.

Andrews,	Holmes,	Reynolds,
Barbour,	Howard,	Rhodes,
Barry,	Huestis,	Ringgold,
Brown,	Hunter,	Smith, of 4th District,
Caples,	Kelley,	Smith, of San Francisco,
Condon,	Laine,	Soule,
Cowden,	Larkin,	Stevenson,
Davis,	Larue,	Swenson,
Dean,	Lavigne,	Terry,
Doyle,	Lewis,	Tinnin,
Eagon,	Mansfield,	Tully,
Evey,	McCallum,	Turner,
Finney,	McCoy,	Vacquerel,
Freeman,	McFarland,	Webster,
Freud,	McNutt,	West,
Glascock,	Moffat,	White,
Gorman,	O'Donnell,	Wickes,
Herrington,	Porter,	Wilson, of Tehama,
Hilborn,	Reed,	Wyatt—58.
Hitchcock,		

MR. LARKIN. I object to the name of Mr. Noel being counted.

THE PRESIDENT. Too late; the result has been announced.

EXPENSES OF A COMMITTEE.

MR. HOLMES. Mr. President: I present a report from the committee appointed under a resolution of this Convention adopted November seventeenth.

THE SECRETARY read:

SACRAMENTO, November 26th, 1878.

MR. PRESIDENT: Your committee appointed on the seventeenth instant, to make arrangements for the obsequies of Honorable J. M. Strong, late a member of this Convention, beg leave to report that in the discharge of their duties incurred expenses to the amount of two hundred and ninety dollars and fifty cents, for which vouchers are herewith presented.

The committee recommend the adoption of the following resolutions:

Resolved, That the Controller be and he is hereby authorized to draw his warrant in favor of the Sergeant-at-Arms for the amount of two hundred and ninety dollars and fifty cents, to pay the expenses of the obsequies of the late Honorable J. M. Strong, a member of this Convention, and that the State Treasurer be and he is hereby authorized to pay said warrant out of the funds appropriated to this Convention.

Resolved, That the per diem for the remainder of the session of this Convention, which the late Honorable J. M. Strong would have been entitled to as a member of this Convention, be paid to the family of deceased.

S. A. HOLMES, Chairman.

THE PRESIDENT. The question is on the passage of the resolution. Adopted unanimously.

THE RAILROAD COMMISSION.

MR. ESTEE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, to further consider the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section nineteen is before the committee.

SPEECH OF MR. STEDMAN.

MR. STEDMAN. Mr. Chairman: I feel somewhat diffident, after listening to the very able arguments of the distinguished gentlemen who have preceded me on both sides of this great question, in offering a few remarks after this subject has been so thoroughly discussed; yet, sir, recognizing as I do, the fact that the subject-matter involved in the sections now under consideration is of vast interest to the people of this State, and believing as I do, that no subject will be brought to the attention of this Convention of greater importance than this question of corporations, the solution of which will require the most careful consideration, and, also knowing that the public mind is excited upon this question of railroad corporations especially, I cannot, in the performance of the duties incumbent on me as a representative of the people, do less than raise my voice in favor of these sections. The people expect us to act squarely on this question, and not dodge it. They expect us to place restrictions on these corporations, for the reason that there is, as has been demonstrated by the able gentlemen who have addressed the Convention on this side of the question, special abuses that have crept into the railroad system, which demand special remedies. It is proposed in section nineteen, that:

"No discrimination in charges or facilities for transportation shall be made by any railroad or transportation company between places or persons, or in the facilities for the transportation of freight or passengers

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within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any transportation company, or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class in the same direction to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates."

The section provides that no greater charge should be made for carrying a short distance than for a longer one. Here is one of the causes of complaint. A greater charge is in many cases made for carrying ten miles, where the business is local and no competition can exist, than in other cases is made for carrying fifty, and even one hundred miles, over the same line.

In the matter of freights, I am informed that grain is carried from San Francisco to Yuma for ten dollars per ton, and although Los Angeles is about thirty-six hours nearer Yuma than San Francisco, it costs the merchants of Los Angeles just the same price—ten dollars per ton—to export their grain there. Instances of further discriminations in favor of localities have already been noticed in this discussion, and thousands of additional instances could be cited, as well as the other unjust enforcement of arbitrary rates, made at points where no relief can be had from the extortion of the carrying companies, for the sole purpose of exacting all the tribute which the commodities carried will stand. On the other hand, where there is competition, a carload of freight is carried a hundred miles for a sum less than is charged for carrying the same freight ten miles where there is no competition. It is a matter of fact that upon small communities great impositions are practiced in putting upon them enormous charges for transportation, in order that the companies may be the better able to carry from the great cities at very low rates. And it is to abolish this abuse that this section is offered. I think all will agree with me that this injustice to the shippers from intermediate points is getting to be too grievous to be borne much longer, and a remedy must be found.

It is the experience of the past which tells us that we cannot expect the remedy from, or through, Legislatures. If restrictive laws were enacted, the companies would get other Legislatures to repeal them—therefore the necessity of putting in a constitutional provision which cannot be repealed, and which, being enforced under proper legislation, cannot fail to be salutary in its influence.

The next section provides for the creation of a Board of Railroad Commissioners, who "shall have the power, and it shall be their duty, to correct abuses by railroad corporations or other transportation companies, establish rates of charges for the transportation of passengers and freight for railroad or other transportation companies," etc.

It has been said by gentlemen on this floor that this section contemplates the creation of a triumvirate, having powers that are absolute, exercising executive, judicial, and legislative functions combined. Well, sir, what if it does? To my mind there is merit in the proposition. I believe it is a correct one—for here are three officers of the State clothed with the sole power, not only to regulate fares and freights, but to enforce a proper obedience. It is an absolute necessity, to my mind, that there should be public officers charged with the duty of investigating these outrages and wrongs, and having the power to apply the remedy. It is evident to all that the acts of this Commission must fall far short of our anticipations, unless we provide some means by which they can be enforced.

The eloquent gentleman from Sacramento, Mr. Edgerton, spoke of the limited powers of existing Railroad Commissioners, especially the English Commissioners. Why, sir, the English Board of Railroad Commissioners provide for the limitation of freights and fares, as well as the character of the train's service, requiring them to run first, second, and third-class trains, and specifying the time for such service; also how cars shall be constructed, the length, breadth, heighth, etc., and various regulations, completely demonstrating the fact of their having and exercising the same powers in effect as are sought to be conferred upon the Commissioners provided for in this section. The gentleman admits the fact that in England the solution of the railroad question was recognized as an anomaly in the exercise of governmental powers, and that a creation of an anomalous power was necessary; that it required a Board possessed of different functions from any of the former methods; that it should possess powers of a combined legislative, executive, and judicial character. He admitted further, that there it was impracticable for Parliament to deal with the question, and that in order for the workings of this supervisory and controlling Board to be effectual, they should be clothed with arbitrary powers in some particulars, and then attempts to argue from the fact that they are called upon to exercise these arbitrary powers in but few instances, that the necessity for the existence of such a Board is brought into question. Does not the gentleman know that the very fact of the existence of such a Board, clothed with ample remedial powers, and ready to exercise the same upon the development of any reason for so doing, is, in itself, the reason why so little call is made upon it? And I am frank, sir, in saying that if we had had heretofore as thorough a control over the carrying companies in this State as is maintained in England, there would never have arisen this vast system of extortion and unjust discrimination, that now characterizes the railroad operations in this State.

No, sir; there is no question in my mind as to the duty of the State to exercise, through this Commission, all the powers contemplated by it, anomalous though it may be, if her citizens are to be protected. The gentleman's argument, therefore, resolves itself down to this: that under the claim of vested rights these corporations can bid defiance to the government—if they will acknowledge there is a government. He, with other gentlemen who have spoken on this subject, claim, according to the arguments they have made, that there is no government that can control, and regulate, and limit their demands. I maintain, sir, that corporations are subject to governmental powers, the same as individuals. I hold that the charges of railroad corporations can be limited, the same as tolls of ferry, bridge, plank road, and turnpike companies. It is a fallacy to assert that a railroad, or any private corporation, can have a vested right in any governmental power. It has been said that this is a matter of legislation. Whenever it suits some gentlemen on this floor to oppose certain measures, it is legislation; but when it suits their purpose to thrust the same into the Constitution, it is constitutional law. I have not heard any definition here of constitutional law as contradistinguished from legislation. I do not know where to draw the line. No one has attempted to do this. It is legislation when they do not want it, and it is Constitution when they want it placed in the fundamental law.

The Convention of Massachusetts of eighteen hundred and twenty, in an address to the people—a document prepared by Judge Story, Chief Justice Shaw, Daniel Webster, and a dozen other great lawyers and eminent men, set up the distinction, and this is what they said: "In framing a Constitution, or revising one for an extensive commonwealth, in which various interests are comprised, nothing more can be hoped for than to establish general rules adapted to secure the greatest good for the whole society."

This provision, I hold, is one of that kind—a "general rule for the greatest good." It is not mere legislation, and it is one of the most important on this subject. I am opposed to this eternal cry of legislation. We know what will be the result if we give up this matter of the regulation of corporations into the hands of the Legislature. The people are demanding that we secure them this protection through the medium of the organic law, and, sir, for my part, I am willing that organic law shall stand between the people and these vast moneyed corporations. The time has come when the constitutional power of the State should be brought in use to protect the people. In my judgment there can be nothing done by this Convention that will give such universal satisfaction as providing in the Constitution for the protection of the people against the aggressions and extortions of these great monopolies. Railroads are great and grand things. I place as high an estimate on the inestimable value of these immense commercial enterprises that are running throughout our State and country as any man, but I would rather see every railroad which has been constructed sunk out of sight, than to see this free people become, as they gradually are becoming, the slaves of these immense corporations. No gentleman has had the hardihood to assert that abuses do not exist. They not only exist, but are practiced under the forms of law. This crying evil demands redress at our hands. This robbery under the forms of law should be ended. The New York Evening Express recently, in an article on railroads, said:

"The most vital issue in the United States to-day, is whether the State shall be ruled by the people or ruined by the corporations."

This is too true. The daylight robbers are abroad, stealing from the people under the protection of miserable charters, and the practice is being rendered respectable by being followed under the cover of legalized methods, which gentlemen say here we cannot interfere with. I do not know that I can better illustrate the practice than by reading an extract from a chapter of Erie:

"Pirates are commonly supposed to have been haltered and hung out of existence, when the Barbary Powers and the Buccaneers of the Spanish Main had been finally dealt with. Yet freebooters are not extinct; they have only transferred their operations to the land, and conducted them in more or less accordance with the forms of law, until, at last so great a proficiency have they attained, that the commerce of the world is more equally, but far more heavily, taxed in their behalf than would ever have entered into their wildest hopes, while, outside the law, they simply made all persons stand and deliver. Now, too, they no longer live in terror of the rope, skulking in the hiding place of thieves, but flaunt themselves in the resorts of trade and fashion, and disdaining such titles as once satisfied ancient Pistol, or Captain Macheath, they are recognized as 'President this,' or 'Colonel that.' They rob and steal in every conceivable manner. We have seen our lands taken from the people and given to these corporations by corrupt Congresses, and these same corporations whose miserable, grasping, and soulless existences have been flattered into life by this wholesale robbery of the people, using the wealth of which they have defrauded you and I to corrupt our Legislatures and our Courts, until they are almost able to defy us."

These corporations are not the great benefit to the people they are said to be. They have laid their blighting hands upon every avenue of labor, have prostrated industries, reduced wages to starvation prices, and, in pursuance of this policy, have introduced into our midst, to compete with our white labor, swarms of the most degraded race whom God ever knew, or the devil ever dreamed of—the filthy, leprous Chinese—a race to whom no refinement is possible and no civilization attainable; to whom virtue is unknown, and vice and depravity their only religion. Our white laborers cannot compete with them, and are forced to succumb and accept labor from these corporations for the support of themselves and their families at the mere pittance of one dollar per day. This great State, with resources vast enough to support thirty millions of people, has only a population of eight hundred thousand, and notwithstanding this, there are thousands of our people suffering the greatest poverty in consequence of the general corruption of the times.

And now, Mr. Chairman, in conclusion, I desire to say that my constituents, who have sent me here, have charged me to give all possible aid to the curtailment and limitation of the powers of these grasping corporations, and the abolishment of the abuses and evils which have grown up under their fostering care, and every sense of my duty to them, as well as all of my personal convictions, induce me to vote for these sections as they stand. To these corporations, together with the privileges that have been granted, there has been confided a high, sacred trust; and, sir, standing upon the broad platform of reform, I demand that in the enjoyment of their privileges they shall also discharge their

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trust with a proper regard for the welfare of the people, who, in giving the one, will insist upon the other.

SPEECH OF MR. EAGON.

MR. EAGON. Mr. Chairman: I am well aware that the Convention is becoming wearied over the protracted discussion of this question, and I need not detain this body any great length of time in hearing what I have to say. I would not detain them at all; yet, sir, there are some things I desire to say in order to set myself right in voting as I shall upon the questions now under consideration. I have not occupied any of the attention of this Convention before, and I shall ask their indulgence that I may say a few words, more in explanation of my vote than for the purpose of attempting to produce any new arguments that will influence the vote or action of any gentleman upon this floor. Now, sir, I am in favor of the amendment of the gentleman from Los Angeles, as modified by Judge Hager. I am in favor of that amendment, for the reason that I am unalterably opposed to section twenty, creating this Commission. I believe, sir, that the object sought to be accomplished might very well be left to the Legislature. In voting as I shall, I cannot be charged as being either a friend or a foe to the great railroad corporations of this State. I have never had any connection with them, and never was said to be their friend or their foe; but I have always acted in public life in a manner to do justice, both to the people and the railroad corporations, and always intend to do so. Now, sir, I have not lost faith in the people. Like Judge Shafter, I believe an honest Legislature can be elected, if the people themselves will look to it and see that honest men are sent to the Legislature. It has been too often the case that these positions are left to men incapable of filling them—ignored by good men for more remunerative offices, without receiving proper attention from the people. I believe, sir, that this section twenty is in conflict with the spirit of our Government. It is a centralization of power that no man who believes in the true principles of government can give his sanction to if he will investigate the matter.

I have arrived at these conclusions, not from the force of the argument of the gentleman from Sacramento, Mr. Edgerton, because I differ with him as to the line of his argument. That argument was more a defense of the railroad corporations than it was to sustain right constitutional principles. I differ also with the gentleman from San Francisco, Mr. Estee, in regard to his conclusions, but I am satisfied that a great portion of his argument is correct. There is no need of reiterating here what everybody knows. Go back to the commencement of railroading in this State, when Governor Haight first took a stand against railroads. These matters have been written upon and talked over day after day and year after year. Every man in this assembly knows well enough what the grievances of the people are. They know that these questions have been talked over. Every man in this body has read them. Every man knows that there has been great wrongs perpetrated by the railroad companies, but that is not the question here. The question here, in my judgment, is where the lodgment of this power to control should be. It is admitted by all that we have a right to control freights and fares; that we have a right to legislate against discriminations; and all we have to do is to arrive at the simple conclusion as to where this power to control should be lodged. Is it better, I ask, to lodge it in the hands of a Commission composed of three men, or is it better to lodge it with the people themselves? Let me say right here, that my honest conviction is, as soon as this Convention attempts to take that power away from the people of this State and place it in other hands, the people of this State will spit upon your Constitution, and I would not blame them for doing so. What right have we to take away from the people the great right of government—under a republican form of government—to act through the Courts?

Why, sir, if the people send corrupt men here without intending to do so, is it not an argument to throw in their faces that they themselves are to blame? It seems to me so. I can argue it from no other point. If the people are corrupt, they will send corrupt men to the Legislature, which I deny as a general thing has been done. If they are honest they will send their best and purest men here. I think they will hold the members of the Legislature to a stricter accountability hereafter. This being done, sir, would you take this power away from the people and place it in the hands of three frail men? As has been intimated by Judge Terry, I would not place these men in a position where they would be so tempted as these Commissioners would be under this condition of affairs, provided these railroad corporations are as corrupt as you make them out to be.

Now, sir, I say the people of this State will not give up this power. It is not a mere matter of legislation, that can be undone in two years should it prove oppressive. Gentlemen forget, it seems to me, the responsibility that is placed upon them. They forget the importance and the magnitude of the act they are about committing in this Convention. They do not look to the great principles of our Government; that it is republican in form; they do not stop to consider that the greatest, most important thing the people can do is to frame an organic law. Gentlemen have forgotten, I think, that they have been sent here for the purpose of founding a government for one of the greatest and grandest States in this Union. And yet they would put this into the Constitution, where it cannot be changed, altered, or amended; no matter what hardships it may work, it must stand there until a new Constitution is framed, if you place this great power, this vast power, this absolute power, in the hands of these three men.

Then, let us look further to the succeeding section, which districts this State, and says how these Commissioners shall be elected, and from what portions of the State they shall be elected. Now, it has been the cry all over the State for years, and it is the cry in this Convention to-day, that the railroad corporations control the politics of the State; that they control our legislative bodies; that they control our Courts; that they have a controlling power over this body. I deny it, sir; but if such is the case, how easy it would be for them, under the classification here, to elect three men to do their bidding, and do as they should dictate against the people. If you will notice how the State is districted—and certainly I mean no disrespect to the committee, for it would have been almost impossible to have done otherwise—you will find that the railroad passes through two thirds of the counties in every district. We know they sometimes interfere in the politics of the State. They control many of our primary meetings, and political conventions. How easy it will be to go into these districts where, out of twenty-two counties, ten are intersected by railroads, how easy it will be for them to control our primary meetings, and our conventions, and nominate three men who will carry out their wishes and desires. I say they could do it without any trouble at all. It is absurd to say that we can carry on this government without parties. They can organize a party in their favor if they see fit to do so. Now, sir, they could elect three men as easily—more easily—than they could elect one hundred and twenty men to the Legislature. If they can elect or control a body of one hundred and twenty men, how much more easily can they control three men elected under their influence, and in their own cause. And there is no denying the fact that, if they see proper, they can have influence and power in our political organization, and they do have it.

For these reasons I am opposed to this twentieth section. I shall vote against it upon the ground that I do not wish to take the power out of the hands of the people. I believe it can be controlled better by the Legislature, that the power will be safer in the Legislature, than in the hands of these three men. I believe, sir, again, that if we put that into the Constitution, the people will not allow that power to pass out of their hands, and that they will reject what we have done here, and what we may do, and all our work will go for naught. And, sir, as I said before, I am not here to protect railroads or to ruin railroads. I believe that the right place to lodge this power is in the Legislature, not in the hands of the Commissioners, therefore my vote shall be cast against this section and the sections following it, and I shall vote for the amendment of the gentleman from Los Angeles, Mr. Ayers, as modified by Mr. Hager. I believe that is all we were sent here to do upon this question, nothing else; not to take the power out of the hands of the people and place it in the hands of three men. If there is danger in the others, there is ten times more danger in bringing it down to the point the committee would have us bring it to. Some of the gentlemen who have spoken here, Mr. Beerstecher, for one, who has not been a resident of this State for more than a year, and has recounted all the things that are out of place. He, perhaps, has some excuse, but it seems to me that this is only consuming time to no good purpose. It is not the place. If these Commissioners are to be elected, these gentlemen should go before them and make their speeches there. Either before them or the Legislature is the place to rectify these evils, if they exist.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I would not again claim the attention of the Convention in discussing the subject before us, did I not believe the gravity of the questions involved demanded it. I do not propose to make any defense to personal allusions made of myself, or explain the motives which have actuated me in the performance of my official duties in this Convention, except only wherein the public interest may be affected thereby.

The report now under consideration requires no apology, and will receive none at my hands; yet, in so far as the criticisms of this great measure recommended by this report associates the person with the subject, I am entitled to be heard.

It has been stated that members of this Convention, favoring the report of your Committee on Corporations, are candidates for office, and are, hence, shaping their actions here so as to ingratiate themselves into the good wishes of the people, and thus secure their election. If this were true, which I deny, it proves too much, for it shows the people are in favor of the report. Whom do we represent, if not the people? For whom are we making a new Constitution? Who are to pass upon our work? The people? By whom are we to be judged, but by the people? For one, here! And, now, let me say, I am a candidate for no office in the gift of the people; yet it is honorable to aspire to public station. In a republic no man should hold himself aloof from politics, or avoid the duties or responsibilities of his citizenship. An honorable ambition to serve one's country is laudable, and every citizen should be willing—nay, anxious—to do so upon all fit occasions.

I say this much, sir, because I understand the peculiar tactics used to underrate the value of the report of the committee of which I am a member. Sir, in my opening remarks, the other day, on the article on corporations, I attempted to make clear five points, viz.: First, that the railroads of the country had now a virtual monopoly of the carrying trade; second, that competition was practically impossible; third, that the power of these great corporations was so boundless that the rights of the people were in danger, unless some remedy was devised; fourth, that regulation was the only practical remedy; and, fifth, that the best and safest form of regulation, for both the people and the railroads, was by a Commission. I attempted to present these five propositions, and to convince members of the Convention that these were the real questions at issue.

As far as I understand it, the gentlemen upon the other side have admitted—at least not denied—the truth of the first two propositions, namely: that the railroads of the country have now a virtual monopoly of the carrying trade; and, second, that competition is practically impossible. But they deny the truth of the last three of these propositions. And upon these three arises the issue between us.

Sir, before I proceed to discuss these, I wish to call attention to some of the arguments made by the distinguished gentleman from Sacramento, Mr. Edgerton. I regret exceedingly he is not in his seat. My distinguished friend commenced by saying that I had deceived the

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people of this State, and the members of this Convention, and quoted from my opening remarks as follows:

"And let me say that this is nothing new. I want you to understand distinctly that the committee do not claim the honor of inventing this. We find that section—or one of the same purport—in several of the more recent Constitutions adopted by various States in the Union. I find section three of the Pennsylvania reads as follows."

Now, sir, I did not use those words; and I read the sections from the Pennsylvania and Missouri Constitutions. And here, and now, after having reëxamined them with great care, I say that in substance—in substance—the same are found in the Constitutions of these two States. And even if they had not been, my reading those sections showed exactly what I meant, and clearly vindicated any unintentional misstatement I may have made on that occasion. And in pursuing that subject, I took occasion also to refer to the distinguished men who participated in the framing of that Constitution in Pennsylvania, and referred to ex-Governor Bigler, Jere. Black, and other distinguished men of the State of Pennsylvania—men who had lived there for over half a century, some of them nearly three quarters of a century—and that these men took part in the debates in the Pennsylvania Constitutional Convention, and every one of them maintained that it was necessary to adopt such a provision in the Constitution of Pennsylvania.

The gentleman took occasion to say in his speech that I had misquoted from their speeches that the section in the Pennsylvania Constitution was passed by a simple majority of three, and that Jere. Black was not a member of the Convention at the time, having resigned some time before. Let me say, sir, that it was a mistake in one respect only.

On looking at the records, I find that Jere. Black had resigned his position as a member of the Constitutional Convention. I so stated on the floor of this Convention, which should have convinced the gentleman that there was no intention on my part to deceive the Convention. But, sir, in answer to the assertion of the gentleman, let me call the attention of the Convention to what Jere. Black did say, and then we will be able to observe whether or not I have led the Convention into error as to Mr. Black's position.

I will read from page four hundred and eighty-seven, of volume two, of the Debates of the Pennsylvania Convention, from remarks made by Mr. Black, upon the question of imposing new penalties and new oaths upon the members of the Legislature, upon the ground that they could not be trusted when dealing with corporations. Here is what he says:

"By such dereliction of duty on the part of the Legislature, that corporation has grown so mighty that its little finger is thicker than the laws of the commonwealth which created it. I do not say it bestrides your narrow State like a Colossus, for the ancient Colossus of Rhodes was but the image of a pigmy in comparison to this Colossus of railroads. Her stride is across the continent from ocean to ocean. Her head is in the clouds, and the arms of her gigantic power stretch out on either side from one horizon to the other."

That was the quotation, sir, which I intended to make when I read, or supposed I read, from Jere. Black, in my former remarks on this subject, but I got hold, in the hurry of the moment, of the wrong page; my distinguished friend is entitled to all the benefit of the criticism. Again I read, from page four hundred and eighty-nine of the same volume, in regard to the control of these great corporations, where Jere. Black says:

"The gentleman preceding me has described the tree of liberty, as his poetic fancy sees it in the good time coming, when weary men shall rest under its shade, and singing birds shall inhabit its branches, and make most agreeable music. But what is the condition of that tree now? Weary men do, indeed, rest under it, but they rest in their unrest, and the longer they remain there the more weary they become. And the birds—it is not the wood-lark, nor the thrush, nor the nightingale, nor any of the musical tribe that inhabit the branches of our tree—the foulest birds that wing the air have made it their roosting-place, and their obscene droppings cover all the plain about them; the kite, with his beak always sharpened for some cruel repast; the vulture, ever ready to swoop down upon his prey; the buzzard, digesting his filthy meal, and watching for the moment when he can gorge himself again upon the prostrate carcass of the commonwealth. And the raven is hoarse that sits there croaking despair to all who approach for any clean or honest purpose."

He was then describing the power, the influence, the unparalleled and inordinate influence of these great corporations over the Legislature of that commonwealth. He says further:

"We may preserve the forms of republican government, but the substance will pass away, and with it will depart all that is perfect in politics, all that is pure in morals, all that makes life, liberty, and property secure, all that makes existence in a free country worth having."

I call attention to this, sir, because, as before stated, by an oversight the other day I read from Charles Black instead of Jere. Black, and my distinguished friend took occasion to say that I had deceived the members of this Convention and the people of this State. I now leave the subject as to the position taken by Jere. Black in the Pennsylvania Constitutional Convention on the question of corporations to the enjoyment of the gentleman from Sacramento, and in conclusion on this point add: that no more incisive argument could be made in favor of the position taken by your committee than that marked out in the speeches of Jere. Black, made years before in the Pennsylvania Constitutional Convention.

The gentleman from Sacramento falls into another error when he says:

"Now, sir, it is a noticeable fact that not a single provision contained in the section now under review can be found either in the Constitution of Illinois or of Colorado.

"The section is inoculated with two vicious principles which are contained in the Constitution of Pennsylvania of eighteen hundred and seventy-three, and one in that of Missouri of eighteen hundred and seventy-five."

I merely said, and members will remember it, that the Constitutions of Illinois and Colorado contained provisions very similar to these sections under discussion. I repeat that to-day. Without reading from these Constitutions, I respectfully ask that gentlemen will refer to them, and see whether I am right or wrong. I understand that all the words used in these sections are not there; that these sections were not copied from those verbatim. I mean by that, that our section nineteen is not copied directly letter for letter, word for word, from any of those Constitutions. But what I said was true, that this section contained the substance of what is in those Constitutions, and I have made no mistake in that respect. The gentleman says further:

"No Constitution yet exhibited here contains any provision attempting the regulation of transportation by individuals, or by companies, or corporations, other than quasi-public, such as railroad and canal corporations."

Sir, our section nineteen, as reported, does apply to all transportation companies, and I submit to the Convention, to the friends of this measure, to those who are in favor of some regulation of this character, if it is not a wise provision to make it apply to all transportation companies. The reason of that is, that there shall not be any such thing possible as a wheel within a wheel; that there shall not be a transportation company within a railroad company, that will be irresponsible in itself; that in itself will do all the transporting of freight and passengers in this State, and yet which will not come under the control of the Government, or be bound to obey the law. Hence, your committee put that in, and I think it makes the section more perfect, and I think it will commend itself to the favorable judgment of this committee, and to the favorable consideration of the people of this State.

Again, my distinguished friend in his speech says, and I shall pass over that matter as fast as possible: "We have a right to expect from a gentleman occupying the high position of Chairman of one of the most important committees of this house, a careful comparison of systems relating to the subject committed to his charge; we expect from him sound and judicious counsels regarding it; above all, we demand of him rigid exactness in his statements of facts. Such misrepresentations as I have noted would be hardly excusable if made in the heat of debate, but when they are made in cold blood; when they occur in a speech which was weeks in process of incubation, and for which the columns of a widely extended and influential journal were offered days in advance; when they are thus paraded to propagate, mislead, and poison the public mind; when their evils are thus diffused, they are simply atrocious."

In reply to this sweeping indictment, I beg leave to say, it strikes me that if it was done for the purpose of poisoning the public mind; if it was done for the purpose of misleading and deceiving the members of this Convention; if it was done in an atrocious manner; then this Convention ought to know it. I appeal to what I said upon that occasion. I appeal to the history of these proceedings, if when I discussed the question at that time I did not treat it with all the candor that it was possible, at least for me, to bring to bear upon it. I know I tried to avoid personalities. Even if it had been in my power to punish the corporations, I had no enemies to punish, and I know I had no friends to reward. I did not come into the contest with anything rankling in my heart. I was and am but an instrument in the hands of this Convention, as Chairman of that committee, to present before you our views upon this question. I understand the importance of the question at issue. I know better than the gentleman from Sacramento can tell me how important it is, and how difficult to understand, and still how much more difficult to reach and remedy the evil complained of. But I appeal to the truth of history if on that occasion, by any word, or by any act, or any misrepresentation, I in any manner did anything, or said a word that was poison in its character or atrocious in its results. The fact is, Mr. Chairman, the gentleman from Sacramento did not intend to say that I had, but he was trying to make the point which advocates often make when they have a bad case, namely, showing inconsistencies, if there be any, in the arguments of the opposite counsel, and thereby making the subject dwindle down to the insignificant size of the person making the argument.

I think this question rises away above all personal considerations; if it does not, then we had better adjourn and go home. If it does not rise above ordinary personal considerations and personal feelings, if it does not rise to the plain of broad statesmanship, then, sir, it is not worthy of our serious consideration. My friends upon the other side, the gentleman from Marin and the gentleman from Sacramento, seem anxious upon every occasion which offers, to tell this Convention that we who favor these reforms are just ready to put on our ascension robes, that we think we are clothed in immaculate robes of white, and that we will not admit that anybody else, in the Convention or out of it, has any reason for the faith that is in them. Sir, I know I expressed the opinions of the committee of which I am a member, when I said we approached the discussion of this subject with great solicitude. That for weeks almost continually we met in committee and discussed these questions. We knew how difficult it was to reach any result that would meet and remedy the evils complained of, and had no other object in view except to relieve the people of this State from what they believed was a great wrong. Again, sir, my distinguished friend from Sacramento took occasion to say that our report was replete with bad grammar and worse sense; that because of the bad language no one could tell what it meant. And yet, if I recollect rightly, the gentleman has discussed these sections for hours and hours upon this floor, maintaining that these very sections, framed in the very language they are, would work a terrible hardship upon the railroads, if not destroy them. Now, if this report does not present any ideas, if the grammar is so bad, if this report does not express any sense, I commend the matter to the

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serious consideration of this Convention, that it will not require any argument to show that these sections confer no power. Mr. Chairman, and gentlemen of the Convention, it is not the grammar, it is not the want of sense, that troubles these gentlemen—not a bit of it. My friend from Sacramento could stand the bad grammar, and the bad construction—it is not that that bothers him—very far from it. It is because there is too much in it; because it means too much; because it goes too far. That is the trouble. The report does mean something, and hence these criticisms. If the sections referred to had meant nothing, there would have been no struggle like this to cause their defeat in this Convention.

I think, also, my friend from Sacramento made a very grave mistake when he challenged us to produce any great names anywhere who were in favor of a similar proposition. He said it could not be so, and he paused in the debate to ask me to name some of them.

I will call your attention to a few great minds of the country who have favored similar propositions. In the Forty-third Congress, which met two years ago, Mr. McCrary, present Secretary of War, was appointed Chairman of the Committee on Railways and Canals, of the Forty-third Congress, and during that session he proposed a bill providing for the appointment of a Commission of nine persons, with full power to require reports from all the railroads and other transportation companies engaged in commerce between the States, and to regulate and enforce the rates of fares, that they, the Commission, might adopt. The bill reported by that committee inspired a very lengthy debate, which runs through page after page of the Congressional Record, and I will give the names of some of the distinguished men, members of the House of Representatives, who favored the bill. Among them were: Messrs. McCrary, Hoar, Hurlbut, Pratt, of Iowa, Stanard, formerly Lieutenant-Governor of Missouri, Hazelton, Fort, Orr, Woodworth, J. A. Smith, of Virginia, Colton, Mellish, Hawley, present Assistant Secretary of the Treasury, Monroe, Lawrence, Kasson, McNulta, Gunckell, Cobwin, Garfield, Kendall, Erastus Wells, of Missouri, Holman, and Wolfe, of Indiana. The bill passed the lower house, but reached the Senate too late in the session to reach final action at that session of Congress. The arguments made in the discussion of this great question, I cannot better express than by reading an extract of a speech made by the Hon. J. P. Jones, Senator from Nevada. The argument made by advocates in favor of the McCrary bill, says Senator Jones, was:

"That their, the railroad companies, operations are part of that general movement known as commerce, which by the Constitution of the United States is placed under the regulative control of Congress. That where railroad operations are inter-State in mileage, extent, and character, they must necessarily be subject to such control. That it is both the right and duty of Congress to regulate, supervise, control, or it may be to possess and own them. The sovereignty rests in this practical power of Congress. It is in all respects a correlative of the rights to create such corporations, to grant them great franchises, to exercise the high prerogative of eminent domain in their behalf and for their security; above all, it is a necessary sequence to the power to grant subsidies to railroads and otherwise aid in their construction."

These were the arguments expressed by these distinguished gentlemen in favor of the bill, and that bill passed the House, as I said, but reached the Senate too late in the session for final action. Later than that, on February ninth, eighteen hundred and seventy-four, Representative J. Q. Smith, of Ohio, offered a resolution setting forth that Congress has the constitutional power to regulate by law commerce between the several States, and protect the people "from all unjust or oppressive tolls, taxations, obstructions, or other burdens, whether imposed by railroad companies or combinations thereof," and that the "condition and magnitude of the commerce among the several States are such as to demand the prompt and wise exercise of the power and duty declared in this resolution."

This resolution was passed by a vote of one hundred and twelve to sixty-four. But more recently, sir, in the Senate of the United States, a committee was formed, of which Mr. Windom was Chairman. That committee, after a lengthy examination of the subject, framed the following report and recommendations, which was adopted by the Senate of the United States: First, That legislation be framed to enforce the publication of all schedules of freight and fares made and issued by the inter-State railroads, and that no changes therein shall be allowed till after due notice, to be fixed by law. Second, That quantity should be receipted for, under regulation to be fixed by law, for freight carried between States. Third, That inter-State railroads touching at any inland port or point should be prohibited from charging more to or from such port or point than to or from a more distant point on the line. Fourth, That the power of the several States should be exercised to prohibit inflation of the stock by the process known as "watering" it, or by any other method. The States should also prohibit railroad officials from being interested in the "non-coöperative" freight or car companies or lines. Fifth, That Congress should authorize the organization of a bureau of internal commerce, empowered to collect and report all necessary information on the subject, and also to compel inter-State transportation companies to report at least annually, under oath, their rates of freights and fares, receipts and expenditures, sales of bonds and stock, cost of same, amount and value of commodities carried, together with such other facts as the chief of the bureau may deem necessary.

The committee further found that the problem of cheap transportation could only find solution in governmental control, and through the construction by Government of one or more through railroads as competing lines, and by the improvement of certain natural, and the construction of certain artificial waterways, which were specified. Besides other provisions which will be found in the report of the committee, the leading men of that body, let me say, favored the adoption of these resolutions.

This question has been before the Congress of the United States for a period of four years and over, and in a very short time Congress will doubtless find some adequate means of remedying the evil as far as inter-State commerce goes. Your committee, sir, did not attempt to go beyond the boundaries of the State, and the criticisms made by the gentleman from Sacramento upon the point, that it was unconstitutional, because we undertook to regulate inter-State commerce, seems to me very fallacious. He got that from the following expression found in section nineteen:

"No discrimination in charges or facilities for transportation shall be made by any railroad or transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State, or coming to or going from any other State."

"Coming from or going to any other State." Now, I submit, Mr. Chairman and gentlemen of the Convention, that the only reasonable construction that can be given to that section is that the regulation as to freights and fares shall affect only freights and fares within this State, and coming from other States and going to other States. Mr. Edgerton also said in his speech that heretofore there never had been any successful attempt made at regulating fares and freights. That it was a false principle, that it would result in nothing, that we are standing upon dangerous ground when we attempt it, and that the ownership and management of property must go hand in hand. Now, sir, I submit, that there has been, and there is to-day, a virtual regulation of freights and fares in a great many of the States of this Union. In England this is done, and in nearly all of the European Governments, and there is in the United States to-day, as for instance in the regulation of the transportation of cattle and other live stock. Only two years ago Congress passed a law providing that in the transportation of cattle by railroad from one point to another, it should be done in a certain specified manner, directing the manner and how often trains should stop, and how long they should run without turning them out of the cars for water and feed; and all the railroad companies, at least all east of the Rocky Mountains, obey that rule now, and it seems to work exceedingly well. In England, in relation to the freight and passenger tariff, the Commissioners have control over the subject. There are some questions, it is true, which they do not touch.

Looking at the law passed by Parliament in eighteen hundred and seventy-three, organizing the Commission and fixing its powers, I find, on page one hundred and fifty-three of the Law Journal, volume forty-two, among other powers, the following:

"It shall not be lawful for the Commissioners in any case to compel any company to accept lower mileage rates than the mileage rates which such company may for the time being legally be charging for like traffic carried by a like mode of transit on any other line of communication between the same points, being the points of arrival and departure of the through route; and the Commissioners shall have power to hear and determine any question or dispute which may arise with respect to the terminal charges of any railway company, where such charges have not been fixed by any Act of Parliament, and to decide what is a reasonable sum to be paid to any company for loading or unloading, covering collection, delivery, and other services of a like nature. Any decision of the Commissioners under this section shall be binding on all Courts and in all legal proceedings whatsoever."

Parliament has always controlled these companies in England, not in all cases to the fullest extent of governmental control, but in a large portion of them, and especially the class by which the people are most affected, such as second-class and third-class passenger traffic. The construction given to these rules is very much stronger than any that can possibly be given to sections nineteen and twenty of this report.

Again, on page one hundred and fifty-five of the same book we find the following:

"For the purposes of this Act the Commissioners shall—subject as in this Act mentioned—have full power to decide all questions, whether of law or of fact; and shall also have the following powers—that is to say: (*a.*) They may, by themselves or by any person appointed by them to prosecute any inquiry, enter and inspect any place or building, being the property or under the control of any railway or canal company, the entry or inspection of which appears to them requisite. (*b.*) They may require the attendance of all such persons as they think fit to come before them, and examine, and may require answers or returns to such inquiries as they may think fit to make. (*c.*) They may require the production of all books, papers, and documents relating to the matters before them. (*d.*) They may administer an oath. (*e.*) They may, when sitting in open Court, punish for contempt, in like manner as if they were a Court of record.

"The Commissioners may review, and rescind or vary, any decision or order previously made by them, or any of them. Save as aforesaid, every decision and order of the Commissioners shall be final."

Thus, you see, these provisions found in our report are not new. We can find abundance of precedents for our action. While I admit that in some instances the control of railroads by State Legislatures has not worked successfully, yet it must have a commencement, and this is but a commencement. But admitting partial, or even total failure, in some instances, there are now no less than sixteen of the States of this Union that have Railroad Commissioners, and every one of them organized within the last ten or twelve years. In the Congress of the United States the first time this question was ever discussed was within the last six or seven years, so far as the regulation of railroads was concerned. Then, in our Courts, the decisions affecting railroad transportation companies only date back seven or eight years at most.

I need not stop to speak of all the benefits of this section. I find that other distinguished men besides those I have named have favored the regulation by the States; and in our own State, Senator Booth, who favored it very strongly—and if I recollect rightly, my friend, Judge Hager, favored the resolution which came into the Senate from the House. I think he was in favor of appointing that committee.

MR. HAGER. That committee was appointed before. I was there

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when the report came in. I will say that when a report comes in the body votes to receive it, and it is printed. We do not undertake to subscribe to it, because we could not read it or know what it contained until it was printed.

MR. ESTEE. I find, also, that my distinguished friend from Sacramento, Mr. Edgerton, the other day said:

"Sir, I unhesitatingly affirm that in every instance in which your Legislature has been called upon to act upon this subject, it has treated it intelligently, wisely, and to the best interests of the people, as well as of the corporations."

And yet he follows it up by saying that the interference of the people of this State with this class of property is unwise, and productive of mischievous results. I find some very good authority on this question, and I shall call attention to the fact that my friend from Sacramento, Mr. Edgerton, has changed his views a great deal on the subject.

Now, I do not claim that a gentleman has no right to change his views. On the contrary, I believe he has, and I do not believe, either, that the fact of the gentleman's actions, four or five years ago, being inconsistent with his actions now, is necessarily evidence of the fallacy of his position to-day, except in so far as what he said four or five years ago is true. I quote from a speech delivered by the gentleman on August eighteenth, eighteen hundred and seventy-three, on the subject of freights and fares. I am aware that the gentleman's inconsistency, if he be inconsistent, does not necessarily weaken his argument; but as his speech of eighteen hundred and seventy-three was such an able one, and the authority so undoubted, I desire to read a short extract from it, merely to sustain my side of the case, and to show that he was right then and wrong now. I want to show what were the opinions of a very able man on this subject. He says:

"A subject of the greatest importance to the material prosperity of the State, which demands legislation at the earliest possible moment, is the regulation of rates of transportation on our railways. The rates now imposed by the different companies controlling these thoroughfares are extortionate, and, in many instances, run into larceny itself. So frequently outrageous have their exactions become, so unjust the discriminations they practice between individuals and places, that the continued existence of those institutions under the present regime is almost a matter of doubtful expediency. When producers are compelled to move their freights by horse and mule teams for a distance of fifty to a hundred miles right alongside a railroad, one of two conditions of things is true—either the railway managers are a set of unmitigated extortionists, or the country is too poor to support a railroad. The grinding policy of the managers of those roads in this State have made them the adversary of every interest they were created to subserve, and their managers objects of just and general condemnation. How outrageous and exasperating to the common sense of justice, is the spectacle of these great institutions, called into being by the people's power, built and equipped with their money, responsible to their sovereign will, designed to procure a freer vent for the products of the earth, to furnish new incitements to the cultivators of land, to be the most powerful instruments in increasing the quantity of money in the State, to be, in fine, the faithful handmaid of labor and industry, perverted into the mere instruments for the aggrandizement of a few selfish men into mere tourniquets, by which they may check or stop at will the circulation of the material system of the whole State. We propose to remedy these abuses, not by any attempt at empirical, retaliatory legislation, but by an adjustment of a scale of rates on freights and fares that shall be just, both to the companies and to the people. The power of the Legislature over this subject is indisputable."

It will be seen by this that my friend from Sacramento entertained very different opinions five years ago from what he does to-day, and I leave it to the candor of the members of this Convention and of the people of this State as to whether he was right five years ago or whether he is right now. I think he has made a mistake. I think he was right then and wrong now. I think his argument then was conclusive upon that subject, and his argument the other day a fallacy. Again, I find in that very elaborate speech, speaking of the power of these corporations and the necessity of controlling them, the following:

"The companies are common carriers, intrusted with public institutions—for such the railroads have been held by the Courts, both of England and America, to be—and they are in the exercise of a public employment, a sort of public office. It would be the important duty of the next Legislature, at the earliest practicable moment in the session, to appoint an appropriate committee—probably it should be a joint committee of the two houses—endowed with plenary power to investigate the whole question of freights and fares from top to bottom, to tear off the mask from the Contract and Finance Company, and from the affairs of all other companies, and ascertain the actual cost of construction and equipment of these roads, and the necessary cost of keeping them in repair and operating them, and a just scale of rates of charges for transportation that will yield a fair return on actual investment, and expense of operation and repair."

It will thus be seen that the gentleman from Sacramento, five years ago maintained the absolute necessity of taking hold of this great subject. He thought it was due to the people of the State that it should be investigated. He thought it was right and proper that freights and fares should be investigated and regulated, and I cannot forget—I have not forgotten—how eloquent the gentleman became when debating upon this question. I remember how his whole soul welled up when talking on the subject, and he seemed to be on fire, not as he said we were the other day—"with eyes aglare, head down, and tail up, crowding the best brains of this body into the dust with the mere weight of body and hardness of hoof"—but in the fullness of manhood, defending a great cause and maintaining a great principle. I would repeat the eulogium of the gentleman from Sacramento, Mr. Edgerton, paid to the bar, could I add anything to the strength and beauty of his illustration. That would be impossible, but the learned gentleman will pardon me if I take up the theme where he left it. I would add that in every instance where lawyers have stood in the front rank of their fellows, in the vanguard of human progress, it has been when they have defended the rights of man, when they have stood between the oppressed and the oppressor, when they have gathered around the altar of liberty, when they have followed the average judgment of the great middle classes, which is always right. I glory in this profession. I recognize within its ranks the defenders of the Constitution and the laws. I know their immeasurable value in a free country. I know their learning and their patriotism, their honor. Without the great names and the life-long devotion to the people's cause of the bench and the bar some of the brightest pages in our history would be left out.

But, sir, the great common people of the country, the middle classes, the people as a whole, including every class represented by every vocation, every interest, the masses in a free country, are the State. It was the people moved by one impulse, and that the sublimest that ever animated the human breast, that struck the first blow in the war for our liberty. It was the farmers, the middle class, who fought the battles of Lexington and Concord; they commenced that conflict and stood by it till the end. It was the masses who gathered around the dying Warren at Bunker Hill. It was the people who followed Washington through victory and defeat for seven years of that war. They formed the lines that encircled Saratoga, and they filled the trenches at Yorktown.

Whenever liberty demanded a martyr the people produced him. On a hundred battlefields in every part of the Union, on sea and on land. In the bivouac of the camp, and in the shock of arms. At the polls, in the church, in the school-room, by the humble fireside, at the plow, or directing the ceaseless movement of machinery by night or by day, in peace or in war, they have made our history. God bless our country, for the people are the State. And the people, the whole people, must be made secure in all their legal rights. This, and this only, we are trying to accomplish.

Now, sir, when my friend from Sacramento spoke about there being a mere temporary excitement of the people on this subject, it would have been more thoughtful in him, if he had said there is an evil somewhere, let us look for it and apply the remedy. For unless there was an evil the people would never have become excited about this matter. For one, I recognize the fact that all men are at times liable to be mistaken. I recognize the fact that it is human to err. But, sir, we are here to amend the organic law, and to make an organic law for the whole people of this State, not for the railroads, nor against them; not for any particular class; and I want to know of gentlemen here if they do not see in the signs of the times a necessity for protecting the people against the encroachments of these corporations? I took occasion the other day to say in my opening remarks that it would be but a very short time before the railroads would be owned by foreign capital. At that time I was not aware that there was any immediate probability of such an event occurring. I find in the Record-Union of this morning the following dispatch:

"CHICAGO, November 25th.—The Times has what it believes to be trustworthy information that Jay Gould has originated, and the stockholders of the Central Pacific Railroad have seconded, a plan to consolidate the Union and Central Pacific Railroads under one management, with Sidney Dillon as President; Clark, General Manager of the Union Pacific, as General Manager; and with one Board of Directors. This will greatly reduce the clerical and official force, saving enormously in salaries, and in the cost of transportation, and will form a continuous line, under one management, from Omaha to San Francisco. It is stated that the particulars are nearly arranged, a conference having taken place with General Manager Clark in New York, and with General Freight Agent Vining, of the Union Pacific, in San Francisco, during the week. A consultation will be held this week in New York between General Dillon and the President of the Central Pacific. It is further stated that the principal owners of the Central Pacific are anxious to retire, in order to take part in the construction of the Southern Pacific Railroad."

If this be true, what was foreshadowed the other day will soon occur, namely: that these great railroad and transportation companies of this coast will soon be in the hands of foreign capitalists, and the people who have grown up amongst us, who know all our necessities, whom we know, will soon pass out of the directorship of these enterprises, and how more than ever necessary will it be for the people to have some power behind the throne to control these great enterprises in the future when they shall have passed under the control and management of men whose interests are not allied with the State.

Let me say that the great necessity for regulation is shown in an article by Charles Francis Adams, upon the Railroad Commission in Great Britain. He says:

"Whenever it should appear that the railroad company abused its privileges and its power, then the time for action would have arrived. As yet this was not the case in any such degree as called for a decisive and far reaching measure of reform. To better watch over it meanwhile, and to cause its members to work with less friction among themselves, and with a more careful regard to the equal rights of private persons, an exceptional piece of governmental machinery was provided in the form of a Board of Commissioners. The powers of this tribunal were both judicial and executive in their character, and very broad. It was its duty not only to hear any complaints of private parties, but to intervene in cases of difficulty which might arise between the companies themselves. The Board was, in fact, designed to secure the community an easy and equitable interchange of traffic over its railroad lines, as well as to put a stop, in so far as might be practicable, to that unjust and vexatious system of discrimination which seems to be inseparable from all active railroad competition. Through this Board the exceptional character of the railroad system was at last recognized. An attempt was made to deal with the anomaly as an anomaly. Mean-

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while, the most noticeable feature in the career of the Board, which has now been in existence five years, is the very trifling call which seems to have been made upon it. So far as can be judged from its annual reports, the cases which come before it are neither numerous nor of great importance. It would, however, be wholly unsafe to conclude from this fact that such a tribunal is unnecessary. On the contrary, it may confidently be asserted that no competent Board of Railroad Commissioners, clothed with the peculiar powers of the English Board, will ever, either there or anywhere else, have many cases to dispose of. The mere fact that the tribunal is there, that a machinery does exist for the prompt and final decision for that class of questions, puts an end to them. They no longer arise. They cease to arise, for the simple reason that the railroad corporations in these matters are not like the members of a numerous and complicated business community. The controversies among them, which do not involve legal points, are comparatively simple and confined to a few persons."

The mere fact that there is a power behind the throne; the mere fact that the sovereignty of the State has provided for a Board of Commissioners, or some representative body that can handle this subject, will render the occurrence of discriminations, and all that sort of impositions practiced upon the people, less frequent. And let me say right here, that the point made by the gentleman from Sacramento, and the gentleman from Marin, that there are no injuries now being inflicted upon the people by the railroad companies, cuts no figure. If it was true, it cuts no figure here. I claim it is not true. We are attempting to place the people out of reach of these influences—out of reach of these evils—and we must have these Commissioners vested with such power that the railroad company itself cannot veto what the Commission attempts to do. I say, whenever the railroad company can exercise the veto power over these Commissioners, we may as well abandon all hope of any good results, for nothing will be accomplished.

Now, Mr. Chairman, it is claimed by some gentlemen that this matter should be left to the Legislature; that we have no confidence in the people, or else we would be willing to leave it to the Legislature; and they appeal to us by saying that we were elected by the people to this Convention, and if they were wise enough to select us to represent them in the Convention, they would be wise enough to select suitable legislators to control this matter. Mr. Chairman, I claim that this is not at all analogous. That is no argument, for this reason: it is not that the Legislature is necessarily corrupt, but it is because, under no state of circumstances can the Legislature ever act intelligently upon the matter within the short period of time allotted to that body. It cannot remedy these evils. For my part I have as great respect for the integrity of the people and the integrity of our legislators as my friend from Marin, or my friend from Sacramento, Mr. Edgerton; but I challenge those gentlemen to show an instance—a solitary instance—where the Legislature of this State has acted intelligently in regulating this great question. A committee of the Legislature—which sits ninety days, or sixty days—can hardly get to the first step on this great question before the expiration of the term. We want a permanent body, that will know exactly what the people require, and what the companies require, and will thus be enabled to act wisely.

I think that was a very inapt allusion made by the gentleman from Sacramento, when he said that England had for twenty years been legislating upon this subject; that they passed over three thousand bills relating to this matter, and that this legislation had cost the companies four hundred million dollars. That is, that these railroad companies in Great Britain had spent over four hundred million dollars to curb the Parliament of England. I confess, sir, it was an inapt expression to argue in the same speech that the railroad companies should still have such opportunity to spend more money and corrupt more legislation. We want to place this temptation out of the reach of railroad companies. It is not because we say that Legislatures are corrupt—very far from it, sir—but because we want this temptation removed. And let me say right here to the gentlemen upon the other side, that if they can present some rational scheme—one that will be better than the one we have proposed—let them present it, and let us see what it is. They are always talking about the imperfections of ours. Let them present some scheme that is better for the people and more secure for the companies. I fear they are in the position of the ass in the fable that could lean against a wall and topple it over, but had not the capacity to rebuild it. Let them present some scheme, perfect in its character, that will remedy these evils. Gentlemen say to us—point out the evils. Why, Mr. Chairman, it appeals to the reason of every man that vast concentrations of power, whatever that power may consist in, are always dangerous to a free people unless it is regulated and restrained by law. Even then, sir, it requires constant watchfulness on the part of the legislative department of government. It requires the constant attention of the people to see that their rights are not infringed upon. It is human nature that if a man has a million, he wants two millions; and if he has two millions, he will want ten, and in order to attain that end he will go to the verge, if not beyond the law; and I tell you, sir, the time is coming when you will have to regulate the corporations of the country. You have an opportunity now to do it. Let us try. Let us consult together, and if you have any better scheme than we have presented—if you have any amendments to offer—let us know what they are. For one, sir, I believe, in the depth of my heart, that it is our duty to do it—that we owe it to the people of this State. We owe it to ourselves to follow the example of those Conventions in the East that have recently framed Constitutions, and put in a stringent section upon this great question, to limit their powers and circumscribe their capacity for evil, and then if you go before the people with that measure in your Constitution it will not be beaten.

I do not agree with the gentleman from Marin and the gentleman from Sacramento, that that expression at the ballot box will be fatal to the Constitution. But if it should be fatal, after we have done our best to protect the people, by framing such a Constitution as will protect them from the encroachments of these great corporations, then let it be beaten. We shall at least have done our duty. We shall at least have performed the responsible duty that has been imposed upon us. I recognize, sir, the question of taxation, and other questions which the gentleman referred to, as important questions; but I have always noticed, whenever we are discussing some subject which the gentlemen do not like, they try to evade it by saying: "Why not go to taxation; why not go on to something else, and leave this subject?" Let us stay right where we are, and consider this subject until we have done with it, and arrive at such conclusion as in our judgment is best for the people of this State; and if we do that, my word for it, no gentleman on this floor will ever have occasion to regret it. No gentleman can ever regret having done right, and this is right. Let us put such a provision in the Constitution as will forever hold these corporations to a strict accountability to the sovereign power that gave them birth.

THE CHAIRMAN. The question is on the amendment, to insert the word "unjust."

SPEECH OF MR. HALE.

MR. HALE. Mr. Chairman: I trust the amendment will not prevail. The section, if amended as proposed, or rather the first clause of it, will read in this wise: "No unjust discrimination in charges or facilities for transportation shall be made by any railroad or transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State, or coming from or going to any other State."

I object to this word "unjust" being interjected as proposed, because we should thereby positively, or at least by implication, sanction the idea that only *unjust* discrimination should be prohibited. By putting in this qualifying word, we, in effect, say that discriminations may be made which are not unjust. That is precisely the point of my objection. I insist on these two propositions. First, I say it is not true, practically, that discrimination can be made in the respects specified and yet be just. The other is, that it interjects into the clause an element of uncertainty so as to destroy its practical value.

It has been said by one gentleman, speaking of what they are pleased to call dangerous powers proposed to be conferred upon the Railroad Commissioners, that they were not only above the Legislature, and above the law, but above the people. But I answer, if this clause be left as it comes from the committee, the criticism is not well founded in fact. The one all important feature of the section, in my judgment, is that it lays down certain fixed and invincible rules of action governing alike the railroad and other transportation companies and the Commissioners. One of them is, that no discrimination whatever shall be made between persons or places, or in the facilities for transportation. But when, as by the amendment, you say no *unjust* discrimination may be made, it must obviously be left to the Commissioners to decide what is just and what is unjust. That is precisely, sir, what I do not wish to be done. Nor do I wish to refer such a question to any future Legislatures to determine, but I desire to prohibit all such discrimination as unjust. If you do not enact the clause as it comes from the committee it will be no rule at all. Moreover, if, by the adoption of the amendment, you say that no *unjust* thing shall be done, then, consistently, you must go further, and define what is just and what is unjust, else the Commissioners may decide arbitrarily and irresponsibly, or it would be left to the Legislature hereafter to determine the whole question.

MR. ANDREWS. If the gentleman will allow me a question?

MR. HALE. Certainly.

MR. ANDREWS. You believe, then, that the railroad company should be prohibited from charging more for a heavy grade than for a light grade?

MR. HALE. I intended to discuss that question farther on, but I suppose I may as well express my views upon it now as any time. One of the most notable features of our current history of progress and civilization—not limiting our observation to the State of California, but extending our observation over the whole country—is the fact that the established railroad lines through and over the country, have come to be the chief public highways, over which passes the great mass of the internal commerce of the nation. I am not prepared, at this moment, to state what proportion of the internal commerce of the United States is so conducted, or to make a statement of the aggregate value or volume of our national commerce, or the relative amount of our internal commerce as compared with the entire commerce of the nation. Probably, however, it is safe to say that the internal commerce of the United States comprises not less than four fifths of the entire commerce of the nation, and perhaps more. The commercial conditions of a people furnish the best indication of their financial condition—of the prosperity or adversity. This is universally recognized as true. Now, sir, we observe as one of the results of the establishment of great railroad lines, that the greatest bulk of internal commerce of the whole country is transacted over them. This is not a fact existing to-day merely, but every indication, prophetic of the future conditions of the country, point to the conclusion that in the future this is to be more absolutely true than now. It is therefore safe to predict that a much larger proportion of the internal commerce of the country in future will pass over these railroads than at the present time. Now, take this as a starting point: this aggregation of commerce on lines of railroads tends to concentrate capital, material, improvement, and population, along their alignments, and chiefly at their terminal points. To be more specific, as a result of the establishment of lines of railroads in the State of California, we perceive as a practical result the aggregation of nearly all commercial capital of the State, and nearly all the commercial business of importance transacted upon this coast at San Francisco. Does any gentleman challenge the truth of that statement? Now, sir, upon what condition of fact does that important result depend? I maintain, sir, it is the legitimate result of the discriminations that are

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now permissible, that actually are made, that have been made, and will be made, except as restrained by the provision as here reported by the committee, that there shall be no discrimination between persons or between places, in the charges or facilities for transportation. For an example, sir, can you ship goods from New York to Auburn, to Sacramento, to Stockton, to San José, with like facilities as to San Francisco? No, sir, nothing of the kind. I had a chance a short while ago to test that. I found that I could not make a shipment to Auburn, my place of business, at all, owing to an arrangement between the great railroad companies. I found myself compelled to pay through freight to San Francisco, and then pay local rates back over the same road to my place of business. The tendency and necessary result of such arrangements and policies is to discourage all business except at grand terminal points on these great railroads, and hence the necessity of the interdiction of all discriminations between places, as to charges and facilities for transportation. This provision proposes to require of these companies that they shall not tolerate any such discrimination in any case whatever. It may be said, Mr. Chairman, and I recognize the truth of the proposition, that the railroad lines can do the aggregate of their transportation business exclusively between terminal points, at lower rates and for less money then they could if governed by the provisions of this section nineteen as it comes from the committee. But I nevertheless claim that it is sound public policy, that it is sound American statesmanship, not only for us in California, but for the people of the whole country, to break down this system of concentration, otherwise, by the adoption of extended railroad lines and other modes of interior transportation for the conduct of our internal commerce, we will destroy the prosperity of all the points along their lines except the terminal points, where capital will be aggregated. That certainly is not a condition of things to be desired. That will destroy the prosperity and importance of the interior portions of the State, and transfer the wealth of the country to the few great railroad centers.

This question of discrimination between places and between persons, in the charges for freights and fares, and the facilities for transportation, is a matter of the greatest moment. If we wish to preserve the integrity of the people, as a whole, and the rights of all the people in the various parts of the State, wherever they may be, we must provide against this discrimination.

Now the gentleman from Shasta, Mr. Andrews, asks me if I would make a difference between a light grade and a heavy grade road. In the transportation over the entire line, I answer no. These railroads are State and national highways, and over them, as such, the business of the country, the commerce of the country, is and must be conducted. The people, when they travel, must travel upon these lines. A law of necessity compels this result. For instance, in some portions of the county where I reside, the railroad charges for passengers are fixed at such a rate that the old stage lines could resume their business profitably, but they are, nevertheless, deterred from doing so, for the reason that the railroad company can, without loss to itself, put the charges down to a point where the stage companies could not compete, and by so doing the stage lines would be driven off. The result is that they do not attempt to compete with the railroad, because the railroad company have it in their power to drive off all competition. The result is that if we wish to travel between points on the railroad, we must travel in the cars, or by our own conveyance. It is in this sense that the railroads are public highways. Not that any man should have the right to go upon the road and ride free of any charge or cost. He must do so upon the terms and conditions prescribed by law. But when that regulation is made—and it should be regulated—it should be made equal; it should be uniform, so that all citizens of the State of California, upon the line of the road, shall have the right to travel upon it, upon the payment of equal charges.

"But," say the gentlemen on the other side, "the risk is a great deal more on some roads; it costs a great deal more to build and operate a road over a heavy grade than where the ground is level; that more power is necessary to move freight over one than the other." That is true, sir. I recognize that fact. For instance, there is on the railroad line below the Town of Auburn, where I reside, a long, deep cut, eighty feet deep, and the actual cost, as I am credibly informed, of constructing that short piece of road, was eighty thousand dollars. Coming thence down toward the City of Sacramento, on the railroad, you pass along an easy tract of country till you come to the bridge and its approaches across the American River, which cost perhaps one hundred thousand dollars. Going still farther up in the mountains you come to a series of tunnels which cost very large sums of money, greatly disproportionate to the average cost of the general line of the road. Now does all this furnish good reason why the railroad company shall throw upon the immediate community around this cut, these tunnels, and near this bridge, the burden of the entire cost of construction? These difficult places are, after all, only parts of the general line of railroad, which is a highway. The entire railroad line has no value except as it may connect over the river, through the tunnel, and through the cut. The people who live at these points have contributed alike with all others in the construction of the entire road. In one sense you may say these roads belong to the company, but in another sense they do not. After all, sir, the cost of these roads, whatever it may be, sooner or later comes out of the pockets of the people. It must be so, because the ultimate cost of the road has been or will be realized out of the proceeds or earnings of the road. Again, it must be conceded that one of the highest duties the State owes to its citizens, that the government owes to those who are governed, is to furnish reasonable facilities for commerce, and intercommunication of the people, as by the opening and maintenance of highways. Indeed, sir, the character and condition of the highways of any people supply the most significant and important indications of the degree of progress and civilization of the country in which they exist. Therefore, sir, one of the most important duties the State has cast upon it, in legislating for the people, is to provide a system of highways for the convenient conduct of all the internal commerce of our people. This involves the transportation of all the freight, and the conveyance of all the passengers, and we should have such highways that all the people shall have equal facilities upon such roads, and be treated alike in the charges for their use.

Now, sir, if we retain this section as reported from the committee, this discrimination, which is in the interest of the terminal cities, as against the intermediate points, will be done away with, and this system will be broken up. I trust that we shall pass this section just as it comes from the committee. I believe the rule it declares to be right, and that it will work a great public good, while no wrong will be done to the carriers. I think it should be engrafted in the Constitution, and thus placed beyond the reach of legislative action or discretion.

But what I say is this, that this rule of equality shall be made permanent, strong, and inviolate, for the benefit of all the people of the State. Whatever we shall do with reference to the Commission, I hope we shall lay the foundation for future harmony between the people of this State and the railroads and other transportation companies, and secure the rights of the people and the welfare of the companies. I hope, therefore, that this amendment will not prevail, and that we shall adopt this section as it comes from the committee. I believe it is right. Let us have no element of uncertainty. Let the rule be so simple and plain that a child can understand it, so that no one can misinterpret the meaning and intent of the law, and it will, I believe, equally benefit the people and the railroad companies.

MR. WILSON, of First District. Mr. Chairman: I move the committee rise, report progress, and ask leave to sit again.

Lost.

MR. HOWARD, of Los Angeles. I move a call of the committee.

THE CHAIRMAN. That motion cannot be made in the Committee of the Whole. The question is on the amendment of the gentleman from San Francisco, Mr. Estee.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I trust the amendment will not be adopted. I do not intend to discuss it, only to say that you might just as well strike out the entire section if you put that word "unjust" in. It will throw it open to adjudication, and inject into it an element of uncertainty, and instead of being a permanent rule it is an uncertain rule. The question will have to be determined as to what is unjust discrimination. One may say it is one thing, and another would say it is another. You would have to call a jury in every case to determine that question. You might as well strike out the section.

THE CHAIRMAN. The question is on the amendment.

Lost.

MR. TULLY. I have an amendment.

THE CHAIRMAN. The Secretary will read the amendment.

THE SECRETARY read:

"The Legislature shall, after the adoption of this Constitution, establish and provide a system for the enforcement of an equitable tariff of rates to be charged for the transportation of freight and passengers by the railroad and transfer companies of this State, and all appropriate legislation to prevent undue and unwarrantable discrimination in such charges or in the facilities for the transportation of the same class of freight or passengers by such companies between persons and places, and shall compel the observance of the same by fines and forfeitures upon such railroad and transfer companies, and by an imprisonment of the officers or employés thereof, at its discretion."

MR. LARKIN. I don't think that is a proper amendment to this section. I think he had better offer it as a separate section.

MR. TULLY. I offer it as a substitute for section nineteen. I am opposed to the creation of these Commissioners by the Convention. If this is adopted it will in effect be a substitute for nineteen and twenty, as I understand. It leaves the whole matter of regulating the freights and fares to the Legislature.

THE CHAIRMAN. The question is on the amendment.

Lost.

MR. WEBSTER. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Amend section nineteen by inserting the word 'other' between the words 'or' and 'transportation,' in the second line, and by inserting the word 'other,' between the words 'any' and 'transportation' in the fifth line."

THE CHAIRMAN. The question is on the amendment.

REMARKS OF MR. WEBSTER.

MR. WEBSTER. That is merely a verbal correction. It will then read as follows:

"SEC. 19. No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates."

You will notice in the preceding section, these words are used. I think it is an omission in this section. It is simply to make the language more plain and definite. It may appear, as it stands now, as if railroads are not included in the term "transportation companies." I think there is no objection.

The amendment was adopted.

MR. DAVIS. I have an amendment to offer.

THE SECRETARY read:

"Amend section nineteen by inserting after the word 'State,' and

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before the word 'persons,' in line four, the following words: 'Except freight of a perishable nature, which shall at all times take precedence.'"

THE CHAIRMAN. The question is on this amendment.

REMARKS OF MR. DAVIS.

MR. DAVIS. Mr. Chairman: I presume the committee will understand that there are many articles that are liable to decay on account of the heat of Summer and the cold of Winter. It is not necessary for me to occupy the time, as the necessity for this amendment must be apparent, and I hope it will be adopted.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I think this amendment would make the section nonsensical. The truth of the matter is, that the first part of this section is aimed at discrimination as to the price of freight; it is aimed at discrimination between persons and places only; and if this amendment is added to the end of that sentence, it would make nonsense of it, and there is no use of it.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. Chairman: The objection raised by the gentleman himself is not well founded. If he will read a little farther he will discover: "No discrimination in charges or facilities for transportation shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State, or coming from or going to any other State." It says "facilities for transportation," and the proposed amendment says, "except perishable articles." I think the object of the amendment is a good one, and I think it is highly necessary. Fruits, milk, meat, etc., must be preferred over all other freights, or else they will be virtually prohibited. It would hardly be possible to supply the markets of San Francisco and other cities with perishable produce, unless these perishable goods can be shipped through without being delayed by other goods. It seems to me that this is a very necessary amendment to make. If you do not amend it, then perishable goods can have no preference.

MR. ESTEE. Mr. Chairman: I do not see any objection to the amendment. I do not see why it should not be adopted, to do away with any doubt.

REMARKS OF MR. WEST.

MR. WEST. Mr. Chairman: In the eighth line you will see the words "same class." Every gentleman acquainted with the business of shipping freight knows that all articles of freight are classified according to the nature and character of the freight. Now, perishable articles will be in a separate class—in a class which recognizes these articles. They will be shipped in that class, and under the regulations governing the shipment of that class of freight. But no discrimination will be allowed between persons having perishable goods. That is the meaning of the section, that the same class of freight offered at any depot or station, shall be taken and transported without discrimination. I do not think that the amendment is at all necessary.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: It does not seem to me that the proposed amendment is necessary at all. I take the view of it that the gentleman from Los Angeles, Mr. West, takes. I suppose there is a class of freight, such as produce for the cities, of a perishable nature, and I suppose the railroad company makes a regulation that all such freight shall take precedence over other freight not perishable; and certainly such action on their part could not be held to be a discrimination according to the language of this section. It is a just regulation, and in no sense discrimination. Then the section does not prohibit, as has been intimated and agreed here, a just regulation of these matters. But it does prohibit discrimination. What does the word "discrimination" mean? Why, sir, the very signification of the word is "injustice." And the attempt to interject the word "unjust" before the word "discrimination," was equivalent to saying that you shall not do any "unjust injustice." That is what it amounts to. So I think, with regard to this amendment, that there is no need of it, because a regulation that would provide for the forwarding of freight of a perishable nature, would not be discrimination in favor of or against anybody else. It seems to me so, and therefore I shall vote against the amendment.

MR. CAMPBELL. I wish to ask the gentleman a question, whether, when he says a man has a very discriminating mind, he means the man has a very unjust mind?

REMARKS OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: It seems to me that this amendment suggests to us that we have made a mistake in voting down the amendment suggested by the Chairman of the Committee on Corporations. Now it does strike me that we should have the word "unjust" there. I have as yet heard no answer to the question propounded by the gentleman from Shasta, Mr. Andrews, if a difference in charges on different roads, for instance, where the grade is different, would be a discrimination. I think it must be a discrimination, and we say here that there shall not be any discrimination, leaving out the word "unjust." Now, is it not a discrimination to say that one kind of freight shall be run through with greater expedition than another kind? Is not that a discrimination with reference to freight? It strikes me that it is, and I do not see how any man can say otherwise. It is obvious, from the fact that the gentleman suggests this amendment, that it is a discrimination. But the question is, is not that a just and proper discrimination? If it is, why, certainly, the committee made a mistake in refusing to insert the word "unjust." Some gentlemen may say that the Courts will construe that to mean only a just discrimination. That it means that you shall not unjustly and unduly discriminate. Now, if the Courts are obliged to interject this amendment in order to make common sense out of it, why leave it for the Courts to do; why not put it in the Constitution so as to take away such necessity on the part of the Courts, and make our meaning plain. If we want the Courts to construe it in that way, then it is our business to put it in here. I merely throw out this suggestion. I have not occupied the time of the committee on this subject, and have contented myself with listening attentively, and voting. But it does strike me that the amendment of the Chairman of the Committee on Corporations should have been adopted, or else the word "undue" should be inserted, as it is in other Constitutions containing similar provisions.

REMARKS OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. Chairman: I think the gentleman from Alameda, Mr. Van Dyke, mistakes altogether the purpose of this section, and the operation of it, upon the subject of railroads. In the first place, say a party is shipping from San Francisco to Bakersfield. From here to Bakersfield is a level road, and easy grade. Now, sir, there should be no discrimination between shipments over that road. When you leave Bakersfield, going south, you commence a heavy grade. Now, I do not say that more shall not be charged per ton, per mile, from Bakersfield to Los Angeles, than from San Francisco to Bakersfield. They have a right to charge a fair increase according to the increase of the grade. The section itself does not prevent them from doing so. It would prevent the railroad from charging more to one man than to another. That is the aim, and that is the effect of the section. Therefore, the gentleman misapprehends the whole thing. I see nothing in the objection. This section is right. I advise gentlemen to stick to the report of the committee, if they ever intend to make any progress.

MR. BARBOUR. Is there anybody here who can define what perishable property is? I am not in favor of allowing the railroad companies to be the judge as to what is perishable property and what is not.

MR. HALE. I desire to suggest to my friend from Nevada, whether he would not better accomplish his purpose by making the section read in this way: "except perishable freights."

MR. HOWARD, of Los Angeles. Why not leave that to the Commission, if you are going to have a Commission, and if not, leave it to the Legislature. Don't tinker with these small things.

MR. DAVIS. I think the suggestion of the gentleman from Placer is a good one, and I have no objection to it.

THE CHAIRMAN. Does the gentleman accept the amendment.

MR. HALE. I do not suppose he can accept it, for he proposes to amend at one point, and I propose to amend at another.

MR. DAVIS. I accept the amendment.

MR. HALE. I will interject the words "except in favor of perishable freight," after the word "freight," in the third line. It is now nearly time for recess, but if the committee desires to act upon it now, I will write it out and put it in shape.

MR. HOWARD. Let us go through with it now.

THE CHAIRMAN. The question is on the amendment as modified. Lost.

MR. SMITH, of Kern. I move that the committee rise, report progress, and ask leave to sit again.

MR. O'DONNELL. I call for the previous question.

THE CHAIRMAN. If there are no further amendments, the Secretary will read section twenty.

MR. BARNES. Mr. Chairman: I desire to make a motion that the committee rise, that the members may have a chance to get a breath of fresh air.

THE CHAIRMAN. The question is not debatable.

MR. VAN DYKE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress, and ask leave to sit again.

RECESS.

MR. VAN DYKE. I move that we now take a recess until seven o'clock P. M.

THE PRESIDENT, at four o'clock and fifty-two minutes, declared a recess until seven o'clock P. M.

EVENING SESSION.

The Convention reassembled at seven o'clock P. M., President Hoge in the chair. Roll called and a quorum present.

RAILROAD COMMISSION.

MR. VAN DYKE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section twenty.

THE SECRETARY read:

SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State, at the regular gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the sole power, and it shall be their duty, to correct abuses by railroad corporations or other transpor-

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tation companies; establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; report to the Governor, annually, their proceedings, and such other facts as may be deemed important; hear and determine complaints against railroad or other transportation companies; affix penalties and enforce them through the medium of the Courts, and perform such other duties as may be prescribed by law. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in the foregoing sections.

MR. PROUTY. I send up an amendment.

THE SECRETARY read:

"Add to section twenty: 'Provided that nothing in the foregoing sections shall be so construed as to prevent the Legislature, by a three-fourths vote of all the members of both branches thereof, from changing or annulling the action of said Commission, as in their opinion the public good may demand.'"

MR. WATERS. I offer an amendment to the amendment.

THE SECRETARY read:

"Every railway company or corporation, and ever other common carrier by railroad, now or hereafter doing business in this State, shall be entitled to a reasonable compensation for its services, and no more. Three Railroad Commissioners shall be elected by the qualified electors of this State, at each gubernatorial election, whose salary shall be fixed by law, and whose term of office shall be four years from the first Monday in January succeeding their election. Each of them shall be a qualified elector of the State, and shall not be interested as owner, partner, stockholder, creditor, agent, attorney, or employé in the business of transportation. Said Commissioners, or a majority of them, shall make a schedule of reasonable charges for the transportation of passengers, freight, and cars over each railroad now or hereafter operated in this State, as well as reasonable rates for receiving, handling, and delivering freight and cars on such roads. In any action, prosecution, or proceeding, by or against any person or corporation, such schedule, or a certified copy thereof, shall be deemed, received, and taken as prima facie evidence that the rates therein fixed are reasonable rates of charges over the road or roads for which such schedule was prepared. They shall alter, revise, and amend such schedules as they shall from time to time deem just, and shall perform such other duties and possess such further powers, not inconsistent with this section, as may hereafter be prescribed or conferred by law. No charge by any railroad company, or other common carrier, shall be deemed reasonable if in excess of the sum which it is now entitled by law to exact for a like service."

MR. WATERS. Mr. Chairman: I do not desire to say anything further in addition to what I said this morning. I ask a careful consideration of that amendment by this Convention, and hope that it will be adopted.

SPEECH OF MR. VAN DYKE.

MR. VAN DYKE. Mr. Chairman: I wish to submit a few reasons why I cannot support the twentieth section as it comes from the Committee on Corporations, and the following sections of course follow. Now, Mr. Chairman, I have the greatest respect for that committee, and for its individual members. They are men of experience, and they have devoted a great deal of time to the preparation of this report, and to the arguments which they have presented; but after thoroughly considering the report, and listening attentively to the able arguments that have been produced here in its support, I yet cannot find it consistent with my sense of duty to support that section and those following. Now, I suppose it will be generally conceded at this time that the power to regulate these corporations exists in the State. If that has been a debatable question heretofore, since the decisions of the Supreme Court of the United States, reported in the fourth of Otto—more generally called the Granger cases—I presume that it can no longer be considered a debatable question merely upon that point; and the decision announces no new law, but refers to law as old as the time of Sir Matthew Hale, in support of the doctrine there enunciated; and, although corporations may desire to have a different rule, I presume that now no one will seriously contend that the power of the people, through the Government, cannot be invoked to regulate these corporations. But, sir, admitting that to its fullest extent, I cannot subscribe to the policy which this twentieth section contemplates. Now, sir, what do we understand by the power of the people to regulate these corporations? Sir, we merely understand that this power of the people is to be exercised through the Government. It is not contemplated nor imagined that the people, en masse, can regulate these questions. They must do it through their organization, to wit: the Government. Now, sir, what is the Government as understood by the American people? Why, sir, one of the great triumvirate that indited the papers known generally as the Federalist, Alexander Hamilton, at that day announced it in one of its papers that it was axiomatic that popular republican government consisted of three coördinate, coequal branches, to wit: legislative, executive, and judicial; and that constitutes popular republican government. It was because the old confederation did not conform to this, because it did not have in it and did not recognize these cardinal principles, these axioms in a popular government, that it was displaced and the present Government of the United States was installed in its stead. And it was in advocacy of the present Constitution of the United States against the weak, puerile Government of the old Confederation that this announcement was made—that now it had been admitted an axiom in government, that in order to exist as a government, it must possess these three coördinate, independent powers.

All the States of this Union, Mr. Chairman, recognize this as cardinal in all government in this country. I hope gentlemen will bear in mind the difference in this respect between adopting this and an ordinary legislative enactment. We are not now forming an ordinary legislative law, but we are preparing and formulating a Constitutional Government. We are going down to the substratum, and what we put into this instrument will control not only the Courts, but the executive and judicial departments of the Government. Then, sir, if this twentieth section is incorporated into the Constitution, what do we have? Why, we destroy that feature in republican representative government, of three distinct, independent, coördinate departments, and we create a fourth, which is greater in some respects than all the others, and, like Aaron's serpent, swallows them all up. Now, can there be any denying this? Why, a mere inspection of the twentieth section will show you that this is no exaggeration at all. It provides for the election of these men like the Governor of the State; it defines their duties; it gives them the sole power in these matters. They not only have the power of legislation, under the law, in fixing these rates, but they have the judicial power to hear and determine. It is the very essence of jurisdiction and judicial power, and they can call upon the Courts and the rest of the departments to enforce their decrees. They therefore embrace, to this great extent, all the three departments of government, and in matters more important, than can possibly come before the other three.

Now, sir, as to the argument in support of this departure from our theory of government—because it can be nothing less than that—it is a clear departure from our theory of government, and if that section prevails, we must modify that article of the Constitution which distributes the powers of the government, in order to conform to it. What are the arguments deduced in support of such an extraordinary proposition as that? That the people demand this; that the Legislature cannot be trusted. Well, now, Mr. Chairman, I deny the right of some gentlemen, the youngest members of this body—some gentlemen from San Francisco, who perhaps have been in the State only a few years—I deny that they have any authority above their fellow members here for announcing what the people demand. As the witty John Van Buren once remarked when he was answering this demagogical catch of what the people want, what the people say, and what the people were going to do, that he didn't know of any better guide or rule to ascertain what the people wanted, than to ascertain what he wanted himself, inasmuch as he claimed himself to be one of the people. How do we know what the people want except by ascertaining what we, as men of common sense, of common intelligence, as a part of the people, coming from the people, want? What we want is what the people want, necessarily. We are of the same constituents that they are, part and parcel of the State, and it is sheer demagogism to continually harp upon what the people want. In a matter of such great moment, such vast magnitude, a matter that will affect us, if adopted, for years in this State, it seems to me that it requires that we should address ourselves to it in a calm and dispassionate manner, and not be continually appealing to the feelings or prejudices of members to control them in one way or the other.

Now, sir, the other argument that we cannot trust the Legislature. Do members stop to think for a moment what the inevitable result of that admission is? It is nothing more nor less than an acknowledgment of the failure of republican government. There is no escape from it. If we solemnly declare here that experience has demonstrated that the legislative department of the Government cannot be trusted in the exercise of the necessary functions falling to such a body, I say the conclusion is inevitable, and there is no escape from it, that republican government is a failure, and some other government must be adopted. Now, sir, I challenge any gentleman on this floor to stand up in his place and admit here the logical result of this claim, that the Legislature cannot be trusted, and that is, that republican government on American soil has proven a failure. I wish no gentleman of the committee to announce that as his deliberate opinion, because that is what it comes to. Now, sir, who are these legislators? Where do they come from? Why, we would suppose if we had just come into this Convention from some other country, and were unaccustomed to our form of government, that the members comprising these Legislatures were a race different from ordinary mortals; that they didn't come from the rest of the community. Who is it that elects the Legislature? Why, the same qualified electors that elect your Governor; the same qualified electors that elect the Judges of your higher Courts. And it is claimed here, that these men who must, in the nature of things, be trusted, if you preserve the form of government, that these electors scattered through the State are incompetent, and when we cease to exercise the functions which have been committed to us by their choice, that they, forever after, are incompetent to select men to discharge their business in a legislative capacity. That is the argument. Now, sir, is there anything to justify that? Suppose there have been abortive attempts at checking evils. Does it follow from that that you cannot trust the Legislature in anything, or forever more? Why, is it not the history of every effort in this line, that it must be repeated—that you must try again? As a matter of course it requires experience to ascertain what is right in the premises, and the very gentlemen here who have so maligned the Legislatures, and who say they will not trust the Legislatures, have, of themselves, admitted that the Legislature, in the nature of things, cannot, during one session, arrive at a just schedule of freights and fares. Notwithstanding this admission, that the Legislature, with all its wisdom, and however honest it may be, cannot, during one session, arrive at a correct conclusion in reference to this subject, and still they say: "You cannot trust the Legislature; we must fix it all up right here; we must leave nothing to be done in the future." Now, this is perfectly impossible. You must trust the Legislature. Unless we conclude to do that in the future, as it has been in the past, it will be better for us to adjourn at once, and acknowledge that the whole structure was a failure.

Now, sir, I am in favor of a Commission; I think it a proper and a

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legitimate mode of arriving at the matter; I think it is necessary in order to place within the knowledge of the Legislature sufficient and correct data on which they can found proper action. But, sir, while I am in favor of a Commission, I am not in favor of surrendering the State government to any three men. Right here I wish to ask those gentlemen, who are so loud in their denunciation of Legislatures, and who say it will not do to trust the Legislature, how they expect to select these three Commissioners? They do not propose to disfranchise the present electors of the State. I have not heard that proposed. Here these three Commissioners are to be selected by the same electors that send us here, by the same that select your Governors, by the same that select your members of the Legislature, and your Supreme Judges—precisely the same. Now, in all these three departments of government, they have proven themselves ignorant and corrupt—these electors—but in reference to these three Commissioners, it is presumed here, I suppose, that they will select from the whole State, the only honest, the only intelligent men in the State. It is a mere delusion. Mr. Chairman, as practical business men, we must look at this question in a practical business point of view. All this talk about the people desiring this to be thrown into their hands is simply talk, because the people, en masse, cannot select these men. They send men and delegates to some Convention; that is the first movement to select these Commissioners. Where do these delegates go? They go to a State Convention composed of politicians, just like all our State Conventions are. What is the business of that State Convention? Why, they commence at the head of the ticket, usually at the office of Governor, and go along down, and among the rest, they nominate these Railroad Commissioners. Now, Mr. Chairman, it is within the knowledge and experience of all of us, that while we had a State Printer elected in this State, the whole work was a job from beginning to end, and it was so much a scandal that the whole thing was wiped out of existence, because of its demoralizing effect in the nominating Convention; because in every Convention, whether it was a Republican Convention or a Democratic Convention, the same experience followed, that this State Printing Office, being an office of considerable emolument, demoralized every Convention. It was farmed out among men who put up and put down things on purpose to nominate the State Printer. Every one knows that to be the effect, and the same result would follow in case you elect these three Commissioners. These three offices, possessing such immense power, would be sought for, not for the salary, because I do not think very much compensation would be allowed them, perhaps three thousand dollars per annum, but for the purpose of making out of the office, either in farming it out or by corruption. The result would be that the Democratic Convention, and the Republican Convention, and the Workingmen's Convention, or any other State Convention, that might meet to nominate these officers, would be demoralized, in order to secure these officers—for the purpose of nominating these officers—and the people would be obliged to vote for the Commissioners presented on one of these tickets. I say, Mr. Chairman, that we must look at this in a practical point of view. That would be the practical working of this section.

Now, the gentleman from Los Angeles referred to Boards of Supervisors as an analogy to this. Boards of Supervisors and other Commissions possess, in a measure, legislative, executive, and judicial powers. Mr. Chairman, there is a great difference between these subordinate Boards and Commissions and a Commission appointed under the Constitution. They are subordinate to the power of the State necessarily. This Commission, if we pass this section, would not be subordinate to the other powers of the State. The Chairman of the Committee on Corporations has referred to the great powers of the Transportation Commission in Great Britain. That is not a parallel case, because every lawyer knows, and perhaps most laymen, that in Great Britain they have no written Constitution. In Great Britain there is no power above the power of Parliament. Parliament in Great Britain is omnipotent—essentially so. Therefore the Commission in Great Britain is a Parliamentary Commission, and there is no analogy unless we empower the Legislature to appoint a Legislative Commission. Then there would be an analogy. Now, sir, it makes no difference, practically, how much power that Commission has in Great Britain, because if they attempt to abuse their trust the strong hand of Parliament can shut down on them and destroy their power and in fact put them out of existence by one breath. How is it here, if this twentieth section enters into the Constitution? Why, as I remarked before, it is necessarily above and beyond the reach of the legislative power. And what is the legislative power? It is the power and voice of the people—nothing else. They are the representatives directly from the people. Therefore you create a body of men who are alone and beyond the reach of the people. Is not that so necessarily? I say there is no analogy between the Commission in Great Britain and the Commission you propose to establish here. Further, Mr. Chairman, the Chairman of the Committee on Corporations and other gentlemen have referred to the powers of other Commissions in this country. I wish to ask some gentleman who has informed himself upon this subject, whether there is any case in the United States where in the Constitution there exists a provision at all like this twentieth section. I want to know if there is a single Constitution within the whole of the States of this Union where there is embodied in the fundamental law of that State, or any other State, a provision at all similar to this twentieth section, where it provides for a body of men to whom it commits the sole power to establish their rates, to hear and determine questions, and to call upon the other powers of the State to enforce their edicts. Sir, I understand that the majority of these Commissions are purely legislative Commissions. Now, sir, there is no danger in any Commission of that kind, however great its powers may be, for there is a power behind it that can throttle it whenever it attempts to abuse the high trust conferred upon it. I say there is no danger in a Commission if you reserve some power that can control it; but here there is no reservation at all. Therefore the argument that was attempted to be adduced here in favor of this, drawn from reference to other Commissions, I think has no great force.

Mr. Chairman, I wish to impress upon the members of the committee the important fact that we are liable, very liable, in the present temper of the people—and I have no doubt that the state of feeling has been produced by many abuses; I do not deny that—but I say, Mr. Chairman, in this Constitutional Convention, smarting under this feeling, or actuated by a feeling of enmity or hostility to these great corporations, we are in danger of running to excesses which we will not discover, perhaps, until too late to correct them. But the correction will come; and if we commit excesses here the result will be the defeat of this instrument. Now, sir, for one, I came here, and I have no doubt the rest of the gentlemen in the Convention all came here, with the sincere purpose of working to the sole end of revising the Constitution so as to improve it, and to better adapt it to the wants and conditions of the people of the State at the present time. There are some great and important questions that we should act upon, and that we should improve on in the present instrument. They are known to us all. I am in favor, with reference to corporations, of holding on to all we have got, making it fixed in the fundamental law of the land, but in doing so not to go to excess in such a manner that we cannot remedy it if the instrument is adopted, or that will possibly insure its defeat on the other hand. We should attempt to remedy the evils in reference to assessment and taxation. They are evils under which the people of this State are groaning. All recognize the inequality of taxation. We should reform the judicial branch of our State, and I say this without designing to reflect upon the judiciary; I attribute it to the system. I say we want a change. Every one recognizes the fact that it can be improved. We should abolish the separate judicial elections; that will relieve the people of the State of hundreds of thousands of dollars of useless, unnecessary expenses. We should transfer our elections from the odd to the even year, thereby saving other hundreds of thousands of dollars. We are necessarily obliged to have elections on even years for President and members of Congress. These things all will recognize as a vast improvement on the present Constitution. If we attend to them, and attend to the question of corporations, in a dispassionate, calm, and prudent way, and if our action is based upon judgment, and not upon passion or prejudice, we will frame an instrument here that the people will approve, and under which their prosperity also will be enhanced.

SPEECH OF MR. WICKES.

MR. WICKES. Mr. Chairman: I think I rightly represent the temper of that section of the State which I have the honor to represent, when I state that they wish a change in the mode of railroad intervention and legislation, and a wave of popular indignation against corporations, and against the Central Pacific Railroad in particular, bore many of us hither. But popular clamor is silent now. The people outside await our action here, with dignified and breathless expectation. They do not wish us to indulge in invective; they will award us no credit for denunciation. They wish us to treat this question within the pure, serene atmosphere of reason and constitutional law.

Since God gave the command to man to subdue the earth, and to earn his bread by the sweat of his brow, the line of evolution, in the development of industrial growth, has extended from the wants of the individual to the wants of the community. From the initial point of civilization to the present advanced age, the gradual concentration of business power has been analogous to the increasing nervous power from the coral zoophyte to organic man. There is now a web of interdependence everywhere, made up of the reciprocal relations between the producer, transporter, and consumer. Society is now a vast organism, in which the growth of industrial resources requires and has built up this greater concentration and circulation of business power. The great railroad trunks and their branches are the large circulatory blood vessels of this organism, stimulating business activities everywhere. Yet it needs a head, and its tendency is to consolidate under a head, or a combination. This head will subordinate the State to its influence, or the State must subordinate it to legislative control. The Convention seems agreed to this, yet analysis of it gives three classes of minds, differing as to the mode. Some are for leaving this power in the hands of the Legislature; some would vest it in an inquisitorial Commission, and others would vest it in this elective Commission, with plenary powers, as reported by the committee in section twenty of its report.

I am opposed to its control by the Legislature. The people know that its intervention hitherto in railroad matters has been farcical.

First—Because of the facilities presented for the corrupting of that body—responsibility being too much distributed to secure the rigid scrutiny of the public. Give due weight and consideration to the words of one whom so many of you admire—Henry Edgerton—found in a speech which he delivered, reported in the Sacramento Union August eighteenth, eighteen hundred and seventy-five, from which I read. He says: "But a few years since, a director of the Central Pacific Railroad Company said, in substance, that *that concern* would not *then* actively participate in general politics, because it was easier to buy legislators than it was (thank God)! to debauch the people." Despicable, execrable as was both the motive and the sentiment, experience has proven the observation a shrewd one; for the facility with which they have hitherto manipulated your Legislatures is proverbial. The two last, one Democratic and the other Republican, instead of exercising their constitutional functions as a coördinate branch of the government, in the true interests of the people, at once abdicated their sacred trust to *that company*, and became its obsequious tool. The most servile and abject of the parliaments of France never bent in more complete submission to the will of a Bourbon monarch than did those bodies to the beheats of the railroad kings.

"The evidences of the surrender were bald, convincing, and humiliating to the last degree. Visiting the Assembly chamber on the occasion of a final vote upon a measure of great public interest, the bill for the

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reduction of freights and fares—forgetful of the rule excluding from the floor of that august body those who were not members, or in the category of State officers—I was proceeding to a seat inside the rail, when I was courteously reminded that my irreverent feet were on holy ground, and directed to a seat in the gallery. Arriving there, I soon discovered that I had been ordered away only to make room for the *leper* Stanford, with his body-guard and train-bands who thronged the floor of the chamber, as well as every recess and precinct of the Capitol; and then followed such a saturnalian scene of legislative perfidy and debauch as was never before enacted since the Commons sat."

He stated further, that "the individual conscience and will shall be stifled beneath the despotic influence of powers usurped and centralized in relentless, remorseless, irresponsible, moneyed corporations." That "the authors of these rings, had they lived in the days of Publicola, would have been hurled from the Tarpeian rock!"

Second—Again, I am opposed to direct legislative intervention, because that body meets but a short time, once in two years, hence it cannot give that close and constant attention which this subject demands.

Third—The Legislature is generally composed of men who have no fitness for intervention in railroad affairs. I am in favor of the elective Commission as reported; first, because it is a representative body, elected by the people. In this connection, I deny that it is an absolute body, because its powers seem to embrace the three departments of government. The division of government into three branches is an arbitrary one for convenience of administration. The legislative, executive, and judicial functions naturally telescope into or blend with each other, and are reciprocative. Again, this tribunal is limited in various ways—they must report to the Governor; they must bring suit through the Courts; they must perform such duties as may be prescribed by law. Again, they are bound by that instinctive sense of justice in the hearts of the people, to give a fair hearing to the Railroad Directors before they fix any tariff or take any judicial action. Next, I am in favor of it because responsibility is so localized in this triumvirate, that the light of public scrutiny can be concentrated upon it in an intense focus. Third, it is the best custodian of the public interests, because it can give constant attention to this work.

Fourth—In selecting this tribunal of three from the large population of California, the people have a great margin of choice from which to secure men of fitness and integrity.

I regret to call attention, in this connection, to an invidious comparison that was drawn here, in a gentleman's speech, between the members of this body representing the legal profession, and those from other vocations in life. He declared that "the lawyers were the brains of the Convention, who, when deliberating upon any important measure, were overpowered by a rush of brawn and muscle from the other side of the house." Now, if the lawyers are the brains of the Convention, their instincts and judgment cannot be unerring, for they differ and divide upon every question. It was further stated that in the structure of our civil freedom, "*every stone had been cemented by their blood.*" If they have thus served their country, it has well rewarded them by bestowing upon them the best part of the offices in its gift. But I have no prejudices against lawyers. Some of them upon this floor are ornaments to their profession and to society. A word, however, might have been said in eulogy of the students, artisans, yeomanry, and workingmen of our land. Of all professions, the student philosophers stand highest; men who follow in the footsteps of Newton, Galileo, Bacon, Kepler, Stephenson, Brunel, Rittenhouse, Franklin, Fulton, Howe, Morse, and Edison. These are the men who have exalted human nature above the petty round of earth, and made life sublime. They have laid the mathematic chain from star to star, and sounded the depths of the universe. They have applied the logic of mathematics to grind your corn, to lift the water from your mines, to propel your loaded trains up the ascending grade. They have made a way for navigation across the pathless sea. They have forged the electric chain and bound the lightning's wing.

A meed of praise also might have been awarded our artisans. These men, in times past, with level, square, line, and plummet, planned and raised the colossal pyramids, built the temple of Solomon, lifted the mighty dome of St. Peter, and its kindred cathedrals; found Rome brick, and left it marble; and none are more worthy to wear the crown of civic honors than *those*, who, at the call of our country, left the plow, anvil, and work-bench, by *brawn* and muscle to push roads through the swamps of the South, along which to carry the flag of the republic, 'mid storm of shot and shell, to victory.

These are the men who are now coming to the front to maintain the integrity and dominion of the Caucasian race; to redeem and ennoble their country; to whom I apply the inspired words of the prophet Balak, *I bless them, and they shall be blessed.* [Applause.]

MR. WATERS in the chair.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I had supposed that when we came to the consideration of this report, each section would be disposed of as we reached it, but this debate has drifted away from the proposition of the gentleman from Los Angeles, Colonel Ayers, a fusilade has been opened along the whole line—one of them assailing the whole report and the whole plan offered by the committee. I, as a member of the committee—after deliberating a considerable time upon this whole section, which seems to be the rock ahead on which the railroad corporations are liable to split, and against which all the engineering efforts of their engineers here are directed—now subscribe to it. I gave my consent to it, although in the beginning doubting very seriously the propriety of intrusting such power to any Board of men, whether appointed or elected, or in anywise constituted. I do not subscribe to the details of the plan as presented, exactly. I have a minority report, which I shall endeavor to present and have considered, which, in my humble judgment, meets some of the objections which have been made against the general plan of the Commission, as to the powers that are sought to be conferred. And when it is so amended as to meet the wishes and to meet the views of those who are sincere and earnest in their desire to respond to what seems to be a universal demand of the people of this State, I hope it will go through, and that it will receive the sanction of the people at the polls, when they come to the ratification of the Constitution we may submit.

Now, sir, my position on the subject of corporations is this: I am not to be deterred from what I conceive to be my duty, from what I think I may safely say has been the practice of my whole life, by any comparisons to "unfeathered bipeds," or "mad bulls, with horns down and tails erect." I shall not be deterred by any cry of that kind, from rescuing this country from what I believe to be the most dangerous tendencies, the most anti-republican theories, which threaten our free institutions themselves; from pernicious doctrines which have been advocated, and which have grown by legislative enactment and decisions of Courts into usages which require, in my humble judgment, the beheading process. This great legal lie which has been preached all over the United States, and which has been preached in this Convention, shall be met by an indignant people, or the representatives of an indignant people, who offset against all this sophistry that is thrown on the plain common sense of plain, practical men.

Now, sir, the subject before the committee is railroad corporations and their regulation. The argument is substantially put forth here, that the railroad property, that is to say, including the franchise of the railroad, its right of way and its right to take toll, are private property. Against that, sir, I maintain that our whole theory of government rises up against these assumptions. But for forty years, in consequence of a mistaken idea from a decision of the Supreme Court of the United States, that great legal lie has been maintained, and has been rammed down the throats of the people, until corporations have grown more powerful than the State, and in their blighting presence, as in the presence of the upas tree, no business can live. No honorable ambition can stir in the breast of an honorable man with any hope of success, for the path to honor lies only in servility and subservience to corporate power. I maintain that the emergency is upon the people of this State now, to come fully up to the progressive spirit of this age. Now is their golden opportunity to rid themselves of that which will ultimately destroy the sovereignty of the State, and destroy free institutions themselves. Therefore I am in favor of bringing to bear on the railroad corporations, the whole constitutional power of the State; the police power, the power of taxation, the power to regulate them as common carriers, and the roads as public highways; to punish abuses and violations of the law, and to use all the powers of the State, except the power of eminent domain, to condemn and take their property, and I shall hold that that power is reserved and declared so that the State may, whenever it sees fit, exercise that sort of power too. But at present, sir, on account of the political corruption, it may not be wise to exercise that power. When in the course of time, by returning to first principles, by returning to the principles put forth by the new party which has arisen in the State of California, that the office shall seek the man and not the man seek the office, it may be possible for the State to own and control its railroads without detriment to the public service.

Now, sir, I maintain that, at the present time, the line is being drawn. We shall soon see who are the friends of the people. We shall soon see who are upon the side of the people, on the subject of the regulation of the railroad corporations within this State. All that we have done now, all of the sections that we have adopted with regard to discrimination, go for naught. They are bald, naked declarations. The mere declarations of a Constitution are not self-executing, and the machinery must be provided by which to carry them into effect. What use is it to declare in the Constitution that railroads shall not discriminate between persons and places? You must render them effective, sir, by providing the machinery, right upon the heels of it, to make it effective, and bring a power to bear equal to or greater than the power that is guilty of the abuses.

Many arguments have been made here by gentlemen opposed to this section, and to the general scope and spirit of the report of the Committee on Corporations. We are accused here of not treating the subject in a judicial and impartial manner. It is said by one that whenever a great argument is presented, that you will hear bellowed out, "Corporation lawyer." The gentleman from Sacramento, Mr. Edgerton, says that whenever you talk about or in favor of a corporation, certain members act like a herd of mad bulls, that put their heads and horns down and rush madly forward with their tails up, reckless whither they go or who is in the way.

Now, upon the subject of this power, and as to the nature of the property which is here denominated private property, predicated upon some claim of vested right, I will read an authority. The Chairman of the Committee on Corporations, in his opening argument, did fall a little short in insisting that the renowned lawyer, Jere. Black, was a member of the Constitutional Convention of Pennsylvania at the time of the adoption of one of the sections in this report. I will read now from the opinion of Judge Black, when he was on the Supreme Bench of the State of Pennsylvania, with regard to the character of the property which these corporations have, and which they claim to have now in the State. This was a case of the forfeiture of a railroad franchise, and the defense set up that it was a taking of private property without compensation. He says:

"The authority given by the Act of October, eighteen hundred and fifty-five, to the defendant, to take possession of the railroad, is asserted by the plaintiff's counsel to be an act of confiscation—a taking of private property for public use, without compensation. If this be true, the injunction ought to be awarded, for no Legislature can do such a thing under our Constitution. When a corporation is dissolved by a repeal of its charter, the Legislature may appoint, or authorize the Governor to appoint a person to take charge of its assets, for the use of the creditors

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and stockholders; and this is not confiscation any more than it is confiscation to appoint an administrator to a dead man, or a committee for a lunatic. But money, or goods, or lands, which are or were the private property of a defunct corporation, cannot be arbitrarily seized for the use of the State without compensation paid or provided for. This Act, however, takes nothing but the road. Is that private property? Certainly not! It is a public highway, solemnly devoted by law to the public use. When the lands are taken to build it on, they were taken for public use; otherwise they could not have been taken at all. It is true the plaintiffs had a right to take tolls from all who traveled or carried freight on it, according to certain rates fixed in the charter, but that was a mere franchise—a privilege derived entirely from the charter, and it was gone when the charter was repealed. The State may grant to a corporation, or to an individual, the franchise of taking tolls on any highway, opened or to be opened, whether it be a railroad or river, canal or bridge, turnpike or common road. When the franchise ceases by its own limitation, by forfeiture, or by repeal, the highway is thrown back on the hands of the State, and it becomes her duty, as the sovereign guardian of the public rights and interests, to take care of it. She may renew the franchise, give it to some other person, exercise it herself, or declare the highway open and free to all the people. If the railway itself was the private property of the stockholders, then it remains theirs, and they may use it without a charter as other people use their own—run it on their own account; charge what tolls they please; close it or open it when they think proper; disregard every interest except their own. The repeal of charters on such terms would be courted by every railroad company in the State, for it would have no effect but to emancipate them from the control of law, and convert their limited privileges into a broad, unbounded license. On this principle a corporation might be rewarded, but never punished for misconduct. Repeal of its charter, instead of bringing it to a shameful end, would put 'length of days in its right hand, and in its left hand, riches and honor.' But it is not so. Railroads made by the authority of the Commonwealth upon land taken under her right of eminent domain, and established by her laws as thoroughfares for the commerce that passes through her borders, are her highways. No corporation has any property in them, though corporations may have franchises annexed to and exercisable within them."

That is from the 26 Pa. State Reports, 307. Again, on page 324 of the same book, he says:

"It is further objected to this law, that it is an act of confiscation—takes private property for the public use of the State without compensation. The Government of the United States is forbidden to do this by the Federal Constitution. That instrument, of course, has nothing to do with this part of the case. But the State Constitution also declares that 'no man's property shall be taken or applied to public use without the consent of his representatives, and without compensation being made.' Does this Act violate the State Constitution in that part of it? We answered this in the negative when we refused the special injunction, and gave reasons which need not be repeated. Railroads built under the authority of law for general purposes of commerce, are public highways. On this principle alone we decided that municipal subscriptions were valid. On this principle alone can land and material be seized to make them. On this principle alone can the laws be justified which limit the tolls upon them. On this principle alone have we the power, so often exercised, of compelling those who have the charge of them to keep within the boundaries of the law. On this principle alone we have always held that no individual or corporation can possibly have any right or privilege connected with them except what the law has expressly conferred. The charter of this company contained a series of regulations, presenting the manner in which a public highway should be used. The repeal abolished those regulations and substituted a different set. By the charter, and by the charter alone, were the plaintiffs authorized to interfere with it at all; the repeal necessarily took that authority away. A public highway is not private property any more than a public office is private property. The execution of the law relating to an office is intrusted to an individual; a corporation as well as an individual may be intrusted with the execution of the law which relates to a highway. In either case, if the trust be abused it may be withdrawn; but neither the highway nor the office is thereby extinguished. The people still have a right to be served in both, and it is the duty of the State to see that they are."

That is the opinion of Judge Black. Corporations, apart from their abuses, are undoubtedly good things; the principle which prompted their formation was a good principle. It sprung from the old Anglo-Saxon spirit of voluntary association. They were never understood to be independent of control at all, but were entirely under the control of Parliament. They first begun their assumptions something like one hundred years ago, in the case of the greatest corporation and the greatest monopoly on earth, the British East India Company. That company grew so powerful that it defied the Parliament of the country. They claimed the charter of rights of man, just as our lawyers talk about vested rights covered by a provision of the Federal Constitution, as of properly being taken without due process of law, and the other provision prohibiting a State from passing any law impairing the obligations of a contract. Now, I read from another very distinguished gentleman, one who is generally considered a great friend of popular rights, Edmund Burke, in a speech in Parliament on the bill to take away the Charter of the British East India Company. There the objection was that the bill was an attack on the chartered rights of man. He says:

"As to the first of these objections; I must observe that the phrase of 'the chartered rights of *men*,' is full of affectation; and very unusual in the discussion of privileges conferred by charters of the present description. But it is not difficult to discover what end that ambiguous mode of expression so often reiterated is meant to answer. The rights of men, that is to say, the natural rights of mankind, are indeed sacred things; and if any public measure is proved mischievously to affect them, the objection ought to be fatal to that measure, even if no charter at all could be set up against it. If these natural rights are further affirmed and declared by express covenants, if they are clearly defined and secured against chicane, against power and authority, by written instruments and positive engagements, they are in a still better condition; they partake not only of the sanctity of the object so secured, but of that solemn public faith itself, which secures an object of such importance. Indeed, this formal recognition, by the sovereign power, of an original right in the subject, can never be subverted but by rooting up the holding radical principles of government, and even of society itself. The charters, which we call by distinction great, are public instruments of this nature; I mean the charters of King John and King Henry the Third. The things secured by these instruments may, without any deceitful ambiguity, be very fitly called the *chartered rights* of *men*.

"These charters have made the very name of a charter dear to the heart of every Englishman. But, sir, there may be, and there are charters, not only different in nature, but formed on principles the *very reverse* of those of the great charter; of this kind is the charter of the East India Company. *Magna Charta* is a charter to restrain power and to destroy monopoly. The East India Charter is a charter to establish monopoly and to create power. Political power and commercial monopoly are *not* the rights of men; and the rights of them derived from charters, it is fallacious and sophistical to call 'the chartered rights of men.' These chartered rights (to speak of such charters and of their effects in terms of the greatest possible moderation), do at least suspend the natural rights of mankind at large, and in their very frame and constitution are liable to fall into a direct violation of them.

"It is a charter of this latter description (that is to say a charter of power and monopoly) which is affected by the bill before you.

"The bill, sir, does, without question, affect it; it does affect it essentially and substantially. But having stated to you of what description the chartered rights are which this bill touches, I feel no difficulty at all in acknowledging the existence of those chartered rights in their fullest extent. They belong to the company in the surest manner; and they are secured to that body by every public sanction. They are stamped by the faith of the king; they are stamped by the faith of Parliament; they have been bought for money, for money honestly and fairly paid; they have been bought for valuable consideration, over and over again. I therefore freely admit to the East India Company their claim to exclude their fellow-subject from the commerce of half the globe. I admit their claim to administer an annual territorial revenue of seven millions sterling; to command an army of sixty thousand men; and to dispose—under the control of a sovereign imperial discretion, and with the due observance of the natural and local law—of the lives and fortunes of thirty millions of their fellow creatures; all this they possess by charter and by acts of Parliament, in my opinion, without a shadow of controversy.

"Those who carry the rights and claims of the company the furthest, do not contend for more than this; and all this I freely grant. But granting all this, they must grant to me in my turn, that all political power which is set over men, and that all privilege claimed or exercised in exclusion of them, being wholly artificial, and for so much a derogation from the natural equality of mankind at large, ought to be some way or other exercised ultimately for their benefit.

"If this is true with regard to every species of political dominion, and every description of commercial privilege, none of which can be original self-derived rights, or grants for the mere private benefit of the holders, then such rights, or privileges, or whatever else you choose to call them, are all in the strictest sense a *trust;* and it is of the very essence of every trust to be rendered *accountable;* and even totally to *cease*, when it substantially varies from the purposes for which alone it could have a lawful existence."

I maintain, sir, that the only way by which corporations which are monopolies—that is all that can be said of them—the only way by which they can be maintained and be consistent with the spirit of our institutions, is to also hold that they are exercising a public trust, and that the very essence of that trust is the accountability of those exercising it, and its liability to cease whenever it perverts or becomes subversive of the natural rights of mankind, or the political rights of a community. In the beginning of this republic of ours, our wise old fathers thought but little of these things. Wealth had not accumulated, corporate power had not been asserted as in modern times, and they provided not for them in the original Constitutions, and did not contemplate them. The only one about which controversies arose, to any extent, in this country, was the United States Bank. That was held, by those who went in for a strict construction of the Constitution, to have been established without the sanction of law, and to have been established in violation of the Federal Constitution. That bank, sir, had become, as all these powerful corporations have become, desirous of political control, and General Jackson, and the great cohorts who marched to victory under his banner, put it down, and then it was discovered to be, as too many of them are, a rotten shell. Then came the question of internal improvement, when the battle raged again. Propositions to subscribe public moneys were combated vigorously by those who favored a strict construction of the Constitution, and a strict limitation upon the powers of Congress to assist and aid in internal improvements; and I suppose that the members in this committee know that the only way by which they were ever allowed to grant a single foot of land or a subsidy of a single dollar in aid of any enterprise of a private character whatever, was upon the power to establish post and military roads. Now, this corporation, which is doing the principal transportation business of the State of California, obtained a subsidy from Congress of lands and of money upon that ground and that ground alone—a contribution which was made by virtue of the power asserted in Congress to establish military roads and post roads. It was not then contended to

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be a creature independent of the power that created it. It was not then contended to be greater than the power that created it; but it was distinctly asserted to have been built and established by the public money, subject always to public control as such. And yet gentlemen are telling us here in this Convention that we have no right to inquire into their title. That we have no right to go back and examine what gifts they have received—gifts from the State, gifts from the counties, gifts from the Government—all of which proceeded upon and depended upon governmental control, and holding them to a strict accountability for the trust which was conferred upon them. And if it should turn out that these gifts amount to more than the whole value of the property itself; if it should turn out that the vast subsidies of lands and of money given by the Government of the United States, given by the State, given by the counties, have been sunk in the private exchequer of the directors, whilst they have got mortgage bonds to represent the money borrowed to build the road, they still tell us that we have no right to inquire what has become of this money; we have no right to look at the private fortunes swelled into millions by the individuals engaged in the work. In the days when they were soliciting this aid at the hands of Congress, of the Legislature, and of the Boards of Supervisors, they sung a different tune, and gentlemen have but to refer to the debates in Congress on the Central Pacific Railroad bills, to see that, in those days, no such tremendous power over the property was claimed, but they were only the agents of the people. Now, we have no right to inquire. Poor suffering men! Objects of compassion and solicitude, as they must be!

Another says, pass this Commission bill, and you will drive them into politics. My God! are they waiting to be driven into politics in this State? Is that what you call forcing into politics? Why, this is as good as the description by Byron of the females of Islam standing on the street corners while the city was being plundered and sacked:

> "Some voices of the buxom middle-aged
> Were also heard to wonder in the din,
> (Widows of forty, were these birds long caged),
> 'Wherefore the ravishing did not begin!'"

Forced into politics! Could they get any deeper in than they are now? Have they not made up their slates? Don't they hold the sovereignty of the State already? Don't they make Governors, Senators, Judges, and everything for you? And yet you force them into politics. The only thing I hope for then is, if they should be driven into bankruptcy, that they will have enough to retire on, and my impression is that they will.

I come now to the great American departure—the direful spring of fruitful woes unnumbered to this dear land of ours—I refer to the oft quoted Dartmouth College case. Daniel Webster, with his ponderous and massive logic, and his overmastering appeal for his *alma mater*, persuaded the Supreme Court of the United States to declare the inviolability of charters, and to place them under the protection of that clause in the Federal Constitution forbidding the impairing of the obligation of contracts. I know, sir, that that high tribunal never intended by that decision to declare what it has been for nearly half a century claimed they did declare. I know that the framers of the Federal Constitution, when they inserted in that instrument the inhibition of interference with contracts, never contemplated the charters of corporations. They had in their minds the private contracts of the citizens—and they never dreamed that their act would be so construed as to bind the State hand and foot and deliver it over thus bound to merciless, soulless monopolies. But this I know, that up to the time of that decision, the power of the State over all its creatures had never been questioned. Its sovereign sway over all internal subjects affecting its well-being had never been doubted; its power of self government, self preservation, and self judgment, had never been impugned. There were no corporate monopolies in existence then threatening society, nay, the sovereignty of the State itself. The Dartmouth College foundation was an old grant from the Crown of England, and it was eloquently claimed that its usefulness, nay, its very life itself was imperiled by threatened State interference and State control. The Court threw itself between the people and the college, and flung its shield of power over the doomed institution. A description of the argument of that celebrated case relates that, under the melting pathos of Mr. Webster, the grave old Justices of the Supreme Court wept. So, too, sir, the people of these United States have wept and groaned in consequence of that decision and the use made of it.

"A charter is a contract," say the Court, "and as such is within the protection of section ten of article one of the Federal Constitution, forbidding the State to pass any law impairing the obligation of a contract." No matter how grevious to be borne, the State must bear the burden. All subsequent Legislatures are bound as with Promethean bonds. "It may reserve the power," says one of the Judges, in an *obiter*, "to modify or annul the contract." But if a base and unworthy Legislature fails to do so, the State must pay the pound of flesh, strictly according to the bond.

This decision has been the fountain from which has flowed the monstrous assumptions of corporate power. They have sprung from it full panoplied, like Minerva from the brain of Jupiter, and they rush back there for protection like that cry of hell hounds, described by Milton, which, "never ceasing, barked with wide cerberean mouths full loud, and rung a hideous peal; yet when they list, would creep, if aught disturbed their noise, into her womb, and kennel there, yet there still barked and howled, within unseen."

It is natural for men to crave power; it is delightful to be above the law. And so they stuck an incorporation on every element and force of nature, and consolidated the corporations. The earth and the fullness thereof was theirs, by legislative grant. They incorporated on the cradle and on the grave. They came in myriads, aggregate and sole. We rise out of incorporated beds; we put on incorporated boots, hat, coat, shirt, pants, and vest; we take up an incorporated paper; we sit down by an incorporated stove, to a fire kindled by an incorporated match; we bathe in incorporated water in an incorporated tub; we breakfast on food handled by a dozen corporations; we live, move, and breathe through the day for the benefit of corporations, and at the close tumble back into our incorporated bed, lighted by incorporated gas. Not a right of way, from the obscurest deer trail up to the straight and narrow way, has been left unincorporated, and the broad road that leads to death, where thousands walked, is now plastered with incorporations, and freights and fares have been reduced on that memorable highway so that States and nations are now being railroaded through to death on better terms than sinners got afoot before.

The wealthy and powerful combine their means to control the industries of the country. The impecunious birds of prey, bummers, and drones of society, combine and incorporate their nothings—capital ten million dollars—and float their shares in the rich man's wine, and the poor man's soup. They incorporate on a hole in the ground, with a prospect in it; they incorporate on the hole, without the prospect, and they incorporate on the prospect without the hole. They incorporate to effect all ends—they end all the effects of the gudgeons and suckers who bite. Like Frankenstein's baby, there was no end to its growing, and no limit to its voracity. And, like that wonderful child, it started in to devour its author. The sovereignty of the State fled in dismay before it.

Such have been the consequences of that decision, that the operation of corporate combination and unlawful appropriation have left nothing unincorporated nor unappropriated of that common stock granted by charter of Almighty God for the use and benefit of mankind. The natural tendency of mankind is to refine, but refinement, according to them, is stealing from the hands of the many by the few. I believe it is somewhere said that eternal vigilance is the price of liberty. Now, it is because of the refinement of mankind—the refinements for which my own profession has been largely responsible. In the eloquent language of the gentleman from Sacramento, Mr. Edgerton, "they have been in the vanguard in the battles of freedom;" they have also been in the vanguard when the rights of man were to be denied by the refinements of the law. That is true, and it cannot be denied. We see the law, simple and plain, in a new community. Take the history of this State itself, with regard to the appropriation of mines. In the beginning, the evidence of title was simple possession. You held your title by being on the land. You held it by having your home on the ground, and by having your tools there. They called it pick and shovel representation. That was the law—a man should only hold that which he worked. A man might be sick, perhaps, and that would not be right, so they held that three days in a week would be sufficient, and then two days was sufficient, and then they said one day would be sufficient, and then they begun to refine upon that, that work done somewhere else for the benefit of the ground would suffice to hold it, and then they conceived the idea of putting a paper upon it and having it recorded; by notice and a record. Then they begun to hold by law, and kept on refining and lost the more simple rules and regulations of miners, because of the disposition of mankind to refine. Now a days you can hold it without anything almost. The tendency has been brought to bear upon them until it has gone so far that the doctrine is declared of absolute property in running water, away off from the old simpler idea of the riparian rights of the owners along the banks, and thus that tendency has been made use of. It has crept into and poisoned the very framework of our society and of our institutions. Nothing can be done, nothing can be carried on without falling back upon the corporate principle, and where a thing is not a subject of incorporation they make a ring, and ring a ring over everything. Even the law has its ring. They could not be incorporated very well, and so they make a ring. The whole evil brood has grown up, and they have fastened themselves upon the country, because of this assumption of the absolute power or ownership of private property that is essentially public, granted to them as public, held as an agency or trust, with the accountability attaching to all trusts. Now, I say, and that is my deliberate judgment, and always has been, from the time I say the disposition of mankind to display the spirit of the swine that is in all of us, wherever the law permits or tolerates appropriations of this kind, then turning round and saying, "you cannot touch me; I am protected by virtue of some vested right." I say, it is time to return to first principles. That is what I want to see done. That is what the people of this State want to see done. They want to see a return to the first principles—to the principles of our fathers—where the functions of the government were supposed to be within the control of the people, and the sovereignty to reside there, not only in theory but to be exercised by the people.

Now a gleam of light shone out over this country when the Supreme Court of the United States did better than to reverse the Dartmouth College decision. I say that they did better than to reverse it. They ignored it. They went over it, and they went under it, and they placed the corporations upon an equality with all persons. That is what the Supreme Court of the United States did, and they never so much as squinted at the old Dartmouth decision. That was a victory achieved by the Grangers. It was the power of that organization that ruled the Legislatures and disciplined the Courts. They, sir, it was, who, standing firmly, shoulder to shoulder, in defense of the rights of the people, as against the corporate assumption, carried their Legislatures and passed their regulating laws. It went to the Supreme Court, and they affirmed in the broadest manner, without reference to their charter, or their assured rights vested in a charter, that they were subject to control in the business in which they were engaged; subject to control, because their use was a public use; subject to control, because it was clothed with a public character, and affected the interests, the fundamental interests, of society itself. They affirmed it because it was indispensibly necessary that it should be affirmed, or it would soon turn out that the sovereignty of the State would give way and be administered solely by the corporations.

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What is the practical effect before our own face and eyes? We see it here around us, and we hear it come up in indignant cries by the people of the State. Gentlemen say that there are no abuses; that the management is altogether lovely. The eloquent gentleman who addressed the committee so long the other day, whatever he may have thought four or five years ago, now contends that they need no regulation. In other words, that they want to be let alone. And yet I remember reading one of his speeches, where he said that the railroad management was simply grand larceny, or something to that effect. Now the question is, where is the change? What great revolution has come over that corporation, if the gentleman was right five years ago and is right now? That problem can be solved by every man for himself.

I attack no man's motive. But the practical effect in the State of California to-day, is what I wish to call the attention of this Convention to. As I said before, three quarters of the whole transportation business of the State has fallen under the control of one railroad corporation. And now, sir, the idea of the sovereignty of the State, the rule of the majority, the greatest good to the greatest number, the administration of the government for the legitimate purposes of the government, have become only child play abstractions. The sovereignty of the State has been imprisoned within the four walls of a structure at the corner of Fourth and Townsend streets, in San Francisco. Stanford and company have captured it and chained it there. They have subjected it to their will, and they have bound it to their bidding. Whenever they allow it to go forth, it goes in charge of a keeper. Whenever they bring it out to lend a semblance of popular rights, it comes in the charge of a number of keepers—their political agents—who follow it around and feed it on corporation milk. Is the Legislature about to convene? they bring it there and unchain it in the lobby. They order a Code, or laws to be enacted, and behold, in the name of the people, the law is enacted! Is a United States Senator to be elected? they bring it into the arena; they order his election, and lo, the faithful is elected. Is a convention to convene to nominate a Governor of the State, and the principal officers of the State; to nominate a county Sheriff and the other officers of the county, and the judicial officers? they bring it there and make up the slate.

What are the attributes of sovereignty? Eminent domain—the right to take private property for public use, on compensation? The Central Pacific Railroad Company goes around over the State and bullies the citizen with this assumption of power. Nay, sir, bullies the State itself, and even assumes the right to take public property for their own private use. Is it the power of taxation? The railroad company knows no limit to the boundless claim to exercise this right beyond the capacity of the people to bear. They bring the lever down and agriculture groans; they raise the lever up and agriculture proves a highway to wealth. They snatch the diadem from the brow of commerce and order trade to "stand and deliver!" while they empty its pockets. Three or four men sit down in a room and with one scratch of a pen extract a million from the industries of the country. And yet you tell me that there is no necessity for controlling a power like this. They run their car wheels over the liberties of the people, crushing in their devastating career a hecatomb of human hopes, and rear upon their ruins an empire of arbitrary power. It is against that company that I contend. It is against them that the people have rallied. It is against them the battle is to be fought. It is a question now of power. The question is, who shall exercise the sovereign power of the State? These railroad corporations never injured me. I fear not their threats and I care not for their favors. But my philosophy teaches me that if we expect to maintain our free institutions; if we expect to maintain this republic; if we expect to maintain in California anything like a republican form of government, these corporations must be controlled, and the means must be devised to do so effectually.

Now, sir, I come to the subject of the Commission. I have said in the committee—I also argued by way of consultation with the committee—that there might be danger; that we might create another despotism more grievous and more oppressive than these corporations; and a very remarkable circumstance is, that I have seen that same kind of argument urged in notorious and well known railroad organs, and urged by corporation lawyers—I beg the pardon of the gentleman; I mean outside of here—the very self-same argument, that we were in danger of creating a despotism. Why, they say that this branch which we propose to establish here, is like something never heard of in the sky, in the earth, or in the waters under the earth. I deny it. I say that it is only proposed here to create a constitutional Board, and to give it a permanent character, differing but little from that which has been established all over the continent of Europe and in many of the States of the United States.

I maintain that we are only proposing to supplement a remedy for those very defects which their experience has pointed out, in order to make them efficient, and of more valuable service to the people. I have relied very greatly upon the report which was lately published by Mr. Adams, a member of the Massachusetts Commission. It is full of valuable information, and it brings us to the conclusions reached by the gentlemen who are composing the Committee on Corporations. They take into consideration the fact that the circumstances surrounding the communities where these Commissions have been created were totally and entirely different from anything we have upon the Pacific Coast. Two conclusions are reached by Mr. Adams. Of course, he is in favor of the Commission, just as gentlemen here say that they are in favor of a Commission—a poor, feeble Commission, which would be kicked out of the office of the Central Pacific Railroad Company, but which could march into a railroad office in Massachusetts and be listened to. The conclusion is, that the Commission has in its power to correct abuses by means of publicity. He reasons very liberally, and he reasons well, to show how a Commission, with full power to investigate, to examine books and papers, to order abuses to be corrected, can become familiar with the business of the road, and make it extremely disadvantageous for a railroad company to refuse to listen to their requests, or orders, whichever you may choose to call it. Why, when Mr. Adams' Commission went into a railroad office, in the State of Massachusetts, when they looked over their dealings and told them that they were practicing extortion, if they paid no attention to them, what happened? The next thing was a publication—an official publication—to the world, that that road was a cheating road; a notice like that, which would be put up at your toll gates, where there was an official notice to avoid that road, because if you went over it it would cheat you. In Massachusetts the traveler had the choice of seven different routes to the seaboard, avoiding the route which he had been warned against. Now, how much application has that to the State of California? How much application has it to any system of railroads that we know of in the State of California? Are not gentlemen ashamed of lugging anything of that kind into this Convention, and telling us that you can bring the railroad to terms by the fear of exposure in the State of California? Why, sir, a Commission of respectable men, created by the laws of the Legislature, at the session before the last, were unable, after two years constantly endeavoring to do so, to obtain even a sight of the books of the railroad company, when, lo and behold, they were legislated out of office. That is how much publicity would affect the railroad corporations of this State; and so all over the United States, except the State of California, if you are traveling over great trunk lines, you have the advantages of three or four routes, and if official notice is given to you by those who have investigated their business, that they will cheat you, that they are an unworthy route, you go away, and go around them. It is the transient loss of business by which they are held in control. But Stanford and company would say as old Tweed used to in New York, when they found him stealing, with both hands in the treasury, "what are you going to do about it?" That would be the beautiful working of that plan of publicity. I understand that a great newspaper, one of the best that was ever published on the Pacific Coast, or in the United States—I refer to the old Sacramento Union—occupied itself for years and years with giving publicity to railroad abuses, and the consequence was that, as powerful as that journal was, they sat down on it, and mashed it. Publicity! Too thin!

Now, what is the other plan? I find that I cannot go further to-night, on account of my throat. I yield the floor.

MR. FARRELL. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress, and ask leave to sit again.

NOTICES.

MR. CROSS. Mr. President: I give notice that on to-morrow I will move to reconsider the vote indefinitely postponing the motion to take from the table the motion to reconsider the vote on adopting the resolution of adjournment until Monday, December second.

MR. HAGER. Mr. President: I wish to give notice that I will move a substitute for section twenty, in case either of the amendments should be voted down. I cannot offer it in the stage in which it now stands, but I wish to give notice that I will offer a substitute for section twenty. I do it now, that it may be printed, and that members may have an opportunity of examining it. I would ask that it be received, and printed in the Journal.

THE CHAIR. If there be no objection, the gentleman will have leave.

THE SECRETARY read:

SEC. 20. There shall be elected, at the next general election, and every four years thereafter, by the qualified electors of this State, a Board of three Railroad Commissioners, whose term of office shall be four years, with such salary as may be fixed by law, not to exceed —— thousand dollars a year. Such Commissioners shall be qualified electors, and for five years citizens of this State, and shall not be interested, pecuniarily or by employment, or in any other capacity, in any railroad or transportation company, or in the business of common carrier of passengers or freight. They shall each take the constitutional oath of office; and before entering upon, and for the faithful performance of, the duties of their office, they shall each give a bond, with two sureties, in the sum of twenty thousand dollars, to be approved by the Governor. The Commissioners, or a majority of them, shall have power, and it shall be their duty, to establish reasonable and just tariffs and rates of charges for the transportation of passengers and freights by all railroad corporations: and, for this purpose, they shall have power to administer oaths; to examine the books and papers of such corporations; to summon and examine the officers and stockholders thereof, and other witnesses; to hear complaints; inquire into and correct abuses; prevent partial and unjust discriminations and extortion in the rates of charges and the tariffs for the transportation of freights and passengers. They shall publish, semi-annually, full statements of the tariffs and rates of charges established and authorized by them, and of all abuses, discriminations, and extortion, and report the same to the Governor. Whenever such tariffs and rates shall be established and published, they shall be binding upon, and must be observed by, all such corporations doing business in this State, and may be enforced by the Commissioners, or by any party in interest, through the Courts; but nothing herein shall prevent any person from maintaining an action for injury or damage against such corporations. The Legislature shall confer on the Commissioners such further powers as shall be necessary to enable them more fully to perform their duties; and it shall pass laws, with adequate penalties, to the extent, if necessary, of forfeiture of the franchises of such corporations, to enforce the action of the Commissioners. The Commissioners, and

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each of them, may be removed from office by the Legislature, by a majority vote of all the members elected to each house, and shall also be liable, personally and on their official bonds, to any party aggrieved, for neglect of duty or any malfeasance or corruption in office.

MR. HUESTIS. I move that the Convention do now adjourn.

Carried.

And, at nine o'clock and five minutes, P. M., the Convention stood adjourned until to-morrow at nine o'clock and thirty minutes, A. M.

SIXTY-FIRST DAY.

SACRAMENTO, Wednesday, November 27th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A.M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Hale,	Prouty,
Ayers,	Hall,	Pulliam,
Barbour,	Harrison,	Reed,
Barnes,	Harvey,	Reynolds,
Barry,	Heiskell,	Rhodes,
Barton,	Herold,	Ringgold,
Beerstecher,	Herrington,	Rolfe,
Belcher,	Hilborn,	Schell,
Blackmer,	Hitchcock,	Schomp,
Boggs,	Holmes,	Shafter,
Boucher,	Howard,	Shurtleff,
Brown,	Huestis,	Smith, of Santa Clara,
Burt,	Hunter,	Smith, of 4th District,
Campbell,	Joyce,	Smith, of San Francisco,
Caples,	Kelley,	Soule,
Casserly,	Keyes,	Stedman,
Chapman,	Kleine,	Steele,
Charles,	Laine,	Stevenson,
Condon,	Lampson,	Stuart,
Cowden,	Larkin,	Sweasey,
Cross,	Larue,	Swenson,
Crouch,	Lewis,	Swing,
Davis,	Lindow,	Terry,
Dowling,	Mansfield,	Tinnin,
Doyle,	Martin, of Alameda,	Townsend,
Dudley, of San Joaquin,	Martin, of Santa Cruz,	Tully,
Dudley, of Solano,	McCallum,	Turner,
Dunlap,	McComas,	Vacquerel,
Estee,	McConnell,	Van Dyke,
Estey,	McCoy,	Van Voorhies,
Evey,	McFarland,	Walker, of Tuolumne,
Farrell,	McNutt,	Waters,
Fawcett,	Miller,	Webster,
Filcher,	Mills,	Weller,
Finney,	Moffat,	Wellin,
Freeman,	Morse,	West,
Freud,	Nason,	Wickes,
Garvey,	Nelson,	White,
Glascock,	Noel,	Wilson, of Tehama,
Gorman,	O'Donnell,	Wilson, of 1st District,
Grace,	Ohleyer,	Winans,
Gregg,	O'Sullivan,	Wyatt,
Hager,	Porter,	Mr. President.

ABSENT.

Bell,	Hughey,	Neunaber,
Berry,	Inman,	Overton,
Biggs,	Johnson,	Reddy,
Dean,	Jones,	Shoemaker,
Eagon,	Lavigne,	Thompson,
Edgerton,	Moreland,	Tuttle,
Graves,	Murphy,	Walker, of Marin.

THE JOURNAL.

MR. TINNIN. I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

LEAVE OF ABSENCE.

Messrs. Johnson and Thompson were granted leave of absence, each for one day.

Messrs. Moreland and Overton were granted leave of absence, each for two days.

IN REFERENCE TO ADJOURNMENT.

MR. TINNIN. Mr. President: I move that the motion of Mr. Larkin, the notice of reconsideration, be taken from the table. It was laid on the table yesterday.

Mr. BARNES. Mr. President: That motion has already been passed upon by this Convention, and I raise the point of order that the motion cannot be made again. The proceedings on that subject will be found in the daily Journal of yesterday. The resolution provides for adjourning from Wednesday noon until Monday, and provided also for two night sessions, to make up for the time proposed to be taken. Now, that resolution was adopted and carried into effect. A night session was held on Monday night, and another last night. The motion to reconsider was made, and Mr. Gregg moved to lay the motion on the table. The roll was called, and the motion was laid on the table. Then in the afternoon Mr. Tinnin made the same motion which he is now making, moved to take from the table the motion to reconsider the vote on the adoption, and I moved to indefinitely postpone the motion, and it was indefinitely postponed. I submit that that was a determination of the whole question, and that motion cannot now be renewed. I submit the following points of order:

First, the motion to reconsider, made by Mr. Estee, was laid on the table. The motion of Mr. Tinnin to take from the table the motion to reconsider was defeated. This disposed of the whole matter, and was equivalent to a defeat of the motion to reconsider. The motion to reconsider was defeated; second, there can be no reconsideration of an order, the execution of which has already commenced, and even if the motion should prevail, the Convention cannot change the order of the twenty-fifth instant, relating to adjournment, as the extra sessions, which were part of the order, have already been had.

MR. TINNIN. Mr. President: The statement made by Col. Barnes is correct to a certain extent. The motion made by me was laid on the table, but it could extend no farther than the particular subject-matter, and it was so ruled by the Chair at that time, and was so understood. The question was asked of the Chair at that time, and the Chair ruled that it affected only that motion. The question was raised whether or not it would carry the whole subject-matter with it, and the Chair ruled that it would not. Now, Mr. President, so far as the motion made by the gentleman from El Dorado is concerned, it is on the table. It is subject-matter before this Convention. When any matter is laid on the table it is not disposed of; if it was, the reports of committees could be passed by in this way. Committees make their reports, and they are laid on the table, and consequently subject to action by this body; and I hold to the position that the motion made by the gentleman is on the table, and can be taken up at any time. Laying on the table is not a final disposition of the subject. It is in effect saying that the Convention desires to consider the matter at some future time, and I hold that this motion is in order.

MR. BARNES. Mr. President: The gentleman is mistaken. The motion made by me was to indefinitely postpone his motion, and not to lay it on the table. It is so recorded. Here is the Journal: "Mr. Barnes moved to indefinitely postpone the motion, upon which the ayes and noes were demanded, the roll was called, and the motion to indefinitely postpone prevailed." (Here the vote is stated.) Now, I contend that there should be some limit to these motions, after the subject-matter has been once, twice, yes, three times, passed upon by this body; and if this system of tactics is to prevail, there will be no limit to this thing. The Convention has executed a contract, so far as those who desire to go away are concerned. It was suggested that we should have two night sessions to make up for the time, and these night sessions have been had, and our part of the contract performed. They agreed, that if we would consent to hold these night sessions, they would take a recess; and now having held two night sessions, they propose, by a forced construction of parliamentary law, to have their cake and eat it too. I do not think it is fair.

MR. ESTEE. Mr. President: I propose to submit my reasons why the gentleman from Trinity, Mr. Tinnin, is not in order, and I think the gentleman will bear me out. A resolution was adopted by this body that we adjourn to-day until two o'clock on Monday, and also that we have two evening sessions, commencing on Monday evening and ending yesterday. That was all in the resolution adopted by this body. Now, to take this matter from the table—an attempt to reconsider it—is not in itself the original proposition——

MR. TINNIN. When a matter is laid upon the table, is it a final disposition?

MR. ESTEE. It was not laid upon the table. It never was laid upon the table. It was only the motion to reconsider it that was laid upon the table. As the matter has been partially executed, it never can be reconsidered as a question of law. It is executed in part, and as a question of law, when a proposition has a body and has been executed in part, even though notice may have been given, it cannot be reconsidered, because the same question will not be before the body again. I appeal to the gentleman if this is not law.

MR. SHAFTER. Mr. President: The Chair ought to first decide this question. Now, the right to make a motion, and the right to hear it, always depends upon the right of the body to decide the question then and there. You decided the question the other day, and entered into a sort of a contract. You made a rule, and that rule has been partially executed, and it is too late to change that rule. We meet under the general rules at ten o'clock, and yet we are here at half-past nine under this rule which is now sought to be abrogated. If we do reconsider this vote and repeal this rule which has been partially executed, then we are here without any organization at all, because the general rule requires us to meet at ten o'clock. It shows that when a rule is partially executed it is not subject to reconsideration. It cannot be made so. Now, if we take up this motion and pass it to reconsider the vote, it stands as if it had never been passed at all, and we sit here under a rule that requires us to come here before ten o'clock. Now, this motion depends upon our right to pass upon the ultimate question ——

MR. TINNIN. The gentleman makes a misstatement. We are here at half-past nine o'clock by the rules—by a change in our standing rules.

MR. SHAFTER. I may have been mistaken about that, but we have not held the two night sessions under the general rules. They were held under this special rule, and it has therefore been executed in part, and cannot be abrogated. That is the doctrine of Cushing. We have commenced to execute this order, by holding two night sessions, and it is utterly impossible to reconsider and put ourselves back in the position we were in before. If we do reconsider, the whole resolution goes for nothing absolutely, and then we come to the question whether we will pass the resolution. Suppose we refuse to pass it, what is the result? You have sat here during two night sessions, without any authority whatever.

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MR. BROWN. Mr. President: Now, we have heard of a certain agreement. We heard nothing of any such agreement or contract when the resolution came before this Convention. Certain gentlemen may have agreed to certain things in their minds, or may have agreed to one or two principles, but as to any such agreement with those who passed this resolution, I am satisfied the gentleman from San Francisco is mistaken upon that point. Now, by those who objected to the resolution there is an effort made to defeat it. In order to vote intelligently——

MR. WALKER. I raise a point of order. The point of order raised by the gentleman from San Francisco, Mr. Barnes, has not been ruled upon, and no appeal has been taken, and it is not debatable.

THE PRESIDENT. The point of order raised by the gentleman from San Francisco, Col. Barnes, has not yet been passed upon. The Chair has no objection to hearing the views of members upon the question.

MR. BROWN. There was no such arrangement as that made, to my knowledge. Now, my impression is that Cushing and Jefferson have clearly advanced the idea that where there is a general sentiment in a body to be carried out, that parliamentary law and usage does not come in the way of carrying it out—the general principles which the body wishes to carry out. Now, if it be that this body wishes to accomplish certain things, it is not bound by anything that may have been agreed upon by certain members among themselves.

THE PRESIDENT. The gentleman is not directing his remarks to the point of order. He must confine himself to the point.

MR. BROWN. I have endeavored to do so. Now, this matter is clear. It is evident that the majority did not know the purpose of the resolution. It seems as though they did wish a certain division of the question. I think when the majority of this body desires to do a certain thing, they should have the right at all times to do it. I shall therefore favor taking up the resolution and acting upon it.

MR. TULLY. It seems to me we might make a compromise here—that is, that gentlemen who wish to go home shall be granted leave of absence. Those who wish to remain here and go on with the business, could do so, agreeing not to vote upon any subject until Monday, at two o'clock. It seems to me that will satisfy the whole Convention. They can make speeches during that time.

MR. DUDLEY. Rule Forty-seven of the House of Representatives makes it very clear that the point of order made by the gentleman from San Francisco, Colonel Barnes, is a good one. It says when a motion of this kind is made, and is laid on the table, it is deemed a finality. Now, it is true that the gentleman from Trinity did not move to reconsider. He moved to take the motion to reconsider from the table. Under this rule he is out of order.

MR. HOWARD, of Los Angeles. Mr. President: I do not rise for the purpose of discussing this question of order, except to concur in the suggestion made by the gentleman from Santa Clara. The President will remember that in the House of Representatives it was the constant practice to have the House meet to discuss questions, with the understanding that no vote should be taken. It seems to me if we do that it will give satisfaction all around. There are certain gentlemen here prepared to speak, to assign their reasons for the votes they may cast upon this important question, and the Convention cannot deny them the privilege. Therefore, with this understanding, those who do not wish to go home can remain here and discuss these questions for two days, with the understanding that no vote is to be taken until Monday. That will satisfy everybody, and I think it is a wise course, because it cannot be denied that these long adjournments are distasteful to the people of this State. If we do this, the time will be well occupied, and those who wish to go home can do so.

MR. GRACE. If I understand the gentleman from Los Angeles, it won't make any difference whether there is anybody here to listen to these speeches or not.

MR. HOWARD. It don't make any difference now. [Laughter.]

MR. GRACE. I think it might be just as well to let the gentlemen print their speeches at their own expense, without delivering them. I make that motion.

THE PRESIDENT. The motion is not in order now.

MR. O'DONNELL. Mr. President: We have occupied in the neighborhood of four hours and a half in the discussion of this question, and I move that the whole matter be indefinitely postponed.

THE PRESIDENT. Out of order.

MR. LARKIN. Mr. Dudley, of Solano, has quoted a part of the rule in the House of Representatives. I have never known any such rule in a parliamentary body as that a motion laid on the table is a finality. Under our rules indefinite postponement is not a final vote, because a majority may reconsider. I insist that we have a right to reconsider the vote, and I insist that a vote be taken.

THE PRESIDENT. Gentlemen: The Chair will state the reasons which govern him in deciding this point of order. Before doing so he desires to correct the gentleman from Trinity, Mr. Tinnin, in the statement he made about the decision of the Chair. On yesterday there was a motion made to lay on the table the motion offered to reconsider, by the gentleman from San Francisco, Mr. Estee. The Chair was asked whether that motion would carry the whole subject to the table. The Chair answered that it would carry nothing but the motion to reconsider to the table.

MR. TULLY. It was the motion of the gentleman to indefinitely postpone the motion to take from the table.

THE PRESIDENT. The gentleman is wrong, as he will see if he will permit me. The gentleman from San Francisco, Mr. Estee, moved to reconsider the vote by which the resolution to adjourn was adopted. Mr. Gregg moved to lay the motion on the table. The Chair was asked what the effect of that motion would be. He answered that it would carry with it nothing except the motion to reconsider. After that vote was had, and in the afternoon, the gentleman from Trinity moved to take the motion to reconsider from the table, and that motion was indefinitely postponed. The Chair made no decision on the question at all. By the thirty-seventh rule of this Convention no motion for a reconsideration can be made, except upon notice being given on the day the vote is taken, and the motion must be made the next day. This rule is contrary to all parliamentary law.

On Monday there was a resolution offered and passed by this Convention, providing for two night sessions of this Convention, and for an adjournment on Wednesday, at twelve o'clock. That resolution was carried, and notice given of a motion to reconsider. The Convention went on and performed and complied with a portion of the resolution, and two night sessions were held, and the motion now comes up to take this original motion to reconsider from the table. Very well. The motion to reconsider was made on Tuesday, and a motion was made to lay the motion to reconsider on the table, and that motion prevailed. This was equivalent to a vote refusing to reconsider. The affirmative of the one proposition included the negative of the other, and was a final disposition of the motion to reconsider. It cannot be taken up under Rule Thirty-seven, because the time has expired. The whole case was decided. Now, that being the fact, this motion to take from the table cannot be entertained, because it cannot be heard. Not only that, but for the farther reason assigned by the gentleman from San Francisco, that the Convention has gone on and performed a portion of the resolution, and it is impossible to reconsider. Therefore, the Chair decides the point of order well taken.

AN APPEAL.

MR. TINNIN. Mr. President: I dislike very much to appeal from the decision of the Chair, but as I believe there is a great principle involved in this matter, which may at some future time have an effect upon the decisions of this body, in regard to laying a thing on the table, I appeal from the decision of the Chair.

MR. WHITE. I second the appeal.

MR. WYATT. I second the appeal.

MR. HOWARD. I second the appeal.

THE PRESIDENT. The question is, Shall the decision of the Chair stand as the judgment of the Convention?

MR. HALE. Mr. President: I desire, before voting on the appeal, to inquire of the gentleman from Trinity, Mr. Tinnin, if there is not an error of fact that should be corrected. Is not this the real history: On Monday there was an effort made to adjourn. A resolution was offered adjourning on Wednesday, and that resolution was adopted. Notice of reconsideration was given by the gentleman from El Dorado, Mr. Larkin. That would be taken up the following day, which was yesterday. Yesterday that motion was made, and a motion to lay that motion on the table was made and prevailed. Last evening, as I see by the report of the proceedings, Mr. Wickes, of Nevada, gave notice of a motion to be made to-day to reconsider that vote. A motion was made to indefinitely postpone that motion, which prevailed. Mr. Cross gave notice of a motion to reconsider the vote by which the motion to reconsider the vote by which the Convention laid the motion to reconsider on the table was indefinitely postponed. I suggest to the gentleman that the matter can be reached by reconsidering the vote by which that motion was indefinitely postponed, in pursuance of the notice given by the gentleman from Nevada, Mr. Cross.

THE PRESIDENT. The question is, Shall the decision of the Chair stand as the judgment of the Convention?

MR. LARKIN. I demand the ayes and noes.

MR. WYATT. Ayes and noes.

MR. CONDON. Ayes and noes.

MR. TULLY. Ayes and noes.

MR. TINNIN. Ayes and noes.

The roll was called, and the decision of the Chair was sustained by the following vote:

AYES.

Ayers,	Harrison,	O'Sullivan,
Barnes,	Harvey,	Porter,
Barton,	Heiskell,	Prouty,
Beerstecher,	Herold,	Pulliam,
Belcher,	Herrington,	Reed,
Blackmer,	Hilborn,	Rhodes,
Boggs,	Hitchcock,	Ringgold,
Boucher,	Holmes,	Rolfe,
Burt,	Huestis,	Schell,
Campbell,	Hunter,	Schomp,
Caples,	Keyes,	Shafter,
Casserly,	Lampson,	Shurtleff,
Chapman,	Lewis,	Smith, of 4th District,
Charles,	Lindow,	Soule,
Crouch,	Mansfield,	Stedman,
Dudley, of Solano,	Martin, of 2d District,	Steele,
Dunlap,	Martin, of Santa Cruz,	Stuart,
Estee,	McCallum,	Sweasey,
Estey,	McComas,	Townsend,
Farrell,	McConnell,	Turner,
Fawcett,	McFarland,	Van Dyke,
Filcher,	McNutt,	Van Voorhies,
Finney,	Miller,	Walker, of Tuolumne,
Freeman,	Mills,	Waters,
Garvey,	Morse,	Weller,
Gorman,	Nason,	Wellin,
Grace,	Nelson,	Wilson, of Tehama,
Hager,	Noel,	Wilson, of 1st District,
Hale,	O'Donnell,	Winans—89.
Hall,	Ohleyer,	

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NOES.

Andrews,	Howard,	Swenson,
Barbour,	Joyce,	Swing.
Barry,	Kelley,	Terry,
Brown,	Kleine,	Tinnin,
Condon,	Laine,	Tully,
Cowden,	Larkin,	Vacquerel,
Cross,	Larue,	Webster,
Davis,	McCoy,	West,
Dowling,	Reynolds,	Wickes,
Doyle,	Smith, of San Francisco,	White,
Evey,	Stevenson,	Wyatt—34.
Freud,		

POOLING OF EARNINGS BY CORPORATIONS.

MR. ESTEE. I move the Convention resolve itself into Committee of the Whole.

MR. TINNIN. I make the point of order, that the order of business has not been gone through with, and that it requires a two-thirds vote to go into Committee of the Whole.

THE PRESIDENT. That motion is always in order.

MR. ESTEE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The Secretary will read section twenty and amendments.

MR. HAGER. We have not got through with section eighteen yet. It was ruled out of order day before yesterday, in consequence of the previous question having been voted down, and I presume we must go back to the section, as the proper order of business.

THE CHAIRMAN. That depends upon the pleasure of the committee.

MR. HAGER. Otherwise section eighteen will be omitted. I move we commence with section eighteen, as the order of business.

THE CHAIRMAN. If there is no objection we will pass back to section eighteen and the pending amendments. The Secretary will read.

THE SECRETARY read:

SEC. 18. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

Amendment by Mr. Ayers: "Amend section eighteen by adding after the word 'carrying,' in the fifth line, 'and whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such reduced standard.'"

Amendment by Mr. Campbell: "Add to section eighteen, 'and whenever a railroad corporation shall, for the purpose of competing with any railroad constructed or in process of construction, lower its rates for transportation of passengers or freight from one point to another, it shall not again raise its rates without the consent of the governmental authority in which shall be vested the power to regulate fares and freights on railroads, nor shall such other railroad raise its original rates without similar consent.'"

REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: I propose to limit my remarks to the amendments. In regard to the proposition of the gentleman from Los Angeles, Mr. Ayers, I propose to support it. It has been pretty thoroughly debated, and I have not much to say upon that subject. I believe the principle involved in it to be the correct one. I believe in giving the small capitalist a sight for his money. I do not know whether your honor ever indulged in the national game of "poker" or not, but it is pretty well known that these large capitalists invariably get away with the "pot," because the small capitalist has no sight for his money. But it never has been the policy in a regular poker game—the great national game described by the ex-Minister to England, Mr. Schenck, who is a learned authority on the subject of poker—to deny to persons of small capital a sight for their money. And the reason I shall support the amendment proposed by the gentleman from Los Angeles, is that I believe it involves the cardinal principles of the great national game of poker, as expounded, if not practiced, by our Minister to England, of giving every man, no matter how small his capital, a sight for his money. I shall not occupy the floor until the subject of the Railroad Commissioners is resumed; and inasmuch as my friend McCallum is looking anxiously at the Chairman, I yield the floor to him.

SPEECH OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: I had not proposed, and do not now, in view of ill health, to discuss any question except that which is immediately before the Committee of the Whole, and that very briefly. As to the amendment proposed by the gentleman from Los Angeles, Mr. Ayers, I am in favor of one feature of the amendment offered by my colleague, Judge Campbell, and opposed to another feature, to confine the competition only to railroad lines. The case has been cited here of the case of freights and fares between the City of Sacramento and the City of Placerville, where, until the railroad was established, the fare by stage was five dollars; and for years, when there was two lines, they both made money. But, as I happen to know, it was three dollars. Since the railroad was established is was five dollars and fifty cents. And it is that price, for the simple reason that if any stage company should attempt to run stages there, they would be crushed out by a reduction of the price. Therefore, to confine this competition simply to railroads would not remedy the mischief intended to be remedied. There is another feature, however, of the amendment which I think is good. That is, that these rates shall not be raised unless by the consent of the governmental authority having the right to control fares and freights. Now, by delegating this to the governmental authority the gentleman reaches the point which I have thought there was some difficulty about, and that is, it does not make any difference whether it be ultimately left to the Legislature or to the Commission, it is referred to the proper authority in either case. To lay down the iron rule that when the rates shall be reduced in consequence of competition, as a constitutional provision, that they shall never be raised, as provided by the amendment of the gentleman from Los Angeles, Mr. Ayers, appears, in my judgment, Mr. Speaker, to be very dangerous indeed. It does not follow that because—even if all the reasons that have been stated, that have been suggested here, are true, in support of the amendment—it does not follow, therefore, that such an iron rule should be adopted, especially when you propose, by a section already before this Convention, to give the absolute control to a Commission, which, of course, would have the right to raise or lower the rates as the circumstances might render proper.

These sections have been all considered together, and I believe, Mr. President, that we have reached that stage of this controversy—similar stages have been reached by the Legislature from time to time—and in my judgment a crisis is upon us, and in my judgment the action we are soon to take will illustrate whether this Convention is to do anything upon the subject or not. I am one of those who believe that there is now an irrepressible conflict between monopoly powers and popular rights. And we cannot escape it if we would, and I believe the majority of us would not if we could. In that section reported by the committee there are some leading ideas I favor, and I very much regret to hear gentlemen who claim to be in favor of popular rights, finding faults and suggesting no remedy. That the committee have acted honestly, intelligently, and faithfully, I have no doubt, though I differ with some of the provisions of the main section now to be voted upon. The leading ideas are right. They propose a Commission to regulate freights and fares. They are opposed to leaving the matter to the Legislature. As to the Legislature, Mr. President, it has become so unpopular that there seems to be a demand for a change in this regard. I have heard people say that they were opposed to the Legislature meeting oftener than once in ten years, and then their business should be confined to repealing what laws the Legislature had passed before that. I do not believe, however, that because there are abuses in a system that therefore it should be abolished.

A POINT OF ORDER.

MR. FREEMAN. I rise to a point of order.

THE CHAIRMAN. The gentleman will state his point of order.

MR. FREEMAN. My point of order is that we are acting under the previous question, and no debate is admissible.

THE CHAIRMAN. The point of order is overruled; there is no previous question pending.

MR. FREEMAN. Yesterday the previous question was put and decided in the negative. According to Cushing, when the question again comes up, the motion for the previous question is still pending, and the question must be again put to the house, so often as the decision is in the negative.

THE CHAIRMAN. The Chair is under the impression, when the previous question is moved, and the house refuses to order the main question, the previous question is exhausted, and the whole matter is open to argument.

MR. FREEMAN. I will read section one thousand four hundred and thirty of Cushing's Law and Practice of Legislative Assemblies:

"1430. If the previous question passes in the negative, the effect of the decision is the postponement of the main question from that to the next sitting day, or to a day or time when such business is again in order; when the subject again comes, or is brought up, the motion for the previous question is still the pending question, and must be again put to the house, and so on as often as the decision is in the negative."

THE CHAIRMAN. The previous question was ordered in this case, and the body refused to put the main question. It carries the subject over for one day, but then the previous question is exhausted. The point of order is overruled.

MR. MCCALLUM. I am in favor of a Commission—that this matter should be regulated by a Commission, as distinguished from the Legislature. And I don't propose in that connection to reiterate, but say in general terms that the Legislature has been tried—and I must express my astonishment at the remarks of the gentleman from Sacramento, Mr. Edgerton, as to the intelligence and honest actions of the last Legislature of this State in this respect. I undertake to say that no man can read the bill passed by the last session, without saying that the bill was prepared by the attorneys of the Central Pacific Railroad Company; that it is a bill simply in the interest of the corporations, and in no sense in the interest of the people; and they violated a great public trust, and this Convention should take no chances in any legislative Senate or Assembly. If mistakes are made they can be corrected by a Commission, because the Commission is all the time in session. If the Legislature makes a mistake, they cannot correct it. Besides, no one can expect the Legislature, during a session not exceeding sixty days, to make an intelligent bill of freights and fares. It requires time—much time—to be expended on this subject.

I am perfectly aware that in taking this position I am taking a position, not as gentlemen seem to think, on the strong side, but in a great sense the weak side. If there is any great power in this State over all other powers, political or otherwise, it is that great corporation called the Central Pacific Railroad Company. It has controlled absolutely the politics of this State for fifteen years. Why, it has more power than

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Mahomet, for he could only order the mountains to come to him, and when the mountains would not come to him then he would go to the mountains. But when the Central Pacific Railroad Company orders the mountains to come to them they come. Gentlemen talk about popular ideas, and accuse us of taking this side of the question because it is popular. If I wished to rise to the skies on beds of flowery ease, as the gentleman from Santa Clara quotes the language, I would make no resistance to anything which that company might want. Nearly a quarter of a century ago, when the California Steam Navigation Company was charging ten dollars between Sacramento and San Francisco, and freights in proportion, one branch of the Legislature passed a bill on this very question, regulating freights and fares, and all this old argument of vested rights, familiar to us all, was used. It passed the Senate, but in the House it was defeated on the opinion of the then Attorney-General of the State, that such a bill, reducing the rates for freights and fares, was unconstitutional. Since then these questions have been decided by the highest Court in the nation, and several of the State Courts, and it is now no longer a debatable question as to the right to regulate freights and fares. The only question now is that of expediency, and how there can be any question as to the expediency I cannot for a moment understand. I say this because it is contradicted here and denied in some form, though not expressly denied, by those gentlemen advocating what they call commissioners of inquiry. We have had that before, and we have it now. I suppose that means that they are to suggest a bill for the Legislature to pass, provided they cannot make some equitable arrangement.

Now, Mr. President, in regard to this section twenty, reported by the committee, I propose to discuss it if my health will permit me. Now, in one place here I think it should be amended. I think the Commission should have the right to limit and reduce the rates of freights and fares, but in no case should they have the right to raise them. I think it can be safely said that in all cases they are high enough, so that there will be no need of allowing them to raise them. In some cases, I admit, in some parts of the State, they are low enough. There is no complaint about the fare between San Francisco and Oakland. But even at the present low rates that franchise is immensely valuable, and as they might want to raise them there some time, I think it would be safer to put in an amendment that these Commissioners should have the right to limit the rates, but in no case to increase them. I think that is going far enough. I do not think they should be allowed to increase them. You have provided that these Commissioners shall be elected for four years. Now, sir, the argument in favor of a longer term is, that they may become posted in their business. I do not believe the position is one so exceedingly difficult that it will require a man to give his whole time to it for exceeding one year, to be thoroughly posted on this matter of regulating freights and fares. It is true, it is more difficult than to regulate tolls on toll roads or bridges; but a man who gives his whole attention to it ought to acquire the necessary knowledge in one year. But another objection to a very great length of time is this: that if the people should make a mistake—and I concede they may make a mistake—they have made mistakes—they ought to have a chance to rectify it. If they should make a mistake there is no way to rectify it, because it is in the Constitution. I would therefore like to offer an amendment, when we reach that point, so as to provide that those Commissioners shall be divided into three classes—one, two, and three—the first Commissioner to be elected for one year, the second for two years, and the third for four years, and so provide that there shall be one of these Commissioners elected at every general election, upon the same principle of our government which provides that, as to the Assembly, there shall be an election at every general election, every two years, in order that there may be frequent changes, and bring this power as near home to the people as possible.

I do not believe that it is proper to provide that these Commissioners shall prescribe penalties. Fix penalties, and enforce them through the medium of the Courts. I am not so much troubled about this general idea of the Commission having legislative, executive, and judicial powers, because that is often the case from the very necessity of the duties of their office, that all these powers shall be exercised to a limited extent. It is not that so much, but there is no necessity that they should fix penalties, and act, as I understand it, as a criminal code. The main thing that these Commissioners will have to do, is to provide against discrimination, and fix rates of freights and fares. Of course, if these rates are fixed, and higher prices are charged, there will be a cause of action, and the party would have a right to recover damages for these higher prices, if he had removed the freight and paid the charges. But this may properly be left to the Legislature, as to the penalties that are not now sufficiently provided by law. I don't know that I would object to a little legislation in the Constitution, and these penalties for a violation of the provisions of this new and untried system might be put in a separate section of the Constitution.

Again, while I am decidedly in favor of a Commission to fix and limit the rates of freights and fares, which is substantially the ideas in section twenty, at the same time I am in favor of recognizing the fact that we have a Legislature, and that so long as they represent and control the government and the laws, we must recognize the right of the people, through the Legislature, to reach all their departments of government. Therefore, I should be in favor of giving the Legislature a supervisory right over these Commissioners. They are not to be feared so much on account of affirmative action as they are on account of non-action, and the rights of the people ignored. I have no apprehension that any legislation will ever be found in the State of California, if the Commissioners fix the rates of freights and fares, that the Legislature will raise it. Nor have I any apprehension that any Legislature will ever assemble that will remove a Commissioner because he is faithful to popular rights. Therefore, I would go further, and give the right to remove one or all of these Commissioners by a majority vote of both branches of the Legislature. I would be in favor of that, not because I would not have confidence in whoever would be elected Commissioners, but keeping all the time in view the fact that mistakes may be made, and that when mistakes are made, the power should be lodged somewhere to correct them. I would provide, first, for the election of a Commissioner at every general election; next, in case one of them should be unfaithful, that his removal should be required upon the ground of a violation of his trust, or neglect of duty, so that eventually this right may come home to the people. They have a right to exercise this great right; that has been decided by the highest Court in the nation.

Entertaining these views without an opportunity of offering any amendment at this time, I shall, when an opportunity presents itself, eventually vote with reference to procuring such amendments; and I say, once for all, that every vote that I shall give, and every amendment I shall offer, shall have no other object and aim than to reach a definite, clear expression of the constitutional right of the people to regulate, not only railroad corporations, but, when we reach it, to offer the amendment which I presented some time ago. All corporations coming under the general head of furnishing articles or rendering services for public use, that in all cases, without exception, the charges for articles furnished and services performed, shall be specifically regulated by law.

SPEECH OF MR. AYERS.

MR. AYERS. Mr. Chairman: The debate on section eighteen has taken in the whole range of the question at issue. Although, when I offered my amendment forbidding the railroads from raising their rates when once lowered for the purpose of competition, I felt that it possessed a principle of vast importance to the people of this State, and I knew that it would provoke discussion, I had no idea that it would bring out so extensive, so exhaustive, and so able a debate as it has. As I said, when I offered the amendment, it was for the purpose of protecting the small capitalists as against the immense, overgrown, and almost incomputable wealth of the great corporation which handles and controls all the roads of this State; and, while speaking to this amendment, I shall ask of this Convention the liberty which has been accorded to others, to also traverse the whole subject.

It is difficult, Mr. Chairman, coming in at the heels of this exhaustive debate, for one to avoid repetition; but I will endeavor to do so, and will merely give to this Convention my views upon what I consider the best criticisms that have been made against my amendment. It has been objected that it would not be a wise policy to place in the Constitution a principle so iron-clad in its character as is presented in this amendment—one which would hold the railway corporations and transportation companies to a rigid rule, and one which could not be relaxed except by a revisal of the Constitution. But I submit that the amendment accepted by myself and offered by Judge Hager will take away that objection in a great measure. Where the rule operates unjustly—whether it be unjustly towards the railroads or whether it be unjustly towards the people—the Legislature, by a two thirds vote, may relax it. I opine, Mr. Chairman, that no Legislature, where a question of absolute justice is brought before it, will fail to give that required two-thirds vote. Another objection has been that, under the operation of this amendment, the great railroad corporation would be blackmailed by land, by river, and by sea. I take it that he who attempts to blackmail this great monopoly will need to have a purse well lined with "the coin of the realm." I take it that no prudent or sensible business man will ever undertake, by land, by river, or by ocean, to run an opposition to this great corporation for the mere purpose of blackmail, knowing in advance that whatever moneys he might put into that enterprise would be swamped irrevocably. Gentlemen say that stage coaches and mule teams will spring up for the purpose of carrying passengers and freight in opposition to this company, and that they will be protected by this clause in the Constitution. Well, sir, if stage coaches and mule teams can compete with that great modern invention, the railroad, I say let them do so. But the principle of this proposition is that the railroad companies shall not be permitted, for the purpose of driving out opposition, for the purpose of crushing out local enterprises, to use the power of the great wealth they have aggregated to themselves, and then come back, after they have crushed out that opposition, and compel the people to indemnify them for what they have spent in so doing. There may be instances of blackmail occurring under it, but we have blackmail in every business. What this Convention should look to is whether it will encourage fair competition, and if it will do so it will protect the people.

I will venture to say, Mr. Chairman, that there is no railroad in this State, outside of the great corporation, which does not exist by permission and will, and sufferance of the Central Pacific Company. I say that it is the history of railroads in this State that whenever the great corporation has gone after a line, it has captured it and put it in its pocket. It will be conceded by every gentleman in this Convention, that the natural highways of this State ought to be as free to its commerce, as open to the enterprise of every citizen, as open to competition, as the ocean itself. But it is not so now. There is not a point of railroad vantage in this State; there is not a navigable stream; not an ocean harbor anywhere within their reach, that is not controlled by the great corporations. The Sacramento River, which is a natural highway between the mountains and this city and the bay, is as effectually in the grasp of the great monopoly as though they owned every drop of water in it; and as I am informed, not a landing can be effected on this river within the limits of Sacramento—except two hundred feet of frontage which is held under an old franchise which they have never been able to secure—but is under the control or ownership of that monopoly. If we go from this to the other points on the river, and to the bay on the Oakland side, we will find the same condition of affairs to exist. The United States Government has spent over half a million of dollars in creating for the people of the southern counties, at Wilmington, a harbor which will be available to shipping. Notwithstand-

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ing that the Government has spent this enormous sum, notwithstanding that it has created a fine harbor, one which will ultimately prove of capacity sufficient to carry on the marine business of the southern coast counties and of Arizona—notwithstanding this, Mr. Chairman, you nor I nor anybody else can reach that harbor except over the territory claimed and, perhaps, owned by this great corporation. It is as effectually sealed out from the people as though there were a Chinese wall built around it. Well, sir, this is not a fine state of affairs, and, if we can overcome it by anything we can do here, we would be false to our trust, false to ourselves, and false to the people if we did not do it. I therefore say, Mr. Chairman, under existing circumstances, that there are no competing points in this State, and there will be none unless the remedy which is here proposed is adopted.

My distinguished colleague, I think, has fairly answered the gentlemen who have asserted on this floor that this amendment is the result of merely sectional grievances. I think he has shown that it will apply to nearly the whole State. It will certainly apply with great efficacy to Sacramento, and, sir, I think it will soon apply to every place on this coast. Mr. Chairman, this amendment only contemplates holding the transportation companies to fair rates. Now, why should they go below fair living rates? If they do so, they do it for sinister, and I may say, for criminal purposes; and if they do so it is their own voluntary act, and taken in connection with the intention, they should be punished. There is one peculiarity of our State that does not exist in the other States of the Union. The conformation of our State has been greatly conducive to the creating of this one-road power. The other States are crossed, traveled, and gridironed by a great many roads, and they have, in a great measure, been relieved by competition. Here we have none—and if we can bring that relief to our people by the adoption of this amendment—why should we not do so? I was astonished when the learned gentleman from Marin, Mr. Shafter, a gentleman whom I highly respect, and upon whose opinions I have always placed great value, used the argument which he did. He said, alluding to the amount of freight available at Los Angeles, that the Southern Pacific Railroad was losing money. In other words, because Los Angeles had not volume enough of trade to enable that company to pay their running expenses now for the entire line of the road, that, therefore, the people had no right to complain. Mr. Chairman, that road, as far as we are concerned, is but one portion of a great contemplated system. Would the gentleman have us pay for the entire system? The benefits derived from that road are to come in the future. If they intend to make it pay as they go along—make it pay interest on the capital invested, and a surplus to continue it—why, God help those who live on its line! I believe, sir, with Edmund Burke, that the medicine of the Constitution should not be its daily bread; but I believe the medicine should be of a character, in this instance, to cure the evils which the great railroad corporation has brought upon this State. And if this medicine is a drastic remedy, and will effect a cure, I think that would be reason and cause for adopting it. So much, Mr. Chairman, with reference to the amendment.

I shall now pass very briefly to a review of the other sections, particularly section twenty. I will premise by saying that I am ready to vote for section twenty as it came from the committee, or to accept such modifications as may recommend themselves to my judgment; or, I will even—if gentlemen wish to offer such amendments—I will even go farther than this section has gone, to curb the corporation in its power over the people of this State. The first clause of the section reads as follows: "Three Railroad Commissioners shall be elected by the qualified voters of this State at the regular gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years." The only objection I have heard to that clause is, that the term is too long. In my judgment, the term of four years is not too long. I believe that if the term were even longer the people would receive greater benefits, for railroading has become, by its amplitude of classifications, and by the great mystery thrown around it, one of the most intricate sciences known to industrial or other economy. As to the propositions that these Commissioners shall be elected by the people, I wish to be understood that I shall oppose any effort, any amendment, by which this power shall be taken away from the people. Mr. Chairman, this great corporation has been able to reach nearly every branch of our Government. It has been enabled to influence our Legislatures, and it has been enabled, by what means I do not say, to have its own way in spite of the people of this State for the last ten years. There is but one factor in this Government which it does not reach, and that is public opinion. The people are too numerous, and public opinion too diverse in its ramifications, for that power to ever reach it, and I shall oppose any other mode of appointing this Commission than that of election by the people. There is another objection made to this section. "The Commissioners shall hear and determine complaints against the railroad and other transportation companies, fix penalties, and enforce them through the medium of the Courts." It is argued that this gives the Commission too much power. Now, sir, there is only one amendment that might with safety be made to this clause. I would be willing that the Commission should hear complaints in public and determine them as against the railroads; but, as to fixing penalties, why should not these Commissioners affix penalties? Who will be better able to judge what the abuses have been than the Commissioners?

And then here is the conservative principle in that clause, "that they shall be enforced through the medium of the Courts." I think that provision is guarded. I think that even the railroads themselves cannot complain of it, and I think the section, as far as that portion of it is concerned, ought to meet the views of every gentleman on this floor. Mr. Chairman, the language and syntactical construction of this section have been criticised by gentlemen in a peculiar manner. Gentlemen have shown their knowledge of grammar, their knowledge of the nice construction of phrases, and they have exhibited a smartness which would perhaps be commendable in a public school, but which I consider entirely out of place among gentlemen who generally know what the English language means, whether it be theoretically grammatical or not. These hypercriticisms of the verbal construction of this section remind me of a great episode in history. You will remember, Mr. Chairman, that in that great Convention of sixteen hundred and eighty-eight, where the leading minds of England were assembled after James the Second had thrown the Great Seal of the State into the Thames and had abdicated the throne in a most pusillanimous manner and fled to France, Parliament met and resolved itself into what is generally known now as the great Convention, from which dates all the popular Conventions since that day of the Anglo-Saxon peoples. That Convention embraced men of a great variety of views; men who were willing and anxious to stickle upon points in which prejudices of long standing were concerned, and there seemed to be no possibility of getting them together in one mind upon the grand object for which they had assembled. In a happy moment the great lawyer, John Somers, offered a resolution. That resolution at once brought the Halifaxes, the Derbys, the Rochesters, the Nottinghams, and all the leaders of antipodal opinions together. In speaking of the resolution Macaulay says:

"This resolution has many times been subjected to criticism as minute and severe as was ever applied to any sentence written by man; and perhaps there never was a sentence written by man which would bear such criticism less. * * * It is idle, however, to examine these memorable words as we should examine a chapter of Aristotle or of Hobbes. Such words are to be considered, not as words, but as deeds. If they effect that which they are intended to effect, they are rational, though they may be contradictory. If they fail of attaining their end, they are absurd, though they carry demonstration with them. Logic admits of no compromise. It is therefore not strange that some of the most important and most useful political instruments in the world should be among the most illogical compositions that ever were penned. The object of Somers, of Maynard, and of the other eminent men who shaped this celebrated motion was, not to leave to posterity a model of definition and partition, but to make the restoration of a tyrant impossible, and to place on the throne a sovereign under whom law and liberty might be secure. This object they attained by using language which, in a philosophical treatise, would justly be reprehended as inexact and confused."

Now, Mr. Chairman, I dispose of the verbal inaccuracies and of the criticisms of that section upon the same ground that Macaulay disposes of the resolution of John Somers. If the language can be construed to mean that henceforth the railroads shall be regulated by law; that they shall not be permitted to oppress the people with extortions; that they shall not discriminate against persons or places; that they shall not use their great wealth to confiscate and absorb the property of others; that they shall not corrupt our Legislatures; that they shall not continue to tax every man's goods and products as much as they please; that they shall not defy the power of the State, and ride roughshod over the people. If it shall do this, I care not whether its major agree with its conclusion, or whether its moods and tenses will stand the test of a pedagogue's criticism. If it shall give to the people of California the relief they seek, its words will be deeds, and such deeds as every lover of his State will fervently hope to see realized. My vote will go with my judgment, and my judgment is that this section, and the sections which have already been adopted, including the amendment which I have had the honor to offer, will afford to the people of California full protection from the oppressions and the aggressions of the railroad monopoly.

MR. SCHELL. I move that the committee rise, report progress, and ask leave to sit again.

Lost on a division vote—ayes, 55; noes, 65.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I take the floor for the purpose of setting myself right before the Convention and before the world. I must deprecate the practice that has been indulged in by gentlemen on this floor, who it seems have constituted themselves my censors, of taking a word here and a word there from my remarks, and perverting its meaning, and making that the basis for their criticisms. I do not think that is fair, and I regret to have to be constantly defending myself. I am very much surprised and highly delighted at the encomiums which have been heaped upon me, but the reputation of the gentlemen from whom they emanate, for learning and ability, do not justify them in talking like fools. [Laughter.] I would much prefer it if they would kindly change the medicine. They bestow their encomiums, and then the censure. I would much prefer it if they would bestow the censure first, and then smooth me down with encomiums. The gentleman from Los Angeles, General Howard, has credited me with saying that a superior officer is not responsible for the acts of a subordinate; that the directors of a bank are not responsible for the misappropriation or embezzlement of funds by their subordinates. I said no such thing. I did say that certain subordinates in the bank would not fall within the meaning of this clause in the Constitution, because they are not officers of the bank, hence the directors, under this clause, would not be responsible for their conduct. Why, I learned a long time ago that the superior is responsible for his subordinate, in all cases. It is necessary, in a discussion of this kind, to observe what is said, to get at the correct meaning. These misrepresentations arise from the fact that gentlemen take a word here and a sentence there from my remarks, and proceed to criticise me upon that. My friend makes me say things which I never thought of saying; makes me give utterance to principles that any unwhipped boy ought to know better than to utter. Now, General Howard (and I will take occasion to say, that he is the Nestor of the Convention), has presented the claims and complaints of the people of Los Angeles. It was his duty to do so. No matter whether those claims

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are real or imaginary, it is his duty to present them for adjudication before this body. He has imputed to me the statement that I thought the railroad company had used the people of Los Angeles right. I hope my profession has taught me more justice than that. I am not one who would belittle the claims of any community. They ought to be presented and fully considered. If we find that these grievances are well founded, it is our duty to redress them. I am not disposed to find fault, but I think these gentlemen are not doing me justice in their arguments. What I did say was, that whenever an opposition has been started, the same people who make complaints here are the very ones to patronize the railroads the moment the rates are reduced, on account of the competition, and aid them directly in running off the opposition. That they look to their own temporary, selfish interests. That when they have, by assisting and patronizing the railroad, succeeded in driving off the opposition, they come up to this Convention and ask to be relieved from the rule which they themselves have put in force. That they became *particeps criminis*, and that they had nobody to blame but themselves when the opposition was driven off. They simply consult their own temporary interest, and under the circumstances the people are not in a position to complain. If I stand upon the corner and advise a man to commit murder, or if I peer around and tell him when the coast is clear, I would be a party to the murder, if it should be committed. These men who shove out money to these grasping corporations to help kill off competition, I say are not morally in a condition to find fault with the natural consequences of their own acts. I do not mean that they should suffer any penalty, but that they are not in a position to cry out against the men whom they aided in doing these things.

Now, the question here is whether, after the rates have been reduced, the companies should be held to this reduction? It seems to me, sir, that it is unusual and excessive punishment. It is unstatesmanlike, and is giving way a little too much to the clamors of the people. Under the amendment of the gentleman from Los Angeles the same thing will be done, except that it will be done in a roundabout way. The result will be the same. The railroad company will not run at rates which do not pay, and no law can compel them to do so. They will not lower the rates on the road, but when an opposition steamer is put on, somebody, no one can tell who, would put on an opposition steamer at rates that would compel the opposition to draw off. Nobody would know who owns the steamer. It is true that under this provision the owner would be prohibited from again raising the rates, but he would not want to. He would have accomplished the purpose aimed at—the retirement of the other steamer. When the next opposition comes on, the same steamer perhaps, under a different ownership, would be called into use again to baffle the opposition. Thus the law could continually be evaded. Anybody can see in an instant that this would be the result. I greatly prefer the amendment offered by the gentleman from Alameda, Judge Campbell.

In regard to the criminal acts which General Howard claims have been committed, I do not see why they do not arrest them and have them indicted and punished. They have the Courts and juries apparently sufficiently prejudiced against the railroads to find a verdict, if they are guilty. If any crime should be committed by the railroad companies over in Marin, I am morally certain they would be hauled up and punished. I am of the opinion that the only reason they are not punished is that they are not guilty. If they should commit any crime over in the county where I live, you bet your life they would be indicted and punished very quickly [laughter], and not much talk about it either.

Now, in regard to the steeple business, the only reason I mentioned that——

MR. HOWARD. I did not do the gentleman any intentional injustice, because I said he could raise his steeple as high as any one whenever he chose.

MR. SHAFTER. I have no ambition in that direction at my time of life. I merely alluded to this matter of palatial residences in reply to others who had mentioned the matter. If I had twenty millions I do not think I would want to live any differently from what I do now; yet, we cannot tell. I remember an ancient quotation which runs, "Is thy servant a dog that he should do this great sin?" Yet, it turns out that he did do it. Men's ideas change with their interests. A man is an extremist when he has nothing; but as soon as he gets possession of six hundred and forty acres of land he will hold on to it and see that nobody else gets a slice of it. He won't be in favor of a division of property then. I do not take anything back that I said in regard to railroads advancing the prosperity of the country. If others want to go back to the days of the gee-haw-buck—the long train of oxen, let them do it. Railroads have done a great deal to elevate mankind, and it cannot be denied, and I have no wish to dispense with them.

MR. HALE. Mr. Chairman: One word——

MR. BARNES. (At twelve o'clock) I raise the point of order, that we have reached time of adjournment under the resolution.

THE CHAIRMAN. The gentleman cannot raise a point of order, because the gentleman from Marin is on the floor.

MR. SHAFTER. I had finished, but I thought Judge Hale wanted to ask a question.

MR. BARNES. I move the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress, and ask leave to sit again.

ADJOURNMENT.

MR. REYNOLDS. I move that this Convention adjourn until Friday, at two o'clock.

THE PRESIDENT. Out of order.

MR. HALE. I move we now adjourn.

THE PRESIDENT. In pursuance of the resolution adopted by this Convention to adjourn at twelve o'clock, I now declare the Convention adjourned until Monday, December second, at two o'clock P. M.

SIXTY-SIXTH DAY.

SACRAMENTO, Monday, December 2d, 1878.

The Convention met, pursuant to adjournment, at two o'clock P. M., President pro tem. Belcher in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Barnes,	Hilborn,	Reddy,
Barry,	Hitchcock,	Reed,
Barton,	Holmes,	Reynolds,
Beerstecher,	Howard,	Rhodes,
Belcher,	Huestis,	Ringgold,
Bell,	Hughey,	Rolfe,
Blackmer,	Hunter,	Schell,
Boucher,	Inman,	Schomp,
Brown,	Jones,	Shoemaker,
Burt,	Joyce,	Shurtleff,
Campbell,	Kelley,	Smith, of Santa Clara,
Caples,	Keyes,	Smith, of 4th District,
Chapman,	Kleine,	Smith, of San Francisco,
Charles,	Laine,	Soule,
Condon,	Lampson,	Steele,
Cowden,	Larkin,	Stevenson,
Cross,	Larue,	Stuart,
Crouch,	Lavigne,	Sweasey,
Davis,	Lindow,	Swenson,
Dean,	Mansfield,	Swing,
Dowling,	Martin, of Santa Cruz,	Terry,
Doyle,	McCallum,	Tinnin,
Dudley, of Solano,	McComas,	Townsend,
Dunlap,	McConnell,	Turner,
Estee,	McFarland,	Tuttle,
Estey,	McNutt,	Vacquerel,
Evey,	Miller,	Van Dyke,
Farrell,	Mills,	Van Voorhies,
Fawcett,	Moffat,	Walker, of Marin,
Filcher,	Morse,	Walker, of Tuolumne,
Finney,	Murphy,	Waters,
Freeman,	Nason,	Weller,
Freud,	Nelson,	Wellin,
Gorman,	Neunaber,	West,
Grace,	Noel,	Wickes,
Graves,	O'Donnell,	White,
Gregg,	Ohleyer,	Wilson, of Tehama,
Hale,	O'Sullivan,	Wilson, of 1st District,
Harvey,	Porter,	Winans,
Heiskell,	Prouty,	Wyatt.
Herold,	Pulliam,	

ABSENT.

Andrews,	Garvey,	McCoy,
Ayers,	Glascock,	Moreland,
Barbour,	Hager,	Overton,
Berry,	Hall,	Shafter,
Biggs,	Harrison,	Stedman,
Boggs,	Herrington,	Thompson,
Casserly,	Johnson,	Tully,
Dudley, of San Joaquin,	Lewis,	Webster,
Eagon,	Martin, of Alameda,	Mr. President.
Edgerton,		

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. Andrews for one day.

Indefinite leave of absence was granted to Mr. Ayers, on account of sickness.

Leave of absence was granted to Mr. Casserly for five days.

THE JOURNAL.

MR. CAPLES. I move that the reading of the Journal be dispensed with.

So ordered.

MR. HILBORN. I move that the Journal be approved.

So ordered.

COMMUNICATION FROM THE CONTROLLER.

THE PRESIDENT pro tem. I have here a communication from the Controller of State, which the Secretary will read.

THE SECRETARY read:

CONTROLLER'S OFFICE, SACRAMENTO, December 2d, 1878.

To the honorable the President and Members of the Constitutional Convention:

GENTLEMEN: The Convention having adjourned from November 27th to December 2d—which adjourment seems to be a "recess longer than three days," and as under the Convention Act for such recess, the members and officers are to receive no pay—I have, in accordance with the law and my duty in the premises, issued per diem warrants for members and officers for four days, ending Wednesday, November 27th, instead of for the seven days, as claimed in the payroll furnished by your honorable body.

I have the honor to add that I am in receipt of the following resolutions, to wit:

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SACRAMENTO, November 20th, 1878.

Hon. W. B. C. Brown, Controller:

SIR: The following resolutions were this day unanimously adopted:

Resolved, That the Controller be and he is hereby authorized to draw his warrant in favor of the Sergeant at-Arms for the amount of two hundred and ninety dollars and fifty cents, to pay the expenses of the obsequies of the late Honorable J. M. Strong, a member of this Convention, and that the State Treasurer be and he is hereby authorized to pay said warrant out of the funds appropriated to this Convention.

Resolved, That the per diem for the remainder of the session of this Convention, which the late Honorable J. M. Strong would have been entitled to as a member of this Convention, be paid to the family of the deceased.

J. P. HOGE, President.

I cannot find any authority under the law for drawing a warrant for the payment of either the funeral expenses of a deceased member, or an after-death per diem to his family, and am therefore constrained to decline a compliance with the resolutions above set forth.

Yours, respectfully,

W. B. C. BROWN, Controller.

MR. BARNES. Mr. President: Not merely in respect to the matters referred to in this report, but with respect to other matters, a difference of opinion has existed between the Controller of State and this Convention, with reference to the disposition of the funds set apart for the use of this Convention. Some of these questions, as for instance, the question of printing, the view is taken by the Controller and his associates on the Board, that all expenses incurred in any way by this body should be charged against the one hundred and fifty thousand dollars appropriated by the Legislature for the expenses of the Convention. We are at issue upon that. I will therefore move that this report, or communication from the Controller, be referred to the Judiciary Committee for the purpose of ascertaining and reporting to the Convention what steps, if any, are necessary to be taken, for the purpose of getting the opinion of the Supreme Court of this State upon these questions. So far as I am personally concerned, I do not agree at all with the Controller. I believe that this fund of one hundred and fifty thousand dollars was placed by the Legislature of this State at the disposition of this body, and I do not understand that the Controller has the legal or moral right to pass upon any appropriations which this body shall make. But if these questions can be brought before the Supreme Court I think they ought to be submitted for their determination. Therefore, I move that this report be referred to the Judiciary Committee for that purpose.

Carried unanimously.

MR. O'DONNELL. I will give way to Judge Campbell for the present.

POOLING OF EARNINGS BY CORPORATIONS, ETC.

MR. ESTEE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President pro tem. in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on section eighteen and amendments.

SPEECH OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: As I expect to be called away this afternoon on business which cannot be neglected, I desire to present now, in a few brief words, the views which I entertain in regard to the subject under consideration. The report of the committee, it seems to me, goes too far in one direction, and not far enough in another. In one respect it confers absolute powers upon the Commission; it enables them to fix rates of freights and fares, reasonable or unreasonable, without any appeal from their judgment, without any right to contest in any way the fairness of their proceedings; but it gives to them the sole and absolute and unrestricted control of at least one hundred and fifty millions of property. In one respect it fails to make provisions of vital importance, and without which it will be absolutely impossible for them to determine on reasonable rates of freights and fares. It gives them no power—no incidental power—to examine into the books of corporations, and the business of these railroad corporations, but allows them to be refused, as other Commissioners have been in past times refused in the exercise of that duty. It gives them a farther and undefined power to correct abuses. What abuses, is not specified; how they are to be corrected, is not specified. No limit of any description is placed upon their powers; and in another part of the section they are enabled to fix penalties for fines. Such powers, it seems to me, in our free country, ought not to be vested in any Commission. I think it would be unjust, not merely to the corporations, but to the people, because they have absolute power to fix fares and freights, without any appeal in any direction; because, if they are to sit in judgment upon questions of abuse, and correct, as it is said here, such abuses as may in their judgment exist, they deprive the parties interested, on both sides, of all power of appeal to a jury as in other cases—of all power of appeal to any Court in the land—and they are made absolute dictators, a power which, in a republican government, is dangerous to intrust to any such persons. In short, I am in favor of the strictest and strongest regulation consistent with republican principles, upon the aggressions of these corporations. I am in favor of limiting them by law, and through the medium of a Commission, to just and reasonable rates. I am in favor of placing their books, and documents, and papers, under the control of the Commission, so that the Commissioners may be able to act understandingly and advisedly from first to last. I am in favor of enabling them to fix reasonable rates of freights and fares, and any person who may be aggrieved should have an ample remedy. I am in favor farther of investing this Commission with power to devise a system of accounts to be kept by all these railroad companies, which will enable the Commissioners to discharge their duties in a satisfactory way. And I am in favor here, in this Constitution, of fixing such penalties for any misconduct on the part of railroad companies, for a refusal to acquiesce in the reasonable rates of freights and fares which may be decided upon by the Commissioners—I say I am in favor of fixing these penalties here in this Constitution, and not leave it to be done by the Legislature—ample penalties for the protection of the public.

I have prepared an amendment which I will read for information. I am aware that it is not in order now, but for the information of the Convention I will read it. I think it covers the entire ground. I think it goes as far as we ought, in reason and in justice to go, and this goes no farther. The proposition reads thus—and allow me here to say that I have left out of this section the mode of selecting these Commissioners, and their qualifications, and the compensation to be given to them, to be fixed in another and separate section. I do this for the reason that I believe there is a difference of opinion in this Convention as to the mode in which these Commissioners should be selected, and in regard to their terms of office. I believe myself that the surest way to get an intelligent, honest Commission, that cannot be cajoled or bribed or influenced, would be to have them appointed by the Governor of this State. To make these Commissioners to hold at his pleasure, so that at any sign of delinquency on the part of any one or more of them, they could be removed. The plan of electing or appointing these Commissioners for a term of four years, or any other term of years, seems objectionable in this: that if you appoint, or get a bad Commission appointed—get one that is under the control of the corporations—you have no redress for a term of four years. You have no remedy. Again, there is the danger which has been continually pointed out here, that the corporations may get at and control these Commissioners, either before or after their election. Now suppose there are politicians in this State who desire to obtain these positions as a means of making money, and in order to accomplish it, they make every other nomination to bear upon it. The corporations themselves will use all their influence and power to secure these nominations and control them. They will give up everything else to subserve this one purpose, and as one gentleman has well said, the company could afford to turn out five thousand Chinamen and put in five thousand white men, for the purpose of electing a single Commissioner. The other mode is not entirely free from danger. They may control the Governor, and through him the Commission, but there is less likelihood of that, for the reason that the Governor forms the head of the ticket. It is to that part of the ticket that the people are most likely to look with a critical eye. And in the present temper of the public mind there is no question on earth but they would see that no man, of any party or any organization, is elected to that office who is not perfectly sound upon that question, and who would not make appointments satisfactory to the people. But I propose to include the mode of appointment, the compensation, and the term of office, in another section. Let us first agree upon the powers with which this Commission shall be vested. Now, this section which I shall propose reads as follows:

"Strike out section twenty and insert as follows: 'Section 20. Three Railroad Commissioners shall be selected in the manner hereinafter provided. Said Commissioners shall have power, and it shall be their duty, to examine the books, papers, records, and documents of all railroad corporations organized, or hereafter to be organized, under the laws of this State, or any portion of whose road shall be in the limits of this State, to investigate their affairs, ascertain their receipts and disbursements, and by a majority vote to establish reasonable rates of fares and freights upon all or any such roads, or upon any parts thereof, whenever and as often as they may deem necessary, and alter the same when in their judgment it shall be proper, and to make and publish schedules of such rates. Said Commissioners, and each of them, shall have access to the books, records, papers, and documents of all such corporations; and any officer of any such corporation, or any person having the care, custody, or control of any such books, records, papers, or documents, who shall, at any reasonable time, refuse to any Commissioner access thereto, shall be deemed guilty of a misdemeanor, and fined not more than five thousand dollars, or imprisoned in the County Jail nor more than one year. Said Commissioners, and each of them, shall have power, in the discharge of their duties, to administer oaths and affirmations; issue subpenas for and examine witnesses under oath or affirmation; and any witness who shall willfully swear or affirm falsely to any material matter before said Commissioners, or either of them, shall be liable to all the pains and penalties affixed by law to the crime of perjury; and any witness who shall fail to attend, or shall refuse to testify in any material matter before said Commissioners, or either of them, shall be punished for contempt by the Superior Court, as in other cases of contempt. Such Commissioners shall annually, and whenever requested by him, report their proceedings, and such information as may be proper, to the Governor. Any corporation refusing to conform to such reasonable rates as shall be established by said Commissioners, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding twenty thousand dollars, and shall be liable to the party injured for all damages sustained, and, in the discretion of the Judge or jury trying the case, for exemplary damages; and every officer, servant, or employé thereof, who shall willfully refuse to conform to such rates, or shall demand or receive rates in excess thereof, shall be fined not exceeding five thousand dollars, or be imprisoned in the County Jail not exceeding one year. These provisions shall be deemed self-executing, but the Legislature may enforce them by additional legislation, and may confer additional powers and duties upon said Commissioners. The rates of freights and fares established by said Commissioners shall, in all controversies and proceedings, whether civil or criminal, be deemed prima facie just and reasonable. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations, and returns thereof shall be made to said Commissioners whenever required by them, or either of them; and any rail-

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road corporation failing to keep such accounts, or to make such returns when so requested, shall forfeit its road and franchise.'"

Now, sir, I think this section would cover the entire ground. It is said that it is bad to incorporate a Code in the Constitution, but it is likewise true that in some cases it is right to incorporate penalties in the Constitution. It is right where there is reason to fear, from past experience, that the Legislature will not perform its duty. We may direct and order a thing to be done as much as we please in the Constitution, but if we do not impose some penalty for a failure to obey the mandates of the Constitution, it is mere waste paper—it has no practical living effect, and if the Legislature chooses to omit the penalties, your Constitution is utterly valueless. Now, while in general matters I am perfectly willing to trust the discretion of the Legislature, I am not willing, in a matter where this tremendous corporate influence can be brought to bear, to leave to them the doing of any act which is necessary to curb the overweening power of these corporations, and keep them within their proper limits and in their proper spheres. I have therefore introduced these penalties applying to their case where they refuse to submit their books to examination, and keep their accounts in such a manner that the Commissioners can proceed intelligibly—can know the amount of their receipts and disbursements, the amount of capital, etc., and see if any of the pretended capital of any railroad is fictitious, how far the actual expenses corresponds with the expenses which they hold forth to the world as being the expenses of construction and repairs, or anything else connected with the road. And I am in favor of placing them under penalties which will compel them to obey the mandates of the Constitution even if the Legislature should hereafter remain silent and inactive.

Now there is one point where this amendment presented by myself, differs from that presented by the Committee on Corporations. It is this: I do not in this give them absolute power to fix just such rates as they please, without any appeal. In my amendment, if the railroad deems the rates unreasonable, it may take its chances in going into the Courts; and if it does go there, the rates fixed by the Commissioners are deemed prima facie evidence that the rates are reasonable, and the burden of proving that they are not so rests upon the corporation. And, moreover, under my amendment, if a party aggrieved, if they feel that the rate fixed by the Commissioners is an unreasonable rate, the aggrieved party has his cause of action, and may not merely recover the damage he has sustained, but may recover exemplary damages. He may not have been injured to the extent of ten dollars, and yet a jury may award him a verdict of ten thousand dollars, or what the law calls punitive or vindictive damages—damages which shall punish the wrongs. If you hedge around these corporations in this manner—if you say that the rates fixed by these Commissioners shall be deemed prima facie evidence that they are reasonable, and make their violation punishable by a forfeiture on the part of the corporation of a large sum of money, or by the imprisonment of its officers—you put the railroads in such a position that they will not dare to contest the rate fixed by the Commissioners, unless it is palpably and clearly unreasonable, and in such cases they ought to be permitted to contest it.

I think this plan will do justice to all parties. It compels them to produce their books, and to submit them to the proper examination of the Commissioners, and it imposes severe penalties if they testify falsely before the Commissioners. It gives the people every chance to have these rates regulated without oppression. I wish to see no injustice done on either side, and that the rights of the people, which have been grossly trampled upon by these corporations, shall be in the future absolutely maintained. Why, Mr. President, just look at it. I shall not go over it in detail, but we find this state of facts: That five men incorporating a railroad company, contributing but a small sum originally out of their own means, have been enabled, first, to freeze out every other stockholder, and to become owners of a most princely domain, while the other stockholders, their partners in the enterprise, through their management, through their organization of companies within companies, have been deprived of all benefit of the investment. You find that that great corporation, beginning on nothing—virtually nothing—has succeeded, out of the profits and gains which they derived from that original investment, from the subsidy which it got by means I will not now undertake to describe, that it controls the entire transportation of this State by land and by water; that it has been enabled to build hundreds of miles of railroads out of its exactions upon the people; that the people to-day are contributing enormous sums to enable them to build other railroads, and to increase their power over the State and over the coast; that they have succeeded in obtaining this control of transportation by land and by water; they have even control of the ferry between San Francisco and Alameda County. I do not begrudge them a reasonable compensation for their enterprise. I am perfectly willing that they should have palaces to live in—that they should enjoy all the luxuries of life; but I am not willing that they shall put their hands into the pockets of the people day after day, and year after year, and take millions from them for their own use and benefit without an equivalent in return.

I desire that this extortion shall cease now and forever. It is with this view that I introduce this amendment. There is nothing in it, if they act honestly and fairly, of which they need complain. They are public corporations, existing by authority of law, and they cannot expect that the public, who are interested in their acts, are to be kept from any knowledge of their inward workings. They cannot expect to say to the people that it is none of their business. In fairness and justice they cannot complain of the public being fully informed in relation to their business; they cannot complain of being compelled to charge only reasonable rates of transportation; they cannot complain at being obliged to adopt a system of bookkeeping which will show the true condition of their affairs—how much they receive, from what sources it comes, and what disposition they make of it—and if they refuse to comply, they ought to be subjected to the severest penalties. They have refused in the past, and it is time it should stop. I think it is time for the people to step in and put a stop to the system which has prevailed of allowing unscrupulous men who control these corporations to tax the people at will. They should be regulated by the laws of the land, and held to a strict accountability.

Mr. Chairman, I am compelled necessarily to be absent this evening, so I have requested another member, at the proper time, to introduce this amendment. As I said, I have omitted the mode of selecting these Commissioners. Now, one word in regard to section eighteen. That has not been passed yet. I have an amendment to that also. The amendment of the gentleman from Los Angeles, as amended by Mr. Hager, provides that when any railroad company shall reduce its rates to crush out competition, that the rates shall not again be raised without the consent of two thirds of the Legislature. Now, sir, I do not want the Legislature to have anything to do with this matter of consent. I want that to be vested in the Commission—such Commission as this Convention shall, in its wisdom, think proper to provide for. And farther, it seems to me that by leaving it to the Legislature, it would in many cases necessarily do injustice. Take the case which was presented by my colleague here, of the railroad between this city and Shingle Springs. Why, the gentleman says they used to run stages there and carry passengers for three dollars a head. The railroad has driven them off by putting down the rates. But, this Sacramento and Placerville Railroad, as I am informed—and I have never heard the statement denied—has never made a dollar out of any of its properties, and I do not believe they are to-day. But, it would, at any rate, be under the supervision of the Railroad Commissioners, and if it does make more than a reasonable amount, they can reduce the rates to a reasonable basis. But, there is this about it: take a peculiar railroad like that, and you may put on a competing line of stages, if you please. The stages were run on the Placerville route in the palmy days of that country. Now, a railroad line is fixed and permanent. It is built at great cost, and run at a heavy expense, whereas a stage line can be put on and off at will, for the purpose of blackmail. I believe the amendment offered by the gentleman from Los Angeles will tend to prevent the building of short lines of railroad, and to render unprofitable some of those already established. If a man has an unemployed stage, he can put it on and run opposition to the railroad, for the purpose of blackmail. The railroad company must not lower its rates, because they cannot be raised again. So with the owner of an unemployed vessel. He can run it in opposition to the railroad on any of the natural highways of the State. He can afford to run cheaper on water than they can on land, and when they come down to his rates, they must necessarily lose money, and they dare not put the rates down.

MR. TERRY. Has not this been voted on in the Committee of the Whole. I raise that point of order.

MR. CAMPBELL. The eighteenth section has not been voted upon.

MR. TERRY. I have been informed by the clerk that the Convention has so voted.

MR. CAMPBELL. No, sir, section eighteen was passed over on account of the previous question having been moved.

MR. ESTEE. It has never been disposed of.

THE CHAIRMAN. Section eighteen has not been disposed of.

MR. CAMPBELL. It has not been disposed of, and that is the reason I am discussing it. I say it would be dangerous to put such a provision in the Constitution, compelling these railroad companies to go to the Legislature for permission to raise their rates, as the Legislature only meets once in two years, and they would be compelled to run for two years oftentimes at a loss. I say it would be rank injustice; and while I am in favor of the strongest restrictions, I am not willing to do them any injustice.

MR. O'DONNELL. I move that the committee rise, report progress, and ask leave to sit again. I gave way to Judge Campbell because he wanted to go away. I wish to rise to a question of privilege.

MR. ESTEE. I object.

MR. O'DONNELL. I want to rise to a question of privilege.

MR. WATERS. The doctor had the floor for that purpose before the Convention went into the Committee of the Whole. He, at the suggestion that Judge Campbell wished to get away, gave way to him. Now all he asks is to have a few moments for a question of privilege.

MR. ESTEE. What is the harm in waiting until we come out of Committee of the Whole. I would be willing to give way, but it makes no difference whether he speaks now or not.

MR. MURPHY. I move that the gentleman have leave to make his statement now.

THE CHAIRMAN. The question is, Shall the committee rise?

Division was called for, and the motion was lost by a vote of 38 ayes to 39 noes.

MR. O'DONNELL. Mr. President: I rise——

THE CHAIRMAN. The motion was lost and we are still in Committee of the Whole. The question is on the amendment of the gentleman from Los Angeles. The Secretary will read section eighteen and the amendments.

THE SECRETARY read:

SEC. 18. No railroad company or other common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier, by which combination or contract the earnings of one doing the carrying are to be shared by the other not doing the carrying.

Amendment by Mr. Ayers:

"Amend section eighteen by adding after the word 'carrying,' in the fifth line, 'and whenever a railroad corporation shall, for the purpose of competing with any other common carrier, lower its rates for transportation of passengers or freight from one point to another, such reduced rates shall not be again raised or increased from such reduced standard.'"

Amendment by Mr. Campbell:

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"Add to section eighteen, 'and whenever a railroad corporation shall, for the purpose of competing with any railroad constructed or in process of construction, lower its rates for transportation of passengers or freight from one point to another, it shall not again raise its rates without the consent of the governmental authority in which shall be vested the power to regulate fares and freights on railroads, nor shall such other railroad raise its original rates without similar consent.'"

THE CHAIRMAN. The question is on the amendment of the gentleman from Los Angeles, Mr. Ayers.

MR. WEST. My recollection is that the gentleman from Los Angeles accepted the amendment of the gentleman from San Francisco, and the question would therefore come on the amendment of Judge Campbell.

THE CHAIRMAN. The question is on the adoption of the amendment proposed by Judge Campbell.

MR. RHODES. I desire to call attention to the verbal amendment which I supposed had been accepted at the time: "Constructed or hereafter to be constructed."

THE CHAIRMAN. Yes, sir.

MR. CAPLES. As Judge Campbell is not in, I will state that he agreed to make that correction, and it was my understanding that it was to be a substitute for the words, "in process of construction," and I was under the impression that he had made that correction. He agreed to do so, and I presume afterwards forgot it. I now move to make that correction.

THE CHAIRMAN. It seems to have been made here, but there is a line drawn over it so the clerk did not read it.

THE SECRETARY. The correction is in ink and has been marked out, showing that he made it and afterwards erased it.

MR. HOWARD, of Los Angeles. That is a mistake—he did not intend to erase it.

MR. CAPLES. I move as an amendment, to make that correction by inserting the words, "or hereafter to be constructed."

MR. BLACKMER. I rise to a point of order. There is an amendment to an amendment pending. I understand that Judge Campbell erased it himself.

THE CHAIRMAN. The Secretary says he does not know how it was done. If there is no objection it will be considered as being in.

MR. HALE. I ask the Secretary to read that again, without the proposed amendment.

THE SECRETARY read:

Amendment by Mr. Campbell:

"Add so section eighteen, 'and whenever a railroad corporation shall, for the purpose of competing with any railroad constructed, or in process of construction, lower its rates for transportation of passengers or freight from one point to another, it shall not again raise its rates without the consent of the governmental authority in which shall be vested the power to regulate fares and freights on railroads, nor shall such other railroad raise its original rates without similar consent.'"

MR. HALE. It seems to me that the language there is ample to express the purposes in view. It says roads in process of construction. It does not mean simply that it would operate simply upon roads now built, or being built. It is applicable to roads built or being built at the time of the lowering of the rates. I presume Judge Campbell struck that out, thinking it unnecessary.

MR. O'DONNELL. Mr. Chairman: I find by Rule Thirty-nine that a question of privilege shall be entitled to supersede all other business, and Rule Fifty-six says these rules shall be applicable to the Committee of the Whole, so far as applicable.

THE CHAIRMAN. A question of privilege must come before the Convention, and not before the Committee of the Whole.

MR. O'DONNELL. The same rules apply.

THE CHAIRMAN. It is not in order.

MR. WILSON, of First District. Mr. Chairman: I would like to have an explanation, so as to see whether the committee understand this matter as I understand it, so that we can vote upon it understandingly. Section eighteen was before the committee, and the gentleman from Los Angeles, Mr. Ayers, moved an amendment. To that amendment the gentleman from San Francisco, Mr. Hager, moved an amendment which, according to my recollection, was accepted by Mr. Ayers. Then came the amendment of the gentleman from Alameda, Judge Campbell, as an amendment to the proposition of Judge Hager. Now, the proposition of Judge Hager, as I understand it, does not change section eighteen, but adds to it. I am not very clear in my mind as to whether the amendment of the gentleman from Alameda, Judge Campbell, is a substitute or an addition to it. It seems to me it would supersede the Hager amendment.

MR. ESTEE. The gentleman from Los Angeles, Mr. Ayers, accepted the amendment of Judge Hager, and now the first question is upon the amendment to the amendment proposed by the gentleman from Alameda, Mr. Campbell. If it is adopted it will supersede the other amendment.

THE CHAIRMAN. If adopted it will operate as a substitute.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: The objection I have to the amendment is that it permits railroad corporations to reduce their fares for the purpose, at pleasure, of killing off opposition. Now, it occurs to me that if there is any object at all in preventing a reduction in fares and freight, in order to prevent opposition, it is just as important that it should be prevented whether it be a railroad or an old fashioned mule team. There is not a bit of difference. There will be no competing railroads in this State, and the only opposition the railroads will have to contend against is water carriage or by teams, so the effect of the amendment will be destroyed absolutely. The section will be of no use whatever; of no possible benefit to the people; no possible check upon the railroad companies of this State.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I hope this amendment will be voted down. Suppose a railroad company builds a road from San Francisco to some point on the coast, and establish their rates between these two points. A corporation may be formed for the purpose of running a line of steamers from San Francisco to that point. The corporation running the steamer, under this provision, would be allowed to reduce their rates until they had compelled the railroad company to suspend; and when that is accomplished, not being a railroad corporation, the steamboat company would be allowed to raise their rates again without asking leave of anybody. They could kill off the railroads as fast as they could be built.

MR. ESTEE. Would not that be the result of both these amendments?

MR. BLACKMER. Yes, sir; and for that reason I hope this amendment will be voted down, and I shall then propose an amendment that will include all corporations or associations that are doing business as common carriers. Further, that they shall not again raise the rates unless the Legislature authorizes it. Not that the Legislature shall raise them, but to compel the corporation to go to the Legislature and get authority to put the rates up again. I will read it:

"And whenever any corporation or association doing business as a common carrier shall, for the purpose of competing with or rendering unprofitable the business of any other common carrier, lower its rates for transportation of passengers or freight from one point to another, it shall not again raise its rates, unless the Legislature, by a two-thirds vote of all the members elected to each branch thereof, shall authorize such change."

MR. McFARLAND. That will require a special law. It is an exception to the general rule, that laws should be general.

MR. BLACKMER. Perhaps it would be.

MR. ESTEE. I will state to my friend that he will get things badly mixed if he undertakes that, because we have a provision that the Legislature shall pass no special laws. I hope both amendments will be voted down.

THE CHAIRMAN. The question is on the amendment of the gentleman from Alameda, Judge Campbell.

SPEECH OF MR. CROSS.

MR. CROSS. Mr. Chairman: This amendment proposed by the gentleman from Alameda, Judge Campbell, seems to be very objectionable in itself. It applies only to a case where one railroad is competing against another railroad, which is a case that does not exist in any part of this State. Now if this amendment be adopted, it disposes of and does away with the amendment proposed by the gentleman from Los Angeles, Mr. Ayers. For instance, some one starts a steamboat to run from Sacramento to San Francisco, for the purpose of carrying freight and passengers. The railroad company can put on an opposition boat, and puts the price down so low that the other boat is soon run off. Now, the railroad company is enabled to do that, for the reason that it can make up the loss resulting from carrying freight and passengers below cost, by charging an unreasonable price at other points. The result will be this, if this amendment is adopted, that whenever any boat is put on this line between here and San Francisco, the Central Pacific Railroad Company can put on a competing boat and put the rates of freights and fares at just what it pleases, and after having run off the opposition, then they raise them again, as they always have done. Now it seems to me that is the very object of this amendment, to allow railroads to monopolize the carrying business on the natural highways of the country; if it is not, I am very much mistaken.

Here is the City of Marysville, that has withstood fire and flood. And it is to-day, after the many misfortunes, one of the most prosperous interior towns in the State, for the simple reason that she has, through thick and thin, maintained an independent line of steamers between there and San Francisco. And she is to-day maintaining this line of steamers. Now this amendment offered by Mr. Ayers will prevent the railroad company from competing that line of steamers out of existence. But the other amendment, offered by the gentleman from Alameda, Judge Campbell, will enable the railroad company, if it chooses, to put down the rates of freights and fares from Marysville to San Francisco until the steamer is run off, and tax the loss of the transaction upon the people of other portions of the State where there are no natural highways, where competition is impossible. And when they have succeeded, by these means, in running off the steamers, and crushing out the opposition on the great natural highways, which God made for the use and benefit of the people, which, by the overshadowing monopoly of these corporations, have become worse than useless in this State. I say this amendment of Judge Campbell will leave us worse off than we are now. Everybody knows there are no competing railroads in this State. It is between the railroads and steamer lines on these inland streams. This amendment will not better our condition a particle. They can lower the rates and raise them at will.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from Alameda, Judge Campbell.

The amendment was rejected.

MR. BLACKMER. I now offer an amendment to section eighteen of the report of the committee, as a substitute for the amendment of the gentleman from Los Angeles, Mr. Ayers.

THE SECRETARY read:

"Add to section eighteen the following: 'And whenever any corporation or association doing business as a common carrier shall, for the purpose of competing with or rendering unprofitable the business of any other common carrier, lower its rates for transportation of passengers or freight from one point to another, it shall not again raise its rates, unless the Legislature, by a two-thirds vote of all the members elected to each branch thereof, shall authorize such change.'"

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THE CHAIRMAN. The question is on the amendment to the amendment offered by the gentleman from San Diego, Mr. Blackmer.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: The question raised in regard to the Legislature, it seems to me, does not affect the amendment which I have offered. The object of this is not that the Legislature shall raise these rates, but that the corporations themselves, who do these things—lower their rates for the purpose of driving off competition, or making unprofitable the business of any other common carrier—before they can raise the rates again, they must get permission of the Legislature to do it. I think this will accomplish a good purpose. The Commissioners might do this without any publicity whatever, if it is left in their hands. Nobody would know it but the corporations until the report of the Commissioners came out. But if you compel the corporations to come to the Legislature, they will have to show good cause—show that they did not violate the provisions of the Constitution—before permission will be granted the Commissioners to put the rates up again. I think this is a good provision. I believe it is not open to the criticisms that have fallen upon it; and I believe there is justice in it, and that we should include all corporations that are doing a carrying business. I see no reason why railroad corporations should be prohibited from doing these things, and still leave it open for other common carriers to lower their rates for the purpose of killing off opposition lines, and then raising them again. I say it is no more than just that railroad and other common carriers should be placed upon the same footing.

REMARKS OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: These amendments are all aimed at the old lines. It is not plain how it will affect new lines that have no original rates to be lowered. A new line cannot lower its rates, because it never had any rates. My experience is that the new lines are the worst, because they are generally put on to blackmail the others. I know the old California Stage Company used to carry people at very reasonable rates, and some men, who had a few old horses and a stage or two, used to put them on in opposition for the purpose of blackmail. They compelled the stage company to reduce fares or lose their business. Now, this proposed amendment would put things in this condition: A new line is put on; the old line cannot reduce, because if they do they cannot raise the fares again. But the new line can run off the old line and then raise its own rates to a paying basis, because there is nothing in the provision to prevent it. I say you are doing a great wrong. I will state to my friend from Nevada a case: A man up there, having finished some large teaming contract, and having a lot of horses and mules on hand, with nothing for them to do, could put on a line of freight teams to Colfax, and for two or three months in Summer could carry freight cheaper than the railroad does to-day. Now, what would be the effect under this rule——

MR. CROSS. If the teams can carry cheaper than the railroad, let the teams carry it.

Mr. McFARLAND. Then the gentleman does not express the wishes of his constituents, for they do not wish to dispense with the railroad. I say for two or three Summer months they might be able to carry cheaper than the rates now charged by the railroad. But they could not carry at all when Winter comes. Does the gentleman want to put them in a condition where they would have to stop running, or run at a loss? If he does, he would find that his own constituents are against him.

MR. CROSS. If mule teams can compete with railroads, then they should have a chance to do it.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: We have great difficulty in procuring a proper form of the amendment under the rule that there can be but two pending amendments. In reality, the proposition of the gentleman from San Diego, Mr. Blackmer, is in the nature of a substitute to the amendment proposed by the gentleman from Los Angeles, Mr. Ayers. There ought to be some machinery by which we can perfect a substitute, if it is not already acceptable. In some respects I like the provisions of the amendment proposed by the gentleman from San Diego, Mr. Blackmer, better than those of the amendment of the gentleman from Los Angeles, Mr. Ayers. I find objections to both. In the first place, I think the objections urged by the gentleman from Sacramento, Judge McFarland, to the phraseology, are well founded as to both these pending amendments. In other words, while the true policy may seem to be the same as between two transportation companies, whether railroads or steamboats, or railroad against steamboat, or railroad against mule, or ox teams, that if one lowers its rates for the purpose of driving off opposition, it shall not be privileged to raise them back again, until they have secured the permission of the proper authority. For instance, a steamboat is put on for the purpose of competing with the old line. It puts its rates originally at whatever figure is desirable. It does not reduce its rates for that purpose, because it has no established rates to reduce. Now, will this provision apply to them as well as to all others? If not, the phraseology ought to be amended.

MR. BLACKMER. Under my amendment, if they are corporations or associations doing business as common carriers, then my amendment applies to them. If the gentleman thinks it is not clear, let him propose an amendment and I will accept it.

MR. HALE. I made this suggestion because I desire to see the provision properly framed. I desire to see it framed in such a manner that the rule shall be equally applicable to the old and to the new lines, whether one or both change their rates. I desire that the rule shall apply to both, that they shall not increase their rates except by permission of the proper authority. As to another point: of course, I do not know what may be the disposition of the committee when we come to section twenty. We cannot tell whether the committee will adopt the idea of a Commission. I hope they will. If the idea is not adopted, I hope this power of granting or withholding consent to raise rates after they have been reduced will be lodged in the Legislature. If the idea of a Commission is adopted, then that power ought to be lodged in the Commission. I think the words "or establish" ought to be inserted in this amendment.

MR. BLACKMER. I accept that amendment, after the word "lower" the words "or establish."

THE CHAIRMAN. The question is upon the adoption of the amendment of the gentleman from San Diego.

MR. O'DONNELL. I sent up an amendment to this section a week ago, and it has laid there all this time and never been brought forward.

MR. ESTEE. Mr. Chairman: I think all these amendments proposed to this section are vicious. I do not believe they will remedy the evil complained of. I do not believe they will do any good, and I do believe they will do a great deal of harm.

MR. O'DONNELL. I have the floor, I believe.

MR. ESTEE. Mr. Chairman: Is the gentleman from San Francisco entitled to the floor? If he is, I will sit down.

MR. CHAIRMAN. He was calling the attention of the Chair to an amendment.

MR. O'DONNELL. The amendment I offered was laid on the table and never brought forward. My amendment was this: "No railroad company or common carrier shall combine or make any contract with the owners of any vessel that leaves port or makes port in this State, or with any common carrier navigating the waters of the State."

THE CHAIRMAN. It is not in order this time.

MR. SHOEMAKER. I move the committee rise, report progress, and ask leave to sit again.

Lost.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: The question before this house is the amendment of Mr. Blackmer. I am opposed to that amendment. I am in favor of the amendment of Judge Ayers. The amendment offered by the gentleman from San Diego would prevent competition between two stage lines in this State. If either one of them lowers its rates, it can't raise them again without permission. The object of the amendment of Mr. Ayers was to protect the people against the immense monopoly that has been built in this State by the great donations of land and money and bonds drawn from the people. The present owners, or pretended owners, are oppressing the people, and for that reason I shall vote in favor of the amendment of Mr. Ayers. Their property occupies a different relation from any other line in this State. A different position from railroads in other States. It is the lands, bonds, and money of the people placed in the hands of these men that built these roads, and gave them the power which they now wield over the people. That is the reason why this amendment should apply to railroads, and not to all carriers, because the people themselves built these roads. There are carriers in this State who are operating on their own private capital. They have never drawn a dollar from the State; they have never been granted subsidies of land, they have never received any bonds, and hence do not stand in the same relation with the people that the railroads do. Therefore, I hope gentlemen in this Convention will vote to sustain the proposition of the gentleman, Mr. Ayers.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I was going to say a few words upon this subject when the gentleman from San Francisco interrupted me. What I was going to say was this: that the result of the amendments now before the committee will be this: to absolutely freeze out any opposition line that may be established—and I have listened for several days here to hear any gentleman give a reason why such would not be the case. I attempted to make this point clear the other day. Suppose the people of Los Angeles establish a line from Los Angeles to Anaheim—a fast passenger line. The present line, belonging to the Central Pacific Railroad Company, would put down the rates. That road is but a short road, and they have a network of roads all over the State. The result is, the opposition line must carry freight and passengers lower than the main line, or they will not get any business. That is a business proposition, the correctness of which will not be disputed by any gentleman on this floor. Now what is the result? The result is, that the old line, having a network of railroads all over the State, can afford to cut the rates down on that short line, and make it up out of the roads elsewhere, where there never can be any opposition. There is no man in this State, insane or otherwise, who would put his money into a railroad enterprise, if either of these amendments is adopted as a part of the Constitution. There will be no such thing as competition.

MR. CROSS. As the matter stands now, could any competing company build and maintain a line of railroad?

MR. ESTEE. I will answer that question. There is not capital enough; there is not trade enough; there are not people enough to justify competition. There is no such thing as a healthy competition, and cannot be in my judgment. There is no real competition between railroad lines in the great State of New York, or in New England, or even in England, much less here in this State, with its vast extent of territory, and less than a million people. Such a thing, gentlemen, is impossible. Let us look at these things as they are, not as they ought to be. Put that amendment into the Constitution and there never can be any real competition. The result would simply be that some roads would be run at a loss in order to freeze out all opposition, and the loss so sustained would be made up elsewhere. They could not come up here to the Legislature and apply for permission to raise the rates, because we have agreed to a clause that no special bill shall be passed; at least the Committee on Legislative Department have agreed to it, and it will be adopted, of course. [Laughter.] That course is a wise one. It is admitted by all experienced legislators to be the correct

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course. Hence, this would fall within the prohibition of special legislation. I hope none of these amendments will be adopted. I can see nothing but evil in them. It may sound well, but it is no remedy. It is as sounding brass and a tinkling cymbal, but it is no remedy for the evil complained of.

REMARKS OF MR. TERRY.

MR. TERRY. Mr. Chairman: The gentleman cannot point me to a competing line that has been built anywhere in this State that has not been frozen out. This would not be the case if we do our duty, and compel these men to adopt a reasonable rate of freights and fares everywhere. We ought to provide that these corporations shall not receive above a certain per cent. upon the value of their property. These abuses will not exist if we make these provisions here in this Constitution, and declare that the rates of freights and fares shall be so regulated as to produce but that percentage, and if it overruns, have it paid into the State treasury. I shall argue upon that basis, satisfied that no wrong can be done. I hope the amendment of the gentleman from Los Angeles will be adopted.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from San Diego, Mr. Blackmer.

Lost.

MR. O'DONNELL. I now offer my amendment.

Lost.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from Los Angeles, Mr. Ayers.

Division was called for, and the amendment was adopted by a vote of 66 ayes to 39 noes.

MR. SHOEMAKER. I move the committee rise, report progress, and ask leave to sit again.

MR. ESTEE. Let the next section be read, so that this section will be disposed of.

MR. HALE. This amendment ought to be amended in one respect, and if we rise now the members will have an opportunity of amending it.

THE CHAIRMAN. The question is on the motion to rise.

Lost.

MR. HALE. I move to substitute for the amendment as acted upon, to strike out after the word "unless," these words, "the Legislature, by a two-thirds vote of all the members elected to each house, shall authorize such change," and substitute the corresponding words in the Campbell amendment, "without consent of the governmental authority in which shall be vested the power to regulate fares and freights, authorizing such change."

MR. HOWARD, of Los Angeles. I rise to a point of order.

MR. SHOEMAKER. I move that the committee rise, report progress, and ask leave to sit again.

MR. LARKIN. This amendment has been adopted——

MR. SHOEMAKER. I rise to a point of order——

MR. ESTEE. You cannot change the object of the amendment. You can perfect it, and if that is for the purpose of perfecting it, it is in order.

THE CHAIRMAN. This amendment will be entertained. The point of order is overruled.

REMARKS OF MR. HALE.

MR. HALE. Mr. Chairman: I have no desire to occupy the time of the committee. This amendment, however, should prevail, it seems to me. Now, sir, if you are going to appoint a Commission to regulate freights and fares, and confer upon them the general power to do it, then I am unable to see the reason why this power of consent should not also be left to them. Moreover, the policy should be, if you are going to adopt this Commission system of dealing with railroads, to take the entire subject out of the hands of the Legislature and vest it in the Commission. It certainly belongs there, if you are going to have anything like harmony in this system.

REMARKS OF MR. CAPLES.

MR. CAPLES. Mr. Chairman: I had already prepared an amendment the same as that offered by the gentleman from Placer. I think it is right and proper. We expect to organize and institute a Commission to deal with this whole subject-matter. That proposition may fail, but it is my impression that we shall institute this Commission. If we do, that is the true governmental authority to have charge of this subject. Again, it seems to me that the matter, as it stands, relegating this matter to the Legislature by a certain vote, would be to invite lobbying, and that would be in contravention of the cardinal principles of the report here of the legislative committee prohibiting special legislation. That is another serious objection to leaving this matter to the Legislature. I therefore desire and earnestly hope the amendment will prevail. In the event of a failure to agree upon these Commissioners, it would go to the Legislature, because that would undoubtedly be the proper governmental authority in that case. In the event that we do institute this Commission, it will leave the matter with them, where it will properly belong, without any conflict of terms—without contradiction. I hope the gentleman's amendment will carry.

THE CHAIRMAN. The question is on the amendment.

Division was called for, the committee divided, and the amendment was adopted—ayes, 61; noes, 43.

MR. SHOEMAKER. I move the committee rise, report progress, and ask leave to sit again.

THE CHAIRMAN. The question is on the motion that the committee rise, report progress, and ask leave to sit again.

Lost on a division vote—ayes, 51; noes, 51.

THE CHAIRMAN. The Secretary will read section twenty.

THE SECRETARY read:

SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State, at the regular gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the sole power, and it shall be their duty, to correct abuses by railroad corporations or other transportation companies; establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; report to the Governor, annually, their proceedings, and such other facts as may be deemed important; hear and determine complaints against railroad or other transportation companies; affix penalties and enforce them through the medium of the Courts, and perform such other duties as may be prescribed by law. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in the foregoing sections.

MR. VAN DYKE. I have an amendment to section twenty.

THE CHAIRMAN. The first question is on the amendment of Mr. Prouty.

MR. TERRY. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT pro tem. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress, and ask leave to sit again.

QUESTION OF PRIVILEGE.

MR. O'DONNELL. Mr. President: I rise to a question of privilege. My rights as a member of this Convention have been assailed by a venal sheet called the San Francisco Chronicle. That paper, in its issue of last Saturday, published the following false and defamatory language in relation to my action on this floor. I will read it:

"As to O'Donnell, it may be said of him that he is an adventurer in his profession, and as a politician beneath contempt; and he hates the press because it has opposed him. And that is the motive of his opposition. He was elected as a Workingman and a reformer, and on a platform which, if it had any meaning, meant hostility to the arrogance and corruptions of the railway monopoly, and he has shown a desire recently to go back on the platform and assist the corporations in one of its most vital points, namely, to defeat the proposition for a Railway Commission for the regulation of fares and freights. For this act of treachery he should be read out of the Workingmen's party, and if they fail in this duty the Chronicle now respectfully warns them that it will cause their disruption and utter failure."

Mr. President, that is an extract from the degraded Chronicle. The creatures which purport to be its proprietors are now under indictment for libel, and their trial will take place at the next term of Court in Placerville. Of their conviction I never had any doubt. As to the paper itself, it has been branded by the Workingmen's party as a Judas and a traitor to the very cause it professes to advocate. As to the statement that I have shown a desire to defeat the measures for the election of Railroad Commissioners, every member of this Convention can testify it is false; and it being false I take this occasion to brand the editor of the Chronicle as a malicious libeler and a willful liar. [Applause.]

ADJOURNMENT.

MR. SHOEMAKER. Mr. President: I move the Convention do now adjourn.

MR. GRACE. Mr. President: I have a motion to make. I move that Dr. O'Donnell be appointed a committee of one to punish the Chronicle for this libel, and that the trial take place in some other part of the State.

THE PRESIDENT pro tem. Not in order. The question is on the motion to adjourn.

Carried.

And at four o'clock and twenty-five minutes P. M. the Convention stood adjourned until nine o'clock and thirty minutes A. M. to-morrow.

SIXTY-SEVENTH DAY.

SACRAMENTO, Tuesday, December 3d, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President pro tem. Belcher in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Burt,	Doyle,
Barbour,	Campbell,	Dudley, of San Joaquin,
Barnes,	Caples,	Dudley, of Solano,
Barry,	Chapman,	Dunlap,
Barton,	Charles,	Edgerton,
Beerstecher,	Condon,	Estee,
Belcher,	Cowden,	Estey,
Bell,	Cross,	Evey,
Blackmer,	Crouch,	Farrell,
Boggs,	Davis,	Fawcett,
Boucher,	Dean,	Filcher,
Brown,	Dowling,	Finney,

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Freeman,	Lindow,	Shurtleff,
Freud,	Mansfield,	Smith, of Santa Clara,
Gorman,	Martin, of Alameda,	Smith, of 4th District,
Grace,	Martin, of Santa Cruz,	Smith, of San Francisco,
Graves,	McCallum,	Soule,
Gregg,	McComas,	Steele,
Hager,	McConnell,	Stevenson,
Hale,	McFarland,	Stuart,
Hall,	McNutt,	Sweasey,
Harrison,	Miller,	Swenson,
Harvey,	Mills,	Swing,
Heiskell,	Moffat,	Terry,
Herold,	Moreland,	Thompson,
Herrington,	Morse,	Tinnin,
Hilborn,	Murphy,	Townsend,
Hitchcock,	Nason,	Tully,
Holmes,	Noel,	Turner,
Howard,	O'Donnell,	Tuttle,
Huestis,	Ohleyer,	Vacquerel,
Hughey,	O'Sullivan,	Van Dyke,
Hunter,	Overton,	Van Voorhies,
Inman,	Porter,	Walker, of Marin,
Johnson,	Prouty,	Walker, of Tuolumne,
Jones,	Pulliam,	Waters,
Joyce,	Reddy,	Webster,
Kelley,	Reed,	Weller,
Keyes,	Reynolds,	Wellin,
Kleine,	Rhodes,	West,
Laine,	Ringgold,	Wickes,
Lampson,	Rolfe,	White,
Larkin,	Schell,	Wilson, of Tehama,
Larue,	Schomp,	Wilson, of 1st District,
Lavigne,	Shafter,	Winans,
Lewis,	Shoemaker,	Wyatt.

ABSENT.

Ayers,	Eagon,	Nelson,
Berry,	Garvey,	Neunaber,
Biggs,	Glascock,	Stedman,
Casserly,	McCoy,	Mr. President.

THE JOURNAL.

MR. CAPLES. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

MEMORIALS.

MR. BELL presented a memorial of the Representative Assembly of Trades and Labor Unions of the Pacific Coast on the following subjects:

First—The contract system, and praying for a law prohibiting the same on public works.

Second—Against the letting of State Prison labor to contractors.

Third—To prohibit children under fourteen years of age from being employed in shops and factories.

And also urging the adoption of certain articles reported by the Committees on Chinese, and on Corporations other than Municipal.

Representative Assembly of Trades and Labor Unions of the Pacific Coast do hereby memorialize the Constitutional Convention, now in session, on the following subjects:

First—The contract system, as practiced by State and municipal authorities, in the letting and permitting the subletting of contracts, without holding the subcontractor responsible, as provided by the Consolidation Act, passed by the Legislature in eighteen hundred and seventy-one, and thus defranding the State, as well as its citizens, this all being done under the connivance of Commissioners appointed to guard the public's interest. We, therefore, would respectfully recommend the adoption of a law prohibiting the letting of any State, county, or municipal work of any description by contracts, so as to have all public work done by the day, and eight (8) hours to constitute a legal day's work. For illustration of the above evils, see Stone-cutters' memorial.

Second—The State Prison labor. We indorse the clause introduced by John D. Condon and P. M. Wellin, as sufficient remedy for evils as now existing at our State Prison, to wit: the furnishing of prison labor at forty cents per day to unprincipled contractors, to the disadvantage of honest manufacturers and honest labor, particularly the cabinet, shoe, harness, sash and blind, door makers, and all other labor indirectly.

Third—We would most respectfully recommend the adoption of a clause prohibiting children under the age of fourteen years from working in any shops or factories.

Next, we indorse and respectfully recommend the adoption of the following sections:

By the Committee on Corporations other than Municipal, sections three, seven, eight, ten, eleven, twelve, and thirteen.

By Committee on Legislative Department, we unanimously indorse section thirty-three.

By Committee on Chinese, we indorse sections one, two, three, four, five, six, seven, eight, and nine.

E. WESTINE,
Secretary of the Representatives of Trades and Labor Unions.

Referred to the Committee on Miscellaneous Subjects.

Also, the following memorial from the Journeymen Stonecutters' Association, of the Pacific Coast, against the contract system of labor on public works:

WHEREAS, There was a law passed at the session of the State Legislature of eighteen hundred and sixty-six and seven, enacting that all State work should be done by the day, but its effect is nullified by the passage of special Acts authorizing contract work; and, whereas, since the passage of said Act, there has been the following public buildings constructed, under the head of special legislation:

First—The Deaf and Dumb building, which was partially destroyed, in eighteen hundred and sixty-eight, by the falling of the walls, they being constructed in such a manner that they could not support the roof; and two years after, the State, by relief Acts, paid the original contractor forty thousand dollars ($40,000) to rebuild the same walls; and in the year eighteen hundred and seventy-five, when the building took fire through defective flues, the entire walls fell in complete mass of confusion, wherein, if said building had been constructed with half care, as to plans and specifications, the walls would stand for ages to testify to the solidity of their construction.

Second—The State Normal School, erected at San José, which has been a disgrace to this commonwealth since its first inception, and we believe it is to-day, after considerable expense to the State in patching up a bad job.

Third—The College of Letters building, of the University of California, which the public investigation of the Building Committee of the Legislature of seventy-four and seventy-five proved to be the poorest constructed building (both as to workmanship and material) that could possibly be constructed with any show of decency, and a personal inspection from your honorable body will show the most glaring proof of the foregoing.

Fourth—The Napa Insane Asylum, which was also by special Act, at an estimated cost, by the architects whose plans were approved, of six hundred thousand dollars, but the State was compelled to pay some one million four hundred thousand dollars, an excess over original cost of eight hundred thousand dollars, and to-day there are portions of the building which are fast decaying.

Fifth—Is the Branch State Prison building, at Folsom, where the contractor gave bonds to finish said building, but finally collapsed, cheating all the poor workingmen, and his creditors, out of their hard earned money. When the State commenced suit against his bondsmen to perform the contract, they instituted a counter suit for damages in the sum of thirty-six thousand dollars, and were granted judgment in the Sixth District Court, of Sacramento.

Sixth—Is the present contract for the same work, which is being carried on by just such said actions.

The memorialists could give a great many instances, in the contract work on the Pacific Coast, which is a living disgrace, of which your honorable body is perfectly cognizant, as they have been pretty thoroughly ventilated in the public press.

E. WESTINE,
Secretary Trade and Labor Unions.

Referred to Committee on Miscellaneous Subjects.

MINORITY REPORT ON CHINESE.

MR. O'DONNELL presented a minority report from the Committee on Chinese, as follows:

MR. PRESIDENT: The undersigned, a member of the Committee on Chinese, asks leave to present the following minority report:

The power which, it is conceded, is possessed by the Legislatures of the respective States to pass quarantine regulations, is conclusive of the right of a State to prevent the landing of criminals or paupers upon her soil. If a State may, by virtue of her sovereignty, pass laws to quarantine a vessel for a single day then she has the power to continue such vessel in quarantine for an indefinite period. The power to prevent the landing of the cargo of such vessel, therefore, necessarily resides in the State.

I heartily concur in the report of the majority of the committee in respect to the necessity of preventing any further Chinese immigration. It is unanimously conceded by all parties—by native Americans as well as by citizens of Irish and German descent—that the coolie is a curse, and that some power should be invoked to prevent the further importation of the revolting creatures to these shores. Upon that point I fully acquiesce with the majority of your committee. I disagree with them only as to the means to be employed to accomplish a great national result.

The cases in which the Supreme Court of the United States decided that foreign immigration into the United States ports was a regulation of commerce have no relation to the coolie question. Those cases referred to immigrants from European ports, and it was decided that in respect to such immigrants the question of their immigration was a commercial regulation, over which Congress possessed exclusive control. I take the position that there is no analogy between those cases and the case of the coolie. He is not an immigrant; he is not eligible to American citizenship; he is imported merely as a chattel; he comes here under a contract to perform labor for a menial compensation. The Southern slave was always better paid, better fed, and better educated than the coolie of Asia.

If the decision of the Supreme Court of the United States applies only to immigrants to the United States, how does it affect the power of the State to prevent the landing of a leper upon her shores?

I am distinctly in favor of a constitutional provision which shall empower the Legislature, by necessary enactments, to prohibit the coolie trade, and to prevent them from landing in any of the ports of California. Such a provision would be opposed by certain members, upon the ground that it is unconstitutional. They will pronounce it a regulation of commerce. But suppose we incorporate it in the Constitution of California. The question will then be presented to the Supreme Court of the United States for adjudication, and that tribunal will determine the question whether a sovereign State has or has not the power to prevent the importation of diseased persons or criminals into her ports.

With this view of the subject, I respectfully propose the following amendments to Article—:

The Legislature, at its first session after the adoption of this Constitution, shall pass all laws necessary to prevent the introduction of Chinese coolies into any port of this State, and may provide for the punishment of such offense as a felony.

Respectfully submitted.

C. C. O'DONNELL,
Minority Committee on Chinese.

2. No alien of Asiatic descent shall ever be eligible to American citizenship, nor carry on any trade or occupation in the State of California; nor shall they be employed on any public work within this State.

MR. SCHELL. I move that the reading of the article be dispensed with.

THE CHAIR. They will lie on the table.

THE RAILROAD COMMISSION.

MR. ESTEE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIR. The question is on the amendments of section twenty.

SPEECH OF MR. MCFARLAND.

MR. McFARLAND. Mr. Chairman: The report, sir, of the Committee on Corporations departs at right angles from all of the provisions in the present Constitution upon that subject; provisions that have stood the test of more than a quarter of a century. It goes upon the theory also of enacting a code instead of establishing a Constitution. This committee having passed one after another of these provisions, each one, in my judgment, worse than its predecessor, has now arrived at the twentieth section, which, in my judgment, is the climax of mischievous innovation. I am opposed to that section, and I desire very briefly to give a few of the reasons why I oppose it. Now, sir, the mover of a new law is supposed to make some statement of the evil which he pro-

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poses to remedy, even in an ordinary Legislature, where new laws are mere experiments and where they are held in hand responsive to bit and rein, and in a condition to be amended or repealed at any moment. He who proposes a new law to be put into a Constitution should state, in strong terms, the evil which he proposes to remedy. But, sir, when it is proposed to put into the organized structure of the government itself a provision so startling, so unusual, so contrary to conceived notions, so destructive of the basal idea of the American system of government, so revolutionary as this, he ought to be expected to state, with every minuteness of detail and all aptitude of illustration, some enormous and overwhelming evil that calls for such extraordinary legislation. The surgeon does not apply the knife to parts near the vital organs except when life and death are in the scale. This twentieth section proposes a dictatorship—a dictatorship, it is true, of a triumvirate instead of a sole despot—a dictatorship that does not go to all the powers of sovereignty of the State, but a dictatorship that goes to many of the most important functions of the government. Well, now, sir, in the whole history of civilized nations dictatorships have only been resorted to some half dozen times, and those were times when the State was disturbed and distracted to the very center, when anarchy was impending, when it looked as though night and old chaos was about to return. Now, sir, is any such a statement of evils made here in this case?

The gentleman from San Francisco, the Chairman of this committee, and the father of this report, is an able gentleman, able to state a case strongly, and is used to that business; yet, sir, from the first of his argument to the end, he only referred, if I recollect, to one, single, solitary, isolated fact as going to prove this extraordinary evil. He stated, as I understood, that one particular railroad company in this State charged less in proportion for fares between two certain points than was charged between two other points, and therefore all this revolutionary project is to be introduced into our Constitution. So far as he is concerned, all these things are to be done only to make this railroad company charge two bits more from Sacramento to San Francisco. What a mole hill is this, where we should have been shown a mountain! Does not the gentleman know that if this law should pass nobody would be benefited by it, and that everybody would be injured? How could Sacramento be benefited? Why it would prevent the company from carrying to San Francisco by railroad at all. How would the people from Davisville to Vallejo be benefited? They would be compelled to sustain by their local trade a line of railroad that is now sustained by a large portion of the State. Does not every gentleman who has thought upon this subject know that to be true? Let us turn now to the knightly gentleman from Los Angeles, who seems to have entered upon this modern crusade with an enthusiasm as great as that which carried the chivalry of Western Europe to the plains of Palestine. He goes to another State and tells us what somebody has said occurred at Reno, in the State of Nevada, outside the jurisdiction of your Constitution, and beyond the reach of your power. And the scholarly gentleman from Sonoma, disdaining all details, contented himself with comparing these corporations to that fabled giant of Greek mythology, Briæreus, reaching out its hundred arms for mischief, and belching fire and devastation from its fifty mouths. If the gentleman were to undertake to exhaust the resources of language for purposes of unfair exaggeration upon any subject, he could not say a more unjust thing than that. Why, sir, an enthusiastic friend of railroads might, with far less extravagance, compare the railroad system of this State to some vast beneficent system of watercourses, which nature might have produced, with its branches penetrating every nook and corner of the land, stimulating activity and prosperity everywhere, and bearing to the gates of commerce, on its broad currents, the growth of every climate, and the products of every industry. Comparisons are easy; but a comparison is neither an argument nor a fact. And the gentleman from San Joaquin, Judge Terry, devoted himself almost entirely to the elaboration of the statement that railroads are responsible for all the ills that flesh is heir to. He described this world previous to the era of railroads and during the era of teaming, as a paradise, free from all poverty and misery, and full of beautiful mules. He recited to the Convention, from a Scottish poet, a description of the luxuries of the rich and the wants that pinched the poor in his day. The language was very pretty, and the words were pronounced trippingly on the tongue, but the effect, "not to put too fine a point upon it," was broken, to some extent, by the fact that the poet died a quarter of a century before the railroad was even dreamed of. And the gentleman from San Francisco, Judge Hager, committed hari-kari in the beginning of his speech, by saying that he had no knowledge in the world of the question whether freights and fares are too high. But you will notice that we have personal complaints here. It seems to be argued that railroad companies make United States Senators. Well, the gentleman ought to know something about that, for he was made a United States Senator himself. How that may be, sir, I do not know. There is a little matter of history—and the gentleman refers to history—relating to the two distinguished gentlemen who now serve this State in the United States Senate, and who have served this State there for several years. It is well known that one of these gentlemen was elected by an organization or party which was based upon the sole idea and sentiment of opposition to the railroads. That is a matter of history. As to the other gentleman, he was elected because his party was in a large majority in the Legislature, and because he was and had been from the very natal hour of that party, one of its most able, consistent, and distinguished representatives. How the gentleman himself got to the United States Senate I do not know. But I do know that he would be highly and justly indignant if any one should intimate that he ever received or solicited railroad support for that position.

Now, sir, it is apparent to the unprejudiced mind that all this clamor about railroads and corporations originates in this house. It is a mania. It is evolved from the inner consciences of some men here, as spiders spin their webs. I say there is no popular demand for any such extraordinary legislation to-day. I say the people do not call for it. I insist that the relations between the railroads and the people are satisfactory—and, if it were not so, we should hear from the people upon the subject. Your Secretary, from day to day, reads from the desk petitions and memorials on various subjects in which the people set forth their demands; but there is not one there about railroads. I contend that there has been no general complaint made before the committee itself outside of this Convention, and I have been informed—though I cannot vouch for its being true—that not a single individual, outside of this Convention, has gone before that committee to make any complaints. We have had in this State, for some years, a Commission to whom complaints could be made, and we have heard from them that there were, practically, none. Under this state of facts, it would seem that this passion that afflicts some gentlemen here, is like the passion that consumed the swarthy Moor—it makes the meat it feeds on. Where are your facts? It seems to me, sir, that some gentlemen in this Convention, like some newspapers, are undertaking to build up public opinion upon which they may feed, and upon which they may ride to popularity. I have talked to the farmers of this State. There are some of them in this Convention. I have talked to other men, and I have heard no complaints. I have heard here legal arguments about propositions never disputed; plenty of declarations and assertions, but we have nothing, worthy the name, of a presentation of any fact or the indication of any evidence before the Convention, showing such state of feeling as is claimed here by gentlemen on the other side.

Why, it is a most astonishing thing that the gentlemen who advocate this report confine themselves almost exclusively to making legal arguments upon a point that the State has a right to regulate railroads. Who denies that? It was not denied by the gentleman from Marin, Mr. Shafter, by the gentleman from Sacramento, Mr. Edgerton, by the gentleman from Alameda, Mr. Van Dyke, nor by any other gentleman on this floor. Now, does it not look as though the gentlemen advocating the other side of this case, undertake to expend a great many words upon the proposition that the State has a right to regulate, in the hope that the people will infer that because they have the right they must therefore create such an extraordinary Commission as this is? But, sir, I am rather astonished at the arguments and authorities they cite on that proposition—a proposition that nobody denies. The gentleman from Los Angeles was exceedingly unfortunate in both his argument and his authorities upon that point. He says, sir, that the State has the right to do this thing, because there is a contract between the State and the railroad companies. Why, sir, he had better abandon that proposition at once. If it is a contract, there are two parties to it; and where there is a contract and two parties, there are rights and duties on both sides. Who ever heard of a contract where all the rights are on one side and all the duties on the other? But his argument is that here is a contract, yet the State has all the power and the corporation none; that the very condition of the contract is that the railroad company shall have no right whatever. Who ever heard of such a thing? Did the gentleman ever hear, in all his experience, of any Court that would enforce such an unconscionable condition as that? You had better say it is not a contract—that it is a law. Then he will put himself upon a safe proposition. And he was further unfortunate in the main decision he cited. He had the Secretary read from the Elevator case.

Sir, I have a great respect for Courts. I think Courts are generally right, and I know of no way in which civilized society can be conducted except through the instrumentality of Courts, which must have a final adjudication of rights; but I do not know any slavish doctrine that would prevent any man from expressing his opinion about a decision of a Court, and I pretend to say that the decision of the Supreme Court of the United States, in the case alluded to, is most destructive of the leading ideas of American government, the most ruinous to personal liberty, of any decision ever made in any Court in the United States or England. I do not believe that the gentleman from Los Angeles will indorse it when free from the bias of partisanship. I do not believe that a man of his legal judgment and good sense and love of liberty will indorse any such decision. Why, what was it? Two private individuals leased a piece of land and erected upon it buildings. They had no privileges or immunities from the State whatever. They were private individuals. They built upon that land houses with their own private funds. They connected with it an elevator for the purpose of handling grain. They said to the farmers, "Come and store your grain with us, and we will take it for a certain price," and that decision is that the State shall say what they shall charge. Is there a man in this Convention that will indorse that doctrine? That if a man erects a warehouse at Stockton, at Sacramento, Marysville, or Vallejo, the Legislature can say what he shall charge for storage? If that be the law, then the Legislature can say what Booth & Company shall charge for groceries, what Holbrook, Merrill & Company shall charge for a bar of iron or a stove; what Lyon & Company shall charge for a sack of onions. It can compel every hotel in this State to reduce its board and lodging to the level of the hash-house that the gentleman from San Francisco, Mr. Estee, says the other gentlemen from San Francisco live in, and can control the private affairs of every business man in the State. I say it is monstrous. I am glad that it was announced by only a majority of that Court. But I only meant to show where that doctrine leads. Now the gentleman says that he voted for every Democratic candidate for the Presidency from Jackson down, including, I presume, that life-long apostle of Democracy, Horace Greeley.

MR. HOWARD. If the gentleman will allow me. I do not wish to be misrepresented, though it is a small matter. I could not go Horace; I voted for O'Connor.

MR. MCFARLAND. I am glad of it; I am glad to know that my friend was not entirely wrong during his whole life. Now, sir, the leading principle of the Democratic party, the one asserted by its greatest leaders, and built into its platforms, was this—and it is a good principle

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too—there are not many things in the Democratic party, connected with it, that I can indorse, but this I can, the gentleman knows it—"that government is the best that governs the least." And, sir, the converse of the proposition is true, that that government is the worst which to the greatest extent sticks the finger of inquisitorial power into private affairs, and keeps the eye of official espionage upon the daily walk and conduct of the citizen. And I say that that decision is a blow at this doctrine, and goes to the point that every citizen in his private business is at the mercy of the Legislature. I scorn and detest such a doctrine. There is not a man on the floor of this Convention who would stand up here and defend it, and if the gentleman from Los Angeles were to assert that he believes any such monstrous doctrine, and that he is willing to follow it to its logical result, while I would not dispute his veracity, I should say that he was carried away with his feelings or prejudices, and that he would, in his calmer moments, repudiate it.

But we do not deny the power to control. It stands on a better and firmer basis than that decision. "The Court awards it, and the law doth give it." So did the bard, apparently, give to Shylock power over the life of the unfortunate merchant of Venice; but can you cut the pound of flesh nearest the heart without the life-blood of your whole political and economic system following the knife? Does it follow that you must exercise the power because you have it? The Legislature of this State has immense power; it has all the power not taken away from it by the Constitution of the State and the United States. Shall it be exercised for bad purposes as well as good? That is the question, sir. Now, the point I make is this: that there never has been presented before this Convention any evidence to warrant any such extraordinary and revolutionary legislation as this section provides for. I say you propose to put into the Constitution a proposition almost unknown to the history of nations, and when you propose to do that it devolves upon you to show that an evil exists here as great as was ever known in the history of nations. I say you have not done it—it is all declamation. I say there are no facts here; there is not a particle of evidence here showing any such condition of affairs. It is most singular if we have this condition of affairs here and have no evidence of it. Distinguished gentlemen coming here for the purpose of risking their political future upon this question, are utterly unable to give this Convention anything more than mere general assertions. Now, sir, I say this: that the judgment of men who have given the most attention to railroad matters, is that the best thing to do with them, as a general rule, is to let them alone; to hold over them the legislative power, so that it, at any moment, can, when a case of extortion comes, remedy it. That is the opinion of Charles Francis Adams. I do not want to read from the book—that is what he says, and any one can read it for himself. He has had more experience than anybody else upon the subject, and his conclusion is that the railroad problem will work itself out; that the people on the one side and the railroads on the other, are fast coming to a conclusion themselves, and there is no need of any legislation on the subject in any shape or form—and that is the opinion of all who have examined the subject thoroughly and carefully. I do not deny the power of the Legislature to regulate freights and fares, when they choose to do so, or when they think the time has come that they ought to do it. They have done it already, to some extent, and they hold that power; and if exercised wrongly, and it is shown within a year, or within six months, that the law is wrong, the Legislature is ready to alter or repeal it. But here, sir, in the report of your committee, you have put in, already, dozens of sections that are irrepealable, permanent, beyond the reach of the Legislature—that cannot be reached by any ordinary power—and you propose to give the remnant of the power to another Commission, over which neither the Legislature nor the people can have any control. That is what is proposed to be done.

It seems to me that if the statements of some gentlemen are true, that this Commission has all the powers of the State, because it is said that the railroads have all the power, that the people are mere serfs, that they are the only portion of the country that are of any importance, yet you give to the Commission power to rule them, and therefore you give to the Commission a pure dictatorship, holding all the powers of the government, and having sole power to exercise the right of sovereignty. I do not propose to answer all these personal objections that gentlemen make to railroad companies. It does seem to me that we ought not to be governed by these considerations. The relations of individuals with the railroads, and the private grievances of any man, or personal dislike of some member of the company, should not operate on questions to be decided in a constitutional body. The question is, in the first place, is there any necessity for regulation at all? I say there is not. But if there be, if there should be in the future, the question is, where should that power rest? I say in the ordinary power of the State Government; in the ordinary legislative branch of the State Government. This Commission says it must be taken away from that power and put into an extraordinary Commission, one beyond and above the government. These men do not only propose to tinker with the vital organs of the State, but propose to take away a portion of them as a surgeon would cut away a portion of the heart, or liver, or lungs; and they propose to establish a Commission of three men to whom these several parts are to be given. Was such a proposition ever heard of in a free government—in a government that pretends to have a free Constitution? The proposition was never heard of before; certainly not in America, and never heard of in England after she commenced to become free. Why, this Commission is to be a Court. They are to hear and determine all complaints. I do not know in what manner; not according to the ordinary processes of law, I suppose. Everybody who has a complaint, whether frivolous or not, could come before a Commission and it would have to spend the most of its time in hearing complaints, and would not have time to examine into the question of freights and fares or pass laws upon that subject. Their powers as a portion of the judiciary would be so much taken up that their executive and legislative powers would not have any time in which to exercise themselves. For that is what it is. They are to hear all complaints on every question connected with railroads.

Now, sir, I have only one more word to say, and I am done. I do not desire to detain this committee after the many long arguments we have heard. Sir, I believe in this American system of government. I believe it is the best system this world has ever seen. I have lived on American soil all my life, and my ancestors for three generations have been born on it. I know what the arguments are in favor of other forms of government; that the monarchy is the strongest government, because it is best able to do right; that the aristocracy is the wisest government, and knows the best how to do right, and that the republic, or democracy, or free government, most desires to do right. I believe that our American system includes to a great extent the whole three ideas. But we are subject to great dangers. Monarchies are subject to one kind of dangers, and republics or democracies to another. What is the danger? The great danger in a republican government—in a free government—comes from the unbridled license of a mob; the dangers come from a want of respect for law and order; from a want of respect for private rights and private property. There is the danger, and you see it in this country and in this State to-day. And if this Government ever falls, and a monarchy is established on its ruins, it will be the very reason that the people have not been educated properly, that the demagogues have led them to stray from the doctrine that law and order must be preserved, and that the rights of private property must be respected. There is the danger. And I will tell you this: there is a principle in the science of government that is as true as mathematics and as eternal as the stars, that men will be protected in their rights of property. If they cannot be protected as the citizens of a republic, they will be protected as the subjects of a King; and the history of the overthrow of free government, back to the very dawn of human annals, shows that free governments have been overthrown through that very fear of want of protection. It was that very fear which enabled the Cæsars to erect an empire upon the ruins of Roman liberty. It was that fear of protection that enabled the Charleses and Philips to break the ancient Constitutions of Spain and destroy her free Cortes. It was that fear that enabled nearly all the monarchs of medieval and modern Europe to establish absolute governments upon the ruins of liberty, and it is that fear to-day that stands in the way of Republicanism in France. The fear of the Commune, sir, will enable the opponents of Republicanism in France to defeat it if anything does. And it is that fear which will overthrow this Government, if it is ever overthrown. But I do not believe it will be. I believe the people have been too well educated in the principles of their government to allow it. But there is the danger. One of the ablest and most liberal of British statesman said that no Government can stand where the ballot is universal, and as to the United States he said this: "At present every man, no matter how poor, has a prospect of bettering his condition. He, therefore, is interested in maintaining law and order." But he appealed to the next century and said, "when the time comes that America was populated as thickly as France and Germany, and when a great majority of men will be compelled to remain poor, that they will not remain poor with the ballot in their hands."

We have some exhibitions of that principle in this State at this time; and it is the duty of us to try and inculcate among those with whom we associate and those who come after us a respect for the principles of American liberty, a respect for American government, a respect for the rights of private property. If that is gone, everything goes. When I look back through the history of American and English liberty, from the day when John Hampden risked his magnificent fortune and his head upon the question of constitutional liberty, and see through what sacrifices and devotions and martyrdoms from that day to this, we have arrived at this magnificent structure of American government, I feel as if I should like to do something to make it permanent, safe, and secure for those who come after us. We cannot do it, if we instill into the people a want of respect for personal rights and private property. When that is gone, your Government falls; and I say that this whole report upon corporations is impregnated with the desire to undermine and overthrow the rights of private property. From the beginning to the end of it, I say, sir, that this mania—this political malaria that has spread over the land—has reached the Supreme Court of the United States, and has caused that decision in the Supreme Court of the United States—and I say that the whole decision and the doctrines set forth in it are subversive of American liberty, and that they will, in the end, be overruled and set aside. Men will be upon the Supreme Court of the United States who will ignore and overrule that decision. If they do not, and it is carried out to its legitimate consequences, the people of this country are slaves—minorities slaves to majorities.

Now, in regard to the railroad companies in this State, the statements are wonderfully wild and exaggerated. One gentleman said here, I believe, that the railroad companies were employing seven or eight Chinamen to one white man. That is not true. I understand that there are not more than one Chinaman to seven or eight white men. Gentlemen talk about this railroad having been built to a great extent by Chinese labor. It had to be built that way or not at all. Everybody knows that the interest of this State was to push that railroad forward as fast as possible, and that could not be done except by the use of all the hands that could be employed. It was said that the railroad companies had imported Chinamen. I understand that is utterly false; but they have made use, to some extent, as other citizens have, of that kind of labor. It seems to me that every gentleman ought to understand that it is to the interests of California that the railroads of California should be under the control of California men. They have been so owned thus far. What has been the result? Why, sir, when you go as far as the Central Pacific runs eastward, to Ogden, you find that the trade to that point comes to California, and upon the other side it goes to the

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East. And I have been informed by a gentleman not connected with the railroad, that if the City of San Francisco had given her million of dollars, as she agreed to do, that the railroad would have been pushed one hundred miles further, and we would have had all the trade of Utah. Everybody knows that if the Southern Pacific is owned and controlled by California men, that the whole trade of that part of the country, almost to the Mississippi River, will come to California, and if it is owned by Eastern men it will go there. And yet you want to fill up your Constitution with burdens and provisions that will discourage any California man from putting a dollar into railroads.

We all know that the men who have controlled these railroads are rapidly passing away. Two or three of the most influential and able of them have lately gone, and the time must soon come when the roads must pass into other hands. Where is it going? There are not many men in California outside of the few who know how to manage it, that know much about railroad business. And of those who would be willing to try it, there are few that have the capital. And yet, if you put all these burdens upon it you simply drive out of the minds of that class of men any idea of controlling our railroad system. There are men in the East who have been in the railroad business for years, who have command of a great deal of capital, who would be glad to own our railroads, but we want to do something to encourage our own men to control these railroads. If you put these burdens upon them they go necessarily to Eastern men. I suppose that Gould to-day would give a large amount for a controlling interest in our roads. Then the trade of Nevada and every point a hundred miles east of this city would go to fill the coffers of the rich men of Chicago, St. Louis, New York, and Boston, which now comes here to build up the same city which these gentlemen represent, and which they are endeavoring to ruin by this class of legislation. Why, sir, a great deal has been said about the members of this railroad company getting rich. Well, sir, would you expect them in such a magnificent enterprise as that to get poor? Would you expect an enterprise costing the millions of money that the Central Pacific Railroad cost to be so nicely graduated at the start that the men who built it would neither lose a dollar nor be in a position where they could make more than legal interest? Why, sir, the mechanic, the carpenter, the contractor, in estimating the expense of a house costing only a few thousand dollars, will sometimes make a mistake of several hundred, and yet you expect that a railroad can be commenced at the Pacific Ocean, run over almost inaccessible mountains, over deserts, through Indian countries, through undiscovered countries you might say, and that at the start you are going to calculate this thing down so nicely that the men who build it shall neither lose a dollar or make more than legal interest. Why, sir, would any man of common sense go into a hazardous business of that kind upon any such terms? Suppose some men were going to prospect for a mine. They find a hill which they think may contain a mine; they are willing to put their money in for the purpose of determining whether there is a mine there or not, and if they lose, they lose all. If there is no mine there, everything is lost. If there be a mine there, they make money. Suppose you say to them: "If you find a mine there you shall not make more than about ten per cent. a year on your investment." Would any man of sense undertake to open a mine? Would any man in his senses undertake to go into a thing upon the condition that he might lose everything, but he should not make more than the man who loans money on a mortgage?

The Government of the United States wanted to build a railroad from the East to the West. It was a national enterprise. They considered first whether they would build it themselves as a piece of government work, or whether they would help somebody else to build it. They said: "Instead of building it ourselves, we will offer a certain proposition to a company. We will give you so much land; we will guarantee your bonds for so much a mile. If upon that condition you will build this railroad, it is a contract." Well, sir, it was accepted, and after these subsidies had been granted there was not half a dozen men in the State of California that believed it could be done. It was called the Dutch Flat swindle, and it was said that they only intended to run it to Dutch Flat, so as to draw the trade of that section and of Virginia City. The certificates of stock were hawked around the City of San Francisco, and there was not a man to buy them. The City of San Francisco, after having subscribed one million dollars, after the land grants had been made, compromised by paying six hundred thousand dollars—a little more than one half—because she believed that it never could be a successful business operation. That is history. But because it turned out successful, and a few men got rich, gentlemen say, "Take it away from them." Is that sense? Is that justice? Is that in accordance with any rule or system of laws the world ever saw? Suppose I go out upon that public domain, and the Government says I may take a piece of land if I want to prospect for a mine there. I go and spend perhaps thousands of dollars, and find no mine, and I lose it all. The gentleman over here at the right goes on, and he finds and makes maybe a million. Do I go to him and say: "Give me your mine; pay into the State a certain portion of the products of that mine; you shall not be allowed more than ten per cent. on your expenditure?" If that is not confiscation, what is it? Do gentlemen undertake to say that the State owns these railroads? I do not understand anybody to take such a position as that. Who owns the locomotives and the cars that run on them? Are they not private property? And yet you propose to hand over that property—every car, every locomotive, every station, every machine shop which that company has built—you propose to take it all and give it over to three men, with a strong hand, just as if you proposed to take from the gentleman his homestead and give it to me. Don't they own it practically under the bill? Can't they control it without any other governing power at all—without any restraint whatever? What could the railroad companies do under that bill except to say to them: "Gentlemen, upon what terms shall we be allowed to use our own property?" There is no restraint upon them; there is no limit to their powers. No man can point to the line where it stops. These three Commissioners can in the course of their four years control millions of property; property not their own; property that does not belong to the State which proposes to give it to them; property which belongs to private individuals; and yet they have the power to take that property and control it, and make it utterly worthless, if they choose. It seems to me the position is too monstrous to be entertained by any body of sensible men like this.

I have nothing further to say. I only say that I stand upon this principle: that the Legislature, under the decision of the Court, have the right to regulate fares and freights; that at the present time it is not policy to do it; that the people who are dealing with the railroad companies do not ask it to be done; and that the power it possesses should be left with the Legislature that comes fresh from the people every year—the Legislature which, if it happens to commit an error, can correct it. I shall not detain the committee any longer.

SPEECH OF MR. DOWLING.

MR. DOWLING. Mr. Chairman: I only wish to place myself in a true light regarding how I shall cast my vote on this twentieth section. I am one of those that do not want to sail on an unknown sea without any instruments with which to find out where I am going. I do not want to sanction any innovation on well-established principles without knowing the reason why. The gentleman from Sacramento, Mr. McFarland, says that the railroad problem will solve itself if we let it alone. Does the gentleman know—he ought to know—that the interests of the State and the railroad are to-day antagonized, and we want to see a tribunal that will harmonize the two interests. Again he says, that the majority is the slave of the minority. Well, that is known many a day ago. It is an old thing. But, sir, Mr. Hamilton says that it is of great importance in a republic, not only to guard society against the purposes of its rulers, but to guard one part of society against the injustice of the other. De Toqueville says no matter how strong a government may be it cannot easily escape from the consequences of that which it has once admitted as the foundation of its Constitution.

Now, sir, there is a principle established—there is a grand principle underlying section twenty—and that is the principle upon which our government is established. The underlying principle is the principle of equity and justice. This corporation question is a very complex problem, no matter from which side it is viewed. I have not heard a speech delivered on this floor since this subject was taken into consideration that was not for or against this corporation question. Now, sir, I am glad the lines that separated us in the commencement here are getting to be obliterated. I am very proud, sir, that the line of demarkation is drawn so clearly and so well defined, with this monopoly on the one hand and anti-monopoly on the other. On a question of this kind, where a new idea is being considered, we should not be wafted away on the winds of popular opinion. We should be guided, sir, by reason, by common sense, and by good sound judgment. I heard one gentleman make an attempt to solve the problem, that is to express his views, so that it would be just to the railroad, and just to the people, but his uncertainty showed conclusively that he had no fixed opinions on this matter.

Now, sir, we want the Commission. A Commission is the only way to solve this question. Commissions want knowledge, they want power, they want control, they want honesty and justice. That is my idea of Commissioners—self-knowledge, self-control, self-government. These three alone raise them up like sovereign power.

Now, sir, there is a reason why we should have the Commission and there is a reason why we should not have the Commission, and they are these: The reason we should have a Commission is because the people want to be represented and protected. The reason that we should not have a Commission is because the railroad companies or the railroad monopolies do not want to be bridled. They want to be let alone. They want to be let run rampant the same as they have for the last fifteen years in California.

Again, sir. What are the functions of the Commission? Now the functions of the Commissioners are simply first to execute, and second to report to a higher authority. But gentlemen cannot see a higher authority than the Commission. That is an *ignis fatuus*—that is what always appears before their imagination—an absolute and autocratic Commission. But, sir, if I understand this section aright, I think that it exacts from the Commissioners a report annually to the Governor—though so far as I am concerned I would have them report semi-annually—and through him to the Legislature. I also understand that by an amendment that has been offered here by the gentleman from Sacramento, I think, Mr. McConnell, that he provides that two thirds of the Legislature can remove these Commissioners for dereliction of duty or abuse of their trust. That don't seem to me like an autocratic Commission. That don't seem to me like an imperial triumvirate. I spent my boyhood days under an autocratic government. I have been raised under a monarchical government, and I know what it is. But for the life of me I cannot see where this has any analogy whatever to a monarchical form of government. And let me confess here on this floor that notwithstanding all the political corruption, notwithstanding all the railroad oppression, notwithstanding all the rascality that exists in public places, I would rather be a dog in a republic than to be a British Lord. Now, sir, that tells exactly how I stand about monarchy.

It is a well established principle, and as old as the right of eminent domain itself, that no man can be deprived of his life, liberty, or property without due process of law. That is plain enough. Now, again, our whole system of government is Commissioners. The President of the United States, Senators, Representatives, Governors of States, in fact, all of our officers down to a common Constable, are Commissioners, deriving their power from whom? From the sovereign. Deriving their powers from the people. But, sir, our sovereign is not found 'neath the

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sheen and floss of crimson curtains on the bench or at the bar. If you want to find the sovereign in a republic you have got to go into the workshop, you have got to go on the farm, into the woods, into the busy market places, and down into the mines. He is the life, the center, the motive power, the pillars upon which the nation rests. He only is the monarch. It is a monarchy turned upside down. It has no analogy at all.

Now, sir, the three Commissioners proposed to be elected under section twenty of the report of the Committee on Corporations are to derive their just powers from the people, and be individually responsible to the people for the abuse of that power. If I understand it right it is a coördinate branch of government, and owing to the peculiar circumstances surrounding it, it has got to be clothed with legislative, judicial, and executive power, or else it is not worth the paper it is written on. That is not to say that it is an autocratic Commission. Not at all, sir. It is amenable to our laws; amenable to the laws of the State. They can be removed for dereliction of duty as I have already stated. They can be removed for abuse of their trust if two thirds of the Legislature see fit. Now, an eminent author says that one ounce of practical common sense is worth all the theory from here to China, and I believe he is right. The practical common sense we want in this question I think is to get three men that will solve this railroad problem. That is the common sense. Three determined, honest men, that we can depend on, and if we cannot get three honest men, as some gentlemen have remarked, in the State, well, it is time for us to change our system of government anyhow. But I am not prepared to accept any such doctrine yet. I think that the Commission cannot be so unreasonable as to destroy the corporation, but even if the Commission is a little arbitrary with the corporation it will do no harm. A man never repents while he is prosperous. It takes adversity to bring a man down on his knees. The corporation has been arbitrary, and if it had been wise and just this Convention would not have been arrayed against it as it is to-day.

Now, sir, we have such a sovereign in this country as in no country on the face of the globe. The will of the majority, in this country, is the sovereign—a majority of the industrial masses, the toiling millions before whose imperial will the most gigantic as well as the humblest citizen must bow. That is a fact I presume that every gentleman will concede.

Again, sir, the corporations, the money monopolies, the land monopolies, and the shoddy aristocracy, form a minority in this country, and they are always blowing against the will of the many. Why? Because their interests are diametrically opposed to popular prosperity, and they want, as a matter of course, to further their own aggrandizement. Now, sir, they create all the strife, they cause all the tears of grief to flow from the eye, and create all the wrinkles that are so perceptible to-day in California. It is this class of people that are to blame and nobody else. They are the Communists, and time alone will verify the truth of that assertion. The advocates of corporate power have all the machinery at their command. They have ability, they have experience, they have talent, and they have the ability to use their money to further their designs. They are deaf to the cry of distress. They are insensible to the miseries of the poor, and they are regardless of the cry of the groaning State. This may appear wild and weird, but however wild it may be there is more truth than fiction in it. Corporations have bought up conventions and swayed Legislatures as if by a magic wand. They have even entered into the sacred presence of the United States Senate chamber. Why, sir, Senators are but machines and Representatives tools in their hands. In fact they run the ship of State. They have the control of the whole government, and certainly we cannot say but that the judiciary to-day in California, as well as in every other State in the Union, is dishonored with their contaminating influence.

Now, then, what remains to be done to stop this avalanche of scandal. We have got, as far as possible, to remove the influence of corporate power from our body politic. You can remove it, and I defy any man to show a better way to remove it than by electing a Commission to supervise the highways—to correct abuses by the railroad corporations of this State. It underlies the whole structure. Because, if we have a Commission to legislate and to determine on these abuses, why Stanford and his cohorts and his minions will not come to the Legislature. They won't own Legislatures. The Hart bill, if it passed now, would not be treated, if we had a Commission, the same as it was treated here last Winter. The Record-Union says, in criticising the speech of the Chairman of the Committee on Corporations, that the right of eminent domain is simply the exercise of State sovereignty to condemn private property for public use, that the prospects of benefit to the public may be enhanced thereby. Well, what the Record-Union is trying to get at is this: it is trying to say that this property belongs to the corporations, and it is nobody's business. They can regulate it to suit themselves, independent of the people. But, sir, it is a new idea. It is a new idea, indeed, that when the property of the citizen interferes with the prosperity of the State, the sovereign power can be invoked and the property of the citizen can be condemned, but when the State interferes with the property of a corporation, there is a howl raised, and it is nothing but communism; it is nothing but confiscation. I am sick of such tomfoolery as that. The Record-Union, or Mr. Stanford, need not be afraid at all. But the sooner they realize the fact that the power that can condemn the beggar's hovel, can condemn the biggest railroad, and can condemn all the railroads in the State of California, the better for themselves, and the better for the people of the State of California.

We recognize the utility of railroads, and we recognize that they are almost indispensable to the existence of the State, and the people appreciate this; but they have abused their prerogative. They have violated their trust. They have severed the links binding consanguinity between man and man. And instead of the railroads being a blessing to the State of California, they are a curse. They are getting to be intolerable.

Now, sir, I will not detain this Convention much longer; but I will say that when the railroads came they were hailed as the messengers of prosperity—the heralds of joy. But they came, and with them came hordes of Asiatic slaves, fresh from China, to compete with the citizens of this republic. I know that Chinamen were in California before we had railroads; but the floodgates of China were not opened until the great railroad magnates received subsidies from Congress, from the Federal Government, to build these railroads; and as soon as they had received these subsidies they went to work and brought hither hordes of these lepers to contend against the honest working men of this country. The gentleman from Sacramento made an allusion to mining. He compared the railroad to mining. I would like to know who built the railroad, and to whom does the railroad belong? If the question was asked on a solid basis, and answered from an honest standpoint, it would be shouted back that they belong to the people who paid for their construction; belong to the people whose money built the railroads; and belonged to those men who went to work and toiled and worked to construct them. They belong to the United States. That is the solution of it.

Again he says, that we came up here from San Francisco to buck against the locomotive. We did nothing of the kind. We came up here from San Francisco to try to frame a Constitution for the State of California. We are not localized. We do not look at the interest of San Francisco alone. We look at the interests of the great State of California. Now, sir, with such tools and amounts of money taken from the public treasury, is it any wonder that the march of railroads has been a success in this State? I don't think it is. The railroads, sir, have been a success in California. They have penetrated the remotest precincts of our State. The Sierra Nevadas, the Tehalchapi Pass, and the Colorado Desert, offer no resistance to their onward march. They span the mountains. And who owns them? They are owned by a few individuals whose concentrated wealth surpasses the wildest flights of imagination.

We have lots of railroads, but we have multitudes of men who cannot even procure the privilege of obtaining work. They cannot even get it. Something is wrong. Everything is monopolized. Everything is monopoly. Go and ask this question down in Tulara County to-day: "What is wrong?" and ask the big boa constrictor of California. The land is monopolized. The railroad owns the land. They seduced, as it were, these people to go on, a few years ago, and cultivate it, and now they want fifty and sixty dollars an acre for it. That is what is wrong.

Let us see what railroads are now. We have heard, in connection with the arguments on this question—we have listened to men resurrect the tones of Burke and the Duke of Wellington, and those dead Irishmen. I consider that we have enough wisdom here to tell just exactly what is wanted. But I will tell you what is the matter. One half of this Convention cannot see things if they would, and the other half would not see things if they could. That is what is the matter.

Now, sir, the railroad is the vehicle of quick transportation between one place and another. They have superseded your old wagon roads. They have crossed and recrossed them with reckless disdain. But the old wagon road was conceded by everybody to belong to the sovereign. It had no common property, and, secondly, it was open to everybody. Freights and fares were regulated by the common carriers, and as soon as one party would charge too high, the coast was clear, and another party had the privilege of starting. But it is different with the railroad. And, sir, we have not arrived at that stage in the world's progress when it is convenient for a man to have a locomotive hitched up in his stable. Again, sir, the responsibility of maintaining these railroads must therefore devolve on some individuals combined for that special purpose, or on the sovereign; or, in other words, on the people in common. I believe we will come to that point when the State, and the State alone, will own, and control, and run the railroads in the interests of the people. That there is an analogy between the railroads and the King's highway I will admit; every sensible man will admit; every railroad admits it when they apply to the sovereign for the right of eminent domain. The sovereign has no right to grant that except for specific purposes, and that very purpose is distinctly stated, when private property is condemned for public use. It is not for the use of a highway, but expressly for the use of a public highway—for the use of the public, and not for the use of railroad companies. The only difference between the old wagon road and the railroad is nothing more nor less than that the public have to pay for being transported over the railroad, but they have not to pay over the wagon road if they do not so choose. The railroad bed is the property of certain individuals, and can be traced as belonging to the stockholders. The railroad is a public highway owned by private individuals, as near as I can come to it. They change the time for running cars over the line to suit themselves, but the supposition is that they will regulate it to make the most money for themselves. There is no analogy between the railroad and the community at all, except that the community can live—can exist—without the railroad, and the railroad cannot exist without the community. The railroad, sir, is a public highway, and it is a public highway in the broadest sense of the term, for it is the most dependent thing in the world on the community. But the circumstances surrounding the railroad precludes the possibility or the advisability of throwing it open to the community. Even if it belonged to the State itself, it could not be turned loose—or the community would not be turned loose—to go on it, and run their trains at will.

But, sir, the sovereign is the creative power of these institutions, and the power that can create can certainly condemn, destroy, or confiscate anything that interferes with its welfare. The Legislature has proven itself in the past to be entirely unable to cope with this great question of regulating fares and freights. Hence, sir, it devolves upon the people to come to the rescue and to solve this intricate problem. There was never anything that raised in the United States but the people were able to overcome. Now we have had instances where autocratic Commissions have been established in this country. We have had an

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instance of it at the last Presidential campaign, where the High Joint Commission was established—and certainly it suited the purposes for which it was established.

If the legislative functions have been abused in the past, I have no doubt they will be in the future, too, more or less; but abuses always exist, and will exist as long as man is human. However that may be, sir, I have no less faith in human kind. I know we have honest men in this country, and virtuous women: I know we have as honest men and virtuous women in this country as ever graced a throne or social circle, and I know that when this responsibility is directly thrown on them they can be found. I cannot see why a Commission should not be appointed—why a Commission should not be elected. We have instances of it here. I refer to the bill that passed the Assembly last Winter, and when it came up before the Senate it was, of course, strangled. The bill passed the Senate, but the very section that was in the interests of the people was buried in a premature grave. That bill conferred legislative, executive, and judicial power on the Commission.

Again, sir, my attention was attracted by a remark that the gentleman made in the course of this debate, about this great imperial trio. I quote from his speech. He says: "First, I think the construction of the section is a violation of every principle of republican government. It sets up three men in this State, the selection of whom is left to chance," etc. The selection of whom is left to the people of this State. The selection of whom is left to the sovereign of this State, and the responsibility is directly resting upon these men. They have got to be responsible to the sovereign and to nobody else. Even as the section states, coming, as it does, from the Committee on Corporations, but it is amended so that the Governor of the State will have supervision over them, so that they are to be subordinate to him, and they can be removed by the Legislature. I do not care whether it is the Legislature or the judiciary, it matters not to me, but when a man abuses his trust, I say that he ought to be removed.

I cannot see how this great question of railroads can be solved, unless it is solved by three business men; men that will go into the field and learn the exigencies of the occasion; that will study out what is necessary for the people and what is just to the railroad. And then, whether they are appointed or whether they are elected, if they solve the question, it amounts to the same thing. But the Legislatures in the past have proven themselves unworthy of our confidence. Besides, the Legislatures were only machines gotten up by corrupt Conventions; gotten up in the interest of capital; and now, sir, let us leave this question to the people, and the people will overcome all obstacles. I will vote for the Commissioners, sir. I will vote for them should the heavens fall!

REMARKS OF MR. O'DONNELL.

MR. O'DONNELL. Mr. Chairman: When we contemplate Leland Stanford as the railroad President and capitalist, we see that the ambition of man is unsatiated. Give him all the kingdoms of the world and, like Alexander, he will weep because there are no more worlds to conquer. [Laughter and applause.] Stanford, not content with his rule in the North, has gone into the South, and is now determined to control absolutely both lines of travel from California. The appointment of Railroad Commissioners to regulate the tariff of prices for the transportation of freight and passengers is a necessary measure; but, sir, their powers should be limited. If they betray the trust devolved upon them then the Governor of this State should have the power to remove one or all of the Commissioners, and to appoint others in their places. We are providing for their election; let us not forget also to provide for their removal from office.

Now, in regard to this section twenty, I intend to propose an amendment to it: "It shall be the duty of the Legislature to provide by law for the removal of any Railroad Commissioner guilty of malfeasance in office or breach of any trust reposed in him by the Constitution or laws of the State of California. The power to hear and determine complaints against railroads or other transportation companies shall not be construed as conferring upon them, or either of them, any judicial authority." I think, Mr. Chairman, that this section with that amendment, would be a good clause in the Constitution to control this railroad king, Stanford. I am satisfied that a majority of this Convention will be willing to adopt this amendment to section twenty. It covers everything; and I hope that the delegates in this Convention will vote for the Commissioners with these provisions. Thank you kindly.

SPEECH OF MR. WYATT.

MR. WYATT. Mr. Chairman: I shall vote to engraft section twenty, or something that is equivalent to section twenty, upon the Constitution of the State of California. I shall do that in obedience, first, to what I consider my own duty in the matter, and secondly, because I believe that I shall be carrying out the will of the constituents who sent me here. It was said this morning by Judge McFarland: "Why are we dealing with the railroad subject? Who has appeared before the Committee on Corporations? Who has complained of the railroads? Who has said anything about the railroads? Let the railroads alone, as you let other people alone, and let the railroads regulate themselves as other businesses regulate themselves." I submit, Mr. Chairman and gentlemen of the Convention, that that is all very fine in a general way; but I submit that it does not meet the facts of the case with reference to the railroad corporations of the State of California. If I have any knowledge of the political history of this State for the last twelve years, every canvass that has been conducted in this State has been upon the basis of the corporation or railroad question. Sometimes the people have seemingly won in these political contests, most generally though, in the ultimate results, the railroads have got away with the people.

After having wrestled with the subject in this political point of view for the last twelve years, it was the abuse of the railroad corporations and other corporations supplemental to the railroad corporations, that induced the people of this State to call this Convention, and this Convention has been assembled for the purpose, and for the paramount purpose, of dealing with that question above and beyond all other questions. If I was followed here by petitions by my constituents; if I was followed here by lobbyists from my constituents to urge me as to what course I should pursue in this case; if I was constantly followed up here and directed about this matter, I should say it was because my constituents believed that I was not faithful in carrying out the pledges which I have made to them. If there was any one question above another before them that elected me, it was that I agreed that I would vote for such provisions, that I would present and sustain such propositions as they believed would be wholesome in regulating the rates of the railroads. And if they were to follow me here with petitions, by the thousands, it would be upon the principle that they believed I had forgotten my pledges; it would be upon the idea that I had forgotten the issues upon which I run and upon which I was elected. I then am here in obedience to the agitation of this question before the people. It was discussed before them; it was agitated before them. This subject was over and above all others in reference to voting. Not only with me, but so with almost every man that occupies a seat upon this floor. And hence it is that the people repose confidence in our honesty, in our integrity, and in our manliness, that we will discharge the duties upon this floor that we promised we would discharge when we made speeches before they elected us.

It is objected that this section providing for the Commission will give too much power into the hands of the Commissioners. Mr. Chairman, that government fails of its duty, and fails in the discharge of its duty, that is not equal to meeting the emergencies by which it is surrounded. When it is necessary to meet an evil of one kind the government must meet it. When another and a different kind of evil arises, the government must meet that. When you have no railroads you do not want any Railroad Commissioners. When you have railroads, if you deem it necessary to have Railroad Commissioners, if all other expedients fail to govern the railroads, then it is the duty of the government to form a Railroad Commission. The question is: Who shall bell the cat? That has been the question before the people of the State of California for the last twelve or fifteen years. We have been elected for that purpose, and I for one will endeavor to do it, in the shape of this Commission, if I can get a majority of the Convention to sustain me in that action.

I conceive, Mr. Chairman, that it would be worse than idle—that it would be folly—to have a figurehead Commission—a Commission such as the Legislature, at the last session, furnished the people of the State of California; a Commission even like the first Commission instituted, wanting power enough to grant any remedy to the people. If we have any Commission let it be an effective Commission. Let it be one as well in truth as in name, that can give some remedy to the people. I further want that Commission planted upon such a foundation as that it is not liable to be overturned every Legislature that meets. For we are well aware that the railroads have to elect very few members to the Legislature in order to control the Legislature. Other members, not in the interests of the railroads, come with projects of their own. The projects of the individuals are pooled with the railroad members, they succeed in getting a majority of one or two in either branch of the Legislature, and then it is that the purpose is thwarted and prevented from being put into the form of law. I, then, want the Commission above the Legislature, practically speaking. I want the Commission so that they can act responsive to the behests of the people, and not the Legislature. It is said that the Commission will be clothed with extraordinary power. Then many other officers of government are necessarily clothed with extraordinary powers, be it in a republic, monarchy, or any other character of government that you may take. Some officers of government must necessarily be clothed with authority. The Executive of this State is clothed with wonderful authority. When it is looked at in all its length and breadth, with power to award life or death, it is almost immeasurably above the power proposed to be given to this Commission.

Take the judiciary. They are under no bonds. They are clothed with a public charge. Every twenty years the entire wealth of the country passes through their hands—so the history of judicial matters informs us. They deal not only with the property of men, but with the lives of men. This Convention is clothed with no such powers as these. No other part of the Government exists with such powers as the Judicial Department of this Government. You have Generals that you send out into the field who have no law, but are a law unto themselves; and yet it is a part of the Government, and a necessary part of the Government, and an absolutely necessary part of the Government. And if it becomes necessary for us to have Commissioners clothed with the powers in order to curb the greed of the railroads, we must have Commissioners of that character. We must either govern the railroads or the railroads will govern us. We must either govern concentrated and monopolized capital, or it will govern us. We must either meet this question—and meet it in that shape that we can do effective work against the encroachments of the corporations upon the powers of the people—or else our work is useless. I do not want a Commission with limited powers. I want one with power ample to grapple with the power that they have to grapple with. Take a railroad corporation, like the Central Pacific Railroad Company, absorbing all the other railroads in the State. Having been donated government land and money, and authorized to issue first mortgage bonds on their road—having all these privileges voted to them by the Government—they say that these donations were made by the Federal Government, and that the State has no right to control them. That was about the proposition brought before the Legislature of the State by Governor Stanford and those that he pretends to represent: "We have received these liberal donations from the Government of the United States; we have been endowed with certain rights and privileges by the Government of the United States; and you, the Legislature of the State of California, being a subordinate branch of the Government

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of the United States, have no right to pass laws regulating fares and freights. You are interfering with our rights under the laws of the Government of the United States." For the last year or two, I believe, that point has been abandoned by those who represent the railroads, and they no longer claim this high privilege; but now they say that—notwithstanding all the millions of donations that have been given by the Government, State and Federal—yet, that the wiser policy would be not to regulate them, but to let them regulate the people. Go to them and ask them how much they have expended, and they will answer as though it is impertinence upon your part, and they will inform you nothing upon the subject. Ask them what their running expenses are, and the same answer is given you. Ask what are the gross receipts, and the same answer is given you. The only thing you do know is this, that they have the carrying trade of the State, in passengers, freight, and everything that is transported from one portion of the State to another; that they charge you so enormously that you are simply the hewers of wood and drawers of water, and they are the ones that fare sumptuously every day.

Take one of them when he commences as a member of a corporation in Sacramento, fifteen years ago, worth ten or twenty thousand dollars, at the outside. I would ask if the State of California and the United States have not reasonably rewarded him for his services by paying him a million dollars annually for his services. That certainly ought to be a reasonable compensation for the services of any gentleman that we can conceive of. You cannot set a limitation to their reaching out. There is nothing too low, too fine, or small for them to reach for. There is nothing too big or too high for them to reach for. If you travel up and down the road you will find that they are engaged with every candy boy in the monopoly of candy peddling on the cars. If you stop at one of the depots, the very hacks belong to them, and are a monopoly in connection with the railroad.

The Central Pacific Railroad Company, in connection with the Union Pacific Railroad Company, has not only spanned the continent, but it has branches throughout the length and breadth of the State of California, and is reaching down and building the Southern Pacific Railroad, to span the continent south of us, all under the grasping mind of one chief spirit. If you consult the public prints, and take what the papers say, you will find that the receipts of those railroads sum up to fifteen and eighteen million dollars per annum, and that the net receipts of these railroads are from nine to eleven million dollars per annum; that the net receipts of the Central Pacific Railroad Company, since its construction from here to Ogden, have been about forty-nine millions of dollars. Aggregated then with this vast capital, owning all the railroad lines of this State; owning largely the river transportation of this State; owning the steamship lines that ply up and down your coast to the whole extent; owning the Oriental steamships that ply between here and China and Japan, under subsidies from the Government; owning your street railroads; owning the ferry at Oakland, and the candy factories of the State; owning the lines that haul your passengers to and from the hotels; owning all these vast ramifications in society, I ask if it is not time that the governmental hand was laid upon them?

What controls this vast capital aggregated? Aggregated wealth is aggregated greed, and aggregated greed knows no point upon which to stop except to consume everything that comes within its reach in a money point of view. This very corporation, with the various ramifications that it has in the State, draws to itself the surplus money of the State, just like the free rays of the noonday sun dry up the moisture upon the damp ground. It consumes all the financial interests of this State. Four or five or six men aggregate all of the wealth—wealth that is unknown almost to this age, and to former ages unheard of. They have this wealth so vast that men speak of millions and millions of dollars, and they do not conceive of the magnitude of the sums of money that they speak of. We have got so used to big figures by reason of the civil war that we have had, that we have no conception of the vast amounts that we talk about. Then, I ask, how is any individual to grapple with this mighty corporation? How is any individual man to right himself as against the powers of this corporation? How is any individual to stand out when your Legislature, and your Governor, and your organized society is not able to put any restraint upon them as yet? I ask if it is not about time that this Convention should say that they would act upon this matter, and act upon it efficiently; act upon it as though they intended their action to reach the evil. While I do not desire to destroy railroads; while they are an institution that cannot be done away with; while they are one of the institutions of this age that the people must have, and will have; yet they will be too expensive if we have them at the cost of liberty and the rights of the people. They must be controlled. They must be put under the strong hand of the law. That people is the freest—that is the most perfect liberty, as I heard defined the other day, where there is a perfect law perfectly administrated. We want the railroads under the law, and we want the law administrated to the railroads, and we want their strong hand and their strong power curbed.

Gentlemen, I am for the Commission, and I do not want the powers of the Commission lessened from what it is reported by the Committee on Corporations. I am perfectly willing to have that section as proposed by Judge Campbell, by which the rights of the Commission will be more sharply defined, more penalties introduced; by which the section will make itself more self-operating than it is at the present time. But I do not want the powers of the Commission curbed. I want the powers of the Commission to be strong enough to meet the powers of the railroad, and in meeting the railroad you do not meet men of flesh and blood, but you meet men of capital and greed in a corporate capacity, without a soul. I hope then, gentlemen, that the section will only be modified so as to make it more specific; so as to more specifically specify the rights of the Commissioners; so as to make it more effectual in the hands of the Commissioners; but not so as to give the Commissioners less power. I am, therefore, in favor of section twenty, and am willing to vote for such further specification of powers as in my opinion will make it more effective. But I am not in favor of making it more limited or weak as regards the powers of the Commissioners.

SPEECH OF MR. DUDLEY, OF SOLANO.

MR. DUDLEY, of Solano. Mr. Chairman: I desire to offer a few words upon the subject under consideration here, this section twenty of the report of the Committee on Corporations. It will take me but a few minutes, however. I am in favor of a Commission, having a foundation in the organic law of the State, and so firmly grounded that it cannot be wiped out of existence. I believe that the Commission ought to have the power to acquire the knowledge upon which intelligent action can be based. I believe the difficulty in the past has grown out of the fact that sufficient knowledge could not be obtained. But I cannot bring my mind to the support of the section as it now is. The power—the extreme power—that is there given to this Commission, is certainly, so far as the United States is concerned, unprecedented. I believe it to be unnecessary and uncalled for, and, to my mind, it is dangerous. I believe that this Commission ought to be endowed with power to investigate the affairs of the companies, to examine their books and their papers, to ascertain their receipts and disbursements, and, in fact, to acquire the requisite knowledge upon which intelligent action can be based. They should be compelled to report to the Governor, or the law-making power, and leave it to the people, through their Legislature, to take such action as may be required. It was an open question, for twelve or fifteen years, whether there was any power in the people to regulate these corporations. I believe it is generally conceded at the present time, that that power exists. Very few, if any, deny it. Having reached that point, why we should desire to get rid of that power and place it in an arbitrary Commission which is above and beyond the control of the people, as much so as the corporations have been, I do not understand. I believe that having finally established the right on the part of the people to regulate these corporations, the next step to be taken is to acquire the requisite knowledge upon which intelligent action can be based, and then to act by the law-making power of the State. With a view to modifying this section—in case no one else offers an amendment of the kind—I have prepared one. I believe it is not in order at the present time. I use a part of the section introduced by Judge Campbell, which is proposition number eighty-two on the file. I have also made use of the section as reported by the Committee on Corporations, and have modified it according to my own judgment. If the Convention should vote down the amendments pending, and an opportunity offers, I would like to offer this amendment.

I desire to say, while I am up, that I dislike very much to disagree with that portion of the Convention which thinks as I do on the main question, and that any vote I shall cast shall be cast with a view to modifying this section in the manner spoken of. I do not feel competent to discuss this question to any great extent. Nor do I propose to. I simply desire to offer a few remarks in answer to the gentleman from Sacramento concerning the decision in the Granger cases. I am not a lawyer, neither have I read the decision very carefully, but if I understand the groundwork of that decision it was this: that whatever should become a monopoly—it mattered not whether it was in corporate hands or private property—if it became a monopoly, and by virtue of such monopoly it assumed proportions that enabled it to oppress the people, or to take from them an undue proportion of their earnings, then the law had a right to interfere. I believe that to be a correct principle. Again, it has been often urged in this debate that the advantages to California of having the Central Pacific Railroad under the control of citizens of California are very great; that had it not been for the fact that men interested in California had succeeded in maintaining control of the Central Pacific road, that the trade would have gone east instead of coming here. It was urged this morning that if the Southern Pacific Railroad should be built by eastern capitalists that the inland trade would go east and not come here. Now I understand that there is no power in any railroad or other means of transportation to force the trade from one point to another along the line of communication unless it is by discrimination. Now if we admit that any man or set of men owning or controlling any means of communication have the right (the right carries the power) to so discriminate as to carry trade where they see fit, and prevent it from flowing in its natural channels, we admit what I believe to be a wrong principle, one founded upon a wrong idea of the rights and privileges of corporations. The right to discriminate is a dangerous power, and one that we ought at all times to subject to control. With the consent of the committee I will read my amendment. It proposes to amend section twenty by striking out all after the word "commission," in line seven, down to and including the word "law," in line sixteen, and insert the following:

"SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State, at the regular gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commission shall have the general supervision over all railroad corporations and other transportation companies in this State; they shall investigate all charges of extortion, of discrimination, or of unfair dealing; they shall have power, and it shall be their duty, to examine the books, papers, and documents of such companies; to investigate their affairs, ascertain their receipts and disbursements, their manner of doing business, and their rates of charges for freights and fares. Said Commissioners, and each of them, shall have access to all the books, papers, and documents of all such corporations; and any officer of any such corporation having the care, custody, or control of

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such books, papers, or documents, who shall, at any reasonable time, refuse to any Commissioner access thereto, shall be deemed guilty of a misdemeanor, and fined not more than five thousand dollars or imprisoned in the County Jail not exceeding one year. Said Commissioners, and each of them, shall have power, in the discharge of their duties, to administer oaths, issue subpœnas for and examine witnesses upon oath; and any witness who shall perjure himself before said Commissioners, or either of them, shall be liable to all the pains and penalties affixed by law to the crime of perjury; and any witness who shall fail to attend, or refuse to testify in any material matter, shall be punished for contempt by the District Court, as in other cases of contempt. Said Commissioners, or a majority of them, shall have power to institute suit, in the name of the State, against such corporations, to enforce their demands for information, or to enforce their privilege of examining books and papers, and to compel such companies to comply with the law and with the terms of their charters. Said Commissioners shall perform such other duties as may be prescribed by law; they shall make a full report to the Governor, annually, of all their proceedings, and of all information obtained which may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing sections."

I know that it is urged against an amendment of this kind that it contains what may be called legislation. It is true that it is open to that objection. But there seems to be a general disposition here, and there has been in all the States that have held Constitutional Conventions in the past ten or fifteen years, to legislate to a greater extent than formerly. I see that all of the late Constitutions are more voluminous than the old ones. I suppose the reasons are the same as those that incline members here to legislate a little in this Constitution. If the principle upon which the legislation is based is right, and if the legislation is correct, there certainly can be no difficulty. If it is wrong, of course it ought to be avoided. After the Convention shall have passed upon the amendments pending, if an opportunity offers, I shall offer this amendment. The principal difference between this and the report of the Committee on Corporations is, that this Commission will not have absolute power, but it will have all the power necessary and reasonable.

I do not agree with the remarks of those who express a lack of confidence in the Legislature. It is true that some of our Legislatures have earned unenviable reputations, particularly upon this question. But I have had the pleasure of conversing with quite a number of gentlemen that have served in California Legislatures when this question—the control of corporations—has been brought up. These gentlemen are sound upon this question. They voted for the Freeman bill and they voted for the Archer bill. These gentlemen have stated to me that they were compelled to act without the information necessary to enable them to act intelligently; that they were, comparatively speaking, taking the step in the dark; that they did not know whether those acts would be just or not. If a Commission can be established with the power to acquire the requisite knowledge, that knowledge can be presented to the Legislature in a proper form. If any grievances are being suffered by the people they can be specifically pointed out, and that Commission would be enabled to point out a specific remedy. I have no hesitancy in trusting to the Legislature to remedy any grievances that can be found. I believe the people will never elect any Legislature which will not act whenever a specific remedy may be suggested. I do not believe that we are the only honest men in the State. I am satisfied that our constituents are quite as capable of electing honest men to serve in the Legislature as they were to elect honest men to serve in this Convention. There are any quantity of honest men who are just as capable as those who are representing them in this Convention to-day, and they are as likely as any others to be sent up here. Quite a number of the delegates here have been honored with seats in the Legislature of California in the past, and I believe they were as honest and intelligent then as they are now, and if their constituents see fit to send them here again, they will act just as honestly and intelligently as they will in this Convention.

MR. BLACKMER. I would like to inquire of the gentleman whether his amendment gives the regulating of fares and freights to the Commission or the Legislature?

MR. DUDLEY, of Solano. It is patterned after the Massachusetts law, and it will leave it with the Legislature. I incorporated the same ideas that I find there. My first draft of it did not include this part as to fines and penalties, etc., but, on further consideration, I copied into it a part of the proposition of Judge Campbell, number eighty-two, which provides for fines and penalties for non-compliance with the demands of the Commission, provided such demands are warranted by the Constitution.

MR. GRACE. Mr. Chairman: According to the rule, we should each day take a recess from twelve o'clock until two o'clock.

THE CHAIRMAN. From half-past twelve until two.

MR. GRACE. I move that the committee now rise.

MR. ESTEE. I move that the committee now rise, report progress, and ask leave to sit again, for the reason that there are one or two gentlemen absent who will be here immediately after recess, who for special reasons cannot be here to attend to it now.

The motion prevailed, on a division, by a vote 66 ayes to 31 noes.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again.

MR. ESTEE. I move that the Convention take a recess until two o'clock P. M.

Carried.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President pro tem. Belcher in the chair.

Roll called, and quorum present.

THE RAILROAD COMMISSION.

MR. ESTEE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President pro tem. in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE PRESIDENT pro tem. Section twenty and amendments are before the committee.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman and gentlemen of the committee: It has not hitherto been my practice to weary this body with long speeches. There are some considerations, however, which have not yet been submitted, and it may not be improper for me at this time to submit them. I do submit that a more practical view of this question is susceptible of being taken and considered by this committee. The committee have ranged from the doctrine with reference to the power of the Legislature to control these corporations; from the power of the people to enact a Constitution whereby this same power shall be conferred upon a Commission. Those who have opposed this Commission have taken the ground that these corporations own, in absolute right, the property which is vested in them; that they are absolutely free from all control, and ought to be free from all legislation; that they should be entirely free and absolutely absolved from all obligation to obey the mandates and behests of the Legislature in regard to the control which is sought to be exercised over them. That is the reasoning of the able and ingenious argument which the chief magnate of the corporation has placed upon our desks. They have presented facts and figures, and they have sought to establish the doctrine that these corporations were, and of right ought to be, free from all control by the Legislature, either under the police power, or under the power of administration. It is well understood by this committee, by every member of it, that the powers of this State are divided into legislative, executive, and judicial. That subsidiary to these powers are other sovereign powers which are denominated the police power, the power of eminent domain, the power of taxation, and some other authority and powers which the people of this State, in their sovereign capacity, have the right to exercise.

Judge Cooley, in his great commentary upon constitutional limitations, lays down, as a proposition settled and fixed, that it is not within the power of the Legislature to divest itself of this sovereignty. Now one of the attributes of sovereignty is the exercise of the police power. I understand that the scope of authority has been fully discussed before this committee. The great principle upon which it is exercised was announced by the gentleman from San Francisco, Mr. Barbour, in the lucid and explicit argument which could not be misunderstood; and it is based upon the trusteeship of these corporations, which is the condition, and the only condition in which they are supposed to exercise it. That is the only way in which it can be exercised. The gentleman from Sacramento, Mr. McFarland, has conceded in his argument, that the Legislature has power to regulate freights and fares. In the argument of Mr. Edgerton, a few days ago, he endeavored to prove and to satisfy this Convention that there was no such power in the United States to reach and control the railroad corporations in this State, and other corporations doing a common carrying business.

Having mentioned the questions at issue here, and the proposition being settled, that it is within the province of the Legislature and within the province of this Convention to control these corporations under the police power of the State, it becomes necessary to consider the practical effect of the section and the proposition of a Commission. Upon this proposition I maintain that the discussion has been mere logic—not confined to the direct issue, nor to those matters which should be presented and considered more in detail by this committee. I mean to say the practical effect of the powers proposed to be conferred upon this Commission. Now, what will be the effect? Let us suppose our Commission to be organized; that it is now ready to operate; that it has absolute power to pass upon the various questions that have been declared here as the foundation of its authority, and as giving scope and extent to that authority, what effect will it have? It is declared in this section twentieth, that "the Commissioners shall have the sole power, and it shall be their duty, to correct abuses by railroad corporations or other transportation companies; establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make," etc. Now, the question is, what is the scope and extent of that power, and to what extent may the Legislature provide for its exercise? And if that power extends to adjudication, what amount of time will be spent by the Commissioners in rectifying and correcting abuses? There is the first question presented to this Convention, and it is a practical question.

The next thing is that they are to establish charges, or rates of charges, for the transportation of passengers and freights by railroad and other transportation companies, and publish the same from time to time, with such changes as they may make. The practical question suggested by this provision is, what amount of time would it require for these Commissioners to obtain a sufficient amount of knowledge to enable them to pass upon the question of regulating freights and fares? What amount of experience, what amount of understanding, what extent and scope of knowledge, and what degree of judgment, are requisite to pass upon these questions, and put them in shape so as to have a practical operation?

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The next question is: "Report to the Governor, annually, their proceedings, and such other facts as may be deemed important." Of course that is a subsidiary question, embracing within itself part of the proposition last read. "To hear and determine complaints against railroad and other transportation companies." Here is another question that presents itself for practical consideration. "Hear and determine complaints against railroad and other transportation companies." The general principle is declared, but there appears to be no mode provided to carry it out. A provision to enable them to carry out this principle would seem to be requisite. One of the most important questions that will rise for consideration on this subject, is the amount of time required for the consideration of the various questions that may be presented before these Commissioners for their adjudication and decision. When one of these questions shall be presented before them, and its members come to consider the force and effect of the various circumstances, and the facts produced before them, the next question will be, how many of these same questions are pending in the same localities or elsewhere in the State, and what time will be necessary for these Commissioners to devote to the subject of investigation in the various places where these charges may be made. They shall "affix penalties and enforce them through the medium of the Courts, and perform such other duties as may be prescribed by law." Here is another question which presents itself for practical solution. How are these penalties to be affixed? First, they have been authorized to hear and determine complaints themselves. Then they are to affix these penalties and enforce them through the medium of the Courts. Well, if this Commission is established to determine these same questions, and they are then to pass through the Courts, where is the use of an investigation before the Commissioners? Now, it is true there is a provision in this section which says: "Nothing in this section shall prevent individuals from maintaining actions against any of such companies." I suppose that provision, as a matter of course, will relegate parties to the Courts in those cases where they are not given their rights under the regulations and restrictions of the Commissioners. However that may be, in any case these same parties, as far as the provisions of this instrument are concerned, have a right to appeal to the Courts.

Now, I am simply suggesting a practical view that ought to be taken, and announce that I am in favor of a Commission, and it is because I am in favor of a Commission that I am suggesting the difficulties which may present themselves, in relation to these identical propositions. I desire, if it is possible, that some of these difficulties may be avoided which seem to present themselves, that I may be able to support it, and support it conscientiously and freely, as I desire to do. It seems to me that the powers which ought to be conferred upon this Commission are just such powers, and none other, as reason and common sense would suggest. Now, what are the powers that ought to be conferred upon this Commission? First, the power that the Legislature has now, to exercise control over these corporations. It is manifest upon the face of things that it would be almost impossible for the Legislature to obtain the requisite information from the time of the election until the meeting of that body, or to the close of its session, to enable them to pass intelligently upon the very questions here proposed to be passed upon by this Commission. Is it proposed, therefore, to leave the authority of fixing freights and fares in the Legislature, where it is dead to intelligent action on the part of the Legislature, unless some steps be taken whereby that body may be informed with reference to the matter? If this is proposed, we must make the necessary provisions to furnish the Legislature with data, to enable them to act intelligently.

The next question is in relation to the power of fixing and determining rates of freights and fares. There may be some little ground for this difference of opinion here, as to whether the Legislature ought or ought not to retain that power, whether it ought to be vested in the Legislature or in the Commission exclusively. As far as I am concerned I care very little. I prefer to vest it in the Legislature, and I prefer giving to these Commissioners a kind of judicial authority, which will enable them to act intelligently, that will require sumptuary action, that does not require the tedious process of an investigation in the Courts to determine the facts and circumstances of the case.

Now I am suggesting these practical considerations of this subject to the committee, fully satisfied that they are all of one view in this: that they are all endeavoring to arrange some practical system whereby this whole matter can be adjusted in a way that shall do justice to the people, and do no wrong to the corporations. It is manifest that the Legislature cannot remedy these evils. Now we can arrive at a just basis by giving to these Commissioners such powers as may be necessary in the performance of the duty assigned them. I am constrained to believe that the plan adopted here will have to be somewhat different from the plans adopted in other States. It is in vain to talk about restriction of the railroad companies, unless it be restriction that is practical and effectual. It must be effectual. There must be some restraining authority. It has been said here that this is establishing a despotism; but what greater despotism is presented for our consideration than the despotism of these aggressive corporations. It is said that when a tamer of wild beasts had placed his head in the lion's mouth, and felt the pressure of the teeth upon his head, he called to the manager of the menagerie in deep solicitude, and inquired if the animal was shaking his tail, and when informed that such was the case, replied, "Then I am done." We find ourselves in the same attitude. We have this corporation lion on exhibition, and we have our head in his mouth, and we are now inquiring if he is shaking his tail. If he is, we are done.

Now, this is the simple proposition. Here is a power that has been created and fostered by the government of the State and of the United States: It has amassed capital until—as far as financial resources are concerned—it is more powerful than the State of California or any other State. If there are any restraints thrown around them they must be effectual; and in my opinion we can make it no more permanent or effectual than by putting it in the Constitution. It is simply compelling the railroad corporations to deal justly with the people. The proposition presented to us is upon what basis will you fix freights and fares. Upon what basis? The railroad magnates, when they fix rates, go to their patrons and inquire how much profit they make, and the rates are fixed to cover the amount of profits. That is a very certain basis. It is just as sure as the profits upon the shipments. There is no mistake on the part of the railroad companies. If, upon a carload of freight the profit is eight hundred dollars, then eight hundred dollars is the price of shipment. If it is six hundred dollars, then six hundred dollars is the price of shipment. If it is five hundred dollars, then five hundred dollars is the price of shipment. That is the doctrine upon which the railroad companies fix their rates; that is the doctrine upon which their whole freighting system is carried on. Now we propose to fix them on a different basis, and if we can arrive at some solution of this question, and place it in this section, whereby these powers shall be so placed that a proper restraint can be placed on these corporations, we will deserve the thanks of the people. I believe the result can be obtained by good, patient, practical work, and in no other way.

SPEECH OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: From the number of days this honorable body has been considering the question under discussion—section twenty, as reported by the Committee on Corporations other than Municipal—and the number of gentlemen who have spoken upon the subject, I naturally infer that the matter under consideration is regarded as of the utmost importance. It should be so treated. But I fear my power to interest or enlighten those who may give me their attention at this late period, when the subject has been so ably discussed and probably exhausted. The traveler who has often passed over the same route no longer enjoys the scenery, but merely enduring the trip as a necessity, hastens on to his journey's end. So, I fear this Convention merely tolerates the speaker and looks only with pleasure to an early termination of the debate. Nothing, therefore, but an imperative sense of duty impels me to intrude myself at this time. I find that the governmental control and regulation of railroad companies is one which has agitated and taxed some of the best minds of the age, and that profound thinkers have admitted its intrinsic difficulties and perplexities. It is indeed a subject out of the line of ordinary business, and presents anomalies nowhere else to be met, overturning even, to some extent, or at least creating exceptions, to some of the most treasured theories of political economy. The principles of free trade, the most favored of all doctrines of the publicists, are found to have a limit in railroad affairs, for left to themselves competition ceases and monopoly results. The railroad problem, as it is justly styled, has been discussed over and over many times in England, Belgium, France, and Germany, as well as in different States of the American Union, and each time, when it was supposed the solution had been reached, the phantom glided away as delusive as human hopes.

We have gravely discussed here the questions of competition, State ownership, mileage rates, maxima rates, discrimination and abuses. We have heard the railroad kings denounced and an oppressed people bemoaned, but after all we are merely acting over again scenes and parts that have already been seen and acted in other places. How fully history repeats itself. In the language of the wise man of Israel, "the thing that hath been, it is that which shall be; and that which is done, is that which shall be done; and there is no new thing under the sun." We have had great Granger excitements in the great States that border the Mississippi, and numerous remedies against railroad abuses have been proposed; numerous laws have been passed, altered, and repealed. Yet the true remedy has not been reached. I am not, therefore, disrespectful to the honorable committee here in doubting if they have reached the "consummation so devoutly to be wished," and have given us a perfect solution of the great railroad problem. It is no discredit to them if they have failed in an endeavor so often tried without success, and so difficult in its nature. I doubt if it is to be the glory of this Convention to send back to Iowa, Illinois, Massachusetts, England, France, and Germany, the news that we have mastered the subject that has so much distressed them. We should approach the subject as one to be determined on principles of reason and common sense, and if wise we will gladly avail ourselves of the experience of other States and nations on this subject. The discussion here necessarily involves:

First—Abuses and wrongs existing or likely to happen.

Second—The power of the State to regulate and control.

Third—The expediency of the exercise of that power; and,

Fourth—The special remedy of three Railroad Commissioners, with the powers proposed by the committee.

First—As to the abuses practiced by railroad companies little need be said by me. Already their sins have been detailed with great relish on this floor, and anathemas loud and deep have, in all bitterness, been pronounced against them. If we accept as true all that has been said here against them, they have indeed "done those things they ought not to have done, and left undone those things they should have done." But I am not their apologist nor panegyrist on this floor. The propositions which I seek to maintain demand at my hands neither praise nor blame of these corporations. We all agree upon the fact that corporations are necessary to the accomplishment of great ends at this period of the world. The vast enterprises of the age are beyond the reach of private fortunes on this continent, and can only be accomplished by aggregated wealth and organized corporations. They have certain advantages over private persons, and therefore have become numerous and powerful. Naturally, great railroad companies become great monopolies, and have a large capacity for good and evil. Where great power exists there is a susceptibility of abuse. Men are controlled by self-interest, and where self-interest and power combine, abuse is not only possible, but probable. Believing therefore, as I do, that the railroad

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companies of the country have accomplished much for the people, and are a standing evidence of our progress and greatness, I also believe that their power is so great, their importance so vast, and abuses so probable, that the State must give them especial attention and exercise over them a wholesome control.

Second—As to the power of the State to regulate and control the corporations of its own creation, there is no longer a doubt under the decisions of the Courts. It matters not whether this is derived from the original power reserved by the State under the Constitution and law, to alter, amend, and repeal all laws on the subject of corporations, or from the police power of the State—it is sufficient that the power exists, and that the question has now passed beyond the realm of discussion. The only limit to the power seems to be that it is confined to the boundaries of the State; that it must be regulation and not confiscation, and cannot divest vested rights. When, therefore, I have heard gentlemen on this floor long and earnestly contend for the existence in the State of this conceded power, I felt like using to them the language of Oliver Wendell Holmes, in his lines to an insect:

"Thou sayest an undisputed thing
In such a solemn way."

Third—As to the expediency of the exercise of the power of regulation and control within reasonable limits, it seems to me there can be little doubt. It has been exercised in all the nations of Europe as necessary and proper. It has been exercised in many of the States of this Union, and in some instances at least with success and benefit to the people.

Whether rightfully or wrongfully, there is in this State, as well as in the other States of this Union, a general feeling of dissatisfaction with railroad management. There is a general demand for regulation and control. In the language of Charles Francis Adams, Jr., "Jealousy of great corporations is a cardinal principle of American political faith." If no abuses exist, regulation will do no harm; if they do exist they will be corrected. But a great State should not exercise its governmental powers wantonly. The State is never vindictive. It only acts for the general good of all. It is just, fair, and impartial. Its action is not for injury; its movements are not for harm. A human father will not maim or torture his son because he is the author of his being; nor will the State wantonly injure or destroy what it has created. Its action is the great and majestic movement of a sovereign, looking only to the common good and general welfare. It must look to the vast importance of railroads in the progress of the State and in the development of its great resources. It must remember that this State, so enormous in its territorial limits, has a less number of miles of railroad than most of the States in the Union, and that its own companies should be dealt with justly and fairly. It should not stifle enterprise or place its ban on future works. It cannot play the role of Rip Van Winkle and go to sleep in its own mountains, to wake up twenty years hence and find itself poor, ignorant, uncouth, and a mere object of pity or ridicule. It should therefore exercise its vast powers wisely and discreetly, so as to protect the people, and, at the same time, deal justly by the companies, and in such a spirit as will not deter enterprise or impede the State in its onward career of greatness.

Fourth—But what particular remedy should be adopted? Upon great general principles those who oppose the recommendation of the committee doubtless agree with those who sustain it. The disagreement arises when we attempt a practical application and descend to particulars. The Chairman of the committee says, to those who condemn the remedy proposed by the committee, that we do not show a better one. Now, the affirmative of the issue is on the committee to show that this system is good and should be adopted. It is enough for us to show that it should not be adopted. When in India the car of Juggernaut passes along, carrying its graven images, and its priests singing obscene songs, and the devotees throw themselves under the wheels to meet a certain death, it is enough to show that this is not the religion of the true God, nor the teachings of the Divine Being. Any religion is better than that. So, here we may show that the system proposed is unwise, unjust, and destructive of the best interests of the country, though we may not be able to present the true remedy. A wrong remedy may only exaggerate the injury, as an improper prescription may carry the sick man to his grave. We have in this State a series of railroads. These are all to be placed under the control of the Railroad Commissioners, and be managed by them. They are to be elected by the people in districts. They are to have "the sole power, and it is their duty to correct abuses by railroad corporations, or other transportation companies; establish rates of charges for transportation of passengers and freight by railroad or other transportation companies; and publish the same from time to time, with such changes as they may make; report to the Governor annually their proceedings, and such other facts as may be deemed important; hear and determine complaints against railroad or other transportation companies; affix penalties and enforce them through the medium of the Courts, and perform such other duties as may be prescribed by law." It is also mandatory on the Legislature "to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duty enjoined on them in the foregoing sections."

Now, this provision in a Constitution is without precedent. Notwithstanding the great attention which transportation has excited within the last five years in the other States of this Union, and the great amount of legislation intended to prevent railroad abuses and to regulate railroad affairs, and notwithstanding the fact that Constitutions have in the meantime been formed, not one State of the Union contains such provisions as are proposed here. The honorable Chairman of the committee, whose report is before us, frankly admits that this is an experiment. Now, a Constitution is a bad place in which to try experiments, for should the experiment fail, the process of change is very slow, and of extreme difficulty; whilst an experiment tried through the ordinary channels of legislation is easily managed. If partially successful, and more legislation is needed, it is easily obtained; if the experiment fails, the law is easily repealed, and that which experience proves to be better can be substituted. This, therefore, should be enough, if nothing else could be said, to determine us to omit this from the Constitution and leave it to the Legislature. Why not leave it to the Legislature? Other States have Commissions created by the Legislature, and they have worked well. The much-lauded Commission of Massachusetts did not originate in, and is not mentioned in, the Constitution of that State. It originated in the Legislature, and all its merit is due to the Legislature. It has been a successful experiment as there managed. Had it been of constitutional creation, it would have been a failure, because it has from time to time been altered by the Legislature, and its present perfection is the result of repeated statutes. It has been a growth, and as experience demonstrated the usefulness of a new and additional provision, it has been adopted. The superiority of a legislative discretion over an inflexible constitutional rule, is fully shown by Mr. Charles Francis Adams, Jr., in his work on the "Railroad Problem," so much eulogized by the Chairman of the Committee on Corporations. He says (page 140):

"Undesignedly the Massachusetts Legislature had rested their law on the one great social feature which distinguishes modern civilization from any other of which we have a record—the eventual supremacy of an enlightened public opinion. The line of policy thus happily initiated was carefully pursued. New and wider powers were, year by year, conferred upon the Board, but always in the same direction—power to investigate and report. The Commissioners meanwhile were not slow to realize the advantages of their position, and have repeatedly put themselves on record as desiring no more arbitrary powers—as feeling themselves indeed stronger without them. * * * *

"Without remedial or corrective powers themselves, behind them stood the Legislature and the judiciary, ready to be brought into play should any corporation evince an unreasonable spirit of persistence when once clearly shown to be wrong. The policy thus described would seem to have worked sufficiently well in Massachusetts. The Commission has certainly succeeded in sustaining itself, for while at every session the Legislature has conferred upon it new powers, always in the same direction, the railroad corporations have never appeared in opposition to it as a body."—[Page 143.

The truth of this is fully shown by the changes made in the law of Iowa. That State adopted a very stern and severe system, called the "Potter law," under great excitement against railroads. Recently that law has been repealed, and the system of Massachusetts practically adopted.

Mr. Adams, in his book already spoken of, says (page 145):

"A great advance towards a better condition of affairs in this respect has, however, been secured during the last year, through the action of the Iowa Legislature in repealing the so-called "Potter law," and substituting for it a Commission, practically organized on the Massachusetts plan. It will only remain for those who compose the Commission to fairly try the effect of intelligent public discussion as a substitute for ignorant force. That the experiment should now be tried by them and made to succeed is of the utmost importance; if it does succeed, the whole movement in the west will be advanced by one entire stage."

In Wisconsin the same law was enacted and repealed. In various other States during the Granger excitements (as they were called) legislation of a crude and experimental character was enacted on this subject; but repeals, alterations, and amendments have since been the order of the day. Had the legislation, at first deemed proper, been put in the form of constitutional law, the injuries to the community would have been incalculable. "The experiment," therefore, had better not be tried in the Constitution. Whatever is done should be done through the Legislature. The power of regulation exists, independently of constitutional announcement. Whilst there may be no harm in its declaration in the Constitution, yet we cannot add to the power by such declaration. Why, then, should not the exercise of the power be left to the discretion of the Legislature? What is the objection? Cannot the Legislature be trusted with this power? Is it likely to be abused? This Convention cannot act upon any such theory. The powers of the Government of this State have always been divided into three great and separate departments—the legislative, executive, and judicial. The legislative power has always been vested in the Senate and Assembly, called the Legislature. I have yet to learn that any one objects to this system. I have yet to learn that there is any disposition to organize this State upon any other basis. We are a government of the people, but the people act through their representatives in these departments of government. Without these, our republican form of government cannot exist. They are a necessity to our form of government. Shall not the legislative department be trusted with legislative powers? The negative implies much—very much. It implies a failure of our system of government—a failure of self-government. On the contrary, I insist that our form of government is right in theory and right in practice. If abuses exist—and that they have existed no one will deny—let the abuses be prevented, not the use destroyed. Liberty itself has been abused, but let us none the less preserve it with zealous care. Do we not, and must we not, trust the Legislature with vast powers? Why, then, may it not be trusted in this? If a Legislature fresh from the people is not to be trusted, then let us have no Legislature—let us vest the legislative power in some new functionaries of government. Let some one be bold enough to devise some organism through which legislation may be effected without the intervention of a Legislature.

I am not prepared to say that our Government is a failure. I am not prepared to say that a representative republican government is not the best form of government on earth. I am for adhering to it, with its three great branches, and am for intrusting them with the necessary and usual powers with which such bodies are invested. That the power with which the Legislature is vested may be abused, is, I repeat, no sound argument against it, as power vested anywhere may be abused. Use

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and abuse are as wide apart as virtue and vice; for that which, when properly used, is virtue, becomes vice by abuse. Religion may turn to bigotry, and liberty to licentiousness—but shall we not still venerate religion and cling to liberty? The distinguished gentleman from Los Angeles, General Howard, gives us a very low standard for the Legislature. His statements are, in substance, that men of ability cannot for such low compensation go to the Legislature, and that it falls into the hands of very bad men. If this be so, here is room for a great reform. Has, indeed, our past system led to this, that the immediate representatives of the people are men of low intellect and low morals? Why has not the Legislative Committee proposed some wholesome reform? Why does not some reformer on this floor, or the able gentleman from Los Angeles himself, introduce some section that would obviate this? The subject of railroads and railroad corporations, great as it is, sinks into insignificance compared with this wretched condition of this great branch of our government, if the views of the gentleman from Los Angeles be true. Gentlemen are not consistent here. They leave the great Legislative Department almost where it has always been, and yet pronounce it utterly recreant to its great duties. But so far as corporations—and railroad corporations in particular—are concerned, we know that the last two Legislatures have passed very stringent laws on the subject. And we find in this Convention, which, like a Legislature, is fresh from the people, the strongest disposition to hold all corporations subject to the direct control and regulation of the Legislature, and a disposition to correct and reform all abuses. In this body there are numerous gentlemen who have recently been members of the Legislature, and do not fall within Mr. Howard's denunciation—Estee, Larkin, Tinnin, Edgerton, Shafter, Murphy, Campbell, Hilborn, Laine, Graves, Dudley, Hale, and others.

Another objection to section twenty as reported by the committee is, that it changes our form of government. We have heretofore had a government in which there were three great departments—executive, legislative, and judicial—and each has been forbid to exercise any of the functions of the others. The system now proposed introduces a fourth department of the government called the "Railroad Commission," in which all the powers of government are combined. They are to a great degree independent of the other three departments of government, and above and beyond them, and exercise combined and mingled functions, at once legislative, judicial, and executive. To the extent that they are vested with these, the other departments of government are divested. The Commissioners are to have the "*sole power* to correct abuses by railroad corporations or other transportation companies." No matter how great the abuses the Commissioners may commit, the Legislature is powerless to correct them. The Governor is powerless; and the District Attorney and Grand Jury have nothing to say—their "occupation is gone." The Commissioners have the *sole power* to "establish rates of charges for the transportation of passengers and freight." No matter what errors they commit, no matter what mistakes or abuses, the people and the railroad may alike groan, for there is no power in the Legislature to act, and the sole arbitrary power of the Commission knows no superior and cannot be revised. They have the "sole power to hear and determine complaints against railroad and other transportation companies." Here is a wide judicial power granted. The power to hear and determine is jurisdiction, and so jurisdiction is described. This is the exact language used in many cases to give jurisdiction to Courts, as has been shown by gentlemen who have preceded me. If, therefore, any one has a complaint against any railroad or transportation company, the Commissioners are vested with the sole power to hear and determine it—that is, not only to decide, but render judgment. The right of trial by jury is cut off and there is no right of appeal given. From all their great powers and their exercise as before stated there is no appeal, no review, no power of repeal.

Here, then, will stand in our Government a constitutional triumvirate as great in many respects as that of Rome in the olden time. In their department they are as absolute as Cæsar, Pompey, and Crœsus were in their day. How truly "history repeats itself," when we return to the government of the triumvirs. They may raise and lower the rates of freight and fare to suit their views, and thus they can play with the value of the stock in the market, and determine the value of the bonds and mortgages on the road. It will be in their power to increase the running expenses whilst lowering the freight and fares, and thus disable the corporations from paying their interest and expenses or making the payment imposed on them by law. They will be sole judges of what are abuses; of what repairs on the roads are necessary, and of what the rolling stock shall consist. They will determine complaints on their own notions of right and wrong, and however erroneous or malicious their acts there will be no remedy or appeal. The Act provides for no rules of evidence, no modes of trial, no tests of accuracy. They are to be all powerful and are to be responsible to no one. And who are to be the men clothed with these transcendent powers? What are to be their qualifications? Only that they are electors and not interested in or connected with the companies. Railroading is a special business: it requires great training and experience, yet any unskilled man is eligible. If we had to elect an architect of State buildings, we would prescribe a special qualification for the business; but here is a business requiring skill and training as much as that business. Any men who during a popular excitement or in party strife can secure a majority in the several prescribed districts, may take this very intricate and peculiar business out of the hands of the Directors and managers of the companies and destroy the property in a short time. I cannot think that this scheme can meet the support of the majority of this Convention. The power is too great and is too absolute. It is not sufficiently guarded. These men would be too far above all law and all control.

It is too capable of abuse. The Commission may demand blackmail as the alternative to ruin. They may be corrupted, and the temptation will be great. The power is alike perilous to the people and the railroads. The gentleman from Los Angeles, General Howard, also says that the three Commissioners could be trusted; that they would have no motive to do wrong, and would be simply controlled by a desire to do their duty honestly. The same might have been said of the triumvirs of Rome; or of Napoleon, when First Consul of France; or of Danton, Robespierre, or Marat. Why did not they when clothed with power simply do their duty? The same able delegate read from the report of the committee of the United States Senate on taxation, showing the immense power of three or four railroad managers, and how they exercised it in raising and lowering values in a manner that Congress would never dream of exercising. Yet the same gentlemen advocated putting that same power, so far as this State is concerned, in the hands of the three Commissioners we are to create. Nay, more; for those spoken of in the Senate report were subject respectively to the control and regulation of the States where the corporations were created, but here the proposition is to vest this vast power under the Constitution in the Commissioners, and thus place them entirely beyond the power of the legislative, judicial, or executive branches of the government. This would be a grand mistake—an unpardonable sin. Lodge the power and control where it should be—on that great branch of the government which must be trusted, and that is the legislative department. The great railroad problem has not yet been solved. The best business minds of the age are at work upon it; Commissioners are carefully studying it; and statesmen are giving it their most profound attention. Some progress has been made, and the experiments continue. Great laws of political economy are working out their inevitable results. The subject will be mastered, and the end reached. What is the best to be done and the true mode of regulation will be ascertained. Let us be in a position to avail ourselves of the experience of others, and through our Legislature, from time to time, apply the remedies and control which shall be shown to be best. This will be statesmanlike; this will be true wisdom.

This State has an immense territory. Railroads are a necessity to its progress and development, and yet the small States of the Valley of the Mississippi far surpass us in extent of railroads. By a rational system of management—by discreet regulation through the Legislature—we may at once protect the people from abuses and wrongs, and deal justly with railroad corporations. We should be friendly with legitimate railroad enterprises. We should not fight railroads, but only railroad abuses. Thus, by rational management, fair dealing, and enlightened views, such judicious regulation and control may be exercised as will stimulate railroad building, elevate their credit, give them stability and strength, and greatly add to their success. Public confidence will be restored, and railroading, the greatest factor in the progress of the future, will become as popular as it is now unpopular. Then may the State go on in her career of greatness, looking to an earlier development of her great mining interests, a speedier realization of her agricultural resources, an extension of her commerce, and establishment of new and increasing manufactures. But we must, in aid of all this, perform our duty. We are to make a new and revised organic law—not a code. We are to establish a great system, declare great principles, and provide for the movements and action of a great government in its accustomed channels. We must provide for a legislative department of the government, but must not ourselves legislate. We should pass no codes; we should enact no statutes. We provide for an executive and judicial department, but we neither execute the laws nor judge of their infraction. We take the present as it is and provide for the future only.

Let us not forget our true position here, and that we are the architects and builders of the Constitution of a great State. Let it not be like the rude hut of the savage, the wretched adobe of the Mexican; but rather like our own capitol at Washington, with a foundation broad and deep, massive columns crowned with superb capitals, a mighty dome lifting itself to loftiness, and with faultless proportions throughout. Then it may long defy the ravages of time, and when compelled to fall, as all things of human origin must fall, even its broken fragments will tell what it was in the fullness of its original splendor.

SPEECH OF MR. WEST.

MR. WEST. Mr. Chairman: I have not occupied many minutes of the time of this Convention, and I do not, at this stage of the discussion of this important question, propose to occupy the time of the committee for any great length of time. I consider it my duty and my privilege to express the views which I entertain upon the questions which have been so ably discussed by the different gentlemen who have spoken upon this twentieth section. To us has been committed a great task—that of laying the foundation for a great superstructure. To us the people of this great State are looking that this foundation shall be laid in the eternal principles of right and justice, that it shall be laid in view of the contingencies and circumstances that surround the State and commonwealth. If we look back over the history of the State, and of the commonwealth, we shall find that we occupy a position very different in regard to corporations from perhaps any other State. Since eighteen hundred and sixty-sixty-one, corporations have grown wonderfully in the United States. They have assumed gigantic proportions. They have exercised great and wonderful powers. Some of those powers have been exercised for good in the development of the resources of the State and country, and some of them have been exercised for their own selfish ends, and their own aggrandizement, without due regard for the good of the people. Now, it is our duty to formulate a rule by which these corporations shall be governed; not to act with any vindictiveness; not to act in any spirit of persecution. Indeed I do not believe that a single member of this Convention, not a single member of the committee, feel that they would in the least cripple the railroads of the State. They recognize the fact that railroads are a part of our civilization, a material part of our growth, and valuable aids to the development of the material resources of this State. We would not do without them. We could not do without them, and it is a false assump-

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tion on the part of any gentleman to assume that any respectable number of the members here are endeavoring to run these enterprises out of existence, or so cripple them that their growth and construction would not be continued or encouraged by the people of this State.

Mr. Chairman, it is not necessary for me to discuss the power or the right of the State to control and regulate corporations. That is a question beyond the necessity of discussion. As the gentleman from San Francisco has said, that question has been settled. The right and the power of the State to exercise control over corporations, is undenied. The question for our immediate consideration is, what is the best policy, what is the best and most proper course in which to exercise this power? The experience of the older States has been cited, and it is right that we should learn from the light of experience. We should pay due regard to that experience. Let us take a brief view of the experience and result in those States where this subject has been adjudicated—where the best minds have considered this momentous question. Regulation by the Legislature has been tried, and has proved a failure. It has been tried in Iowa, and I have heard from the gentleman from Sacramento that that was a very bitter experience. But let us inquire why this has been so? What caused the law to be abolished in Iowa, and in other States of the Northwest? Allow me to say, right here, that I am not one of those who believe that the Legislature is necessarily corrupt, or that the people will knowingly send bad men to represent them in the Legislature. But I do argue—and I argue upon the basis, in the light of experience—that representatives coming from different localities in the State have their different local interests in charge, put those interests foremost in their endeavors to serve their local constituency, and combinations are nearly always formed in order to carry out these local enterprises. Now, if we leave this matter in the hands of the Legislature, the railroad corporations will necessarily combine with these local interests, and this has been done over and over again to carry their schemes through, or to hamper and hinder legislation on this subject.

Now, in some of the Western States, the Legislatures attempted to regulate and control these railroad companies. They passed the Potter law, so called. In that law they attempted to go into the minutiæ of regulating fares and freights; the classification of freights into classes—classifying all kinds of freight and goods to be transported over the lines. It would astonish any person to examine that array of figures. This law, for instance, would be put in force three or four months after the adjournment of the Legislature. The railroad companies would take up the law, examine its equalities and inequalities, and if there were any faults to be found, they were magnified, and the defective portions were put into full operation and execution, while the better portions were allowed to go by default. They entered into politics with the law in their hands, and the actual extortion, which was the result of their interpretation, worked great individual hardships, and created dissatisfaction among the people, and so, at the next session, the law would be amended. Thus the law was kept moving, and constantly changing all the time from one Legislature to another, from one system to another. The enactment of one Legislature would be amended by its successor, until the people finally became disgusted. Now, that has been the history of railroad legislation in every State adopting the plan of legislative control.

Then, again, one or two of the Western States tried the Commissioner system. Each succeeding Legislature, after the creation of a Commission, would tamper with the Act, changing the duties of the Commissioners, given them new and different instructions, keeping them constantly in the Courts, depriving the people of that settled policy that can alone secure prosperity and give permanent relief. That is the history. That has been the history, and that will be the history in California for the next twenty years if you remand this back to the Legislature. The prosperity and growth of the State can only be secured by having a settled and fixed policy in dealing with this great subject, and that you will never have if you leave it to the Legislature. We know that in all the affairs of life, in order to be successful, we must persevere in one course. Many a man has grown rich gathering rags, because they stuck to it. But this constitutional changing will prevent prosperity in any enterprise, I care not what it may be.

Now, we have a diversity of interests in this State. I wish to speak from an agricultural standpoint for a moment. How does this unsettled policy, between the people and the corporations, affect the agricultural interests of the State? The farmer looks over the ground. He gets his seed furnished on time; gets his agricultural implements on credit; puts in a crop, and estimates the profits on that crop from the probable market prices in San Francisco, less the cost of transportation. The harvest comes round; the crop is harvested; the grain is thrashed, and ready for market. The railroad corporation, under this unsettled system which allows them to raise or lower their rates at will, ascertains what the grain will be worth in San Francisco; ascertains just what the agriculturist can raise the crop for and make a bare living, just sufficient so that he will not be driven from the soil, just sufficient so as not to deprive him of hope for the future, and the difference between that figure and the market price in San Francisco will be the rate of freight fixed by the corporation, and if there is a raise in the market the farmer gets no benefit from it. If he succeeds in raising a good crop, and prices are good, he will reap no benefit. If failure overtakes him, he is bankrupted, as farmers have been too often in this State. Now, if we want to continue the prosperity of the commercial interests, of the manufacturing interests, of the laboring interests of the State, I care not what industry it may be, we must have a settled policy. We want a fixed policy. It would be better for the railroad companies of this State if they would acquiesce in the settled policy of the State, as they have in some other States, and in England, where there is little or no conflict. It has been ably illustrated here, by a speech which we have listened to. Now, I repeat, that it is not in the interest of any party, not in the interest of any faction, not in the interest of either agriculture or the common laborer, the mechanic, the merchant, the professional man, or any other man, to continue this irrepressible conflict between capital and labor in any of its branches. What we need more than anything else is a settled and safe policy; that is alike just to the employer and those employed; to the producer and the consumer; the buyer and the seller; and for one, I believe the only way we can secure this is by the adoption in our Constitution of a provision creating a Board of Commissioners to govern and control the railroads of the State. We are told that this is an arbitrary power, and almost unlimited power. I think not. These Commissioners are amenable to the people themselves just as any other officers elected in like manner. They are responsible for their acts. The people select them with direct reference to this special duty. They are not selected at random, as some of the gentlemen would have us believe, but we select three of the best qualified men we can find for this particular duty. Three men whose time will be devoted exclusively to the performance of the duty; whose education and experience fit them for the discharge of this important trust, and when we have selected such men, they can accomplish great good. They will be in session all the time, and delays will be avoided when wrong needs to be redressed.

Not so with the Legislature. Whatever wrong is enacted will remain until the next Legislature meets, and until it has had time to consider and digest the enactments, and until the new machinery can be put into operation. Now, I hope, and believe, that this Convention is convinced of the importance and necessity of creating this Commission. It is said here that the people do not demand this thing. Why, sir, let me state to the gentlemen that the most important part of the platform adopted by the County Convention which nominated me to the position which I now hold, was in regard to this very matter of regulating and controlling corporations. It is a living, burning issue with the people, and I know that my county does not stand alone. The people are demanding that in this Constitution the corporations shall be bridled. It is demanded in the interest of the poor and the weak. The strong need no protection; the rich need no protection; they are able to protect themselves. It is around the people that the protecting arm of the law must be thrown. There is no danger that corporations will be crushed out by the aggressions of the people. There is no fear that capital will be driven from the country, for both are amply protected. Let us enact laws that will give the people equal protection. That is all they ask.

SPEECH OF MR. BROWN.

MR. BROWN. Mr. Chairman: This question has been under discussion for a great length of time, and great ability has been brought to bear upon it. There is no question but this great amount of talent, and precedent, and law, that have been presented before this wonderful body, should have an influence upon its judgment; and it is a matter of some consequence that light should be obtained upon a question of so much importance as this. Great mountains of legal lore have been precipitated upon us from far and near. History has been ransacked, law has been read and read again, authorities quoted, and I have become convinced, long ago, that so far as the evidence was concerned, and the instructions, that this body was fully prepared to vote some days ago. Still, I am convinced that there cannot be too much law, or too much authority, or too much investigation.

Now, we have heard, in this discussion, of Europe, and how they thought they had succeeded in solving this great question. In this country efforts have been made by the Legislatures of the land, in the different States, and they have evidently been only partially successful. But it is interesting to us in this way: that the many missteps that have been taken, and the many mistakes that have been made, have been rectified, and we can profit by their experience, and not make the same mistakes. It is a matter of the utmost importance here that the nicest judgment and discrimination should be exercised, and that nothing whatever should be done rashly by this body, upon whom the eyes of the people of this State are directed, and in whose acts the interests of the State are concentrated for a time. Now, I am convinced of one thing—that men will differ on the best propositions that can be presented, and that the ablest minds will honestly differ—but it is a matter of a difference in judgment and convictions. I have been thoroughly convinced that this is a question in which the people of this State feel a vital interest. It affects their interests to a vital extent, and I have to some extent doubted the propriety of giving these Commissioners the sole control. It appears to me that this is a proposition to do that thing. Now, when we come to consider this matter in its full extent, we do not know that we will be able to get the best men in the land to fill these positions; and if we did, we do not know what may befall them after they are elected. Human nature is human nature the world over, and if they should prove false to their trust, they would be entirely beyond the power of the people. Farther, Mr. Chairman, in this section twenty it seems that they have not only power to fix freights and fares, but their decrees are to be enforced through the Courts. If they are to fix them, it appears a little strange that they should enforce them through the medium of the Courts. The Court is compelled to carry out their acts, carry out their behests, and determine in accordance with what they have determined. If they are to fix fares and freights, why should we trouble the Courts to do this, if they have no discretion in the matter? In this respect, I think there is an amendment needed. I am under the impression that this unlimited power is, when we come to look at it, a little too much like the iron bed of Procrustes. I fear it. Under these circumstances, I am opposed to the Commissioners; but I feel that there should be certain amendments, and the time is passing away, and this is very soon to be acted upon; and it is a matter of great consequence that we should proceed with the business and accomplish what we were sent here for. Now, I am satisfied that the people of this State want something more in the Constitution than we have had heretofore in regard to the regulation of freights and fares. There are some

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amendments already in hand, and I feel somewhat disposed to vote for some of them. While I have no objections to members here speaking and giving their views; but I think we ought to come to a vote before very long.

SPEECH OF MR. GORMAN.

MR. GORMAN. Mr. Chairman: I would like to say a few words as to the way I shall cast my vote, and as to the reasons upon which I base my action. I am not prepared to vote for this Commissioner clause as it stands at present; at least, it does not suit me as well as some of the amendments which have been offered here. It would seem by the remarks made by gentlemen on this floor, that the feeling of hostility towards railroad corporations is merely a pretense of demagogues, to make political capital for themselves, and that in truth the people make no complaints; that they are perfectly satisfied and contented with the manner in which the railroads are conducted. Now, sir, if that is so, why do the people at every election of late years elect what are termed anti-monopoly men? Why do candidates of all political parties indignantly deny any affiliation with railroad rings? If railroads are honest and just in their dealings and their charges, what need can there be for rings? If they are honest and just, why is it that such a pressure is brought to bear upon the Legislature at every session? Sir, it is not in California alone that these complaints are heard. They are coming up from almost every portion of the country, and this same feeling of hostility, engendered by the same causes, is manifested everywhere, and becomes more bitter as the years go by. Is this spirit of hostility towards railroad corporations groundless? Is there no cause for it? We shall see. Let us go back in the history of railroads and see if there is not a cause for it.

Railroad corporations in this country were at first confined to short lines, reaching from one large city to another. They were built by men of small or moderate means, and were scarcely over one hundred miles in length. But as years went by these short roads were consolidated, until some of them finally reached half across the continent. Several of these great trunk lines were thus formed, which, with their branches, obtained the control of the carrying trade of a great tract of country, and of immense value. As the power and wealth of the railroad increased, their desire for more property also increased; and by sharp practice in manipulating stocks on Wall street, a few men, and in some cases one man, soon came to control each of these roads. When they had gained control of vast tracts of country, they commenced a system of discrimination and high charges for freights and fares which compelled the people to resort to the law for protection; but they were not successful. The railroads, by means of their vast wealth and power, were able to defeat the people and carry their point. To do this they did not hesitate to resort to bribery and other unlawful means. This they did with a high hand, and, as has been mentioned on this floor, they carried it to such an extent in New Jersey that that State was dubbed the "Camden and Amboy State," for years. Vanderbilt and Jay Gould always bring a tremendous pressure to bear upon the New York Legislature. As for Pennsylvania, for years it has been said that Tom Scott carries the Legislature in his breeches pocket, as has also been said of California in regard to the Central Pacific Railroad Company.

We find that they have expended vast sums of money on the India rubber account, bribing members of legislative bodies, and even invading the halls of the National Capitol, bringing disgrace on the whole nation. In Illinois, Judges of the Courts accepted passes for themselves and their families to the Pacific Coast and return, and we find that passes are given from the highest officer of the State down to the smallest county and town officers.

One gentleman on this floor says that congressional bodies take a broad and statesmanlike view of these railroad questions. Yes. Ames, Colfax, Dawes, and others did, when railroad bonds are used to mold their views. As I have mentioned, these corporations have resorted to fraud in discriminating on freights and fares, and other curious ways, as, for instance, the same amount is charged per car from Chicago to New Orleans, as from Chicago to Keokuk, Iowa. But it is not necessary for me to pursue this particular branch of the subject further, after the able manner in which the gentleman from Los Angeles, General Howard, has handled it.

We read of meetings of railroad Directors and officers, representing half the railroad lines of the country. Are these meetings for the purpose of lowering freights, or are they not rather for the purpose of raising them? Upon the consolidation of the Chicago and Northwestern, they raised the rates thirty per cent. Are not many of the railroads of this country owned by foreign capitalists, and what interest can they have in the industries and welfare of this country. At home they are satisfied with an interest of four per cent. or less on their capital, but here they want fifteen per cent. The Oregon Railroad traverses the richest valleys in the State; they cannot be excelled in the whole country. The Northern Pacific Railroad is owned almost exclusively by foreign capitalists, as is the case with several of the eastern roads. In the State of Oregon, owing to their lakes, canals, and rivers, the railroads have been compelled to reduce the rates, and the people can ship their produce to market cheaper than we can. For some time these railroad corporations refused to be governed, in a great many cases, by the laws passed by the Legislatures. Although restricted in some cases, in a certain sense they would manage to evade the law. They would increase their capital stock and create fictitious values. The Baltimore and Ohio Railroad Company, in eight years, increased their capital fifty-five millions of dollars; the Pennsylvania Railroad Company, in nine years, increased their capital one hundred and twenty-six million dollars; the Erie has watered its stock until it has reached two hundred million dollars. In eighteen hundred and sixty-eight Commodore Vanderbilt increased New York Central eighty-four per cent., yet in this year the sworn statement of the Directors says the road was unable to pay six per cent. on the existing capital. The New York Central and Harlem increased nine million dollars in six years. Fort Wayne leased a branch road, and on that portion increased their stock eight million dollars. In eighteen hundred and sixty-seven a report made by the leading commercial paper says: Twenty-eight roads increased their capital stock during twenty-two months, one hundred and thirteen million dollars.

The gentleman from Sacramento says: "Talk about the people wanting this thing or that thing, I say they want no such thing." I must beg leave to differ with him. The people all over the country are demanding reform, not only in regard to railroad corporations, but in every branch of government, and they speak in no uncertain tones. They have been defeated on every hand, and the burden is becoming unbearable. This is shown by the elections of late years, and the proof may be seen in this very body.

Now let us look at home. One corporation, composed of five or six persons, own and control three fourths of all the railroads in this State. All the main lines, and a great many of the branches, as has already been shown here, are controlled by them. Owing to the peculiar formation of the country, no such thing as railroad competition is possible, as in other States. Let us see how this corporation was received by the people throughout this country when the road was first built. Is it not a well known fact, that the people, wherever the railroad passed, received them with open arms, and they were given a hearty welcome everywhere? Did they not give them all kinds of support? Cities, counties, and towns gave them large amounts of money, or took their stock, gave them the right of way, and assisted the enterprise in every manner possible. Have not the people, in truth and in fact, built these roads and equipped them? What, then, has changed the sentiment of the people? Why have they demanded that the railroad shall be controlled? The reason is, that when they have got all that it is possible for the people to give, they want still more. They have become tyrannical and refuse to obey any law but their own. They have carried things with such a high hand that they have come to imagine themselves above the Government, and if matters go on in the future as in the past, they will become dangerous to republican government. They have been falling from being benefactors of the people, as a late writer has well said, like the New York Central, have become a fraud; or, like the Erie, a scandal; or, like the Pennsylvania, a political dynasty. Combining together, they may rule State and nation.

We hear a great deal said about the amount lost daily by the Southern Pacific Railroad. Well, when the company started to build that road they knew exactly how much trade they might expect, and have probably not been disappointed. One would imagine by listening to gentlemen on this floor, that the railroad company was a sort of benevolent or philanthropic society, going about building roads for the convenience of the people.

Gentlemen, when the Central Pacific built this Southern Pacific it was for the purpose of binding still closer in their toils. It was to close the only door left open for relief. Let the people not thank them for this road, but look at it rather as a curse, for by building the Southern Pacific they cut off all hopes of successful competition by any other transatlantic road, holding a still firmer grasp upon the whole State.

We have seen how railroads have from small beginnings and honest dealings at last become despotic and corrupting agencies, backed by millions of money. The morality of the whole country has been greatly lowered wherever their power is used. No officer, whether high or low, from the President of the United States and the Judges on the bench, down to the lowest official in a country village, is exempt from their contaminating influences. This is, I must say, the most lamentable part of the whole outlook on corporations. As a people we have greatly changed for the worse; where once we trusted every officer elected to fill any position, we now suspect every one in office; we look on our legislators with distrust, and no wonder, when we see men who, before election, not having money enough to pay a hotel bill, their friends going round begging people to vote for them, and saying that their children would jump for joy, and after the session is over taking a trip to Europe or to the East, and buying fine houses. When men come here pledged to certain reforms, and after coming to the seat of government scarcely get warm in their seats when they fall down, turn a complete somersault, and forget their pledges; or when a railroad magnate rolls a barrel of whisky into the Sergeant-at-Arms' room in the Capitol building of a capital city, is it any wonder the people should think it time to take the control of corporations in their own hands? Is it any wonder they think no measure too strong to curb their power? We cannot overestimate the danger these great corporations are to a republican form of government. It is like a snowball, so small at first you can hold it in the hand; but roll it in the snow, and in a short time it becomes too large to be handled. But they are unlike the snowball in this, that in one hot day one will be melted away, while the other grows still stronger every day. Millionaires, with all their riches, will die, but corporations live on forever. I will close by quoting Chief Justice Waite. Discussing the Granger cases, he says: "A good government never puts forth its extraordinary power except under circumstances which demand it." I think, Mr. Chairman, this is a case where it is demanded.

SPEECH OF MR. VACQUEREL.

MR. VACQUEREL. Mr. Chairman: I will only occupy your time for a moment. I have listened patiently to all the speeches here. I have learned that one author said something on the subject, and another man said another thing, and still I have not been able to know how to vote. Now, sir, the railroad, if it be an evil, is a necessary evil. The laws in force in Europe cannot be put in force here, because the conditions are different. The laws of one State might work well here, while the laws of another would fail to give satisfaction. Now, sir, I do not care what Mr. Black may have said; or what anybody else may have said, our constituents sent us here to remedy the local evils under which they are

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suffering, and of which they complain. Now, I have heard it asserted that legislators are corrupt. If that is so, then the Commissioners will be liable to be corrupt also. I cannot vote for section twenty as it is reported by the committee. It gives too much power to these three men. I believe it is conferring too much power. I do not believe the Commissioners should make the law. It is against republican principles. The Legislature alone has the right to make laws in a free government, therefore I will vote for Commissioners only with power to carry out the laws made by the Legislature, and report to the Legislature. The Legislature, upon the report of the Commissioners, can pass the necessary laws regulating freights and fares as proposed by the Commissioners. That plan I think would work a great deal better than the plan proposed here of giving the Commission such arbitrary and unlimited powers. This proposition affects great questions. If you try to stop the river in its course it will burst its banks and overflow the country. All violation of natural laws will bring its punishments. Now, if we give too much power to one branch of government, or too much to another, they will turn out masters of the people. Therefore, I insist that these Commissioners shall not be clothed with this arbitrary power. The Legislature is composed of direct representatives of the people, and they, are the ones to exercise this power.

MR. ESTEE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried, on division—ayes, 66; noes, 54.

IN CONVENTION.

THE PRESIDENT. Gentleman: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again.

ADJOURNMENT.

MR. ESTEE. Mr. President: I move we adjourn to meet at seven o'clock this evening.

MR. MCFARLAND. I move the Convention do now adjourn, and that is a privileged motion.

MR. ESTEE. I rise to a point of order.

THE PRESIDENT pro tem. The motion to adjourn takes precedence. The question is on the motion to adjourn.

Lost, on a division vote of 56 ayes to 57 noes.

MR. ESTEE. I move that the Convention take a recess until seven o'clock this evening.

Lost, on a division vote of 58 ayes to 61 noes.

MR. ESTEE. I move we adjourn.

RESOLUTION.

MR. HILBORN. I desire to send up a resolution.

THE SECRETARY read:

Resolved, That the sum of eighty-three and eighty one hundredths dollars be appropriated out of the funds for carrying on this Convention, to pay the bill of the Pacific Ice Company for the month ending December first, eighteen hundred and seventy-eight, and that the warrant be drawn in favor of the Sergeant-at-Arms of this Convention.

MR. HILBORN. The ice has been delivered, and I hope the resolution will be adopted without reference to a committee. I move the adoption of the resolution.

MR. BARNES. I would like to inquire of the President if there is any express provision in the Act calling this Convention together for ice. If not, I would suggest that it go to the Judiciary Committee, to find out whether we can pay it or not. [Laughter.]

MR. HILBORN. There are several nice provisions in the bill.

MR. REYNOLDS. I move that it be referred to the Judiciary Committee.

MR. TERRY. It will have to go to a committee under the rules.

MR. HILBORN. It has not been before a committee. It was handed to me as Chairman of the committee, and I reported it.

MR. O'DONNELL. I have a resolution——

MR. HOWARD. I move we do now adjourn.

MR. CROSS. I call for the ayes and noes.

MR. GRACE. I don't know what we are voting on.

MR. MURPHY. I move we go back into Committee of the Whole.

THE PRESIDENT pro tem. The question is on adjournment.

Division was called, and the motion prevailed—ayes, 62; noes, 59.

And, at four o'clock and thirty minutes P. M., the Convention stood adjourned until to-morrow morning, at nine o'clock and thirty minutes A. M.

SIXTY-EIGHTH DAY.

SACRAMENTO, Wednesday, December 4th, 1878.

The Convention met in regular session, at nine o'clock and thirty minutes A. M., President pro tem. Belcher in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Boggs,	Cross,
Ayers,	Boucher,	Crouch,
Barbour,	Brown,	Davis,
Barnes,	Burt,	Dean,
Barry,	Campbell,	Dowling,
Barton,	Caples,	Doyle,
Beerstecher,	Chapman,	Dudley, of San Joaquin,
Belcher,	Charles,	Dudley, of Solano,
Bell,	Condon,	Dunlap,
Blackmer,	Cowden,	Edgerton,
Estee,	Larue,	Shafter,
Estey,	Lavigne,	Shoemaker,
Evey,	Lewis,	Shurtleff,
Farrell,	Lindow,	Smith, of 4th District,
Fawcett,	Mansfield,	Smith, of San Francisco,
Filcher,	Martin, of Alameda,	Soule,
Finney,	Martin, of Santa Cruz,	Stedman,
Freeman,	McCallum,	Steele,
Freud,	McComas,	Stevenson,
Gorman,	McConnell,	Stuart,
Grace,	McCoy,	Sweasey,
Graves,	McFarland,	Swenson,
Gregg,	McNutt,	Swing,
Hager,	Miller,	Terry,
Hale,	Moffat,	Thompson,
Hall,	Moreland,	Tinnin,
Harrison,	Morse,	Townsend,
Harvey,	Murphy,	Tully,
Heiskell,	Nason,	Turner,
Herold,	Nelson,	Tuttle,
Herrington,	Neunaber,	Vacquerel,
Hilborn,	Noel,	Van Dyke,
Hitchcock,	O'Donnell,	Van Voorhies,
Howard,	Ohleyer,	Walker, of Marin,
Huestis,	O'Sullivan,	Walker, of Tuolumne,
Hughey,	Overton,	Waters,
Hunter,	Porter,	Webster,
Inman,	Prouty,	Weller,
Johnson,	Pulliam,	Wellin,
Jones,	Reddy,	West,
Joyce,	Reed,	White,
Kelley,	Reynolds,	Wickes,
Keyes,	Rhodes,	Wilson, of Tehama,
Kleine,	Ringgold,	Wilson, of 1st District,
Laine,	Rolfe,	Winans,
Lampson,	Schell,	Wyatt.
Larkin,	Schomp,	

ABSENT.

Berry,	Garvey,	Mills,
Biggs,	Glascock,	Smith, of Santa Clara,
Casserly,	Holmes,	Mr. President.
Eagon,		

LEAVE OF ABSENCE.

Leave of absence for one day was granted Messrs. Mills and Holmes.

Two days' leave of absence was granted Mr. Glascock.

THE JOURNAL.

MR. TINNIN. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

PETITION.

MR. WINANS presented a petition and memorial from citizens of San Francisco, relative to coöperative homesteads.

Reading dispensed with, and referred to the Committee on Legislative Department.

REPORTS—RAILROAD COMMISSION.

MR. ESTEE, from the Committee on Corporations other than Municipal, presented the following report:

SACRAMENTO, December 4th, 1878.

MR. PRESIDENT: Your Committee on Corporations other than Municipal have had under consideration section twenty of the article on corporations, heretofore presented by the committee, together with the several amendments to the section proposed in Committee of the Whole, and your committee herewith respectfully submit a substitute for section twenty, and recommend its adoption.

M. M. ESTEE,	JOSEPH W. WINANS,
V. E. HOWARD,	JOHN P. WEST,
CHARLES F. REED,	WILLIAM F. WHITE,
J. V. WEBSTER,	P. DUNLAP,
GEORGE STEELE,	GEORGE W. SCHELL,
V. A. GREGG,	JAMES E. DEAN,
H. C. BOGGS,	PATRICK REDDY,
CLITUS BARBOUR,	JOHN M. RHODES.

SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear complaints against railroad and other transportation companies, to send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action, and enforce their decisions and correct abuses through the medium of the Courts, and perform such other duties as may be prescribed by law; to report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable

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them to perform the duties enjoined on them in this and the foregoing sections.

MR. ESTEE. Mr. President: I move that it be referred to the Committee of the Whole.

MR. WYATT. I second the motion.

THE CHAIR. Hearing no objection, it is so ordered.

STATE INSTITUTIONS AND PUBLIC BUILDINGS.

MR. CONDON, from a minority of the Committee on State Institutions and Public Buildings, presented the following report:

MR. PRESIDENT: The undersigned members of your Committee on State Institutions and Public Buildings, dissent from certain conclusions arrived at by the majority of the committee.

First—We believe that under our system of government, the people should, in every case, directly determine, by their suffrages, who shall occupy official station and be invested with public powers. That the lodging of the power of appointing to office, in any department of State, is an abridgment of the rights of the people. We therefore recommend that persons, to be chosen as Commissioners, pursuant to section one, as reported by the majority of the committee, be elected by the qualified voters of the State.

Second—Believing that the future prosperity of our State, yea, the very perpetuity of our system of government, depends upon an industrious, intelligent, and independent laboring class; that the free, intelligent workingman is the true impersonification of our theory of government; that labor creates capital; that only through intelligent, free labor has the civilization of man been made possible; labor is enobling, and the honest, intelligent, free laboring man, is the true nobleman; if the free working classes fall and are driven out, the industrial ruin of the State will inevitably follow. This country was created for a free people, and for free labor. The intelligence of the people is the safeguard of our political institutions, and every burden imposed upon the independence of free labor is a blow at the liberties of the people.

The labor of convicts is essentially, in all its elements, slave labor, criminal classes existing, convicts being a necessary evil. They should be so employed as not to conflict with free labor, so as not to ruin and destroy the happy homes of honest industry. It is the duty of the State to protect the honest toiler, in his work and in the fruits of his industry.

The contract system of convict labor must cease, as it enables manufacturers to procure slave labor at wages so far below free labor, that free labor is driven from the market, leaves the State, or sinks into want and misery, or death by starvation.

The State to-day is possessed of a large part of the machinery, tools, and material necessary to itself work the convicts.

The free laborers of this State are, as a unit, opposed to the contract system, as it competes directly with them, lowering their wages, and taking the bread from their mouths. The undersigned are of the opinion that the convicts can be employed by the State in such works as not to injure free labor, and at the same time return sufficient to make our prisons self-sustaining, thus removing a grinding opposition to free labor, and a burdensome tax from off the State. We recommend the adoption of the following section:

ARTICLE ——.

There shall be a State Board of Prison Commissioners, to consist of three persons, to be elected by the qualified voters of the State at large, at the general State election, at the times and places that State officers are elected, and the term of office shall be (6) six years from and after the first Monday in January next succeeding their election; *provided*, that the three Commissioners elected at the first election shall, at their first meeting, so classify themselves by lot that one of them shall go out of office at the end of three years, one at the end of four years, and one at the end of six years. If a vacancy occur in the office of Commissioner, the Governor shall appoint a person to hold the office until the election and qualification of a Commissioner, which election shall take place at the next succeeding general election, and the person so elected shall hold the office for the remainder of the unexpired term. The first election of the Commissioners shall be at the first general election after the adoption and ratification of this Constitution.

SECTION —. The Legislature shall, by laws, provide for the working of convicts in State Prisons for the benefit of the State; *provided, however*, that the labor of convicts shall not be let out by contract to any person, copartnership, company, or corporation.

SEC. —. The State Board of Prison Commissioners shall constitute a Board of Pardons, and the Governor of the State shall never pardon any person convicted of crime, except at the unanimous request of the Board of State Prison Commissioners.

SEC. —. The Legislature shall give effect to a judicious system of credit for good behavior to convicts in State Prisons, to be carried out by the State Board of Prison Commissioners.

(Signed:) JOHN D. CONDON,
P. M. WELLIN,
C. J. BEERSTECHER.

MR. CONDON. I move you, sir, that the usual number of copies be printed of that and of the report made by the majority of the committee.

THE CHAIR. If there be no objection the report will lie on the table and be printed with the majority report. It is so ordered.

HOURS OF LABOR.

MR. THOMPSON, (by request), introduced the following proposed amendment to the Constitution, relative to the hours of labor:

ARTICLE —.

SECTION 1. The hours of labor on all contracts performed for the State, county, and municipal governments shall not exceed eight hours a day.

SEC. 2. The hours of labor on all work done for corporations doing business under charter from this State shall not exceed eight hours a day.

SEC. 3. All State offices, county, and municipal, shall remain open for the transaction of business eight hours each business day.

SEC. 4. Eight hours shall constitute a legal day's work in each and every department of the State, county and municipal governments.

SEC. 5. This article shall be enforced by appropriate legislation.

Referred to the Committee on Labor and Capital.

REPORT—THE WINE INTEREST.

MR. REED, from the Committee on Agriculture, Manufactures, and Commerce, presented the following report:

MR. PRESIDENT: The Committee on Agriculture, Manufactures, and Commerce, having had under consideration resolutions numbers thirty three and thirty-four, report the same back, with a memorial to the President of the United States, and respectfully ask the adoption of said memorial.

CHAS. F. REED, Chairman.

MEMORIAL.

To the President and to the Senate of the United States:

The Constitutional Convention of the State of California, duly assembled by authority of law, at Sacramento, on the twenty-eight day of September, A. D. eighteen hundred and seventy-eight, for the purpose of revising the Constitution of the State, respectfully memoralizes the President and the Senate of the United States:

WHEREAS, A treaty or convention between the Government of the United States and that of the Republic of France has been proposed, and is now under consideration at the City of Washington, by which convention it is proposed to so revise the existing schedule of tariffs that a large reduction shall be made in import duties upon French products, particularly wines and spirits; and whereas, such reduction would result most disastrously to the large and growing vinicultural interests of the State of California; therefore, this body, acting on behalf of the people of California, does most earnestly protest against the proposed revision of such tariff, or any revision thereof whereby the import duties upon wines and spirits may be reduced.

And in support of such protest your memorialists respectfully show: That a large amount of capital, reaching, by intelligent and reliable estimates, the sum of fifty millions of dollars, has been invested in the vineyards of California, and the various structures and improvements connected therewith; that all conditions of people have engaged in said industry, from the laborer and small lot owner to the wealthy capitalist, and that the business has come to be the only means of support to thousands of citizens of the State; that said industry is not even now largely remunerative, but at best only yields a moderate return for the capital invested and the labor employed; and that up to a very recent period the vineyardists of California have had a close and constant struggle to place the industry upon a paying basis; that the proposed reduction of duties will, if carried out, utterly crush this industry, leave thousands without adequate means of support, and aggravate the distress prevailing among the producing classes, without the gain of a farthing to the government, or to any person or persons in the United States, except the few engaged in the business of importing.

Wherefore, said Convention has voted this protest, and caused the same to be authenticated by the signatures of the President and Secretary.

Done at Sacramento on this third day of December, A D. eighteen hundred and seventy-eight.

MR. REED. Mr. President: I ask the adoption of that memorial, and with the permission of the Convention I will briefly state a few of the reasons which give rise to that memorial. Early last Spring, at the international exhibition at Paris, the various Chambers of Commerce of France proposed to the delegates representing the various Chambers of Commerce of the United States, that in view of the necessity of a revision of the American tariff and for a treaty of commerce as between the United States and France, that a Franco-American Conference be held at the City of Paris to consider the propriety of increasing the commercial relations of the two countries by reducing the import duties now exacted by the present tariff. Various Chambers of Commerce in the United States were visited by distinguished gentlemen for the purpose of securing delegates to this Franco-American Conference. Mr. Leon Chatteau visited the Chamber of Commerce of San Francisco, and addressed it upon the necessity of a modification of the tariff. And here permit me to say in justice to that Chamber, that it did not indorse the present proposed treaty, as has been stated by the press, for this was in May last, and the treaty was not prepared until August, consequently they knew nothing of its provisions, but it expressed a desire to second the movement already inaugurated to connect more closely the commercial relations between France and the United States, and cordially welcomed Mr. Chatteau, and extended to him its earnest coöperation in the mission with which he was intrusted. Delegates were sent to Washington to a Convention which selected members to represent the United States in the Conference at Paris. The Conference met in August, a preliminary draft of a treaty was presented and referred to a committee of sixteen, which reported to the Conference August ninth a project of a proposed treaty. In article four of the basis of the treaty, is a request to the President of the United States to recommend to Congress a revision of the tariff of the United States bearing on the French products imported into the United States, tending to reduce import duties according to the following suggestions, viz., a reduction on still wines in casks, twenty cents per gallon; still wines in bottles, a reduction of fifty cents per dozen; brandy and spirits, a reduction to one dollar per gallon. This is a reduction of one half of the present tariff.

There is already invested in California over fifty million dollars in viniculture, outside of incidental industries, as cooperage, machinery, etc. Assessing this at one half, or twenty-five million dollars, the State tax at last year's rate was sixty-three cents, and the yield, therefore, one hundred and fifty-seven thousand five hundred dollars for the treasury. In less than ten years it will be double that amount. This is a critical period in the era of wine growing, and for the first time in many years the grape growers of the State have felt encouraged. The production in France has fallen off over fifty per cent. In California a far less percentage of poor wines is made than in France. French brandy is distilled from beets, wine lees, and other worthless stuff, and made up of American alcohol mixed with essences, etc., while that of California is made of grapes, and is pure and genuine brandy. The French have found this out, and a short time ago a sale was made in Chicago of thirty thousand barrels of alcohol, amounting to seven hundred thousand dollars, for French account, to be reshipped in shape of cordials and various liquors, at a profit of over five hundred per cent. They have also purchased all the brandy in Los Angeles, and propose to send it back to California at a reduced tariff. One year ago California brandy was one dollar and fifty cents per gallon, now it is two dollars and fifty cents per gallon to ship to France, under the operation of the present tariff. Our exports in eighteen hundred and seventy-seven were, by rail, six million pounds, or seven hundred and fifty thousand gallons; by sea, nine hundred thousand gallons. We sent to England five thousand gallons; to Hamburg, nine thousand gallons. The French pay twenty-five cents per day for labor; in California two dollars is paid. They pay for barrels, one dollar and fifty cents; we pay three dollars. The reduction proposed will be fatal to American interests, and more particularly to the wine growing interests in California. While our heavy internal revenue tax remains it is impossible to compete with France without the present tariff as a protection. The revenues of the country will not per-

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mit the loss of the internal revenue tax, neither will it be advisable to lose the custom duties at present derived from French wines and brandies. The grape growers of the State have no way of calling the attention of the President and Congress to the manifest injustice of this treaty, except through their representatives assembled in this Convention, and therefore the committee earnestly ask for the adoption of the memorial, and that one copy be sent to the President of the United States, and the other to our Senators. There are two copies, Mr. President, sent to the Clerk's desk, already prepared. I move the adoption of the memorial, and that four hundred and eighty copies of it be ordered printed.

MR. MANSFIELD. Mr. President: I move that double the usual number of copies be ordered printed for circulation.

MR. HAGER. Mr. President: I think, sir, that it is very important that this memorial should be adopted and dispatched to Washington at as early a day as possible. I would suggest to the mover of the resolution that it be also referred to the House of Representatives. Whilst I was at Washington, sir, there was a constant pressure brought to bear upon the Senate and the House of Representatives in regard to our tariff laws, that they might be relaxed so as to admit the cheaper wines of Germany at a reduced rate of duty. Committees were there constantly before the committee of the Senate and before the committee of the House of Representatives that had charge of the tariff bills, to importune them for some modification of our duties in regard to the lower class of wines, in order that the products of Germany and France might be brought in at a reduced rate of duty. That pressure is being brought to bear constantly. I presume it originates mainly with the importers of these wines in New York and in the other cities. I do not know that the governments of Europe have undertaken to interfere, by bringing any influence to bear at Washington, but there is certainly, at all times, a committee there that are using their power and influence to secure some modification of our tariff laws in that respect. I have been told that wines are constantly being exported from this country to Europe, where they are mixed with French and German wines and brought back here as foreign productions. If we wish to establish the California wine interest, we must protect it by tariff laws, as all countries have protected this kind of products in their own interest. I would suggest that the gentleman modify his resolution to this extent, that it be sent also to the House of Representatives.

MR. REED. I accept the amendment.

MR. HILBORN. Mr. President: I would also suggest that where concurrent resolutions are passed which are addressed to the Government at Washington, they are usually sent to each of our Senators and representatives in Congress. They are the special representatives of our interests at the Capital, and it would seem to me proper that that should be the course here. I ask the gentleman to accept an amendment, that a copy be sent to each of our Senators and representatives in Congress.

MR. REED. I accept the amendment, though I understand that the question of a modification of a treaty only goes to the Senate.

MR. HILBORN. Exactly so; but it was proposed to send this to the President of the United States. We have representatives there, and representatives of influence, and it certainly will be courteous for us to send a copy to them, so that they may be advised of what is in the hands of the President, that they may, by their influence, assist in bringing about this good result.

The memorial was unanimously adopted, and four hundred and eighty copies ordered printed.

MR. ESTEE. Mr. President: Before moving that this Convention resolve itself into Committee of the Whole, I wish to state that it is proposed——

MR. O'SULLIVAN. On last Monday week I offered——

WOMAN SUFFRAGE DISCUSSION.

MR. O'DONNELL. Mr. President: I offer the following resolution:

Resolved, That the use of this hall be and the same is hereby tendered to Hon. James Caples and Mrs. Laura De Force Gordon, for a discussion of the proposed amendment to the Constitution, conferring the elective franchise upon women, any evening they may designate for that purpose.

MR. ESTEE. I suppose that is out of order.

THE CHAIR. It is out of order.

THE TEXT-BOOK QUESTION.

MR. O'SULLIVAN. I move to take from the table the resolution I offered a few days ago, calling on the Superintendent of State Printing for information

THE SECRETARY read:

Resolved, That the Superintendent of State Printing be requested to furnish to this Convention an estimate of the cost of composition, paper, and binding of a series of Readers, such as the Pacific Coast Readers and McGuffey's Series of Readers, the work to be done by the State under its present system. That he be requested to estimate the cost of the first edition of one thousand, and also the cost of each succeeding thousand.

MR. O'SULLIVAN. This resolution was laid on the table, I think, under a misapprehension as to the purport of it. The purpose of the resolution is simply to obtain information as to the cost of printing the school Readers in the State Printing Office. The proposition that the State shall print the school books will come up by and by for the decision of this body, and therefore it is that I desire this information laid before the Convention. I see no good reason why this simple inquiry for information should be suppressed, as it was on last Monday week. It will cost nothing, and simply asking the information, commits nobody to the plan of the State printing the school books. It is notorious that one of the worst lobbies that has ever disgraced this State, is the school book lobby. I say so advisedly, because there are gentlemen on this floor who have been in the Legislature who told me so, and I have heard so from school teachers also. I trust that this Convention will show itself above all outside influence, notwithstanding it is said that a certain book firm of San Francisco declare that they will have this book question settled in the new Constitution satisfactorily to them, so that they will not be compelled to come up here every session and use their corrupt influence in the Legislature; I therefore hope that the resolution will be taken from the table, and that the mere courtesy which has been given to all similar resolutions will be given to it.

MR. FREUD. Mr. President: I hope the resolution will pass. It is my intention to present a minority report from the Committee on Education relative to this matter; and it will be absolutely necessary that the information aimed at by this resolution be at my disposal. It is my intention to submit a proposition relative to the compilation, distribution, etc., of books by the State, to be printed at the State Printing Office. In order to make a report of that character, of course the information aimed at is necessary. Therefore, I hope the resolution will pass.

MR. WELLIN. Mr. President: When this question was brought up here a week or two ago, I was very much surprised to hear the gentleman move to lay it on the table. This is one of the questions that interest the people. We all know that there has been an immense power at work on school books in the State of California. We have a State Printing Office here of our own that could print these books and give them to the people at first cost. The question here asked is simply to see whether it can be done or not. Why any gentleman should propose to lay it on the table is more than I can see. No harm can possibly come from getting the information before the Convention, and then if we see we can do the people any good let us do it.

MR. CROSS. Mr. President: In this State there is quite a feeling growing up in favor of having the books for public schools furnished by the State. As I understand it, there is also a feeling that the present cost of school books is about three times what the State could furnish the same books for, and a good many of the delegates to this Convention were elected on the proposition that if there was an opportunity they should favor the furnishing of books in the public schools at the State expense. Now, if any movement is to be made during the sitting of this Convention, and I understand that such an attempt will be made, this information will be invaluable to us, especially if it should appear that the State can furnish books at about one third of the cost that individuals now furnish them at. I am therefore in favor of the resolution. It will cost the State nothing, and we will have the information.

MR. ROLFE. Mr. President: If we attempt to investigate every evil, or supposed evil, that is claimed to have existed for the last twenty-five or thirty years, we will never get through with the business of this Convention in the next five years. The way these things accumulate, it seems that gentlemen in this Convention are determined to go into every minute affair of the State, whether it exclusively belongs to the legislative, judicial, or executive department, and with which this Constitutional Convention has nothing to do whatever. Now, I came here for the purpose of helping to make a Constitution, not to investigate any evils that have been supposed to exist heretofore, which not a half dozen members of this Convention will attempt to remedy. The remedy is with the Legislature, or some other department of the Government. Now, I say that if there has any abuse been perpetrated here in the matter of books for schools, the proper place to remedy it is in the Legislature. We cannot establish a system of books here. If the books have cost four times as much as they should have cost, then, sir, it seems to me that the place for investigation and remedy is in the Legislature. Let us go on with our other business, and let the Legislature when they meet next Spring, or whenever they do meet, attend to theirs. I hope that all such propositions as these will be voted down, and that we may get through with this Constitutional Convention by next May, if possible.

MR. O'SULLIVAN. The Legislature probably is the place to settle railroad fares and freights, too, and the tax question, but we know that the Legislature has been corrupted, and has never passed an Act in the interest of the people on this question. Therefore I want this school book question in the Constitution. Do you want to stifle information? You probably all voted for the resolution presented for the purpose of casting ridicule upon the office of Adjutant-General of the State. Why not vote for this simple resolution asking information that I desire? It will cost nothing.

MR. ROLFE. Mr. President: So far as the members of the Legislature are concerned I do not agree with the gentleman. I am not here prepared to say that the legislators of this State have been a set of corruptionists, thieves, and pirates. I believe that the members of the Legislature of this State have, on the average, been just as good and honest a set of individuals as the members of this Convention. I am not here to say that we are such immaculate individuals, superior to every body that has ever existed in this State heretofore; therefore, I am not willing to act upon that proposition.

MR. O'SULLIVAN. I know what I am speaking of. I call for the ayes and noes.

MR. LINDOW. Ayes and noes.

The motion to take the resolution from the table prevailed.

MR. FREUD. I move its adoption.

The resolution was adopted.

QUESTION OF PRIVILEGE.

MR. CAPLES. Mr. President: I rise to a question of privilege. My facetious friend from San Francisco, Dr. O'Donnell, appears disposed to have a little fun at my expense. I shall not make any objection, in view of the fact, that it seems to be his peculiar department to make fun in this Convention. But for the information of the gentlemen of the Convention, I will state that I know nothing at all of his resolution, and that when I discuss the question referred to in the resolution of the facetious gentleman, I expect to do so before this Convention at the proper time, in the proper manner, legitimately, regularly, and not otherwise.

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PROPOSED AMENDMENT.

MR. HERRINGTON. Mr. President: I desire to introduce a proposition with reference to the Constitution. I ask that it be printed immediately, out of its order, and referred to the Committee of the Whole, to be considered with the report of the Committee on Corporations other than Municipal.

MR. HERRINGTON sent up the following proposition, relative to

RAILROAD COMMISSIONERS.

"Amend Article —— (Proposition No. 444), as reported by the Committee on Corporations other than Municipal, by inserting therein, next after section twenty as reported, the following:

"SEC. 21. Said Railroad Commission, in the execution of its powers, shall so fix, and from time to time regulate, the charges for freights and fares collectible by said railroad and other transportation companies, that the revenue derived therefrom, over running expenses and expenses for repairs by such companies, shall not, in the aggregate for any year after the adoption of this Constitution, exceed, but may be less than, ten per centum of the true cash value of the works, machinery, and property invested and in actual use by such corporations in the business of transportation, as the same shall be assessed annually for State taxation."

MR. HERRINGTON. I move that it be printed out of order and referred to the Committee of the Whole, to be considered with the report of the Committee on Corporations other than Municipal.

Carried.

ORDERED PRINTED.

MR. CONDON. There was a memorial presented from the representatives of the trades and labor unions of this coast, praying of this Convention to have a clause inserted in the Constitution prohibiting the letting out of prison labor to contractors; also, embracing several other subjects of vast importance. The memorial was presented by the gentleman from San Francisco, Mr. Bell, and, sir, in order that all should understand thoroughly the views which actuated these vast assemblages in imparting to this Convention the necessary information, I move you, sir, that four hundred and eighty copies of the same be printed.

Carried.

SUPREME COURT WORK.

MR. WILSON, of First District. Mr. President: The Clerk of the Supreme Court, at the request of myself, as Chairman of the Committee on Judiciary and Judicial Department, and of other members of the committee, has prepared a tabular statement showing the number of cases appealed to that Court, and the amount of business from the several counties in the State. I deem it quite important that this information should be possessed by this Convention before we act upon the judicial department. I therefore move that the communication be received and ordered printed.

THE CHAIR. If there be no objection it will be so ordered. The Chair hears none.

STATE OF CALIFORNIA, CLERK'S OFFICE SUPREME COURT,
SACRAMENTO, CALIFORNIA, December 2d, 1878.

Hon. S. M. Wilson, Chairman Judiciary Committee, Constitutional Convention:

DEAR SIR: In obedience to the request of yourself and other members of your committee, I have the honor herewith to present comparative tables (in detail) of the business of this Court during the four years preceding the amendment to the Constitution increasing the number of Justices, and during the four years commencing January first, eighteen hundred and seventy-four, since which time all the present Justices have been on the bench, showing the number of cases that have been filed from each county in the State, and writs of habeas corpus issued, with a list of decisions rendered during both periods; also, the number of cases remaining undisposed of at this date.

All of which is respectfully submitted.

D. B. WOOLF, Clerk of Supreme Court.

EXHIBIT "A."

Number of Causes Filed in the Supreme Court from January 1st, 1860, to January 1st, 1864, four years prior to the amendment to the Constitution, increasing the number of Justices from three to five.

COUNTIES IN WHICH ACTIONS ORIGINATED.	Civil Causes.	Criminal Causes.	Mandamus.	Prohibition.	Review or Certiorari.	Totals.
Alameda	32	4			2	38
Alpine						
Amador	21	3				24
Butte	48	8				56
Calaveras	21	4				25
Colusa	12					12
Contra Costa	34	3			1	38
Del Norte	1					1
El Dorado	38	10	1			49
Fresno	1					1
Humboldt	6					6
Inyo						
Kern						
Lake						
Lassen						
Los Angeles	14	2				16
Marin	19	2				21
Mariposa	16					16
Mendocino	4	1				5
Merced	5					5
Modoc						
Mono	7					7
Monterey	3	1				4
Napa	28	3				31
Nevada	32	5				37
Amount carried forward	346	46	1		3	463

EXHIBIT "A"—Continued.

Amount brought forward	346	46	1		3	463
Placer	53	8				61
Plumas	8	2				10
Sacramento	120	18	1		1	140
San Benito						
San Bernardino	4	2				6
San Diego	1	3				4
San Francisco	361	15	5			381
San Joaquin	61	8				69
San Luis Obispo	3					3
San Mateo	15	1			1	17
Santa Barbara	16					16
Santa Clara	43	3				46
Santa Cruz	10	2				12
Shasta	22					22
Sierra	30	1				31
Siskiyou	22	2			1	25
Solano	54	4				58
Sonoma	59	3				62
Stanislaus	9					9
Sutter	5					5
Tehama	22					22
Trinity	6	1				7
Tulare						
Tuolumne	47	6				53
Ventura						
Yolo	14	2				16
Yuba	51					51
Habeas Corpus Writs						12
Totals	1,378	127	7		6	1,530

Number of Causes Filed in the Supreme Court from January 1st, 1874, to January 1st, 1878, four years, during which time all of the present Justices have been on the Bench.

COUNTIES IN WHICH ACTIONS ORIGINATED.	Civil Causes.	Criminal Causes.	Mandamus.	Prohibition.	Review or Certiorari.	Totals.
Alameda	60	5		1		66
Alpine	1					1
Amador	3					3
Butte	19	4				23
Calaveras	5	2				7
Colusa	34	5				39
Contra Costa	23				1	24
Del Norte	1	1				2
El Dorado	11					11
Fresno	11			1		12
Humboldt	26	4				30
Inyo	3	1				4
Kern	18	2		2		22
Klamath			1			1
Lake	1	2				3
Lassen	12	1				13
Los Angeles	134	14	1	1		150
Marin	17					17
Mariposa	2					2
Mendocino	22	1				23
Merced	5	1		1		7
Modoc	1	1				2
Mono						
Monterey	23	2				25
Napa	7	1				8
Nevada	6	3				9
Placer	23	3				26
Plumas	2	1				3
Sacramento	131	8	7		1	147
San Benito	9	2				11
San Bernardino	22	6				28
San Diego	14	1				15
San Francisco	681	33	12	6	7	739
San Joaquin	55	21				76
San Luis Obispo	8	4				12
San Mateo	26	2	1	1		30
Santa Barbara	68	2		1		71
Santa Clara	98	8	2		2	110
Santa Cruz	22	2				24
Shasta	1	5				6
Sierra	10					10
Siskiyou	3					3
Solano	19	6				25
Sonoma	25	4			1	30
Stanislaus	11	2			1	14
Sutter	8					8
Tehama	9	4				13
Trinity	1					1
Tulare	13	8				21
Tuolumne	3				1	4
Ventura	11					11
Yolo	41	5		4	1	51
Yuba	11	1				12
Habeas Corpus Writs						62
Totals	1,770	178	24	18	15	2,067

SUMMARY.

Number of causes filed from January 1, 1860, to January 1, 1864.

Civil	1,378
Criminal	127
Mandamus	7
Certiorari	6
Habeas Corpus	12
Total	1,530

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Number of causes filed from January 1, 1874, to January 1, 1878.

Civil	1,770
Criminal	178
Mandamus	24
Prohibition	18
Certiorari	15
Habeas Corpus	62
Total	2,067
Number of causes awaiting argument at commencement of the present term	300

Number of decisions rendered by the Court from January 1, 1860, to January 1, 1864.

From the Bench	256
With written opinions	1,183
Without opinions	125
Total	1,564

Number of decisions rendered by the Court from January 1, 1874, to January 1, 1878.

From the Bench	697
With written opinions	986
Without opinions	559
Total	2,242

NOTE.—During the last four years the Court has had a Phonographic Reporter, and a great number of opinions have been delivered from the Bench which were taken down at the time by the said reporter.

Number of causes argued and submitted prior to the present term, remaining undisposed of at this date, including those awaiting final brief	60
Petitions for rehearing not acted on	9

SACRAMENTO, December 2, 1878.

D. B. WOOLF,
Clerk Supreme Court.

PROPOSED AMENDMENT.

MR. RINGGOLD introduced the following proposed amendment to the Constitution, relative to the banks of navigable waters.

SECTION —. The banks of the navigable waters within the limits of this State are hereby declared to be public highways for all purposes incident to the use of such waters for navigation, and subject to such general regulation as may be prescribed by law.

Referred to the Committee of the Whole.

THE RAILROAD COMMISSION.

MR. ESTEE. Mr. President: I move that the Convention resolve itself into Committee of the Whole, the President pro tem. in the chair, for the purpose of considering the report of the Committee on Corporations other than Municipal. Before the motion is put I wish to give notice, at the request of a great many members of this Convention, that before we adjourn to-night, we will close the debate upon the question, if it is the sense of the Convention to do so.

MR. HAGER. Mr. President: The Committee on Corporations have presented a new report this morning which none of us has had an opportunity of examining. We do not know anything about it. After this debate has been continued here for a long time, and we pretty generally understand what we have before us, the committee have presented a new report this morning, and I think it will be hardly proper to discuss that matter to-day and vote upon it to-day. I would like to see it put in print and let it be the order of business for to-morrow. I think that such an important matter as this we ought to have printed and laid on our desks. I do not suppose there are any gentlemen in this Convention who could vote intelligently upon the proposition for want of information, for want of opportunity of reading it deliberately. I hardly think it would be just. I suggest to the Chairman of the committee, whether it is right that we should be compelled to vote upon an amendment of this importance which for the first time comes before us to-day. We could go on and discuss it, but I suggest that we had better take the vote to-morrow. This amendment only extends over ten or eleven lines, while, if I recollect right, the original extended over some twenty or thirty lines.

MR. ESTEE. This amendment will be printed in the daily Journal. I merely gave notice so that gentlemen might improve the opportunity to address the committee to-day. If we are not through when night comes, I am sure that no member of the Committee on Corporations will try to press a vote.

MR. EDGERTON. I would inquire of the Chairman whether his motion contemplates merely the termination of the consideration of the report in Committee of the Whole.

MR. ESTEE. Of course, that is all.

MR. EDGERTON. Not final action by the Convention upon it.

MR. ESTEE. Only in Committee of the Whole.

The motion to go into Committee of the Whole prevailed.

IN COMMITTEE OF THE WHOLE.

MR. LARKIN. Mr. Chairman: In order to bring the discussion that may arise upon this question to the questions properly before this committee, I move the previous question upon the amendments now pending—so that the discussion to-day may be upon the amendment offered by the Committee on Corporations this morning—the amendments offered by Mr. Waters and Mr. Prouty. I desire this body to stick to the question and not have the latitude they have had before.

MR. BROWN. Mr. Chairman: I do not see that we can ascertain whether we wish to vote upon these amendments that have been before the committee or not until the body learns what will be presented by the Committee on Corporations. We do not know what we will have to vote upon besides the amendments, and until we know something of those to be proposed I do not think we can vote intelligently upon the subject of the other amendments which have been introduced by Mr. Waters, Mr. Blackmer, and others. I think it is but fair that this body should learn what we have to vote for besides before we vote upon these.

MR. ROLFE. I second the motion for the previous question.

MR. ESTEE. There is no motion pending.

MR. HUESTIS. I second the motion.

MR. TINNIN. I second it, too.

MR. ESTEE. I wish to present a report of the committee relative——

MR. LARKIN. I insist upon my motion for the previous question upon the two amendments pending. You can offer yours afterwards as much as you please.

MR. CROSS. I wish to ask a question. If we now order the previous question on these two amendments does that cut off debate upon such other amendments as may be offered?

THE CHAIRMAN. It does not.

MR. REYNOLDS. Mr. Chairman: It seems to me quite unnecessary to move the previous question, or to vote upon these amendments. It seems to me that the Convention is in a temper to——

MR. NOEL. I rise to a point of order, that the previous question is not debatable.

THE CHAIRMAN. The point of order is well taken.

MR. REYNOLDS. I wish merely to state——

THE CHAIRMAN. The gentleman will come to order.

On a division, the main question was ordered by 84 affirmative votes.

THE CHAIRMAN. The Secretary will read section twenty.

THE SECRETARY read section twenty, as originally reported by the committee, as follows:

SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State, at the regular gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the sole power, and it shall be their duty, to correct abuses by railroad corporations, or other transportation companies; establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; report to the Governor annually their proceedings, and such other facts as may be deemed important; hear and determine complaints against railroad or other transportation companies; affix penalties and enforce them through the medium of the Courts; and perform such other duties as may be prescribed by law. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in the foregoing sections.

THE CHAIRMAN. The first question will be on the amendment offered by Mr. Prouty. The Secretary will read it.

THE SECRETARY read:

"Add to section twenty: 'Provided that nothing in the foregoing section shall be so construed as to prevent the Legislature, by a three-fourths vote of all the members of both branches thereof, from changing or annulling the action of said Commission, as in their opinion the public good may demand.'"

The amendment was rejected.

THE CHAIRMAN. The question now recurs on the substitute offered by Mr. Waters. The Secretary will read.

THE SECRETARY read:

"Every railway company or corporation, and every other common carrier by railroad, now or hereafter doing business in this State, shall be entitled to a reasonable compensation for its services, and no more. Three Railroad Commissioners shall be elected by the qualified electors of this State, at each gubernatorial election, whose salary shall be fixed by law, and whose term of office shall be four years from the first Monday in January succeeding their election. Each of them shall be a qualified elector of this State, and shall not be interested as owner, partner, stockholder, creditor, agent, attorney, or employé, in the business of transportation. Said Commissioners, or a majority of them, shall make a schedule of reasonable charges for the transportation of passengers, freight, and cars over each railroad now or hereafter operated in this State, as well as reasonable rates for receiving, handling, and delivering freight and cars on such roads. In any action, prosecution, or proceeding by or against any person or corporation, such schedule, or a certified copy thereof, shall be deemed, received, and taken as prima facie evidence that the rates therein fixed are reasonable rates of charges over the road or roads for which such schedule was prepared. They shall alter, revise, and amend such schedules as they shall, from time to time, deem just, and shall perform such other duties and possess such further powers, not inconsistent with this section, as may hereafter be prescribed or conferred by law. No charge by any railroad company, or other common carrier, shall be deemed reasonable if in excess of the sum which it is now entitled by law to exact for a like service."

The substitute was rejected.

MR. ESTEE. Mr. Chairman: I now offer the amendment as recommended by the Committee on Corporations other than Municipal, and ask to withdraw the other section and insert this in its place.

THE SECRETARY read:

"SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State, at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passen-

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gers and freight by railroad, or other transportation companies, and publish the same, from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear complaints against railroad and other transportation companies; to send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action, and enforce their decisions and correct abuses through the medium of the Courts, and perform such other duties as may be prescribed by law; to report to the Governor, annually, their proceedings and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing sections."

MR. HALE. Mr. Chairman: I send up an amendment.

THE SECRETARY read:

"Amend section twenty by adding thereto: 'Provided the Legislature shall have power to remove any one or more of said Commissioners from office for dereliction of duty, or corruption, or incompetency therein; and whenever, from any cause, a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.'"

MR. WILSON, of First District. I have an amendment I desire to offer.

MR. LARKIN. There was an amendment offered by Mr. Estee, and an amendment to that amendment was offered by Mr. Hale.

THE CHAIRMAN. The proposition offered by the committee takes the place of the one that was in the report.

MR. LARKIN. I simply desired to learn the ruling of the Chair.

THE SECRETARY read Mr. Wilson's amendment, as follows:

"Strike out lines one, two, and three, and insert in their place as follows, viz: 'Section twenty. There shall be appointed by the Governor, by and with the advice and consent of the Senate, three Transportation Commissioners, who shall hold their office for the period of four years from and after their appointment, and until their successors are appointed and qualified.'"

MR. BARNES. Mr. Chairman: I second the amendment.

MR. CROSS. Mr. Chairman: I do not understand that this is offered by Mr. Wilson as an amendment to the amendment. It is an amendment to the proposition of the committee. Mr. Hale's amendment does not go to the first portion at all.

THE CHAIRMAN. It is an amendment to the proposition before the Convention.

SPEECH OF MR. BARNES.

MR. BARNES. We have had this morning the best illustration of one of the propositions I propose to argue to the committee that could have been presented. The Committee on Corporations other than Municipal, more than three weeks ago, presented for our consideration an article on corporations, the main interest of which centered in section twenty, now under discussion. It was, so far as I could understand the Chairman of the committee in his introduction, a novelty, not merely in legislation, but an experiment, so far as Constitution-making was concerned. I propose for a moment to comment merely upon the arguments advanced in support of it. If I understood the views expressed for the committee by its Chairman and by others, it was substantially that this elected Commission, with most extraordinary legislative and judicial powers, was necessary because of the universal popular distrust of the legislative department of the government. It stood upon the assumption, if I may use the phrase, that the representatives of the people, coming biennially fresh from the people, have ceased to have any partnership with the public interests, and recognize no constituents except these great corporate interests, whose cause they venally espouse and whose plunder they share; upon the idea that there is that in the very atmosphere of Legislatures which so corrupts and taints our public men that they are almost by the course of nature seduced by bribes, and become the mere venal partisans of plundering schemes and schemers, corporate and individual. What foundation there may be in individual experience, what justification there may be in the minds of those who have so expressed themselves, I know not, nor indeed do I care to know, except that it leads me to remark that this prejudice has been so far cherished and enlarged upon in the committee that there seems to be no possible restriction upon this popular branch of the government which does not meet with universal favor, and often, I fear, with unthinking support, simply because an Act sought to be incorporated in the Constitution is a restriction upon or a destruction of powers, which, if we are to have any Legislature, properly and of right belong to it. I have sometimes feared that there was something more of temper and of passion than of reason—more of what has been called the hoarse cry of the demagogue than of the voice of true statesmanship. Now, sir, it seems to me that if all that has been asserted on this floor be true, republican government is a failure; and that concentrated power, a government of the few, and the fewer the better, is our only refuge from national shame and destruction.

Certainly, sir, if these aspersions be correct, there should be not only reform, but an absolute change in the form of our Government itself. If our ballot box breeds nothing but corruption, if these halls contain biennially nothing but a seething mass of degradation, where public right and public justice lie prostrate, helpless, and discrowned, it is time that we abandon our form of government. It is time that we abandoned a ship poisoned with pestilence and rotten from bulwark to keel. It is time now that we should have a rebellion; not a rebellion armed against constituted authority, but a change, as universal, and simultaneous, and void of force as God's irresistible Spring, that blushes with flowers and clothes with more than kingly raiment the length and breadth of a barren continent. If these accusations are well founded, endurance should be no longer the badge of our tribe, and that toleration should have an end. But, sir, is there any gentleman who is prepared to abandon the principles of representative government? I think not. Are there any here who are prepared to declare that this Government should be administered by a succession of elected Commissioners; that all the powers of the State should be taken and vested in a horde of irresponsible Commissions? I think not. We know, whatever we may say, that as a whole our system of government is the best that human wisdom has as yet devised, and for one I am not willing to impeach or impair it by intrusting to any three men the powers and prerogatives which belong to either branch of the Government.

No man in his senses will pretend to deny that the power to regulate all corporations exists in the people; that it may be maintained and exercised through their appointed agents to the extent, if it be necessary for the public good, of the condemnation or confiscation of property or privileges enjoyed by any corporation which menaces public right, and the enjoyment of life, liberty, property, and the pursuit of happiness. The only question that we have here to discuss, is as to the manner and the mode in which that power shall be exercised. Now, the most careful consideration would be demanded of us, if we were assembled here as a Legislature merely, to pass a law to go into effect and remain in force two years only; which might be revised, amended, or repealed, as experience demonstrated it was insufficient, or fruitless of the results sought to be accomplished by it. How much more essential is care and consideration necessary, how much more is prudence demanded of us in the work now intrusted to our hands. Hasty legislation may be repented of and repealed. It is simply for a moment mischievous. Hasty Constitution-making is a vice that may rot and ruin the very fabric that we are attempting to uphold. No systems of law, no principles of government, are of value except they be the result of growth, the fruit of experience, the ripe and matured result of the wisdom that flows from it. The science of government itself, of that which shall bring the highest welfare to the body politic and to the individual citizen, is a progressive science. The principles, to be sure, are immutable, unchangeable; but their application must vary and change with the growth and progress of States and peoples. They depend upon a thousand circumstances; they require to be modified and adjusted, and adapted to an infinite variety of conditions which we cannot control, which we cannot foresee, and for which no human wisdom has ever been or ever will be able to provide. Therefore, while the principles should be engrafted upon the Constitution, their application ought not, philosophically speaking, to be restricted, and made incapable of adaptation to inevitable changes. This consideration becomes the more important when we consider the vast interests with which we are dealing.

Corporations have grown to most enormous dimensions in the United States. The railroad system of this State, and which seems to cause so much anxiety, is like a single drop of rain that falls from the clouds in comparison with the deluge that descends from a Summer storm, when compared with that of other States. I find by the statements made by Simon Sterne, in his pamphlet on the railway system of the United States, so flatteringly referred to by the Chairman of the Committee on Corporations—a book which I loaned him, and of which he did not make the best use that could have been made, for, certainly, the views expressed by Mr. Sterne by no means support the conclusions embodied in his report and article—that in the year eighteen hundred and thirty there were only twenty-three miles of railway within the whole limits of the United States. In eighteen hundred and forty they numbered two thousand two hundred and eighteen miles; in eighteen hundred and fifty they had increased to nine thousand and twenty-one miles; in eighteen hundred and sixty, to thirty thousand six hundred and thirty-five miles, and in eighteen hundred and seventy-six there were in actual operation in the United States, seventy-seven thousand four hundred and seventy miles of railway, representing an actual capital of six billion dollars—more money, sir, than is invested in railway enterprises in Great Britain, France, and Germany combined. In the year eighteen hundred and seventy-seven, there was in England invested in railway enterprises, two billion eight hundred million dollars; in Germany, one billion dollars, and in France, one billion two hundred million dollars. During this period railway corporations came, as we know, to absorb and engross, by the force of natural law, by the power of steam operating upon permanent roads—which made traffic open and accessible at all seasons and at all times—nearly all the carrying trade of the United States; and to-day, not only in California do the railroads control all the carrying traffic, but they control it all over the United States. All the complaints made here have been made elsewhere, and for that reason, before I get through, I desire to call the attention of the committee to what other States, who are more deeply and injuriously affected than we have ever been, have done, and what, as it seems to me, we ought to do, if anything. In eighteen hundred and seventy-six, eighty-three per cent. of the great grain staples that sought the Atlantic seaboard for the purpose of exportation and consumption, were carried by rail. Of the general internal commerce of the country, more than ninety per cent. was transported by the railroads; and Mr. Sterne says, in contrasting the railway interest with the shipping of the country, that the value of all the shipping, foreign and American, employed in moving our exports and imports, amounted to about two billion dollars, while the value of the railroad interest employed in the same carrying trade was something like six billion dollars. We exported in the year named one billion two hundred million dollars worth of articles, while our railroads carried or transported something like eighteen billion dollars worth of property.

Though the interest of California in the carrying trade of the United

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States is very small (for we have some two thousand eight hundred or three thousand miles of railway, representing a capital something like one hundred and fifty million dollars), yet these railroads, like those at the East, enjoy, notwithstanding all that has been said here upon the subject as to competition, a practical monopoly. Their management affects the people of this State not less seriously than that of other States. We have almost no other highways. We have no great rivers, no great canals. We never had any internal improvements, except poorly built roads, wandering over the mountains and through the plains, wherever convenience might seem to require. Everybody knows the railways were the pioneers of civilization in many parts of this State, and whatever roads there were in use before the era of the railway have been almost entirely obliterated from disuse. There is no such thing as a carrying trade but that performed by the railroad companies. We are entirely dependent upon them, just as they are dependent upon us. Now, sir, while in common with the mass of our citizens, I feel proud of the courage and enterprise which conceived and constructed these magnificent highways, I cannot but acknowledge that complaints are general and many against their management. I think I know, too, that very many of these complaints are founded in ignorance, in prejudice, and that much of the hostility exhibited has been engendered, not by the system of management, but by the personal bearing of some of the managers. Things that are done by or charged against the railways might have been done by other men without a word of complaint. It is a question of personal popularity, rather than anything else. But, notwithstanding all complaints, notwithstanding all wrongs, real or fancied, dilated on here, we cannot live without the railroad any more than the railroad can live without us. We cannot hurt it without hurting ourselves. It has accomplished a great work. It has invaded the wilderness and put to flight its repose and peace by the music of successful labor. It has ended the mission of the pioneer; it has left him no solitude to conquer. Fast and faster upon his retiring footsteps these massive columns of enterprise and capital have advanced, and made his most silent haunt their abiding place. The deserts no longer protect him; the mountains no longer give him shelter; plain and valley and mountain gorge are trembling with the hurrying commerce of Occident and Orient, and the white death that reposed on the brow of the Sierras has been transmuted into glowing life by the invisible touch of the gods of steam and electricity. Accessions of population, hitherto unknown sources of wealth, the great staples of agriculture, gold, silver, iron, and coal; cities, towns, seminaries, schools, the visible signs of progress and civilization, have sprung up in its path, and have followed wherever it has gone.

Now, in view of all these considerations, let us consider this subject fairly and candidly, and whatever is necessary, whatever is just and right for the people's protection, let us do; but whatever is not necessary, let us not do. I favor every necessary constitutional provision and all proper legislative restriction and control. Suppose that all this was a new question; that we had never known a railroad in this State; that we were here to consider the question of railroads to be built and operated in this State; that there were no complaints, no personal grievances, no signs of wrong of any kind, but had only to consider what was for the best interests of the people, what would we do? We would look at the experience of other countries and States where these railroads existed, and where the vast capital I have mentioned was invested. I have been somewhat surprised, as we have been progressing in this debate, to notice how impatient and restive some of us have been and are at the time taken up with the discussion of this question. We have been occupied two or three weeks; yet we are here seeking not only to make a general constitutional provision, but to engraft upon the Constitution—what one of my colleagues from San Francisco, Judge Hager, said he was in favor of doing—a full and complete code of laws, that should make the Constitution, if necessary, as long and detailed as the Codes of the State. Why, sir, hundreds of volumes have been written upon this subject. Systems of laws have been adopted. One system after another has been changed, modified, and altered to suit the varying complexion of the times and the exigencies of occasions. No one will undertake to say, when he considers the literature of the railroad and sees how much anxious thought has been bestowed on these questions, how very difficult it has been to deal with all these perplexing problems, that two weeks, or three weeks, is too long a period to spend in considering questions of such magnitude, when the results of our deliberations must enter into the organic law of the State, and are to be fixed, immutable, inflexible, never to be modified or altered, no matter what changes in society, in capital, or the judgments of men may be.

The English Parliament began very early to deal with railways. As early as eighteen hundred and thirty-four they commenced to consider them, and the history of the English legislation on that subject shows how futile, useless, and vicious an absolutely unchangeable system for the direction and control of this class of corporations would be. The present condition of the laws in England, which has been alluded to, but not very thoroughly examined, is the result of long experience, and has been reached after very many changes. As early as eighteen hundred and thirty-nine, a select committee on railways, of the House of Commons, expressed a strong opinion—and that was the earliest intimation that I know of reference to these Boards of Commissioners—expressed a strong opinion that a Board would be required to superintend railways for the purpose of protecting the weak against the strong, and of counteracting the evils incident to monopoly. But there was no attempt made at that time to provide that any such Board should interfere with railway legislation. Again, in eighteen hundred and forty-one, another committee was appointed by the Commons, to consider whether it was advisable for the public safety to vest a discretionary power of issuing regulations for the prevention of accidents upon railways in the Board of Trade, and if so, under what conditions and limitations. This committee, by its report, negatived this proposition, and recommended that the Board of Trade should exercise their supervision over railways, in the way of suggestion, rather than by positive regulation. In February, eighteen hundred and forty-four, a select committee of the House of Commons was appointed, which committee made six reports in six months. Many of the powers exercised by the Board of Trade take their origin from the suggestions and conclusions of these reports. It is not without interest to note that this committee, like many others, entered upon their labors with a strong prepossession against any general interference by the Government in the management and working of railways, and that they had seen no reason to change their views. But with regard to railway legislation, they were convinced that it was alike clear from reason and from experience that should thenceforth be subjected to an habitual and effective supervision on the part of the Government. They also recommended that an efficient supervising power should be constituted on the part of the public, to assist the judgment of the houses of legislation, and that general principles should be laid down to guide its proceedings, and finally they recommended that railway bills should be submitted to the Board of Trade previously to their coming into Parliament.

It will be noticed that all these powers were intended to be advisory merely; to aid by the elucidation of facts, by the testimony of witnesses competent by knowledge, habit, and opportunity, and officially responsible, and to make recommendations. For these purposes Parliament adopted various standing orders to enable the Board of Trade to exercise supervision over projected railways, and the Board of Trade acted under them. In eighteen hundred and forty-six the powers vested in the Board of Trade were transferred to a railroad Commission, called Commissioners of Railways, and that Commission continued to act until eighteen hundred and fifty-one, when it was set aside, owing to its inefficiency, and the powers it had exercised were returned to the Board of Trade. In eighteen hundred and fifty-three, a select committee of the House of Commons, to whom this subject was referred, said:

"In a country so rapidly advancing in prosperity as England, and in respect of a system so new, and where so much is still a matter of progress and experience in this system of railway communication, and where such great interests are involved, and so much ability and enterprise are constantly at work, it is futile to lay down general rules in words, unless provision be made for the steady application of those rules to the varying circumstances which from time to time arise. Hence all the most intelligent witnesses whom your committee have examined have pointed to some tribunal which might be invested by Parliament with so high a degree of authority as to give weight and stability to its decisions, and thus, by creating in the public mind a more certain anticipation of the result of parliamentary conflict, be made eminently conducive to public good."

And they considered, then, that such a tribunal could not be erected altogether outside of Parliament. And why? Why, from general considerations of representative government. But to these Railway Commissioners very great powers were intrusted; greater powers almost than those which have been outlined and indicated in the proposed amendment to the Constitution. They had authority over every projected railway scheme; they had authority over every railway that proposed to connect with any other, as to the general management and the moving of freight.

They had authority over the gauge of the road; they had the power of inspection before it was open for the public use; and no railroad could be operated except the Board of Trade had previously approved of the road, its system and management, its track, superstructure, bridges, and rolling stock, and found all ample and sufficient to supply the wants of the public in the region where it was proposed to run it. They had the superintendence of railroads after they were built. They controlled connecting lines, or separate portions of one continuous line of railway, and the orders of this Board of Railway Commissioners controlled the whole railway system. They controlled the junctions, crossings, the speed of trains, the power to condemn lands, and, more extraordinary than all, no railroad corporation could adopt by-laws for the management of its business, in respect to passengers and freights, except they were examined and supervised by the Board of Trade, and whatever was done in that respect was subject to the supervision of the Board, and they had the power not merely to approve or reject, but to direct the adoption of such by-laws for the regulation of traffic as seemed to them in the interest of the people. The Board also had the power to direct the Attorney-General to proceed against the companies for any violation of their charters, or for failure to comply with any by-laws or regulations. They also had power to require returns of traffic, and the publication of the rates of freights and fares. The companies were compelled to report to the Commissioners of all accidents and the reasons for them. And they also had the power to regulate the construction of cars, to regulate the running time of cheap trains for the use of the laboring classes in and out of London and the great commercial centers; and also the fares upon them. No corporation in England could make a scheme for freights and fares by pooling with any other railroad lines, or steamships, except under the authority and with the consent of the Board of Trade. The constitutional provisions as proposed here, as matter of detail, do not approach the severity or the extent of power conferred by Parliament upon the Board of Trade, nor upon the present Railway Commissioners. I care not how honest a man may be, he must have other qualifications than honesty to fit him for such duties as these. To put a man in command of a steamship who comes from Iowa, where salt water is worth five dollars a quart, simply because he is good and honest, would be an absurdity. To take a man unfitted for and untrained in the legal profession, for instance, and turn him loose in an intricate action at law, would be ridiculous. To take a man unskilled in the medical profession and allow him to practice the deviltries of the healing art upon a suffering public, or turn him loose to make a plan of salvation and build up a system of theology to suit himself, would be a crime.

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Now, as political Conventions are managed, how are you ever going to get the best men for such a Commission as exists in England or is proposed here? The ordinary duties of executive or ministerial officers move in right lines. Their course is fixed and steady, and any intelligent citizen can make a fair Governor, or Controller, or Secretary of State, for he enters upon an office where the machinery is already at work; he is but the tender to the government machine. An elective Commission has, so far as I know, never been heard of. In the laws I have examined, the Railroad Commissions have always been appointed, and always with reference to their special qualifications for the peculiar and responsible work imposed on them. In the case of the English Commissioners (I read now from the Act of eighteen hundred and seventy-three, where the Railway Commission superseded the Board of Trade), it is provided, "for the purpose of carrying into effect the provisions of the Railway and Canal Traffic Act of eighteen hundred and fifty-four, and of this Act, it shall be lawful for her Majesty, at any time after the passing of this Act, by warrant under the royal sign manual, to appoint not more than three Commissioners, of whom one shall be of experience in the law and one of experience in railway business, and not more than two Assistant Commissioners, and upon the occurrence of any vacancy in the office of any such Commissioners or Assistant Commissioners, from time to time, in like manner, to appoint some fit person to fill the vacancy. It shall be lawful for the Lord Chancellor, if he think fit, to remove for inability or misbehavior, any Commissioners appointed in pursuance of this Act." Look at the Railroad Commission of Massachusetts. I read from the Acts of Resolves of the State of Massachusetts, for eighteen hundred and seventy-four, chapter three hundred and seventy-two, page three hundred and forty-nine, section six: "Section 6. There shall be a Board of Railroad Commissioners, consisting of three competent persons. The Governor, with the advice and consent of the Council, shall, before the first day of July in each year, appoint a Commissioner, to continue in office for the term of three years from said day; and if a vacancy happens, by resignation or otherwise, he shall in the same manner appoint a Commissioner for the residue of the term, and may in the same manner remove any Commissioner." Such a Board of Railway Commissioners has been in operation in Massachusetts ever since eighteen hundred and seventy-four, but in every subsequent year there have been enlargements and modifications of the powers conferred upon them, showing all the while that it is not safe to undertake at any time to adopt a system which shall pretend to be in itself complete, like that suggested by the gentleman from Alameda, Judge Campbell. Perhaps he thought from our two or three weeks' railroading in this committee, we were competent to include in one single section of the Constitution of this State the ultimate reach and finish of all the labors of old legislative committees and Commissioners on the face of the globe. This descending into details seems to me to be most unwise, or if we must go into details we have by no means comprehended all that are essential to railroad control. If we have part, why not have all? But to return to the question of the Commission.

Take the case of Connecticut. There is a railway Commission there concerning which it is provided that "there shall be appointed by the Governor three Railroad Commissioners, who shall constitute the Board of Railroad Commissioners, each of whom shall hold his office for three years, and until his successor is appointed and qualified; and the term of one of said Commissioners shall expire each year." Now, here is a valuable suggestion. If we are to have a Board as provided for in this section, whether elective or to be appointed, it seems it is to be *in solido* for the term of four years, to come in and go out together, leaving the office and all of its business for a new Board. This seems to me to be a mistake. It should be arranged on some scaling plan, so that at all times at least two competent skilled Commissioners shall remain in office, and that when a new incumbent displaces an old one, he shall have the benefit of the experience and judgment of some who have preceded him; that the whole Commission shall not vanish in the twinkling of an eye, at the trump of some Gabriel of a political Convention. The Act from which I read provides that the term of one of said Commissioners shall expire each year. The Governor, with the advice and consent of the Senate, shall annually appoint one Railroad Commissioner, and may, at any time, remove a Commissioner for cause. Now, the report of our committee makes no sort of provision for the removal of the Commissioners for any cause. They may be corrupt through and through. The intimation given by the gentleman from Sacramento, Mr. Edgerton, in his speech the other day, was that if this Commission was made elective, the railroad company would go down into the southern part of the State and turn off Chinamen and put on four or five thousand others—I do not know who, but I am afraid he meant Irishmen—and make them vote in the company's interest, and elect at least one Commissioner. I think he expressed a truth. If you maintain this Commission in its present shape, it offers the highest kind of temptation to the corporations to protect themselves by regulating the Commission before the Commission gets a chance to regulate them. Can you blame them if they do?

I agree that it is perhaps not so easy to corrupt three Commissioners as it is to influence a Legislature, and I am sure that the concentration of responsibility, the publicity of their proceedings under such systems as have been adopted in the other States, would make them reasonably honest. But it is one of the vices of this twentieth section that it contains no power of removal. The Commissioners are elected and take their seats for four years. They are responsible to nobody. They are themselves witnesses, judges, juries, and executioners. It is the most extraordinary plan, I think, that was ever presented for the consideration of a deliberative body. It has just undergone some sensible modifications, and will do as it stands, provided we shall put in the safety-valve that other States have engrafted in their Commission laws. This will be approved by the calm judgment of every man; certainly it should be. The Commissioners should be appointed by the Governor of the State, with reference to their qualifications for their duties, with reference to their fitness and knowledge of the subject with which they deal; that they should not be elected and go out of office together, but should be so appointed that one would go out of office at a time, and there would always be two of the Commissioners old in the harness, understanding the operations of the Commission, and that we shall not be left every four years to a series of experiments started and carried on by men who have to travel over the same ground that their predecessors have traversed, before they are fit to act upon a subject so important. That is the case with the Commission in Connecticut. I read now from Wilcox's Railroad Laws of Ohio, as to the Railroad Commission of eighteen hundred and seventy-four, under which the railroad law of that State is being administered:

"There shall be appointed by the Governor, by and with the advice and consent of the Senate, within fifteen days after the passage of this Act, a person to be styled a Commissioner of Railroads and Telegraph, who shall hold his office for the period of two years, and until his successor is appointed and qualified. The person who is so appointed shall be an elector of this State and shall have no official connection with any railroad, nor during the term of his office own or be interested in the stock, bonds, or other property, or in the employ of any railroad. In case of vacancy by death, resignation, removal from the State, or otherwise, the Governor shall fill the vacancy, and report the name of such appointee to the Senate, if in session, and if not, within ten days after the commencement of the next session, who, by the advice and consent of the Senate, shall hold his office for the full term of two years, as hereinbefore provided, from the day of his appointment; *provided*, that if the Governor shall, at any time, become satisfied that the Commissioner is inefficient or derelict in the discharge of the duties of his office, or in any way uses the advantage of his position for personal ends, to the disadvantage of the public interest, he is hereby authorized and required, by and with the advice and consent of the Senate, if it be in session, to remove the said Commissioner from office; and if the Senate be not in session, to suspend him from the discharge of the duties of said office, temporarily filling the vacancy, as provided for in this section, and reporting the facts to the Senate when in session."

Now, sir, in view of such lights as these—and I have only referred to these three of the several States that now have a Railroad Commission—why should we not have Commissioners appointed, and so appointed that there should be no break in their administration, just as the Senate of the United States is organized, one third going out every odd year, so that all the time in that body there are two thirds of it who understand and are able to carry on its affairs and manage the interests of the nation? I consider that the men who are to have control of these railroads, as is proposed here, should be men of skill and education, not only honest, but as capable to perform their duties as the utmost discretion can select from the community. They need high intellectual qualifications, as well as all the political and personal integrity that can be bound up in one human being. Yet we propose to take this Commission and throw it as a prize into the political arena, to be fought over and traded for, and also make it an object for the railway companies to go into political Conventions and control the Commission at the expense of every other consideration. It ought not to be done. One of the gravest charges made against the railway company was made by the Chairman of the Committee on Corporations, in connection with his citation of the remark of Jay Gould. He says that Mr. Gould attended the meeting of a legislative committee in the State of New York, and in the course of his testimony stated that whenever he was in a district that was Democratic, he was a Democrat; whenever he was in a district that was Republican, he was a Republican; but that he was for Erie all the time; that he kept an account in his books called the "India rubber account," which represented money paid for influencing legislation. If the railroad companies are compelled to go into the business of controlling the election of Commissioners, they must spend money. They keep books of account. One of the things contemplated by this section is that the Commission will require publicity in railroad accounts. They will not be able to have any "India rubber" fund, but will be compelled to keep their books in such a way as the Commissioners prescribe, to the end that the Commissioners will know where every dollar goes. It may be necessary to spend twenty thousand dollars to insure the election of their candidate. Is he who has been elected by this means to be the one to expose it? Certainly not. He is bound to keep the secret. It is asking too much of any man, if he was put up and nominated by the railway corporation, that he will expose the very means by which he has ridden into power. He should be far removed from any possible influence from any quarter, and to secure his independence and defend his integrity we should, it seems to me, adopt the plan in vogue in England and the States I have referred to. They should be appointed by the Governor, solely with reference to their qualifications and honesty, and without regard to their politics. They should be dependent for office and for continuance in it upon no power except that of the Governor and Senate. No Governor would sit silent in his chair and see the duties expected to be performed by a man he has appointed left undone, without placing his hand upon him and making an official end of him.

Sir, I am opposed, not to the powers conferred upon the Commission at all, because I think they must be conceded, but I am opposed to this elective Commission. I am opposed to it because it inducts all the three Commissioners into office at one time, and removes them all from it at one time. I am opposed to it because it makes no provision for their removal if found incompetent or corrupt, or guilty of neglect of duty, and requires no bonds or security for the faithful performance of duties. It struck me as extraordinary that when we require the Directors of every incorporated company to become a guaranty for the honesty of the porter that sweeps out the office, or the clerk who stands at the desk, that here, and here only, were three men to be put in power

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and vested with an absolute authority, the like of which never existed, without a bond of any kind, without the power to remove them being lodged anywhere—created railroad monarchs for the period of four years—upon whose heads is poured some kind of sacred oil manufactured by this body, that, like that shed upon the heads of kings, makes their right to reign indefeasible. Do you think that is right? Are the people of this State going to tolerate any such thing as that? In my opinion it is the most foolhardy scheme that was ever submitted to scrutiny or for which men were ever asked to vote. Let us have Commissioners if you will; let us give them all necessary powers, but let them be appointed and under some bonds, pecuniary or moral, for good behavior. Provide some security upon which the people can depend, and let us not throw this triune kingship into the political arena, to become the prize of the corrupt politicians, or a weapon for the use of the demagogue, in some senseless crusade against capital, which, if successful, will wound what it pretends to protect. There is another peculiarity about this section. It entirely eliminates the corporations from the control of the Legislature. In a preceding section it is declared that "all railroads and transportation companies shall be common carriers, and subject to legislative control." But in section twenty we say that the Legislature shall have nothing to do with their control, and that all power shall be vested in a Commission to be elected by the people. It is confusion worse confounded. Let us hope that the Committee on Revision, or some other committee, will some time straighten the thing out. I understand the gentleman from Sacramento, Mr. McFarland, to deny that there was dissatisfaction with the railroad companies. What the reasons for the feeling are I do not fully understand, or perhaps appreciate, but I know that there is a general and deep-seated dissatisfaction with their management. I think it grows out of small and petty things; but for all that it exists, and I know when my colleague from San Francisco, Mr. Barbour, one day referred to a defeated candidate for delegate at large on the Workingmen's ticket, he turned and said, "He ran as well as you did." I know very well what was the matter in that election.

It was not that the people had so much more confidence in the successful local delegates from San Francisco than they had in gentlemen who had been residents and citizens of that city for many years, and some of whom, at least, were identified with its best history, but it was because there was a general impression among the people, created by the press, that this non-partisan movement was a scheme gotten up and engineered by the railroad companies and other corporations, and that we were to be sent here with the collar of the corporations about our necks, to do their bidding. And so the people looked about to see what they should do. They could not beat us with the Democratic ticket; they knew they could not beat us with the Republican ticket, because the combination was too strong; so many a good Democrat and many a good Republican down there, who wanted to see the so-called corporation agents defeated, walked up to the polls and voted the Workingmen's ticket. They didn't love the Workingmen as much as they feared us. That was what was the matter. We propose to remove that objection before we run again. [Laughter.] The non-partisans are, and will be, right upon this record. We shall vote in favor of the legislative control of all corporations, declaring in the Constitution that that power shall be guaranteed in this Constitution—if it be adopted—for all time to come. This was the platform upon which we went to the people of San Francisco, but somehow we could not make them believe it. But in securing this popular right, we should take heed of the experience of other States who have dealt with this subject, and which have had a deeper interest in it than we can possibly have, for they have suffered more. If we have a particle of sense, and that of the commonest kind, we will not undertake to beget these elective, irresponsible, disqualified, political railroad triplets, crowned for four years, born together and predestined to die together. Give us a Commission to be appointed by the Governor, with such terms of office that there shall be always one or more Commissioners of experience in office with power in the Executive of removal; with powers ample to enable them to investigate the affairs of the corporations; to compel the disclosure of contracts and dealings with all persons and corporations; to ascertain what delinquencies, discriminations, and unjust exactions, if any, are made; to hear complaints, report the same to the Legislature with such remedial measures as they may deem proper, and by all legal proceedings in Courts of law keep the corporations within the limits of their chartered rights, and the people will be satisfied. Make these experiments, and you will be apt to discover that our people will rather bear the ills they have than fly to others that they know not of.

SPEECH OF MR. WHITE.

MR. WHITE. Mr. Chairman: I am anxious to say a few words upon this question, simply as a farmer. It seems, sir, like an act of temerity on my part to attempt to speak upon the question after hearing the eloquent address of the gentleman from San Francisco, Col. Barnes, who has just taken his seat. I cannot speak as he speaks, but I will try to make myself understood, while I give you the views of the farmers of my district, in my own plain way, on this subject. Now, sir, in the first place let me say that it has been argued that it is only interesting to farmers; it has been so intimated on this floor; and one of the daily papers of this city takes up the absurd idea, and says: "The Workingmen should not bother themselves about this railroad matter, it is interesting only to farmers, and they can take care of themselves; the Workingmen should attend to the land matter, and to the great taxation question; we say look out for yourselves, and let the farmers do the same." What an absurdity! Mr. Chairman, people who talk in this way must think that they are addressing fools, and their language becomes insulting to the Workingmen. I would like to ask what class, what profession or calling in life would or could succeed if the farmers fail to meet with success? Could the day laborer succeed? Could the plow makers succeed? Could the wagon makers succeed? Could the reaper and thrashing machine makers succeed? Could any mechanic succeed? Could the storekeeper succeed? I would ask, sir, what class or calling could succeed if the farmers are crushed down? Not one, and you all here in this Convention know it. Then why such silly talk here on this floor, and in newspapers pretending to address words of sense to an intelligent community?

That my fellow delegates may understand that I have the right to talk for the farmers of my district, I will tell you, Mr. Chairman, that for twenty-five years I have lived and worked on the same farm, and have raised and educated a large family there, and have in all that time never made a dollar but what I made in the track of the plow and the reaper. The farmers are overcharged by the railroads; in fact, we are kept poor by these enormous charges, and that is the reason we ask of this Convention to place our relations with them in a more satisfactory position. To illustrate, I will give you what it costs to remove the crop of an acre of land of our principal productions from our valley to San Francisco, a distance of one hundred miles by railroad. One acre of wheat, three dollars and fifty cents; one acre of barley, seven dollars; one acre of potatoes, seventeen dollars and fifty cents; one acre of beets, thirty-five dollars; in all sixty-three dollars. Now, sir, this same freighting, for the same distance, is done in the State of New York for nine dollars. This certainly is a wonderful difference, and, in my opinion, the railroad company are robbing the farmers by exacting such enormous charges. Gentlemen on the other side say: "Oh! you have the right to correct all this, but you had better not exert that right, it will only kick up a fuss with the railroad people and do you no good." I admit the correctness of this under the present system of dealing with railroads, but we want a change, and we must have it. The Supreme Court of the United States has said to the people of California, "You *own* the right to say what these railroads shall charge and what they shall not charge; the railroad company owns the right to receive and pocket every dollar that is charged and paid for freights and fares." We do not dispute this right of the railroad people, why do they dispute our rights?—the right to say what they shall charge, and that is all we ask.

Mr. Stanford wrote a letter intended for this Convention and laid on all our desks, that our attention might be drawn to it. In that letter he claims that it is confiscation to create this Commission to regulate fares and freights. Now, my friends, I will ask you to consider what I will draw your attention to to illustrate the absurdity of this claim of Mr. Stanford. Some sixteen years ago there was no way to get out of our valley of the Pajaro to go to San Francisco but by the way of San Juan, in Monterey County, which was a circuit of twenty-five miles. To avoid this route, we got together at Watsonville and subscribed about eight thousand dollars, and with this money graded a road across the Santa Cruz Mountains which was to be kept open as a toll road. We received no aid from either Santa Cruz or Santa Clara Counties, the money that built it and purchased the right of way was our own private money, yet did we attempt to fix our own rate of tolls as we saw fit? No, sir; we did nothing of the sort, for the law of our State would not allow us to do so; when the road was finished we sent one of our party to the Board of Supervisors of our county and got from them our schedule of tolls; and that was not all: we sent that schedule of tolls to the Board of Supervisors of Santa Clara County, as the road lay partly in both counties, and got their consent to the schedule allowed us by the Board of Supervisors of Santa Cruz County. That done, we posted on the gate the rate of tolls we were allowed to charge, and collected in accordance therewith. When the road afterwards got into bad repair, the proper authorities forbid us to collect tolls until we had put it into good traveling condition. Was this confiscation, Mr. President? No, sir, it was nothing of the sort, and yet it is a much stronger case than the one Mr. Stanford makes out in his letter on confiscation; for the money that built our road was all our own, while the money that built his railroad almost all came from grants and donations made by the State and National Government.

Now, the question before us is, will we do what we have a right to do—regulate the fares and freights to be charged by railroads? We cannot leave it to the railroad company itself. That would be absurd. Shall we leave it to the Legislature, or shall we establish this Commission, to take charge of the whole matter? The gentleman who has just sat down argued on both sides of the question in many respects. He spoke in favor of a Commission, but was undecided in his language, and wanted the Commissioners appointed by the Governor. What does that mean? It means just this: it gives the railroad people three chances to control the Commission instead of the one chance they would have if the Commissioners were elected by the people, as we propose. Under his plan, they would have their first chance in a party convention to control the nomination of Governor; if they failed in that, they would fall back on their second chance, to control the State Senate—a body they have never failed to control in the last twelve years—and thus prevent the confirmation of any Commissioners, nominated by the Governor, objectionable to them; if they do fail in the Senate, which is not at all likely, judging from the past, they have their third chance with the Commissioners themselves. Now, on our side of the question, we propose a plan by which the railroad people will have but one chance to control the Commission, and that a very slim one. We propose to elect the Commissioners by single districts. On the same day, we say to the people, "choose your men, and be sure who you choose, for it is your own property they will have charge of. As you hold your ballot in your hand, look your man in the eye, as it were, think of his record in all that is past of his life, and if you think the look he gives you back is frank and honest, and the record of his life such as you approve, then drop your ballot in the box, and not otherwise. If you forget to do this, and elect a thief, it is your own fault, and you will have no one but yourselves to blame when you suffer for your blunder."

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But even then we have the consolation of knowing that we are no worse off than we are now, and besides, we gain in one respect immensely. We have saved the Legislature, the fountain from which all our laws flow, from demoralization disgusting to contemplate. It is a fact, a fact to be deplored most bitterly, that the whole people of the State have become almost unanimous in the belief that the Legislature is hopelessly corrupt and vicious. Why is this? It is, Mr. Chairman, in my belief, because of this railroad question being brought under consideration at every session, either by honest men seeking relief for the people from the grasping cupidity of this great corporation, or by dishonest men seeking to levy blackmail on that corporation. In either case the effect is the same on the morality of the Legislature. As the session opens the railroad is here with a few devoted members in its interests in each house. The managers of the railroad fight soon find out who have thieving schemes for the Legislature, and who have honest measures to put through. To the managers of the thieving scheme they say, "If you help us, we will help you," and that bargain is soon made. To the managers of the unobjectionable measures they say, "If you do not help us we will see that your measure is defeated, let come what will," and by and by they too will fall into line on one excuse or another. Thus the pool is made and a whole shoal of thieving laws go through together, to swindle the people of the State in one way or other. In this way the railroad controls the Legislature without using much gold, but gold they will use when other means fail. Is not this a terrible thing to think of, my friends, that all our laws spring from such a vicious, corrupt pool, yet these are facts that everybody is aware of. Gentlemen have stood up here and talked about our Legislature very mildly and politely. In fact they have avoided saying anything that was uncomplimentary.

Our respected Chairman of the Committee on Corporations, Mr. Estee, disclaimed any wish to make charges against our Legislature, but carried us all the way to New York to comment on the Legislature of that State, and showed us its rottenness and corruption, caused by the railroad question. Then he took us to Pennsylvania and other States, illustrating the same fact in every instance, but, as I said, he politely avoided speaking of our California Legislature. Now, Mr. Chairman, I do not see any good reason for this forbearance, and I shall not practice it. I know there were many good men in the last Legislature of our State; men who could not be purchased or swerved from duty by any power on earth. But it so happened that there were forty-four men out of the eighty, here on this floor last Winter, who were always ready to jump on board the railroad car when the whistle blew, and in the Senate the majority was much larger who were pliant tools of the railroad. Now, this is a thing that every one knows; at least if it is not true, the papers of the State have been lying terribly about the character of the Legislature, for the press was nearly unanimous in its denunciation of its venality and corruption. I have collected several articles from different newspapers in this State to show you how universal this belief was in all parts of the country, but not wishing to occupy the time of the committee too much, I will only read you one, which I take from the Daily Examiner of March first, eighteen hundred and seventy-eight. The last Legislature was, I believe, about two thirds Democratic in each house. No one will, therefore, dispute the authority of the Examiner when speaking of a Democratic Legislature, for it is the acknowledged leading organ of that party:

"In Miss Charlotte Bronte's admirable novel of Villette, she makes her heroine listen to some improper suggestions, offered by a companion, for the purpose of giving the latter an opportunity of showing herself in her true colors. The serpent once seen, the gifted authoress remarks, it was easy enough to avoid its slimy trail thereafter. Recent developments in our State Legislature prompt a reference to this observation, made by Miss Bronte.

"The railroad discussion in the Senate and Assembly caused many a serpent to leave its concealment and wriggle forth into daylight. It was not a pleasant sight. It was as disgusting to the spectators as it must have been painful to the reptiles themselves. But there they were, shining in metallic-appearing scales, unfolding coil after coil, creeping on the ground, while the potent magician and snake-charmer, the great railroad corporation, piped the music, to the measures of which their slimy bodies undulated in grewsome harmony. It was a remarkable sight to see the fascination which compelled the creatures to crawl on their bellies, groveling in the dust and filth at the feet of their stern, pitiless master. It was astonishing to see the inexplicable power of the one, and the disgraceful, servile obedience of the other. But the wonder grew, and was changed into horror and indignation, when the hard task-master forced the crawling things to raise their heads and hiss and strike with their venomous fangs at the very hands which had, through mistaken pity and trustfulness, reared, supported, and protected the very creatures who essayed to reward their benefactors with insult and the blackest and most perfidious treachery. Were not the occasions so momentous, the needs of the public so pressing, it would almost be amusing to hear each reptile utter its characteristic sibilation. One said this and another wanted that. One had this excuse and his fellow another. But the whole performance was for the same object, and was actuated by the same purpose, and that was to delay, defeat, and defraud the people of their rights, and to secure, and render still more onerous, the burden imposed by a monster monopoly, which is as dangerous to the civil liberties as it is disastrous to the material interests of the people.

"Of course the men who do these things will put on airs and affect the manner of virtuous indignation. They will say that 'we acted according to our best judgment.' That 'what we did we believed for the interests of the people.' That 'it is not just to accuse them with being actuated with mercenary motives, without proof,' etc. There will be bushels and bushels voided of such stuff as this. But they can spare themselves the trouble, and not add insult to injury. The motives which actuate them and their purpose are well known.

"It is a legal presumption that what a man actually does, that it is his intention to do. When the members of the present Legislature inflict a positive and enormous injury upon the interests of the people, which they have sworn to protect; when they desert their colors, and with traitorous purpose march over to the enemy and array themselves beneath its banners, and do battle in its behalf, they will be held responsible for their acts to the fullest extent. They knew, well knew, what they were doing, its consequences and effects. They knew, and now know, that they deliberately betrayed their constituents; that they refused to be governed by their oaths; that they attempted to deliver over the people bound hand and foot to a merciless and remorseless corporation, which, in the fourteen or fifteen years of its existence, has never performed one of the obligations it undertook; which has never obeyed any law which did not further its interests; which knows neither honesty, good faith, nor gratitude for the countless favors it has received; which, at this moment, before the present Legislature, is seeking to acquire other people's property without rendering a just, or any equivalent; in short, a corporation which has become a public enemy, the aggressions of which must be restrained, or else it will soon as completely rule this coast as ever did the Czar control the Muscovites.

"Yet how blind are the poor, wretched tools who do the bidding of this giant corporation in the Legislature. Their present acts in favor of their masters are really political suicide. They will drop from sight and notice directly they have fulfilled their base purpose. They appear and fret and fume their little hour upon the stage. After they have done their disgraceful spiriting they disappear like the noisome vapors that hover over malarial marshes when the soil is reclaimed and the wholesome light and air have done their health-giving work. They will never be remembered, save as when one reads of the servile jurymen who, awed by the threats or won by the cajolery of the infamous Jeffreys, brought in verdicts whereby innocent men and women, even children, were slain. They are not known by name, but under the generic title of the corrupt servitors of power, who were as dead to the calls of humanity as they were to the dictates of honor and patriotism and the sanctity of their oaths. Such will be the fate of these railroad legislative attorneys. They will sink into—for them welcome—limbo, the gloomful, murky infamy of which will shelter their individualities. But as a body, they will, for all time, be held up to reproach as the legislators who forsook the cause of the people and espoused that of the common enemy. Why they did this—whether it was for money, for place, or because of their ignorance, or their folly—it matters not. In any case they are equally criminal, and should, and will, meet with a like punishment. They will be gibbeted for all time as the railroad hirelings who, under false pretenses, entered the Legislature for the purpose of betraying their constituents. How do they like that reputation? Do they think they have received a *quid pro quo* which will compensate them for bequeathing such a heritage to their children? May be they think so; but how pitiable is their mistake, and how terrible will be their punishment."

Mr. Chairman, the serpent once seen, it is easy enough to avoid its slimy trail, and I say let us be sure to do so. The comments on the Act of the Legislature that I have just read are a fair specimen of those of the press of the whole State, yet, sir, we are asked to trust this question of fares and freights to that body that has fooled us so often.

I object to doing so for these reasons: The first is that it is practically impossible for the Legislature to fix a schedule of fares and freights that would be just even to the people or the railroad company, if they were ever so honest in their endeavors to do so. Secondly, if it was practicable they would not do it; and, lastly, because thrusting this question on the Legislature demoralizes that body to a degree that makes it contemptible in the view of the whole people, and makes respect for its action on any question impossible. Gentlemen talk of the immense power we propose to give the Commission; this, in my mind, is all humbug. The power we give them is not half as much as we confer on other departments of the government. Think of the power we give the Judges of the Supreme Court, and, I may say, the District Courts. Why, we place everything in their hands, life as well as property, and yet we are not afraid to trust them, and our trust has never been abused, so far as any man in the State knows or believes. Colonel Barnes says we cannot trust the people to elect the Commissioners—that they must be appointed by the Governor, yet he forgets to tell us that the Governor is to be elected by the people; and that generally he plays into the hands of the railroad people to secure his election, and after his election for the purpose of going to the United States Senate.

I heard a railroad man, yesterday, say openly, at a dining table, that no man could be Governor of California without the consent of the railroad corporation; he boasted that it elected Haight and defeated Haight; that it elected Irwin and would be even with him if he went against their interests. Why then is it so safe to leave the appointments of Commissioners to the Governor? I will ask you to recollect, Mr. Chairman, that there were three Commissioners appointed by Governor Irwin under the provisions of an Act passed three years ago, and I will say that the people of the State believe these men were honest, and that they did their very best to do their duty so far as the milk and water provisions of that law would enable them to do. They came before the last Legislature with three bills to regulate fares and freights of railroads, recommending their passage. What was the fate of those bills? Why, sir, every clause in each of the three proposed laws that favored in any way the railroad corporation, were formulated into one bill, and that bill was passed by the Legislature, and is well known as the Hart bill; and I say that this Hart bill is an insult to the people of California. Yes, sir, I say it is a downright insult to the intelligence of our people; an insult thrown in the face of every citizen of the State, yet we are asked by gentlemen on this floor, to trust the Legislature again, with this, to us, vitally important question, notwithstanding the infamous job I have just referred to. That bill provided for the appointment of one Commissioner instead of the three it legislated out of office.

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Who appointed that Commissioner? The Governor appointed him. Did he select one of the three men who had proved themselves honest and faithful to the people? Oh, no! he did nothing of the sort. On the last day and night of the session of the Legislature there were some maneuvers in regard to that appointment; a sort of sleight of hand trick played about this building that resulted in all three of the honest and tried Commissioners being thrown overboard, for no other reason that the people could see but that they were honest and true to the trust confided in them; yet Col. Barnes insists that the appointment of the Commissioners would be safe in the hands of the Governor. Yes, Mr. Chairman, he is the man to select the Commissioners, because if he makes a mistake, as Governor Irwin evidently did, and appoints honest men, he can remove them and disregard them as Governor Irwin did in this case. I do not wish to be understood as saying anything against the character of the gentleman the Governor appointed in this case; he may be all that his friends claim him to be, and I suppose he is honest and honorable, but this is a fact of no consequence to the people, for under the Hart bill he has no power worth talking of. Pretty much all he has to do is to gather railroad statistics. There are seven or eight pages of this Act taken up with high sounding statistics; the Commissioner is required to gather all the veriest humbug that ever was written or strung together. To show you this I would read for you four or five pages of this Act, but it would only weary and disgust you. If these statistics were of any use, the Secretary of State could have got them and placed them on file in his office, without a dollar of cost to the people, if directed to do so by a resolution of the Legislature; but no, they must have a Commissioner at four thousand dollars per annum, a clerk at two thousand four hundred dollars per annum, and contingent expenses of about two thousand dollars more, all to gather statistics of absolutely no use whatever to the people of this State; yet this is the work of the immaculate Legislature we are asked to trust.

Now, Mr. Chairman, why should we not trust the people to elect these Commissioners? Do we not trust them to elect every other officer of the government, including all our Judges in this case? The people, as I have said before, will realize the fact that they vote for their own pockets when they vote for an honest man; they will look to the past record of the man whom they vote for, and if dishonest politicians or the railroad monopoly get hold of the nominating conventions it will be of no use, for no corrupt scallawag can ever command votes for this important place. It will be just as it is with Judges. Some sixteen years ago, or more, maybe, a District Judge had to be elected in our district. The Judge we then had was Sam. Bell McKee. He was a Democrat in politics. The Republican party were in a majority in that district of at least three thousand five hundred votes. A Republican, a very honorable gentleman I believe, was nominated by that party, was nominated to run for the Judgeship against McKee. The result was that McKee was elected by a majority of one thousand votes; and why? Because the people knew that McKee was an upright Judge. This same disregard of party has been manifested in that district three or four times, and I say it shows conclusively that the people will throw political nominations overboard when their own material interests demand it.

Col. Barnes points to England, and says their Railroad Commissioners are appointed, and not elected by the people. Of course that is so; England has no written Constitution. Parliament is her whole Constitution, and Parliament directly or indirectly fills every office in the kingdom by direct appointment. That is no criterion for us. They do not trust the people directly with anything they can possibly avoid. Under our system the people are trusted with everything, and it is their own fault when they elect an unworthy officer. But as I said before, suppose the people are fooled into electing bad men, how much worse would we be off than we are now. Just reflect my friends on the enormous power in the hands of Leland Stanford. He can walk into his office, late in the evening, when every farmer in the whole country is asleep, and with one stroke of his pen turn every dollar the farmers have made by their work into his own pocket. What is to prevent him? Nothing. His act will be published as a necessary act of self-protection to the railroad corporation, and that is the end of it. In fact, I think there is no question but that the freights now charged are simply enormous, and I come to this conclusion by comparing them with the freights charged in the Eastern States. The railroad has not cheapened either fares or freights to us in the Pajaro Valley; on the contrary we sometimes had them cheaper before the railroad was built. Of course the facility of moving our freight and ourselves is much greater than before, and it is this fact that forces us to use the railroads. They prevent all competition by water, and besides they have a villainous system of storage at every depot that we are obliged to submit to, which is little less than downright robbery. I tell you, Mr. Chairman, that if Colonel Barnes and other gentlemen who speak as he does, were down with us for one Winter in our valley, and worked as the farmers there have to work, eat their breakfast by lamplight, and turn out in the cold, raw morning, with the mud half up to their knees, while the light was yet dim, work all day, and take the harness from their horses by the light of the lantern late in the evening, they would talk very differently about Leland Stanford's power to confiscate every dollar they had made to support their wives and children depending on them for clothes and bread.

MR. BARNES. When was it that you did that?

MR. WHITE. I did it many and many a morning, and many a night. I did it for years and years. I did it, and in that way supported a large family from childhood to manhood and womanhood. Yes, sir; by the hardest work ever done by farmer. I supported my family, and I am not complaining of it, but am proud of it, and I repeat that if Colonel Barnes had one such Winter's experience of farmer's work, and knew that Stanford had the power, with a dash of his pen, to take his earnings from him, he would not stop to quibble about the power given to these Commissioners; no, sir. He would go as far as we do and further in demanding protection against the more than monarchial power of Stanford.

Some say make the Commissioners give twenty thousand dollars bonds. I say, no! What would twenty thousand dollars be for such an offense? I say if these Commissioners sell out and betray us, let the people rise and crack their worthless necks on the first tree they can find; that is the bond I want. But, sir, I do not fear this great crime being committed, for depend on it, the people will be careful, and the single district system will prevent any combination that might result in electing bad men, and will all but insure a difference as to politics in the Commission, which will be a guard against the power of the Commission being used in favor of any one political party. The great trust imposed in these men will enable them, and serve to put them above temptation. No man elected to the position can be without a feeling of just pride that he has been so trusted, and it will be his glory to show that he deserved the trust. I believe that no money would tempt a man to barter away such an ambition. No! no! My friends, there is no danger, depend upon it. We will have an honorable and honest Commission then. Recollect that all three of the Commissioners must sell out to do any harm, for one honest Commissioner would inevitably expose the others; then if they were to sell out they would become sneaking slaves to the corporations, and would soon expose themselves as all sneaking thieves do, let them try to avoid it ever so much. The reason the railroad charges these enormous freights is that they are building new railroads down south through Arizona, Texas, and most likely into Mexico, which they could not do if they only charged us what would be fair and honorable for the work they do for us here. Now this we cannot and will not stand if we can help it, and we want to establish this Commission for the purpose of stopping it. We are not willing to put our necks in the yoke, or rather leave them any longer in the yoke to gratify Mr. Stanford's inordinate ambition in railroad building. No; we have had enough of that, and we want it stopped right here, or as soon as it is possible to organize this Commission.

But, Mr. Chairman, if this Commission plan, from any cause, should prove a failure, the Legislature can submit an amendment to the Constitution that will wipe it out if the people will agree with the Legislature; so what is the great risk about it after all? As to the objection of too great power, I am not going to say anything more on that point, for the power is only just what the Commission should have if we have a Commission at all. And I would make it even stronger if that were possible; and I am opposed to this idea of letting the Governor have anything to do with its making. But above all things I am opposed to leaving the question with the Legislature any longer, for I tell you, Mr. Chairman, that if it is left to the Legislature, that body will become, by and by, a body of sneaking thieves that no man of honor will be willing to take a seat among. It is impossible it should be otherwise. Then for Heaven's sake let us take action and guard and save our Legislature from this debasing influence. Let us do so for the sake of our children and our children's children more than for our own sake. To do it I see no earthly show but the establishment of this Commission. I will say here that I have nothing against those railroad people individually; no, not at all. I don't know one of them. I think that they are enterprising, fine fellows in their way, but they have no care for the good of the people, and we are sent here to look out for the people. We, the members of this Convention, do not pretend to be better than anybody else. We put on no airs about our ability or honesty, but we were sent here for a specific object, and that was to correct abuses that bear heavy on the people, and that a Constitutional Convention alone can correct, or remedy, or prevent in the future; and this railroad matter is one of them, and another is unjust taxation, and another is land monopoly, and the worst of all is the Chinese blight. All of these evils are destroying our material prosperity, and breaking up the small farmers and all those classes depending on them, and driving them by thousands and thousands into San Francisco to starve or do worse. They fill up that city and depopulate the country. Now we hope and trust and wish the gentlemen of the other side would take these facts into consideration, and stand by us while we try to find ways to correct this great misfortune to our State.

As to how my constituents feel on these questions, Mr. Wyatt, who represents Monterey, a part of my district, told us in his remarks, yesterday, very truly. Our people are almost unanimous, I may say, on all these subjects, and they sent us to express these views, and we are so doing to the best of our ability. The district I represent is about two hundred miles long, and I canvassed it from one end to the other before my election, and if I ever, through forgetfulness, left the stump or platform without speaking on the railroad question, or giving my views on the corporations, somebody would immediately call out, "You have not told us what you will do about the railroad corporations if you are elected." I now feel that I am responding to the wishes of my people in giving my hearty support to this plan of a Commission to regulate fares and freights, for although it may not be perfect, there is no other way to regulate fares and freights unless the State buys out the railroads, and that we are not prepared to do for the present. Many gentlemen on the other side, in discussing this question spoke with almost contempt for the opinion of the people on this subject. They say they intend to do what they themselves think right, no matter what the people think. Now, Mr. Chairman, I am not of that way of thinking. I consider myself the exponent of the views of my constituents, and in all cases when I am satisfied that a majority of the people of my whole district wish me to go for a certain measure or change in the Constitution, I shall yield my own views in obedience to their demands, or resign my seat in this body. In this matter of regulating fares and freights, my own judgment, I am satisfied, is in exact accord with my people, and were I to falter in my action here to-day, I dare not go back

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to my district. Why, gentlemen, if I did I would have to sneak through my people like a guilty thing, for I would feel that I was recreant to the pledges that I had made them, and when I reached my home I would meet the mother of my children, who, thirty years ago pledged her troth to me in return for my vows of fidelity to her, who, while yet her bridal dress was laid not away, took my arm and faced the storms of Cape Horn to find a home in California, who stood by my side in all the vicissitudes of our California life with a faith that knew no doubt, and a courage that knew no faltering; who, when my steps might have wavered in the face of difficulties, whispered to me words of hope and courage that restored me to myself and brought me once more to the front to do a man's work in the battle of life. I say, sir, I would have to meet her there at my home, with her face for the first time averted from me, crimsoned with blushes, that I had proved myself false to my trust, and had cast a dark shadow on the pathway of my children, that no act of their own could ever dispel.

Mr. Chairman, I shall, I hope, never deserve such a reception. No, sir, I will, for my part, try to respond to the fair and just wishes of my constituents, and when I return to them, I will be met, I know, with a cordial greeting, and at my home with smiles; and I am not ashamed to tell you, my friends, that I would not forfeit or barter away the greeting of my people and those smiles at my home, for all the treasure that may be hid beneath the soil of our State. Now, Mr. Chairman, I have said much more than I had any idea of saying when I arose, but my anxiety that this Convention should fully know the views and feelings of my constituents on this important subject, led me on. They demand protection, and look to you for it in this new Constitution, and if we do not get it at your hands, we will not give it up, but agitate and agitate until we do get it, we hope some time in the near future.

MR. HUESTIS. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress therein, and ask leave to sit again.

The Convention then took the usual recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

THE RAILROAD COMMISSION.

MR. ESTEE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question before the Convention is section twenty, and pending amendments.

SPEECH OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: I shall premise what I have to say upon the amendment, now pending, introduced by the Committee on Corporations, by saying that I shall vote for any proposition which can be carried by a majority vote of this body, which will in any way tend to relieve the community from the evils and oppressions under which it now lives; and if nothing better can be done, I shall vote for the amendment, although I fear that no good result will flow from its adoption. I believe that it would really be just such a proposition as the railroad company themselves would send here for our adoption, if they desired to blind and hoodwink us as representatives of the people seeking to afford the people some remedy for existing abuses, while in reality the proposed remedy is only a quack nostrum. I understand the question in this way: that, in order to do anything effectual, we must do something that will be binding; that if we give general—merely general directions to the Legislature; if we shall declare that a thing shall be done, and we impose no penalties for not doing it, it will be, in fact, remanding this whole subject to the Legislature, where it has been in the past, and where the people have been utterly unable to obtain any relief.

Now, I was in hopes a different amendment would be proposed here, which would leave the mode of appointing these Commissioners to be fixed in a subsequent section. That we would first settle the question of the powers and duties of the Commission, and then in a different section undertake to define who shall be qualified to act as members, how chosen, what bonds they should give, and all these little matters of detail. I agree entirely with the argument of the gentleman from San Francisco in regard to the mode of appointing these Commissioners. I think the section is fatally defective in itself, for the reasons stated by him, and I suggest the further one, that the appointing power should be vested in the Governor. I believe the appointment should be vested in the Governor, for the reason that the Governor, being on the head of the ticket, will be chosen with great care, and after the closest scrutiny, by the people. That the names of persons for that office are always canvassed a long way in advance of the nominating conventions, and I believe by the tone and temper of this people to-day, it will be impossible to nominate or elect a Governor who is in such close relationship with the railroad companies as would prevent him from doing his full duty in the selection of these Commissioners. In addition to the considerations presented by the gentleman from San Francisco, Col. Barnes, upon this subject, I desire to add that the position in which we would be placed is this: when it came to the nomination of Railroad Commissioners, it would be done in political conventions composed of gentlemen living three or four hundred miles apart in some instances, representing different counties and districts, widely separated geographically, and we should find a set of gentlemen gathered together for a single day, perfect strangers to one another; gentlemen would be placed in nomination for this position practically unknown to all but a few of his supporters; they would have no time to examine critically into the character of the nominees; no time to deliberate over it, and consequently there cannot be that careful scrutiny that is desired. They cannot canvass the merits of the different candidates in the manner in which the Executive of the State can, for he can take all the time necessary to examine into the merits of the men before he acts. In the nominating convention, as stated already, the nominee would probably be unknown to more than half of the men making the nomination.

Now, this office is one which requires the highest faculties, and requires the utmost care and nicest judgment in the selection of men to fill it, and a convention so assembled from remote parts of a district would be far more apt to make mistakes, assuming that all parties act honestly, than the Governor of the State. That is one objection. If, however, a majority of this Convention determine that Railroad Commissioners are to be elected by the people, then I think it is perfectly clear that they should not all go out of office at the same time. We all know that it will take considerable time for a set of Commissioners, who may be elected or appointed, to post themselves thoroughly upon the business committed to their charge. They will, before they can act intelligently, have to examine into the books and affairs of these corporations. They will have to familiarize themselves with the business of railroads. They will have to do this in order to be in a position to intelligently frame a bill of freights and fares. All this they will have to do. Well, when that is done it is proposed, as soon as they become reasonably familiar with the business, to have another election. Just when they have become most fit and best qualified to perform the duties of the office, another election is held and the whole of them turned out, and the whole thing again thrown into the filthy pool of politics, where, perhaps, by the dominance of this party or that party, a different Board of inexperienced men are elected and inducted into office.

Again, there is no mode provided for their removal in case of incompetency, inefficiency, or corruption. It is said that the process of impeachment is open. Well, in that case, you will have to wait until the Legislature meets. Then they have to be examined before a committee of the House. They are impeached. Then that impeachment has to go to the Senate to be tried there.

I say, as far as that part of the section is concerned, it is open to serious objections. When you come to the power of these Commissioners, I say there is no power given to them which can amount to anything; it can be of no substantial value unless the Legislature breathes the breath of life into this section. As it stands it is not self-executing. The Legislature may fail to legislate, or to support it by sanctioning any penalties whatever. Some gentlemen say they cannot trust the Legislature and others say they can. Well, we all know, as a matter of fact, by applying our own common sense to this question, that Legislatures of the past have been, and in all probability will be in the future, to a very great extent, under the influence and control of these corporations. You will doubtless have, as you always have had, a great many honest, well meaning men in the Legislature; and you will also have (if the experience of the past is worth anything as a criterion) men who can be influenced by selfish considerations. Experience has shown that it has not heretofore been in the power of those who are disposed to carry out the wishes of the people, to prevail over those who may be disposed to throw stumbling blocks in their way. It is true that in a great measure the failures of the Legislature in dealing with this subject have been the result of a want of information. The Legislature cannot frame a bill of freights and fares. It is out of the question for them to frame an intelligent bill of freights and fares. This Convention could not do it, and I presume it will stand fairly in comparison with the average Legislature in point of ability and intelligence. The Legislature has already dealt with this question, or tried to. A set of Commissioners was provided for and the Commissioners were appointed. They did their duty fearlessly. They presented recommendations in their report. They made suggestions. They were not clothed with power. The railroad companies refused to permit them to examine their books and affairs, and they were unable to ascertain the true condition of affairs. They proceeded to obtain a remedy in the Courts, and did get a judgment in one of the Courts. The case was carried to the Supreme Court, and was pending there when the next Legislature met and repealed the Act under which they were created, and thus destroyed the Commission. Now, that has been the course of the Legislature heretofore. What can you expect, then, judging the future by the past? Have we become any better or any more moral? Are our public servants more likely to do their duty in the future than they have been in the past? I think not.

Now, sir, that being the case, it is absolutely necessary that if you create a Commission, you impose and sanction some penalties. The objection is made that you cannot impose penalties in the Constitution. Why not? Why, they say, it would take up too much room. Well, all the penalties necessary to be imposed here without legislative action, will be comprised in twenty lines, and will an addition of twenty lines to the Constitution be such a sorry thing that we shall hesitate to secure a great popular benefit? Suppose it took ten, or twenty, or thirty pages, and yet secured the object which the people have in view, would it not be right to put it in there?

Now, the gentleman from San Francisco spoke sneeringly about the amendment I proposed the other day, and about my three weeks' railroad experience in this Convention. Now, the gentleman, in one branch, has had more experience upon this subject than I have had, but I have been seeking to be enlightened upon this subject. He has, it is

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true, acted as the attorney for the railroad company, but that would not give him any great amount of information upon the subject of freights and fares, no more than is possessed by any other attorney. This matter has been before the people for a great many years. It is not new in this Convention. Years and years ago, as far back as eighteen hundred and seventy-three, I was myself actively engaged in attempting to arouse the people on this subject. It is true that within the last two or three weeks I have paid some considerable attention to this subject. Instead of showing wherein the proposition I presented was wrong, he simply criticised it as foolish.

Now, sir, where is the fatal defect in this proposition reported by the Committee on Corporations? It says they shall have power to fix rates of freights and fares. It says further in another part of the section that they shall enforce their decisions through the medium of the Courts. But under what penalties? What are the Courts to do? Are they to bring their bill of freights and fares in the aggregate, and submit them to some Court, and ask the Judge of the Court, or a jury, to determine whether it is a correct schedule or not? Where are the penalties? Suppose the railroad company, as it will do, with this amendment standing alone and unsupported by legislation, suppose the railroad company says: "We don't care for your bill of freights and fares?" Where is your compulsion, where are your penalties? Of course, they must come from the Legislature, for you do not put it here in the Constitution. It holds out a delusive idea as it now stands, and if you pass it you will find that you can do nothing under it, beyond the selection of the Commissioners, without the aid of the Legislature.

Now, the proposition which I have introduced, and which has been characterized as foolish, is very simple, and I think very effectual, and is not open to the objections I have just urged. It is simply that a Board of Commissioners shall be organized with power to regulate freights and fares. That they shall fix such reasonable rates of freights and fares as they think proper. If the company fails to comply with the rates so fixed, they shall be under certain penalties mentioned in the section, and that they shall be liable to any party who may be aggrieved by their refusal, not only for the mere nominal damages—a damage, perhaps of ten dollars, or six dollars, or five dollars—but that they shall be under severe penalties; that the party may not only recover actual damages, but also exemplary damages. That is one proposition. The other is, that the Commissioners shall have the right to examine the books, papers, and documents of the company, examine witnesses, and inform themselves upon the subject committed to their charge, and then impose a penalty upon every officer or person connected with the corporations who shall refuse them permission to examine the books and papers. That is another. Then the farther provision, that the Commissioners—and that is a most important matter, one to which the late Commissioners called the attention of the Legislature in their report—shall have power to provide for a system of keeping accounts for these companies, which will enable them to act intelligently, which will enable them to determine what the receipts of the corporation are, what their expenditures are, and what their receipts are for and for what they are expended.

Now, there is not one syllable of this in the proposition of the Committee on Corporations. It does say, to be sure, that they may examine the books, papers, and records of these companies, but that is all. The former Commissioners were allowed to do so, but they showed that these companies kept their books in such a way that it was absolutely impossible for them to make the necessary examination, and unless the power is given to the Commissioners to compel these books to be kept in a way that they can be understood, it will amount to nothing.

The report speaks vaguely about the correction of abuses; they may correct abuses, and enforce their decisions through the medium of the Courts. What abuses? What kind of abuses? What penalties are there for a failure to comply with the orders of the Commission? All they can do is to say to the corporation: "You must do what we order." They are a very feeble power as against the great corporations. Take the section and examine it thoroughly, and you will find it absolutely nugatory, or nearly so. It is some advance over the existing state of things, but no material advance. It holds out a promise to the ear, but breaks it to the hope. And, sir, if you allow these companies to do as they please, which this section, unsupported by additional legislation does, you will produce no result which will result in any material reduction of freights and fares upon these roads. Well, if the railroads don't obey the Commission, they may go into Court. And do what? What will they do when they get into Court? It is not specified here. I say under this section there will be no substantial correction of any abuses whatever. I say that the whole section, as it stands now, is utterly inefficient for the intended purpose; that it imposes no penalties, and that I believe should be done in this section. If you leave these penalties to be fixed by the Legislature, the same story will be repeated. Whenever the Commission treads on the corns of the railroad, they will bring their power to bear upon the Legislature, and these penalties and conditions will be removed or changed.

Mr. Chairman, I feel that this is one of the most serious subjects to come before this Convention. I feel that if we do not put this section in a form so that the railroad companies cannot evade the performance of their duty, where they cannot trifle with the law, or with the officers of the State, we might just as well abandon our business and go home. I feel the absolute inefficiency of the proposition offered by the Committee on Corporations. I think it is one that would give very slight inconvenience to these great corporations, though I know it is introduced in the most perfect good faith. But I believe it will have no good effect, and I call the attention of the Convention to these things in order that they may adopt such amendments and make such changes as will give it force and vitality. At the proper time I propose to offer the amendment read here yesterday, and if gentlemen have any criticisms upon it, let them point out its defects. We must have something which will have some life, some force and effect, to curb the power and aggressions of these corporations.

REMARKS OF MR. WILSON.

MR. WILSON, of First District. Mr. Chairman: I offered an amendment to this section twenty. I was not aware that the Committee on Corporations were going to offer another section twenty. The amendment I desire to offer is simply to make the section conform to the views of members expressed on this floor, and I ask leave to withdraw the other amendment and substitute this, which is the same in substance, but a little changed in phraseology:

"Strike out the first three lines of section twenty, and substitute the following:

'The Governor, with the advice and consent of the Senate, shall, before the first day of July next after the adoption of this Constitution, appoint three competent persons, who shall constitute a Board of Transportation Commissioners, and who shall hold their offices from the dates of their respective appointments for the term of one, two, and three years respectively, from the said first day of July. The Governor shall, in like manner and with like consent, before the first day of July in each succeeding year, appoint a Commissioner, to continue in office for the term of three years from said day, and in case of any vacancy occurring in the Board by resignation or otherwise, shall in like manner appoint a Commissioner for the residue of the term, and may at any time remove any Commissioner.'"

SPEECH OF MR. ANDREWS.

MR. ANDREWS. Mr. Chairman: I do not propose to detain the committee. I have but a few words to say upon the amendment now pending. I am in favor of a Constitutional Commission. As I understood the gentleman from San Francisco, Mr. Wilson, yesterday, he was opposed to a Constitutional Commission.

MR. WILSON. You are entirely mistaken. I am in favor of a Commission, but I am not in favor of clothing it with such powers in the Constitution. I am in favor of allowing the Legislature to prescribe its powers.

MR. ANDREWS. Then I misunderstood the gentleman. I understood the gentleman that a Constitutional Commission was not what the people want, not what is required. I may have been mistaken. The acoustics of this hall are so bad that we frequently are mistaken. But he is so reported in the synopsis of the proceedings yesterday. I am in favor of a Constitutional Commission. If I understood the gentleman correctly, he was opposed to a Constitutional Commission. We have been talking on this subject for weeks, and now let us try and come to some conclusion. Are we in favor of a Constitutional Commission, or not? I am in favor of such a Commission, because we need a Commission that will be permanent. I believe the necessity is shown by the history of railroads in this State; by the history of railroad legislation throughout the United States, and throughout the world. I believe that Commission should be a permanent Commission, so as not to be subject to change. I differ with the gentleman from San Francisco. I believe the sentiment of this Convention is in favor of a Constitutional Commission. That being conceded, the next question that presents itself is, how shall we obtain that Commission? For my part, I believe the idea suggested by the Committee on Corporations other than Municipal is the correct one—that is, to have them elected by the people. Not that I am wedded to this particular proposition, but I believe it is better and safer to have them elected by the people. Gentlemen have talked and argued against a Commission chosen in this manner. They have argued that they would be politicians, or controlled by politicians, and at the same time they argue in favor of leaving this question of regulating freights and fares to the Legislature. Now, under the proposition presented by the Committee on Corporations, the Commission would be a Commission of the people, and the Legislature is a body elected by the people. Now, if we have confidence in the Legislature elected by the people, certainly we should have confidence in a Commission chosen in like manner by the people with especial reference to this one object. The people, Mr. Chairman, may be mistaken in relation to these matters, but ultimately those who are elected by the people, whether legislators or Commissioners, will reflect the wishes and sentiments of the people who elected them. Now I do not distrust the Legislature, but I believe a Constitutional Commission is better qualified to deal with emergencies arising from the question of freights and fares, than the Legislature would be, as has been thoroughly demonstrated on this floor. It seems to me that this charge which has been made against the Commission is as unjust as any charges that may be made against a Legislature elected by the same people. But, Mr. Chairman, I have believed that this Commission should be a Constitutional Commission, elected by the people.

Then, sir, the question comes, what powers should these Commissioners have? I believe that they should have power to deal with the subject of freights and fares. I think this is one of the most important questions with which this Convention will have to deal, and I do not believe in acting in haste. I believe in taking all the time necessary to mature the best provision which can be engrafted into the Constitution in relation to this question. I believe, sir, that these Commissioners should have power enough to enable them to fix freights and fares. By the plan proposed by the section under discussion, they would have control of these matters for four years, because we elect Commissioners for four years, and if they do not act in accordance with the wishes of the people, then they may elect another Commission. But while this is the case, the rates of freights and fares which might be established by the Commissioners might be unjust, and might not be satisfactory to the people. I understand that objection is to be corrected, through an amendment of the gentleman from Placer, Judge Hale. I believe he proposes to reach that question by acting upon the Commissioners them-

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selves—that is, if the Commissioners do not satisfy the people—through the Legislature, the people may remove them. I like the plan better than that proposed by Mr. Prouty. I believe that the Legislature should act upon it in that way. The amendment proposed by Mr. Prouty requires three fourths of the Legislature, and probably that would be too much. I believe the Legislature should have power to modify the rates of freights and fares established by the Commissioners. The Commissioners might get around legislative action by fixing rates, and as soon as the Legislature adjourns, set them back again to the original rates. That objection might be obviated by providing that this modification should continue for two years. I wish merely to make these suggestions in order that the committee may take these matters into consideration. I believe these modifications can be better accomplished through legislative Act upon the rates fixed by the Commissioners. I am ready to give way to anything that will reach the wishes of the majority of the committee, because I believe the majority of the committee are in favor of a Constitutional Commission; in favor of a Commission that has some power, and the only question is how to guard this power. I am willing to stay here and consult for any length of time in order to arrive at a just solution of these important questions.

REMARKS OF MR. BEERSTECHER.

MR. BEERSTECHER. Mr. Chairman: In regard to the amendment that is offered here by the gentleman from San Francisco, Mr. Wilson, I must say that it is one of the most remarkable documents that has ever been submitted to this Convention. It proposes that the Governor, with the advice and consent of the Senate, shall, before the first day of July next after the adoption of this Constitution, appoint three competent persons, who shall constitute a Board of Transportation Commissioners. I believe the Constitution is to be voted on in May; and if the Constitution were adopted, it requires the present administration of the State of California to continue the existing present legislation of the State of California; and, in fact, they are to determine who shall govern the State of California during the next three years as Railroad Commissioners. I believe the people of this State have had enough of the present administration, both legislative and executive, as regards the railroad affairs of this State; and I believe that this proposition to allow them, even after the adoption of the new Constitution, and under the new Constitution, to say to the people who shall control them in the railroad legislation, is very singular, to say the least; and I hope the amendment will be promptly voted down. I have never had anything to say upon that subject, other than what I said the other day; but as far as I am concerned, I believe this Commission should be elected. The gentleman from San Francisco, Colonel Barnes, says, that laws of this character were not staple; that experience shows that each succeeding Legislature changes the law. We admit that; and it is in order to prevent these changes; it is in order to prevent the Legislature from changing the law, or rather changing the remedy, so as to prevent the enforcement of the law—that we desire to have it embodied in the Constitution, and have constitutional Commissioners, and not legislative Commissioners, subject to change every two years; a permanent institution; not one to be appointed by the present Executive and by the present legislative department of the government.

SPEECH OF MR. LAINE.

MR. LAINE. Mr. Chairman: I have been a patient and silent listener to the discussion on this question, and it is no desire of my own to impose a speech upon this question that induces me now to address the Convention. But, sir, I feel that I owe it to myself; that I owe it to the members of this Convention; that I owe it to the people who sent me here, to publicly declare my views upon the important question now under discussion. I would say in the opening, Mr. Chairman, that during my private life, and such little of public station as has fallen to my lot, I have always declared myself fearlessly, though no doubt I have made mistakes in judgment, and obeyed the mandates of my conscience. If so be, that I have not lost my own self-respect, or the respect of those who know me, I do not now propose to change my course in that regard. Nor do I propose to take counsel by my fear as to whether or not my action in this Convention shall meet the approval of others. But judging, sir, from the language and seeming temper of some of the members of this Convention, it would seem that they alone know by authority what the people expect and demand at our hands; and unless we obey these demands as they interpret them, and follow out the line of policy which they think is wise, we who oppose them shall be doomed to political oblivion. If this be so, sir, I shall follow my own course and run counter to their views, and I am ready and willing to meet my doom, for, sir, there is no station, however high or exalted, that is worth the price of my manhood. I am not fully enlightened as to what effect our action here will have upon our lawful sovereign, the people, who are watching with keen scrutiny our course; but, sir, that sovereign judges more wisely than any sovereign that ever wore a crown. And while, sir, this sovereign spurns the fawning sycophant in search of place, she is ever ready and willing to overlook the errors and even the blunders of faithful servants. But, I must say here, and I say it without flattery, that I believe the members of this Convention are working faithfully and honestly for what they believe will subserve the public interest. But my own convictions of right and duty compel me to dissent from the views of many of my fellow members upon the question under consideration, for whose learning, sound judgment, and spotless integrity I have the profoundest respect. And in what I shall say in this debate, or in any other, I hope I shall not be so unfortunate as to wound the feelings, or by the slightest implication impugn the motives of any one. The vacant seats shrouded in mourning, admonish us that life is but a short, uncertain span.

But, sirs, to come more particularly to the question in hand: the most casual observer cannot fail to observe that there is a contest going on in this State, between the great corporations on one side, and the people on the other. It is a war most unnatural and wrong, waged by wealthy and arrogant servants against their lawful masters. Can any one doubt, in this contest, upon which standard victory will perch? I think not, if we are governed by sober reason, and not by prejudice. But, sir, in this matter, the people, in my judgment, have not sent us here to disembowel the State; they have not sent us here to lay a hand or finger on a single institution of this great commonwealth. Sir, it is a part of the birthright and education of every American freeman, part of his knowledge, part of the history of this great land, after which the nations of Europe undertook to fashion their institutions; it is an institution complete in all its grand powers, from the foundation stone to the topmost pinnacle—all complete. It is all complete, and we are not sent here to tear down a single column, or mar any part of the view. We are sent here simply to add strength and beauty to the structure, so as to make it as efficient as may be, and as perfect as human wisdom can make it. I know, sir, that it has been said that corporations have fashioned this fair land. No, sir. It was fashioned without them. It was because there was development here, and wealth, and strength—everything that indicated that it would be the dwelling place of a great people, that these corporations were organized. This great State was fashioned by the great architect of the universe for the use and benefit of the highest type of civilization. It was made for the human family. It was not fashioned by the corporations. It was preserved by the hand of the Anglo-American people for our use. They have built up this great government, little by little, and brought it to its present state of perfection. The structure is all complete and is inhabited by the highest type of civilization ever known. And can it be that we, here, are bent upon taking hold of the very pillars of the temple and pulling them down, that we may crush some abuse that has grown up in our midst. Are we to be like Samson, pulling down the temple in order to destroy an enemy? No, sir. We can master an enemy without touching a single column, or displacing a single stone. These corporations, rich and powerful as they are, possess their wealth and their strength as a part of this great political household. They have a right to enjoy their property, but they have no right to make their wealth and their power an engine of oppression, of extortion, and corruption. They are the means to the end, are to be used in working out our civilization; and as civilization advances farther on the plane of progress, we have the right and the power to see that they are so managed, utilized, and controlled that they will work out the objects of their creation; and if we do this, we shall have done all that an intelligent people desire us to do.

And I believe that the people are wise enough and strong enough to do this work, and no one need have any fear about the result. Why, sir, the towering monarch of the forest, with its roots struck deeply into the rocks, is overthrown and crushed by the advance guard of civilization; so if these corporations, with their vast and increasing wealth and power, place themselves across the line of our progress, they will be crushed out by public indignation. It is said here that they are soulless. Sir, I know there are many wrongs charged against these corporations. In the last fifteen years they have been adding one insult to another, one injury to another, until the people are awake in earnest, as indicated by the sentiment on this floor, and the corporations will take heed. The people are determined not to avenge these wrongs, but to stop them, and to see that they do not bar the wheels of progress.

But in dealing with this subject, we should be governed by calm judgment and sound reasoning. We are not to be governed by passion and hate; we must take counsel of reason. And in providing against these evils, we must not resort to measures entirely unknown to others—unknown to our system of government. In former times the great danger arose from power and place. In our own times, the acquisition of great wealth is the great danger. Why is it that these corporations are doing as they do? They are absorbed in their desires to gain wealth, and they want to gain it fast; they want to draw their wealth from the people of this State. I do not question their right to acquire wealth, but the people have rights which must not be lost sight of. We have heard the question of the right of the State to regulate these corporations argued at length upon this floor. Why, sir, any child attending the public schools, knows that the State has the right. It is not disputed, even by the corporations themselves. But the political question, the practical question here is, as to the means which are to be resorted to. The Committee on Corporations, I have no doubt, have labored faithfully and earnestly to solve this great question. No one questions their integrity, but I am compelled to question their judgment upon this subject. The report contains many things, however, which I can heartily support; but their project for a Railroad Commission I cannot support, I will not support. I am not ready now to confess that this is a subject which requires me to tear down my government in order to solve it. No, sir. Let not a hand be laid upon any of the institutions of this government. I know that the American system of government is as fully able and competent to deal with this question as any other question. Now, you are talking about putting this matter in the hands of a Commission. I must confess, as to this matter of Commissions, my views are extreme. I believe they are dangerous. Nowhere have I ever found a Commission that has done any good. It will compile statistics, and write volume after volume and distribute them among the people, and that is all they ever do. As to this man, Charles Francis Adams, I do not believe there is a bigger fraud in America. He has proclaimed to the world how these things ought to be managed. I believe there is no better or more subservient tool of the railroads in America, than this same Charles Francis Adams.

Now I believe in no hybrid system. It seems to me, from listening to this discussion, that there is no wisdom in it; no statesmanship in it. We are placed here in this Convention to do a great work, and we should act fairly and fearlessly. We should regulate these corporations, not by a Commission, but by the Legislature. Because, sir, as was said in Holy

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Writ, a kingdom divided against itself cannot stand. If you are going to have a Commission, let that Commission stand by itself, responsible to the people, but do not mix it up with the Legislature. Let it be the sovereign, the king. If the Commission is sovereign, it needs no aid from the Legislature, and it should not be allowed to sneak behind the Legislature as an apology to the people. Let it stand alone, independent of the Legislature, responsible directly to the people. If you are going to have the Legislature do it, then throw the entire responsibility upon them, so that they will not be able to creep behind the Commission, playing battledoor and shuttlecock from one to the other. If you are going to have a Commission, I am in favor of giving it all the power and all the strength you can give it.

This Commission will be a costly affair. It will cost thousands of dollars every year. When you start with three Commissioners, as perhaps you will do, you must have some very able and distinguished men for Commissioners. You must not have school boys; you must have men of standing, of intelligence, of weight, of power; you must have men of learning, men of age, men of experience, and, above all, men of integrity. You cannot obtain them for a song. You cannot expect such men to leave their avocations, that pay large returns—for a man possessed of the qualifications necessary to fill these positions, will not fail to have a good business. You must pay for clerks and other necessary expenses, so that the cost of this Commission will not be less than twenty thousand dollars per year. Then, if you are going to have the Legislature mixed up in it, you have simply added this much to the expenses of the State, and accomplished no good to the people. I tell you, the people of the State will think of all this. They are no ignorant horde, to be amused and cajoled; but when you have framed your Constitution and submitted it to them, they will examine it and criticise it with wisdom and judgment equal to that produced in this Convention. You are not dealing with an ignorant rabble; you are dealing with the educated, free, and enlightened people of the nineteenth century, who are not to be misled or deceived. I know, at first blush, it will strike the minds of the people of this State that you have carried this question out of politics by creating this Commission, and that henceforth railroads are to be regulated, and everything is to go along smoothly. At first glance, I have no doubt they would feel this way; because, from the abuses we are hurling against the men who occupy seats in the legislative halls, the people may have an idea that the Legislature is a mass of corruption. But they will find out different when they come to reason over it. As for me, I am ready to say that I would rather trust the ills I know of now, than fly to those ills I do not know of.

Now, in our system of government we have but two departments—the legislative and executive power—nothing else. I know we do draw another distinction, and call them legislative, executive, and judicial powers, but when you come to analyze them, you find that the judicial is but a branch of the executive. They are all included in the terms executive and legislative. So the question now is, to which power does the right to regulate naturally belong? Where has it been lodged for the past one hundred years in America? In the legislative department, and it is a legislative power. Then, why wrench it from the place where it belongs? Why take it away? You will either create another Legislature, or else you will have this hybrid system at a vast cost and expense to the State. Now, sir, is it possible that the foundation of our system has become so rotten and decayed that in the very first century of its existence we have to take it away? Are we going to tear down the pillars that have been so strong and beautiful? It seems to me when the people have reflected upon it, they will say, as one man: "You did not heed my voice. This Convention was called to revise the Constitution, not to tear down and destroy this system of government; and you have exceeded your powers. You have asked us to indorse this system, unknown among any other people."

Now, then, it seems to me, that one of the prominent objections to this—and bear in mind that my objection is not because it is too severe upon the railroad corporations—no, sir, I have no objection to that. My objection is not to that. Do you suppose these corporations are going to resign this vast power without a struggle? Are they going to sleep serenely while you elect these three Commissioners? No, sir. See the combinations they can make. Three Commissioners in this State and three parties in this State. There will always be at least two parties.

The railroad company has no politics and no religion. They make all their political principles subservient to their dominant interests, as other people do. They will go to political conventions ready to sacrifice the Governor, the Secretary of State, or all the State and county officers, for the sake of having their men nominated for Railroad Commissioners. They go to the man, or to the friends of the man who wants to be Governor, and say, you shall have our influence and support for the position which you seek, only let us have this one man for Railroad Commissioner. And these things are not so easily detected. They are not done openly and in the broad sunlight; they are not done as legislative business is done—upon the floor in open hall—where there are reporters for the press, and every word goes out on lightning wings. It is done in secret caucus—the most damning thing in American politics; and likely as not they will secure these men in each party. They get their men nominated, and their election is sure. Two of them would be sufficient. Whatever is said and done by the one man will amount to nothing. And having secured their election for four years, under the Constitution, the people are bound hand and foot for that time, with no possible hope of relief. The people will then be clamorous for a change, and it will then take two or four years more to make the change.

Suppose we take the other plan, as suggested by another member—have them appointed—and, sir, I enter my protest here and now against the appointing power. There is nothing on this earth that I trust as I trust the free American ballot. I know there has been corruption. I know that the people have often been deceived; but I do know that it is the safest depository of power on earth. But suppose you get them appointed, have you changed the result any? No, sir; because when it comes to nominating men for Governor, the same combinations will be made to secure the right man for their purposes. The same combinations will be made in ninety-nine cases out of a hundred—exactly the same combinations will be made. This is one of the means used at present. They throw away the House and concentrate all their strength upon nominations for the Senate.

Now, during this discussion here there seems to be no disposition to speak a word in praise of the Legislature. I know, sir, that oftentimes they have not done as we wanted them to do. But, sir, we have the Legislature, and because one fails, or bad men creep in, it is no reason why the system should be condemned. It is one of the grandest institutions that human genius has ever discovered. They are the people. The people, through their representatives, meet to do in a public and open way whatever is to be done, and their acts and utterances are open to the world. Not so with the Commission which can meet in the back office. The public cannot watch them through all their wanderings as easy as they can watch the Legislature.

Another objection I have already indicated: this Commission will be the means of new offices, from which the people will reap no benefit for the large outlay demanded. These charges against the Legislature are, in my judgment, not well founded. It seems to me that a glance at the history of the State shows that we have been impatient. This institution did not grow in a moment. Why, from the year eighteen hundred and forty-nine up to the year eighteen hundred and sixty-five, our whole people were wild upon the subject of the Pacific Railroad. It occupied our thoughts by day and our dreams by night. Why, no man's political reputation was worth anything who opposed the granting of railroad subsidies. It was the all-important subject. From one end of the State to the other men were ready to contribute of their wealth towards the enterprise. We were isolated from the balance of the Union. We spoke of the other States as "home," and we felt a desire to be bound to them—as the set expression goes—by bands of steel. They were subsidized by Federal, State, county, and city authority. They went on and organized. There began their oppressions, after which began the awakening. And when did the awakening begin in this State? Why, not until eighteen hundred and sixty-nine. We had all been on their side. We had fattened these corporations, and fawned at their feet, gave them dinners and grand receptions, and there was no such thought as regulating freights and fares. Such a proposition would have been scorned out of existence. But in eighteen hundred and sixty-nine, as I said, they began to awaken. The subject began to be mentioned in the party platforms—"stop subsidies." That is as far as they were expected to go. And you will remember, in eighteen hundred and seventy, when the lamented Governor Haight vetoed the subsidy bills, there were still other counties that desired to vote subsidies in aid of railroads. Merced County, Fresno County, Tulare, Kern, and others, asked to be allowed to give of their means in aid of these roads. And we have here to-day from Merced, Fresno, Tulare, and Kern, not a single representative who is not pronounced in favor of regulating and controlling railroads. Thus you will see that it was only about ten years ago that the tide of public opinion began to set the other way. And in eighteen hundred and seventy the tide was not yet strong, for you will remember that the veto of Governor Haight was only sustained by one majority. This was the beginning of the awakening in this State. In that memorable veto message that distinguished statesman proclaimed that he was not afraid to abide by the results of his act, trusting to the future to vindicate the soundness of his views. And this distinguished man, who had stood by the people all through this contest, was vindicated by an election to this body, and his seat is only made vacant by the hand of death. That veto was the beginning of a healthy, honest current of public opinion. Then, sir, the Legislature was acting in accord with what appeared to be the sentiment of the people. Governor Haight, peering into the future, took an advance step, and was sustained by the Senate. And while we are denouncing the Legislature as unfaithful and corrupt, the memory of that man who stood on the side of popular rights, should at least cause us to hold our tongues. Though, sir, his feet are cold and wet in the icy waters of Jordan, though his faithful hand is moldering into dust, we should revere his memory, and remember that he it was who saved the State then. Shall we so soon forget the services of Senator Burnett, who was carried on his last bed into the Senate chamber to cast his vote on the side of the people.

Then, sir, come slowly down the line of history, showing still the growth of public sentiment. In eighteen hundred and seventy-two the five per cent Acts, which had previously been passed, were repealed, except as to the Counties of San Francisco, Santa Cruz, Sonoma, San Diego, Santa Barbara, San Luis Obispo, San Bernardino, Marin, and Los Angeles. Still there was a large portion of the State ready to give away five per cent to assist these corporations. Yet here we find on the floor of this chamber, delegates from San Francisco, Santa Cruz, San Diego, Santa Barbara, San Luis Obispo, San Bernardino, Marin, and Los Angeles, denouncing the Legislature because it has not been more rabid than the history of public sentiment shows it to have been. And speaking of these counties that were left, we follow the tide of public opinion a little further, and in eighteen hundred and seventy-four an Act, we find, was passed, repealing and wiping out everything—every vestige of the five per cent Acts, and during that year there was not a Senator in the State who favored subsidies.

Now, since then, we have had other Acts that compelled the railroad companies to yield the ground which they occupied. I remember some very talented men who fought upon the proposition that the State had no right or power to touch these sacred institutions. That private property could be taken for public use, but the moment it came into their clutches it ceased to be public, and became at once private property. In

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other words, that private property could be taken for a private use. Since that, the whole theory has vanished, and no man who values his standing will stand up on this floor and assert any such doctrine now. The people having passed on that, there is no longer any room for argument. I believe, sir, that this is a very simple matter—this thing of freights and fares. Go back to eighteen hundred and fifty, and the very first Act that was passed on this subject declared that the Legislature may advance freights and fares, but not to be so reduced, without the consent of the corporations, as to produce less than thirty per cent. per annum upon the capital paid in. That was the first law ever placed on the statute books of this State on the subject. The people of the State, who then dealt with the question of freights and fares, are not less wise to-day than they were then. They are the same people, and they have lost nothing since then. Are they any less sovereign than they were then? Are they any less able to grapple with these great questions? No, sir! but it was on account of this tide of public sentiment that set in so favorably for the corporation at that time, that no stronger action was had. But public opinon has changed, and the laws of that day are not sufficient to meet the exigencies of to-day, and the abuses which have grown up. We feel to-day that these corporations should be placed under stricter control, and that they shall be compelled to deal fairly and justly with the people who have done so much for them.

Again, in eighteen hundred and fifty-one, the Legislature of this State repassed in substance the Act of eighteen hundred and fifty, except to allow thirty-five per cent on the capital stock paid in. Why was that changed? It raised it from what it had been. Because of this great and inordinate desire on the part of the people to have a transcontinental railroad. Then we come down to eighteen hundred and fifty-three, because there never was but one freight and fare bill passed. They passed a freight and fare bill just in one section—as much as we will ever need, I believe, fixing the maximum for passengers at twenty cents per mile, and freight at sixty cents per ton per mile. You will find the Act of eighteen hundred and fifty-three on page one hundred and twelve. Let the Legislature to-morrow take that for a basis of freights and fares, reducing it for the difference in the amount of earnings, cost of labor, etc., and it would make a fair bill for this time.

Again, in eighteen hundred and fifty-four, May fifteenth, the Legislature passed another freight and fare bill (Stats. 1854, p. 86), fixing the maximum for passengers at ten cents per mile, and freight at fifteen cents per ton per mile. Now, take that and bring it down to the changed conditions of the present day—the reduction in the cost of material and price of labor, and the maximum ought not to exceed three cents for passengers and two cents for freight.

Now, we come to the statutes of eighteen hundred and sixty-one, fixing the maximum of rates at ten and fifteen cents for passengers and freights. Now, in searching for precedents for this thing—this Commission—I would say, in my judgment, it would not be idolatry to worship this thing, because I do not believe there is anything in the heavens above or in the earth beneath, or in the waters under the earth, that is like it.. There is nothing like it in any civilized government. I know there have been mistakes made, and the Legislature has not done all that it might have done. But because mistakes have been made, and errors made, is it any good reason why we should depart from our system of government? Why, sir, divide the responsibility and authority, and you carry us back five hundred years. Do we want to do it? No, sir! Let us stand by our institutions as we have them. As for me, while I am in favor of any rule, however rigid—because I do not believe it is possible that any injustice will be done to these corporations—I do not believe there is any man who wishes to destroy these means of transportation; no man desires to cripple them; but every man desires to say to them, you shall be like every other institution in this State, subservient to the laws of the country. In these matters, we know no favorite powers, no favorite individual, no favorite corporations; but all stand upon the same plane of equal rights.

I cannot support this scheme for a Commission. I believe it will prove a sorry thing for the people of this State. I do not mean to impugn anybody's motives, for your judgments are as apt to be right as mine; but that is what my reason and my judgment tells me. If I shall have an opportunity, I shall offer a substitute for the whole matter, providing that the Legislature shall pass laws to correct abuses and prevent unjust discrimination and extortion, and shall from time to time pass laws fixing maximum rates for the transportation of passengers and freights, and enforce them by adequate penalties. Having done this, in my judgment, we will have done all that the people require us to do.

SPEECH OF MR. O'DONNELL.

MR. O'DONNELL. Mr. Chairman: I am sorry to see my old friend, Laine, praising the Legislature. They have been praised long enough. We have tried them long enough. The last Legislature was the most corrupt that ever convened in this State. The idea of leaving this to the Legislature! The people have sent us here for the purpose of providing for Commissioners to regulate freights and fares. I am satisfied, if I understand the temper among these railroad lawyers, when it comes to a vote they are going to vote solid against these Commissioners. Mr. President, this is a very good section. It reads well until you get to the eighth line, where it says: "The Commissioners shall have the sole power, and it shall be their duty to correct abuses of railroad corporations and transportation companies." Now, if you leave out those few lines, I am satisfied that this Convention will vote for it. It will then read thus:

"SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State, at the regular gubernatorial election, whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad, or other transportation companies, and publish the same, from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear complaints against railroad and other transportation companies; to send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action, and enforce their decisions, and correct abuses through the medium of the Courts, and perform such other duties as may be prescribed by law; to report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing sections."

If I am not mistaken, that is a good section. By that means we can regulate these thieving corporations. They have controlled this State long enough, and it is our duty to take this thing out of their hands. It is our duty to elect these Commissioners. It is the only way we can ever control them. It is a necessity. I am opposed to leaving the matter to the Legislature any longer. We never have had any restraint placed upon these corporations by the Legislature.

SPEECH OF MR. MCCONNELL.

MR. MCCONNELL. Mr. Chairman: The farmers have taken up but little of the valuable time of this Convention in the discussion of the subject under consideration. I will now in their behalf ask the indulgence of this body for a few moments. A few days since I made some inquiries of the gentleman from Marin, Mr. Shafter, in relation to matters now under discussion in this Convention. In their solution on some fair and just basis, the people of California and Nevada are deeply interested. A railroad has been built from San Francisco to Ogden, a distance of about eight hundred miles, not with private funds, as many claim, but by the money drawn from the pockets of a confiding and generous people. The private fortunes of those who have had the enterprise, on the whole have not been greatly impaired. It is a well known fact that their combined means would not have been sufficient to build the road from Sacramento City across the American River to the point where the Central Pacific Railroad succeeded in establishing the foot-hills of the Sierra Nevada Mountains. The United States Government and the State of California, with the municipal aid rendered, was more than sufficient to build the entire road. This aid was not rendered in order that a few men might become rich, but that a whole people might be served as the country developed. It is now pertinent to inquire how they have managed the great trust confided to them. With the vast funds thus intrusted to them they have sought to control, and do control and manage, every transportation and express company in this State, whether on land or water, and their dreams of power and universal dominion upon this coast have led them into many follies, and caused them to make many grave mistakes. They refuse to pay their just proportion of taxes, and have violated their charters by not disposing of the land, as was required.

So powerful and arrogant have they become, that they even contest the right of the United States Government to make laws which they are bound to obey, requiring them to make provisions to pay their just obligations; and they are now in litigation with the national authority. They do not fail, in any instance, along the line of the road, by excessive freights and fares and discrimination, to take every cent that can be got out of any business or enterprise that may be undertaken—and barely let it live. The distance that freight is moved has but little to do with the amount charged. Freight at Winnemucca, three hundred and twenty-four miles from Sacramento, to go East, under their peculiar financial management, must come to this city, and pay one and a half cents per pound, or three hundred dollars per car-load of twenty thousand pounds. It then must be returned over the same road, climbing an altitude of over six thousand feet, back again to Winnemucca, three hundred and twenty-four miles more; and if an equal charge is made of one and a half cents per pound, or three hundred dollars per car-load, that, added to the return trip, will make six hundred dollars per car-load—and yet the freight is just where it started from.

By this arrangement one half of a cent per pound or one hundred dollars per carload would be left to divide with the remaining roads east, the combined length of which would be at least twenty-five hundred miles. One of two things is apparent: either the roads east carry freight at a very low figure, or the Central Pacific Railroad at this end charges a very high rate. It but slightly *changes* the result if you examine it in the following manner: twenty thousand pounds of freight from Winnemucca to Sacramento City, three hundred and twenty-four miles, one and a half cents per pound, or three hundred dollars per carload. The same carload from Sacramento to Boston, according to established rates, four hundred dollars, a distance of nearly three thousand miles. Perhaps the Convention would understand it better by stating the facts in another way—thus:

Carload from Winnemucca to Boston	$700 00
Carload from Sacramento to Boston	400 00
Difference	$300 00

Or it would cost three hundred dollars more to send a carload from Winnemucca, than it would from Sacramento, to Boston.

And yet a legislator of nineteen years experience, with a practice of forty years at the bar, who is also a gentleman of railroad experience, being a stockholder and Vice-President of at least one road, besides, as

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he told us the other day, he was one of the hard and horny-handed sons of toil; still with all of this wisdom, he tells us upon the floor of this Convention that I made three hundred dollars at least by having my freight brought to Sacramento. I suppose if it had made one more trip of the same character, another three hundred dollars would have been made, and so on, without end, if the reasoning is good. I have bills of lading from the same place on which a charge is made at the rate of two hundred dollars per carload entered as advanced charges, when the freight did not come over to Sacramento or any other distance westward. Was an equal amount made on that? Will the gentleman from Marin inform the Convention? I now inform the gentleman from the other side of the Green Mountains, where the Central Vermont Railroad and much crookedness prevails, and State Prisons are located, and near the place where his Puritan ancestors hung witches, that I do not need to have any one tell me when I make three hundred dollars. Many thousands of dollars have gone to the same side of the ledger account, and I find it of as little worth in my financial affairs as Benjamin Butler's *fiat* money would be.

Along the whole line of the road, from Auburn eastward, freight cannot be had at any of the towns, Colfax, Truckee, Reno, Wadsworth, or Battle Mountain, from the East, without paying the freight to San Francisco and then back again. The farmers and merchants of these places have to pay nearly double the freight that the farmers and merchants do who are located in or near Sacramento and San Francisco. In other words, the railroad company charges more for a less service than they do for a greater, and this without restriction or limitation, except the sovereign will of the company. I submit to the judgment of this Convention that such a policy is not liberal, is unjust and unfair, and instead of developing the country through which the road passes, it is retarding it in a marked degree. There is no fixed and fair rate of charges established even at terminal points like Sacramento, Marysville, Stockton, and San Francisco, but every large and extensive shipper and importer of merchandise from the East, in these large places, has a *special* arrangement of his own, not made by Mr. J. C. Stubbs, freight agent of the Central Pacific Railroad, but by Mr. Vining, an imported man from the Union Pacific Railroad. These contracts are under the seal of secrecy, and no mercantile firm can know that his neighbor, engaged in the same business, is not getting his goods transported at a less rate, thus practically enabling the company to aid a friend, punish an enemy, or ruin a competitor in business. Inasmuch as my old friend from over the Green Mountains did not answer my questions in a satisfactory manner, I shall not feel under any obligations to aid him in any aspirations he may have in the future for high *place* and *power*. Notwithstanding he is now an honest Granger, and his hands are horny with toil, with such ideas as these he would not be admitted into the outer gate of the Granger's fold, and he could not be trusted to act for the people. I know of but one way to settle all of this trouble between the people and the railroad companies, and that is on that old and eternal principle of right, justice, and fair dealing. Let Leland Stanford and the Board of Directors of the Central Pacific Railroad order their hirelings, J. C. Stubbs, A. N. Towne, and Mr. Goodman, to rearrange their tariffs of freights and fares so that they will bear some little relation to the service rendered. Quit speculating with the people's money in town lots; let others run restaurants, peanut stands, and hotels, and they will have no difficulty with the people.

If this policy is at once adopted, it will not be necessary to issue a proclamation of this Convention in the shape of an *open letter* for our guidance and direction; but to their burdensome, selfish, unjust exactions, let slaves submit—freemen never will. These railroad companies have in the past largely elected our police officers, and practically they have been above the law. Their acts must be made to subserve the general good; the fight will go on until right prevails. The public will some time in the near future find a leader who will march at their head to victory. This victory must be bloodless, but it will put corporations under the law, leaving them with all their power for good, but shorn of power for evil. Great success now, as in the past, intoxicates the brain, undermines the judgment, and destroys the fine and humane feelings of ambitious men. A people who will not resist encroachments upon their rights and liberties, deserves the fate that always awaits a crouching slave.

As the best means suggested, and in view of the situation, I feel that it is my duty to vote for the Commission as proposed by the Committee on Corporations other than Municipal. Monopolies must be controlled, or they will control the people of this coast. By way of reply to the gentleman from Marin, who has been duly constituted, or constitutes himself the apologist for the known wrongs perpetrated by a greedy corporation, and before taking my seat I wish to remind my aged friend that the old mathematical truths still remain, that "the whole of a thing is greater than any of its parts." He may, one of these days, mount some eminence on his little farm that overlooks and lies some leagues along the Pacific Ocean, and, in imitation of a ruler, also intoxicated with power, command the tides to recede; but he can neither control the waves of the ocean nor the great flood of public opinion on this subject of freights and fares, and monopolies generally. The only way to account for the tenacity with which he clings to his old interests is, that having for forty years devoted his best energies to the defense of criminals and wrong-doers, making the worst appear the better reason, he naturally gravitates in his declining years towards the same class, and even in this Convention he finds himself unable to divest himself of his early modes of thought and take his stand among the defenders of the right.

The Record-Union, the acknowledged railroad organ of this city, has recently said that "no complaints have been made by the people, and that no indictments have been found against the company." I present the following as some of the complaints, made by the people, to go into the judgment roll:

First—The managers of the Central Pacific Railroad have diverted large sums of money from the original objects as intended by its donors, and have used said money for objects and purposes entirely foreign to its original design; and have, by a system of dealing with themselves, diverted large amounts of money, dedicated by the people to a public use, into their private coffers. They have bought up nearly all of the transportation companies of the State, and they control and manage them to the injury of the people.

Second—They charge more for a less distance than they do for a greater, in many cases, over the same road, in the same direction, and on the same kind of freight.

Third—They refuse to pay their just proportion of the taxes.

Fourth—They have not disposed of the lands in accordance with the provisions of their charter.

Fifth—They refuse to obey the laws of the United States requiring them to settle a long deferred account, and are now litigating with the National Government; and—if you will allow me to guess, I guess that Judge Stephen Field will be for the company, as usual, and that Chief Justice Waite and the majority of the Court will be on the other side.

Sixth—The original stockholders complain—those who were not within the charmed circle of the Contract and Finance Committee—that they have been swindled out of their stock by misrepresentations and double-dealing. Sacramento, Placer, and San Joaquin Counties make this same complaint.

Seventh—Samuel Brannan and O. D. Lambard complained—and they settled.

Eighth—A. A. Cohen found much fault, and a Court of competent jurisdiction said his complaints were well founded, and dismissed said suits with costs, as to himself, wherein he was defendant.

Ninth—The records of the Sixth Judicial District Court, when taken in connection with the suit first spoken of, in which A. A. Cohen figured as a defendant, are full of instructive and interesting information. The law student who carefully examines them will be deeply interested as well as astonished.

Tenth—They use the power placed in their hands by the people to control elections and secure such men for public officers as will be found pliable.

Eleventh—They discriminate in the matters of fares and freights so as to cripple commerce, and, having control of our public thoroughfares, treat them as private property in which the public are not interested.

Twelfth—The people of the State of Nevada complain that they are compelled to pay nearly double for all the merchandise, farming tools, and wagons required by the people for the proper development of the country.

Thirteenth—That our halls of legislation are invaded by their paid servants, and that, in many cases, the will of the people is defeated, and the public service debauched and corrupted to prevent legislation tending to remedy the evils complained of.

I take this occasion to say that I have nothing personal against the railroad managers. I have known the men for a long time who were instrumental in building the railroad. I gladly testify to the personal worth of each and every one of them. They were merchants in this city, of whom we, as Californians and Sacramentans, justly felt proud. Their word was as good as their bond. Personally I would do them a favor, now, as I have done in the past. I oppose them only—as it would betray my trust to assist them to rivet their shackles upon the commerce of this State—for I think they are wrong in the management of the great trusts now in their hands. There are very few men, or associations of men, who can be trusted with great and unlimited power without their abusing it. It is an unpleasant thing to be compelled to oppose those with whom you are now and have been on friendly terms. I know, however, that they themselves prefer an honest opponent to a dishonest friend. I hope any regulation attempted will be well considered, and that good results will follow, both to the people and the railroad companies. I shall support the report of the Committee on Corporations other than Municipal, as amended, believing that it is in the interest of railroad companies as well as the people. They may then get rid of the leeches and parasites that now fasten themselves upon the business of the corporation and feed upon the general prosperity of the country. They may discharge their corps of lobby members of the Legislature. They can divert the money now spent in securing and preventing legislation to the payment of debts and taxes. They can, with a wise, beneficent, patriotic Commission to arbitrate between the people and the corporations, being in fact what they are now, only in name, public benefactors. Then the laws can be executed at once, leaving only real grievances to be settled in the Courts.

My colleague, Judge McFarland, in his remarks before the committee, December third, says: "The decision of the Supreme Court in the Elevator case was monstrous and subversive of every sentiment of right, justice, and liberty." It may be a great misfortune, and hard on the United States Supreme Court, that they differ from the learned Judge; still their decisions will have to remain the law of the land until they are reversed by some future Court of competent jurisdiction, the Judge to the contrary notwithstanding.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I regret that these gentlemen should be constantly alluding to my personal experience. I have made inquiries about the Winnemucca case, and I will give the result of my inquiries. You are undertaking to punish the Central Pacific Railroad Company for crimes it did not commit, and over which it has no control. It has an arrangement with the eastern companies by which they carry through freight.

The eastern roads originally would only take through freight to and from San Francisco, the through rates being regulated by competition by water. Finally, a contract was made, admitting Sacramento, Stock-

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ton, San José, and Marysville as competitive points, but beyond this the eastern roads have since refused to go. To ship Mr. McConnell's wool from Winnemucca directly to the East, it must go to the end of the Central Pacific Railroad, and pay the way freight rate; from there to Omaha the Union Pacific Railroad will take it at way rates; from there another road will take it to Chicago, another to Buffalo, and another to the Atlantic. All these way freights aggregate a sum far in excess of the through rates. So the goods are sent to a competitive point to get a start in order to secure for them the benefit of through rates. Thus Mr. McConnell is actually benefited in his wool shipments by the contract. The contract was made for the benefit of the business and shippers of the Pacific Coast, and they all know it. It would have been fairer for McConnell, and in the interest of truth and justice, to have stated the underlying facts relative to his wool shipments. The passion and prejudice which animates many in their declarations against the railroads, has been fully exhibited by Mr. McConnell in his fiery speech. It was not in the spirit of a judge deciding impartially between man and man. It is not befitting a dignified Constitutional Convention. The gentlemen criticise the railroad companies because they appealed to the Courts to settle their disputes betwen them and the National Government. In the name of God, are men to be trampled on by this Convention because they appealed to the law and the Courts to settle their disputes—the very Courts which the people have established for the purpose? For appealing to the Courts they are denounced. I think it is a very strange state of affairs.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: This is the section proposed by the Committee on Corporations:

"SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State, at the regular gubernatorial election, whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad, or other transportation companies, and publish the same, from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear complaints against railroad and other transportation companies; to send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action, and enforce their decisions and correct abuses through the medium of the Courts, and perform such other duties as may be prescribed by law; to report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing sections."

By the consent of the Convention, this has been substituted for the other section twenty. Now, sir, your committee met last evening, and again this morning, and after careful consideration, in the light of the discussion had here, they unanimously report that section to this Convention. I think it is the first time in the history of that committee that they voted unanimously upon any given proposition. I cannot be positive upon that point, but that is my recollection. This section seemed to unite and combine the average judgment of the committee. It prescribes the duties and powers of the Commission, and it says they shall enforce their decisions through the medium of the Courts. My friend from Marin certainly cannot object to that, because it allows them to go into the Courts of the country and defend against any unreasonable act imposed upon them by these Commissioners.

Now I wish to address a few words to the committee in answer to some of the arguments presented by gentlemen on this floor. I wish to say, sir, that so far as I am concerned, and so far as the Committee on Corporations are concerned, we do not claim to be anything but instruments in the hands of this Convention. That as far as we are concerned, we have endeavored thus far to discuss these questions with fairness, and, I hope, with candor; and I wish to say, also, that we have to thank the most of the members of this Convention who have spoken upon either side, for the calm, deliberate, and statesmanlike manner in which they have discussed this subject. I think my friend from Marin is mistaken when he says this subject has not been discussed in the temper befitting a Constitutional Convention. If we have deviated from the proper course it has been an error of the head and not of the heart. We have in no instance, as far as I am able to recollect, appealed, or attempted to appeal to the passions of any of the members of this Convention. And let me say to this Convention, that whatever we may do to-day, or hereafter, upon this subject, we cannot go as far as the Courts of the country have gone. I appeal to the decisions of the Courts all over the Union to bear me out in that assertion. It is a very grave mistake to suppose, as far as I have been able to observe, that we are taking radical ground; that we are going in advance, in taking the action which we propose here. We are only attempting to mark out a line of policy by which to treat these great questions, and in doing so we are following, or attempting to follow, as far as the matter is applicable to this case, the steps taken by others elsewhere.

Now, Mr. Chairman, we find that in this Convention, as in all bodies of this character, almost every gentleman entertains a different view upon almost every question that arises. And that, sir, is right. It shows personality; it shows thoughtfulness; it shows that he has some mind of his own, and is not afraid to express it. As far as we are concerned, we are anxious for, and we invoke the criticisms of every member on this floor relative to this section, or any other section, which this committee has reported. But what I wish to say is this: We are now about to vote, and the friends of these measures must agree upon something, if we hope to accomplish anything. No member of this Convention can get everything he may want into this section; it is impossible. And while we do not claim that it represents the best ideas that can be produced, we do claim that your committee have done all that was in their power to perform faithfully the duty imposed upon them; they have agreed upon this section as now reported, without a single dissenting voice, and I ask you to at least believe that they have handled the subject with candor and fairness.

Now, sir, I am aware that some of the friends—as those who claim to be the friends of these measures—have attempted to criticise this report in a manner that would be far more apt to injure it than the criticisms of those who are openly pronounced against it; far more. An open attack can always be met; but, sir, one of these side hits, one of these flank movements, of those who claim to be the friends of the measures, hurts vastly more than an open, bold, manly stand, by an open and avowed enemy. Now, let us see what our friends argue. Some gentlemen on this floor came to me, and said, first, that there was too much in this section. To-day four gentlemen addressed this body, who are really, heart and soul, friendly, yet they say there is too much in the section. Others again say there is not enough in it. Now, gentlemen, I ask you, you who think there is not enough by half, and you who think there is too much by half, to average up the thing, concede something, and go for the report of the committee, and I think you will not make much of a mistake. The question now is, gentlemen of the Convention, not as to whether every "i" is dotted or every "t" crossed right; not as to whether there is some faulty construction of language, but whether this idea presented here is right and proper. And if the gentlemen who are opposed to these measures criticise our action because we have made these revised reports, I think they are wrong. I think it was our duty, when we found, during the course of this long discussion, that we had made mistakes, to correct them, because my friend from San Francisco, Mr. Wilson, did admit that some regulation was necessary.

Again, some of the friends of these measures say that the Commissioners will be in the hands of the railroad companies when they are elected, and in the same argument they say you can trust the Legislature elected by the same people and subject to the same influences. We have no faith in the Legislature. I could not understand my friend from Santa Clara, Mr. Laine, distinctly, a few moments since, but my understanding of his speech, as far as I could hear, was that this matter should be left to the Legislature, because, he says, you can trust the sovereign people—they are always right, but it would be utter folly to trust the Commissioners, who are elected by the same sovereign power. I cannot for the life of me comprehend his logic.

Again, Mr. Chairman, some of the friends of this side of the question say that you cannot trust the Commissioners without having some power behind them to regulate them. Don't you trust the Executive of the State? Don't you trust the judicial officers all over the State, elected by the people, and is there any power behind them except the power of responsibility to the people for the faithful performance of the duties imposed upon them, and except the other power—the right of trial and conviction by the Legislature, and expulsion from office in case of a failure to perform these duties correctly? For one, sir, I do not think this line of argument is good. I do believe if you can trust the people to elect members of the Legislature, who, our friends say, should control this subject, you can trust the people to elect Commissioners to perform like duties, more especially so, as these Commissioners will have no other duty to perform, and there will be ample time for them to obtain a complete knowledge of the subject, and to become thoroughly familiar with the duties they will have to perform. I wish to say to our friends on this floor that I have never known an instance, and I do not believe any gentleman can point to an instance, where the Legislature, however honest and well meaning, have or could have regulated this matter of freights and fares. It is not a question of honesty, it is a question of ability. I know it has been claimed by one or two members on this floor that the majority of Legislatures are corrupt. We do not claim any such thing. I never have asserted or thought it. But we do say, and challenge contradiction, that if you leave this great subject to the Legislature it will be an unending source of corruption. We do not want to tempt the great corporations of the country; neither do we want to place temptation in the way of the Legislature.

My friend from San Francisco, Colonel Barnes, said to-day that there was no doubt in the world but that we should regulate this matter; that the question was not even a debatable one. That the only objection he made to the report, after saying that there was not power enough, that the manner of electing the Commissioners was wrong. The gentleman from San Francisco, Mr. Wilson, says the Commission is all right, but they have too much power; that their duties should be merely to observe what is going on; I suppose he would have them stand at the outside door of the railroad offices, and there they would be told that there was no occasion for them to come in, and having no authority to go in, that is all their investigations would amount to. If we are to have Commissions at all let us have a Commission with sufficient powers to accomplish something in the interests of the people. Let us have a Commission with sufficient power to place it in a position where it can enforce its decisions through the Courts of the country. Let us have a Commission with sufficient powers as will place these great corporations under the control of the people. Every one admits that they should be regulated by some power. I believe this is the best mode of regulation we can get. This Convention is expected to perform the great duty with which it has been charged fearlessly and conscientiously. I know

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of no reason, sir, nor have I heard any reason given, why these corporations should not be placed in the same position in their relations with the community as toll roads, bridges, ferries, in accordance with the decisions of the highest Courts in the country. These Commissioners will perform no greater duty for the State than are performed by the Board of Supervisors of a county when they fix the rates of toll upon toll roads in the county. Why, sir, for years and years the Canal Commissioners of New York and Pennsylvania performed annually greater duties than those imposed upon these Commissioners.

Now, let me say, that so far as this committee is concerned, and as far, I believe, as the friends of railroad regulation are concerned, this section represents their best judgment. That if it does not meet the views of the gentlemen who oppose it, they ought to present something for our consideration that seems to be more effectual, for nothing less effectual will meet the wishes of the people of this State. If we attempt to regulate at all, let us regulate in such a manner as, when we shall have accomplished it, we shall have accomplished something that will do some good. The gentlemen on the other side seem to think that because we favor this style of regulation, through Commissioners, we have no confidence in any regulation which may be made by the Legislature, or by any other power in the State. I claim, Mr. Chairman, that it can be best done through a Commission, because its past experience of people who have given thought to this subject, has shown that a Commission is the only power, the only body, that can give the time and attention which are necessary to qualify them to handle the subject as it ought to be handled.

The arguments made by the gentlemen who are opposed to this report seem to be, that regulation is all right; that we ought to regulate, but there ought not to be anybody to do it. That it is all right to have Commissioners; but the Commissioners should not be endowed with any power. That it is all right to have something in the Constitution on this subject; but that something should not mean anything. That it is all right for us to express our opinions in the Convention; but those opinions should be clothed in such language as that it will have no beneficial effect upon the interests of the country. For one, I am in favor of this section just as it is. I believe it ought to be adopted, and I know and feel that if it is adopted, it will meet the average judgment of the people of this State. I know it is experimental in some respects; I understand that; but, sir, not so much so as it would to leave it to the Legislature of the State, which meets but once in two years, to pass bills regulating freights and fares. The Legislature would meet once in two years, pass a bill regulating freights and fares, and adjourn. They do not meet again for two years. These Commissioners are in session all the time, and it must be assumed that these Commissioners will endeavor to treat the companies and the people with the same fairness—being elected by the same people—that the Legislature would, for, when they see that any regulation or rule which they have made, is wrong, they have power, under this section, to correct it at once; while, if the Legislature makes a mistake, it would be two years before it could be corrected. Again, if it shall be found from experience, that the Commission is not what we want, an amendment to the Constitution can be made in two years. So I do not see why we cannot trust this question to the Commission. I believe it is the safest for the people, and the best for all concerned. Let those who are in favor of regulating freights and fares come to the support of this section.

THE PREVIOUS QUESTION.

MR. HUESTIS. Mr. Chairman: I most respectfully move the previous question.

MR. LARKIN. I second the call for the previous question.

MR. STEDMAN. I second it.

MR. CROSS. I second it.

MR. SWING. So do I.

MR. WATERS. Mr. Chairman: Does the previous question cut off all amendments.

THE CHAIRMAN. No, sir, it brings us to a vote on the pending amendments. The question is, Shall the main question be now put?

Division being called for, the committee divided, and the main question was ordered—ayes, 97; noes, not taken.

THE CHAIRMAN. The first question is on the amendment of the gentleman from San Francisco, Mr. Wilson.

Lost.

THE CHAIRMAN. The next question is on the amendment of the gentleman from Placer, Judge Hale.

Division was called for, and the amendment was adopted by a vote of 78 ayes to 50 noes.

MR. McCALLUM. I offer an amendment to the section.

THE SECRETARY read:

"Strike out the first three lines of section twenty and insert as follows: 'Section 20. A First Railroad Commissioner, a Second Railroad Commissioner, and a Third Railroad Commissioner shall be elected by the qualified voters of this State at the next general election. The term of office of the First Railroad Commissioner shall be four years, and his successor shall be elected every four years after such first election. The term of office of the Second and Third Railroad Commissioner shall be two years, and their successors shall be elected every two years after such first election.'"

MR. LARUE. I offer an amendment to the substitute.

THE SECRETARY read:

"Strike out the word four and insert six, in line three. And insert after line three, '*provided*, that the Commissioners elected at the first election shall at their first meeting so classify themselves by lot that one of them shall go out of office at the end of two years, one of them at the end of four years, and one of them at the end of six years.'"

MR. SCHELL. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Lost.

THE CHAIRMAN. The question is on the amendment of the gentleman from Alameda, Mr. McCallum.

REMARKS OF MR. MCCALLUM.

MR. McCALLUM. Mr. Chairman: I wish to state, in explanation: the first three lines of section twenty, which my amendment proposes to strike out—my amendment proposes only as to the question of the election of two Commissioners for two years, while one shall be elected for four years. The mode proposed by Mr. Larue will not meet the difficulty desired to be met by this Convention. I do not think any considerable number here desire to elect any one of the Commissioners for over four years. That is long enough for any one of them. In order to get at this idea of dividing them by lot, it would be necessary that one of them should hold for six years; and it was for that reason, and to avoid that difficulty, so as to prevent a division of them by lot—which requires six years, four years, and two years. Now, Mr. President, I wish to say one word on this point. I am not satisfied to elect for four years these Commissioners—to hold the office for four years—so that, in case the railroad companies should get control of a majority of them, we will not have to wait for four years to get rid of them. I think it would be a very great mistake to elect all three of these Commissioners for four years. The idea that presented itself to my mind was this: we elect our United States Senators for six years, our Congressmen for two years, our members of the Assembly for two years, and our Senators for four years. In that case these Commissioners will not all go out of office together; some one of them will hold over.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I believe we have been debating this proposition for about three weeks, and we have had various propositions before the Convention; we have debated them quite fully, adopted amendments, and lopped off various objectionable things. But I understand all our work has been swept away, and that the committee having charge of this subject have brought in to-day a new proposition, which has been read over once at the desk, and now we are compelled instantly to pass on that proposition. I venture to say that not one third of the members on this floor can tell what the proposition is. I could not, and I have read it over. I would not undertake to explain it. I see it is, to some extent, substantially what we had before. But it is not, according to my notion, sufficient to meet the emergencies of the occasion. It does not, according to my notion, embody the sentiments of this Convention. It will not—and I say it with the utmost respect to the gentlemen proposing it—it will not, in my opinion, operate. It gives them power to establish freights and fares, but I cannot find where they are given any power to enforce their decrees after they have made them. If it is in there, I would like to have it pointed out. I had an amendment which I proposed to offer, but I have had no opportunity to do so. I would like to have any gentleman inform me in what single respect this is binding upon any railroad company, or any other corporation in the State of California. It gives the Commission the right to do these things, but who is to obey them. Why not insert some clause, that when these rates are established they shall be binding upon railroads. It gives them power to establish rates of charges for the transportation of passengers and freights, and to publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of railroad and other transportation companies, and they shall have the process of the Courts. Process to enforce the rates of freights and fares? Process to examine the books, records, and papers?

MR. ESTEE. Does the gentleman want an answer? Lines eight and nine provide that they shall have power to establish rates of charges for passengers and freights. They can enforce these decrees through the medium of the Courts. They enforce everything they do in that respect through the medium of the Courts.

MR. HAGER. They have the right to establish rates of freights and fares, examine books, records, and papers, and for this purpose they shall have process of Court; to hear complaints against railroad and other transportation companies; to send for persons and papers; administer oaths; take testimony, and report cases of contempt to the Courts for their action. Now, suppose their mandates are disobeyed, what action will the Courts take? Are they to pronounce judgment? If a man comes and refuses to take an oath, they have no power to enforce it, and report it to the Court. The Court says: fine this man five dollars, and let him go back. I don't see that there is any substantial power given to them here. Now, in my amendment, I have put in a provision that it shall be binding upon the corporations, and if they do not obey the Commissioners any party aggrieved may go into Court and see that these orders are enforced. That means something. I agree with the gentleman from Santa Clara, that this provision, as it stands, amounts to nothing. I say it is a delusion and a snare. It is worse. It takes away from the Legislature all power over these corporations, and fails to confer that power upon any other body. You go to the Legislature, and you find that the power has been taken away from that body by the Constitution. You go to the Commission, and you find that they have not the power to remedy the evils complained of. We have been three weeks debating this proposition, and we should not rush it through at the last. We had better make haste slowly. I do not desire to be forced to a vote upon this matter to-night, and I therefore move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress, and ask leave to sit again.

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ADJOURNMENT.

MR. STEDMAN. I move that the Convention take a recess until seven o'clock this evening.

MR. GRACE. I move we now adjourn.

Carried.

And, at five o'clock and eight minutes P. M., the Convention stood adjourned until to-morrow morning, at nine o'clock and thirty minutes A. M.

SIXTY-NINTH DAY.

SACRAMENTO, Thursday, December 5th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A.M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Gorman,	Miller,
Ayers,	Grace,	Moffat,
Barbour,	Graves,	Moreland,
Barnes,	Gregg,	Morse,
Barry,	Hager,	Nason,
Barton,	Hale,	Nelson,
Beerstecher,	Hall,	Neunaber,
Belcher,	Harrison,	Noel,
Bell,	Harvey,	O'Donnell,
Blackmer,	Heiskell,	Ohleyer,
Boggs,	Herold,	O'Sullivan,
Boucher,	Herrington,	Overton,
Brown,	Hilborn,	Porter,
Burt,	Hitchcock,	Prouty,
Campbell,	Holmes,	Pulliam,
Caples,	Howard,	Reddy,
Casserly,	Huestis,	Reynolds,
Chapman,	Hughey,	Rhodes,
Charles,	Hunter,	Ringgold,
Condon,	Inman,	Rolfe,
Cowden,	Johnson,	Schell,
Cross,	Jones,	Schomp,
Crouch,	Joyce,	Shafter,
Davis,	Kelley,	Shoemaker,
Dean,	Keyes,	Shurtleff,
Dowling,	Kleine,	Smith, of Santa Clara,
Doyle,	Laine,	Smith, of 4th District,
Dudley, of San Joaquin,	Lampson,	Smith, of San Francisco,
Dudley, of Solano,	Larkin,	Soule,
Dunlap,	Larue,	Stedman,
Edgerton,	Lavigne,	Steele,
Estee,	Lewis,	Stevenson,
Estey,	Lindow,	Stuart,
Evey,	Mansfield,	Sweasey,
Farrell,	Martin, of Alameda,	Swenson,
Fawcett,	Martin, of Santa Cruz,	Swing,
Filcher,	McCallum,	Terry,
Finney,	McComas,	Thompson,
Freeman,	McConnell,	Tinnin,
Freud,	McCoy,	Townsend,
Garvey,	McFarland,	Tully,
Glascock,	McNutt,	Turner,
Tuttle,	Waters,	White,
Vacquerel,	Webster,	Wilson, of Tehama,
Van Dyke,	Weller,	Wilson, of 1st District,
Van Voorhies,	Wellin,	Winans,
Walker, of Marin,	West,	Wyatt,
Walker, of Tuolumne,	Wickes,	Mr. President.

ABSENT.

Berry,	Eagon,	Murphy,
Biggs,	Mills,	Reed.

THE JOURNAL.

MR. TINNIN. I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

QUESTION OF PRIVILEGE.

MR. MARTIN, of Santa Cruz. I rise to a question of privilege. Last night my right as a member of this Convention was infringed upon. As a member of the Committee on Education, I was unable to reach the committee rooms without special permission from some parties who appeared to have charge of one of the passage ways leading to the committee rooms. Another passage way was barricaded. On the adjournment of the committee, wishing to retire, I was stopped on the staircase by some one, and informed that I could not go that way, that I must go some other way if I wished to retire. Some parties, other than proper authorities, seemed to have control of the building. I do not wish to be captious, but I do not wish to be ordered about like a dog, when I am attending to my legitimate business as a delegate of this Convention. I offer the following resolution:

Resolved, That the Sergeant-at-Arms be requested to inform this Convention by what authority portions of this building appropriated for the use of this body are used by other parties for illegal purposes.

MR. FREUD. I second the motion.

The resolution was adopted.

MR. ESTEE. I move that the Convention resolve itself into——

TRANSPORTATION COMMISSIONER'S REPORT.

THE PRESIDENT. The gentleman will please wait one moment. The Chair desires to present a communication from the Transportation Commissioner, in answer to a resolution adopted by this Convention.

THE SECRETARY read:

OFFICE OF THE COMMISSIONER OF TRANSPORTATION,
SACRAMENTO, California, December 3, 1878.

To the honorable the Members of the Constitutional Convention:

GENTLEMEN: In pursuance of a resolution of your honorable body, passed on the twenty-second of November, ultimo, requesting the "Commissioner of Transportation to furnish to this Convention, at as early a date as practicable, a compilation of all the general and special laws hitherto passed under which railroad corporations have been formed, or franchises granted, together with an abstract of subsidies granted, and subscriptions made to corporations by the State and the several counties thereof, provided the expenses of the printing thereof be not charged to the funds provided for the expenses of this Convention," I herewith transmit a compilation, by title only, of all the Acts relating to railroads and railroad corporations (other than street railroads), from the year A. D. eighteen hundred and fifty down to the year A. D. eighteen hundred and seventy-eight, with marginal indices showing the year when enacted, date of passage, chapter, and page of statutes containing them.

It was not deemed essential to the attainment of the objects of the Convention to compile more than the titles of the Acts, with an abstract of the State, county, and municipal liability incurred and outstanding.

I remain, very respectfully, your obedient servant,

B. F. TUTTLE,
Commissioner of Transportation.

Following are the documents accompanying the report:

COMPILATION OF RAILROAD ACTS—GENERAL AND SPECIAL.

Passed by the Legislature of the State of California, 1850–1878.

Number.	TITLE OF ACT.	Date of Passage.	Took Effect.	STATUTES. Year.	Chap.	Page.
1	An Act concerning corporations, Chapters I, III, VI, and VII [Amended by Acts approved March 17, 1851, and April 22, 1851. Repealed by Act approved April 28, 1851.]	April 22, 1850	From passage	1850	128	347
2	An Act to repeal Section 174 of an Act entitled "An Act concerning corporations" [Repealed by Act approved April 28, 1851.]	March 17, 1851	From passage	1851	109	424
3	An Act to amend an Act concerning corporations, approved April 22, 1850 [Repealed by Act approved April 28, 1851.]	April 22, 1851	From passage	1851	113	426
4	An Act to provide for the incorporation of railroad companies [Repeals Act approved April 22, 1850. Supplemented by Act approved March 22, 1852. Repealed by Act approved April 22, 1853.]	April 28, 1851	From passage	1851	118	433
5	An Act to grant the right of way to the United States for railroad purposes	May 1, 1852	From passage	1852	77	150
6	An Act supplemental to an Act entitled "An Act to provide for the incorporation of railroad companies, passed February 28, 1851"* [Repealed by Act approved April 22, 1853.]	March 22, 1852	From passage	1852	99	172
7	An Act to provide for the incorporation of railroad companies [Repeals Acts approved April 28, 1851, and March 22, 1852. Amended by Acts approved May 15, 1854, April 10, 1855, and April 14, 1856. Supplemented by Act approved April 11, 1857. Supplemented and amended by Act approved April 26, 1858. Amended by Act approved April 26, 1858. Repealed by Act approved May 20, 1861.]	April 22, 1853	From passage	1853	72	99
8	An Act amendatory of an Act entitled "An Act to provide for the incorporation of railroad companies," approved April 22, 1853 [Supplemented by Act approved April 11, 1857. Supplemented and amended by Act approved April 26, 1858. Repealed by Act approved May 20, 1861.]	May 15, 1854	From passage	1854	61	82

* Title of this Act, as printed in the Statutes of 1852, reads as above. It undoubtedly refers to the Act passed April 28, 1851.

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COMPILATION OF RAILROAD ACTS—Continued.

Number.	TITLE OF ACT.	Date of Passage.	Took Effect.	STATUTES. Year.	Chap.	Page.
9	An Act to amend an Act entitled "An Act to provide for the incorporation of railroad companies," passed April 22, 1853 [Supplemented by Act approved April 11, 1857. Supplemented and amended by Act approved April 26, 1858. Repealed by Act approved May 20, 1861.]	April 10, 1855	From passage	1855	76	100
10	An Act to extend the time of commencing the construction of certain railroads herein mentioned	April 25, 1855	From passage	1855	118	144
11	An Act to authorize the Board of Trustees of the City of San Diego to convey to the President and Board of Directors of the San Diego and Gila Southern Pacific and Atlantic Railroad Company, two leagues of the pueblo lands to aid in the construction thereof	April 30, 1855	May 15, 1855	1855	163	206
12	An Act to amend an Act entitled "An Act to provide for the incorporation of railroad companies," passed April 22, 1853, and amended May 15, 1854, and amended April 10, 1855 [Supplemented by Act approved April 11, 1857. Supplemented and amended by Act approved April 26, 1858. Amended by Act approved April 26, 1858. Repealed by Act approved May 20, 1861.]	April 14, 1856	From passage	1856	75	89
13	An Act supplementary to an Act entitled "An Act to provide for the incorporation of railroad companies," passed April 22, 1853, and to the several Acts amendatory thereto [Supplemented by Act approved April 26, 1858. Repealed by Act approved May 20, 1861.]	April 11, 1857	From passage	1857	173	197
14	An Act to authorize the Board of Supervisors of the County of Yuba to take and subscribe $200,000 to the capital stock of a railroad company, and to provide for the payment of the same, and other matters relating thereto [Amended by Act approved March 21, 1862.]	April 28, 1857	From passage	1857	243	296
15	An Act to authorize the Board of Supervisors in and for Butte County to issue the bonds of said county for an amount not to exceed $230,000, to be expended in constructing a railroad and wagon roads in said county, and to provide for the payment of said bonds	April 23, 1858	From passage	1858	280	242
16	An Act to confer upon the San Francisco and Marysville Railroad Company, incorporated under the laws of this State, certain rights and privileges [Amended by Acts approved April 21, 1860; April 23, 1861, and April 25, 1862. Modified by Act approved April 8, 1863.]	April 24, 1858	From passage	1858	300	265
17	An Act supplementary and amendatory to an Act entitled "An Act to provide for the incorporation of railroad companies," passed April 22, 1853, and to the several Acts amendatory and supplementary thereto [Repealed by Act approved May 20, 1861.]	April 26, 1858	From passage	1858	334	317
18	An Act to amend an Act entitled "An Act to provide for the incorporation of railroad companies," passed April 22, 1853, and an Act amendatory thereof, passed April 14, 1856 [Repealed by Act approved May 20, 1861.]	April 26, 1858	From passage	1858	341	326
19	An Act to authorize the Board of Supervisors of the County of Sutter to take and subscribe $50,000 to the capital stock of the "San Francisco and Marysville Railroad Company," and to provide for the payment of the same and other matters relating thereto	April 15, 1859	From passage	1859	241	247
20	An Act to authorize the "San Francisco and Marysville Railroad Company" to construct and maintain a railroad bridge across Feather River, and for other purposes	April 15, 1859	From passage	1859	248	255
21	An Act to authorize the counties of the State of California to become stockholders in railroad companies [Amended by Act approved April 18, 1860.]	April 16, 1859	From passage	1859	262	263
22	An Act to authorize the Board of Supervisors of the County of Solano to take and subscribe $200,000 to the capital stock of the San Francisco and Marysville Railroad Company, and to provide for the payment of the same, and other matters relating thereto [Amended by Act approved January 31, 1866. Amended and supplemented by Act approved March 26, 1868.]	April 16, 1859	From passage	1859	263	266
23	An Act to authorize the Board of Supervisors of the County of Yolo to take and subscribe $50,000 to the capital stock of the San Francisco and Marysville Railroad Company, and to provide for the payment of the same, and other matters relating thereto	April 16, 1859	From passage	1859	264	270
24	An Act for the payment of the current and necessary expenses of the Pacific Railroad Convention	Feb. 15, 1860	From passage	1860	58	33
25	An Act to authorize the County of Butte to purchase and hold $200,000 of the first mortgage bonds of the California Northern Railroad Company, and to issue the bonds of the county for the payment of the same, and for other purposes connected therewith [Compare Acts approved April 8, 1863, and March 20, 1866, amended and supplemented by Act passed March 29, 1860.]	March 14, 1860	From passage	1860	122	90
26	An Act amendatory of and supplementary to an Act entitled "An Act to authorize the County of Butte to purchase and hold $200,000 of the first mortgage bonds of the California Northern Railroad Company, and to issue the bonds of the county for the payment of the same, and for other purposes connected therewith." [Amendatory and supplementary of Act approved March 14, 1860.]	March 29, 1860	From passage	1860	164	133
27	An Act to amend "An Act to authorize the counties of the State of California to become stockholders in railroad companies," approved April 16, 1859	April 18, 1860	From passage	1860	240	208
28	An Act to amend an Act entitled, "An Act to confer upon the San Francisco and Marysville Railroad Company, incorporated under the laws of this State, certain rights and privileges," approved April 24, 1858	April 21, 1860		1860	248	218
29	An Act to authorize the Board of Supervisors of the County of San Mateo to subscribe to the capital stock of the San Francisco and San Jose Railroad Company	April 21, 1860	From passage	1860	260	230
30	An Act to authorize the Board of Supervisors of the City and County of San Francisco to subscribe to the capital stock of the San Francisco and San José Railroad Company	April 21, 1860	From passage	1860	262	233
31	An Act to authorize the Town of Auburn to take and subscribe $50,000 to the capital stock of the Sacramento, Placer, and Nevada Railroad Company, and to provide for the payment of the same	April 23, 1860	From passage	1860	272	254
32	An Act to authorize the Board of Supervisors of the County of Santa Clara to subscribe to the capital stock of the San Francisco and San José Railroad Company	April 21, 1860	From passage	1860	280	261
33	An Act to provide for the construction of a railroad from a point on Petaluma Creek into the City of Petaluma, and for the right of way for the same [Amended by Act approved May 17, 1861.]	April 25, 1860	From passage	1860	284	265

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COMPILATION OF RAILROAD ACTS—Continued.

Number.	Title of Act.	Date of Passage.	Took Effect.	Statutes. Year.	Chap.	Page.
34	An Act to enable the County of Placer to subscribe for stock to the Sacramento, Placer, and Nevada Railroad Company, to the Eastern Extension Railroad Company, and to assist in constructing certain wagon roads therein mentioned	April 30, 1860	From passage	1860	359	344
35	An Act to authorize the Board of Supervisors of the County of Santa Clara to take and subscribe $200,000 to the capital stock of the San Francisco and San José Railroad Company, and to provide for the payment of the same, and other matters relating thereto [Amended by Act approved May 6, 1862.]	April 9, 1861	From passage	1861	140	128
36	An Act to authorize the Board of Supervisors of the County of San Mateo to take and subscribe $100,000 to the capital stock of the San Francisco and San José Railroad Company, and to provide for the payment of the same, and other matters relating thereto	April 9, 1861	From passage	1861	141	134
37	An Act to authorize the Board of Supervisors of the City and County of San Francisco to take and subscribe $300,000 to the capital stock of the San Francisco and San José Railroad Company, and to provide for the payment of the same, and other matters relating thereto	April 19, 1861	From passage	1861	203	198
38	An Act to amend an Act entitled "An Act to confer upon the San Francisco and Marysville Railroad Company, incorporated under the laws of this State, certain rights and privileges," approved April 24, 1858	April 23, 1861	From passage	1861	225	225
39	An Act granting to Wm. Fitzpatrick and his associates, the right to construct a railroad in Contra Costa County [Supplemented by Act approved May 3, 1861. Modified by Act approved April 20, 1863.]	April 29, 1861	May 3, 1861	1861	260	264
40	An Act concerning the San Diego and Gila Southern Pacific and Atlantic Railroad Company, and to extend the time of performing certain acts [Compare Act approved March 30, 1868.]	May 2, 1861	July 1, 1861	1861	268	270
41	An Act supplementary to an Act granting to Wm. Fitzpatrick and his associates, the right to construct a railroad in Contra Costa County, approved April 29, 1861	May 3, 1861	From passage	1861	283	278
42	An Act granting the right of way over certain lands in this State in the Counties of Alameda and San Joaquin	May 8, 1861	July 7, 1861	1861	320	309
43	An Act to authorize the Mayor and Common Council of the City of Los Angeles to take and subscribe $50,000 to the capital stock of a railroad in the County of Los Angeles, and to provide for the payment of the same, and other matters relating thereto	May 17, 1861	July 16, 1871	1861	402	457
44	An Act to authorize the Board of Supervisors of the County of Los Angeles to take and subscribe $100,000 for the construction of a railroad in said county, and to provide for the payment of the same, and other matters relating thereto	May 17, 1861	July 16, 1861	1861	405	465
45	An Act amendatory of "An Act to provide for the construction of a railroad from a point on Petaluma Creek into the City of Petaluma, and for a right of way for the same." [This Act amends Acts approved April 25, 1860.]	May 17, 1861	July 16, 1861	1861	416	479
46	An Act to provide for the incorporation of railroad companies, and the management of the affairs thereof, and other matters relating thereto [Repeals Act approved April 22, 1853, and all Acts amendatory or supplementary thereto. Amended by Acts approved May 6, 1862, May 14, 1862, April 27, 1863, March 20, 1866, March 30, 1868, and April 1, 1870.]	May 20, 1861	From passage	1861	532	607
47	An Act granting to certain persons the right to construct and maintain a railroad through certain streets in the City of Oakland	May 20, 1861	July 19, 1861	1861	536	656
48	An Act amendatory of an Act to authorize the Board of Supervisors of the County of Yuba to take and subscribe $200,000 to the capital stock of a railroad company, and to provide for the payment of the same, and other matters relating thereto, approved April 28, 1857	March 21, 1862	From passage	1862	72	61
49	An Act to provide for the construction of a railroad from Mokelumne City to Woodbridge, in the County of San Joaquin [Amended by Act approved March 30, 1868.]	March 27, 1862	From passage	1862	107	97
50	An Act to authorize the construction of a wharf at a point designated upon the south bank of the San Joaquin River	April 8, 1862	June 7, 1862	1862	131	116
51	An Act to authorize the County of Placer to loan its credit to the Sacramento, Placer, and Nevada Railroad Company, to the amount of $100,000 [Amended by Act approved May 14, 1862.]	April 8, 1862	From passage	1862	136	120
52	An Act in relation to liens of mechanics and others [Amended and supplemented by Act approved April 4, 1864.]	April 26, 1862	June 25, 1862	1862	297	384
53	An Act to amend an Act entitled "An Act to confer upon the San Francisco and Marysville Railroad Company, incorporated under the laws of this State, certain rights and privileges," passed April 24, 1858	April 25, 1862	From passage	1862	304	421
54	An Act to authorize the Board of Managers of the Industrial School Department of the City and County of San Francisco to grant and convey to the San Francisco and San José Railroad Company the right of way for the construction of said road on and through the land belonging to the said Industrial School Department	April 25, 1862	From passage	1862	322	438
55	An Act to extend the time for the completion of the California Northern Railroad Company's road	April 26, 1862	June 25, 1862	1862	329	446
56	An Act to amend an Act entitled "An Act to authorize the Board of Supervisors of the County of Santa Clara to take and subscribe $200,000 to the capital stock of the San Francisco and San José Railroad Company, and to provide for the payment of the same, and other matters relating thereto," approved April 9, 1861	May 6, 1862	July 5, 1862	1862	374	494
57	An Act to amend an Act entitled "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," approved May 20, 1861	May 6, 1862	From passage	1862	381	498
58	An Act to authorize the Board of Supervisors of the County of Yuba to issue bonds of said county to the California Central Railroad Company, to the amount of $100,000	May 12, 1862	From passage	1862	404	530
59	An Act to amend an Act entitled "An Act to provide for the incorporation of railroad companies, and the management of the affairs thereof, and other matters relating thereto," approved May 20, 1861	May 14, 1862	From passage	1862	424	547
60	An Act to amend an Act entitled "An Act to authorize the County of Placer to loan its credit to the Sacramento, Placer, and Nevada Railroad Company, to the amount of $100,000," approved April 8, 1862	May 14, 1862	July 13, 1862	1862	427	549
61	An Act to authorize the Board of Supervisors of the County of San Joaquin to take and subscribe $250,000 to the capital stock of the Western Pacific Railroad Company, and to provide for the payment of the same, and other matters relating thereto	March 21, 1863	From passage	1863	77	80

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COMPILATION OF RAILROAD ACTS—Continued.

Number.	TITLE OF ACT.	Date of Passage.	Took Effect.	STATUTES. Year.	Chap.	Page.
62	An Act to authorize the Common Council of the City of Placerville to subscribe $100,000 to the capital stock of the Placerville and Sacramento Valley Railroad Company, and to provide for the payment of the same, and other matters relating thereto	March 21, 1863	From passage	1863	78	86
63	An Act to authorize the Board of Supervisors of the County of San Joaquin to take and subscribe $100,000 to the capital stock of the Stockton and Copperopolis Railroad Company, and to provide for the payment of the same, and other matters relating thereto	March 26, 1863	From passage	1863	87	102
64	An Act to authorize the Board of Supervisors of the County of El Dorado to subscribe $200,000 to the capital stock of the Placerville and Sacramento Valley Railroad Company, and to provide for the payment of the same, and other matters relating thereto	March 28, 1863	From passage	1863	110	122
	[Compare Act passed April 4, 1864.]					
65	An Act to authorize the County of Placer to subscribe to the capital stock of the Central Pacific Railroad of California, and to provide for the payment of the same, and other matters relating thereto	April 2, 1863	From passage	1863	125	145
	[Supplemented and amended by Act approved March 31, 1866.]					
66	An Act to protect certain parties in and to a railroad survey to connect Portland, Oregon, with Marysville, California	April 6, 1863	From passage	1863	155	186
67	An Act to authorize the California Central Railroad Company to hold an election	April 8, 1863	From passage	1863	177	237
68	An Act to authorize the County of Butte to purchase and hold $66,000 of the first mortgage bonds of the California Northern Railroad Company, and to issue the bonds of said county for the payment of the same, and for other purposes connected therewith	April 8, 1863	From passage	1863	178	237
	[Compare Acts approved March 14, 1860, and March 20, 1866.]					
69	An Act to extend the time for the completion of the San Francisco and Marysville Railroad	April 8, 1863	June 7, 1863	1863	179	240
	[Modifies Act passed April 24, 1858.]					
70	An Act to authorize the Board of Supervisors of the County of Santa Clara to take and subscribe $150,000 to the capital stock of the Western Pacific Railroad Company, and to provide for the payment of the same, and other matters relating thereto	April 14, 1863	From passage	1863	207	276
	[Amended by Act approved February 21, 1872.]					
71	An Act granting certain rights to the Central Pacific Railroad of California, and for other purposes	April 14, 1863	From passage	1863	209	288
72	An Act to authorize the Board of Supervisors of the County of Stanislaus to take and subscribe $250,000 to the capital stock of the Stockton and Copperopolis Railroad Company, and to provide for the payment of the same, and other matters relating thereto	April 17, 1863	From passage	1863	237	310
	[Amended by Act approved March 31, 1866.]					
73	An Act to authorize the relocation of the route of the railroad of the Central Pacific Railroad of California, and other matters relating thereto	April 17, 1863	From passage	1863	244	320
74	An Act to extend the time for the completion of a railroad in Contra Costa County	April 20, 1863	From passage	1863	279	360
	[Modifies Act passed April 29, 1861.]					
75	An Act to authorize the Board of Supervisors of the County of Alameda to take and subscribe $220,000 to the capital stock of the Alameda Valley Railroad Company, and to provide for the payment of the same, and other matters relating thereto	April 21, 1863	From passage	1863	285	365
76	An Act to authorize the Board of Supervisors of Butte County to loan certain money	April 21, 1863	From passage	1863	287	373
	[Repealed by Act passed April 4, 1864.]					
77	An Act to authorize the Board of Supervisors of the City and County of San Francisco to take and subscribe $1,000,000 to the capital stock of the Western Pacific Railroad Company and Central Pacific Railroad Company of California, and to provide for the payment of the same and other matters relating thereto	April 22, 1863	From passage	1863	291	380
	[Compare Act approved April 4, 1864.]					
78	An Act to authorize the City and County of Sacramento to subscribe to the capital stock of the Central Pacific Railroad of California, and providing for the payment of the same, and other matters relating thereto	April 25, 1863	From passage	1863	310	447
79	An Act to aid the construction of the Central Pacific Railroad in the State of California, and other matters relating thereto	April 25, 1863	From passage	1863	314	465
	[Repealed by Act approved April 4, 1864.]					
80	An Act to provide for the construction of a railroad from Wilmington to Los Angeles, in the County of Los Angeles	April 25, 1863	From passage	1863	332	494
81	An Act to authorize the San Francisco and Alameda Railroad Company to construct and maintain a wharf at the western end of the Encinal of San Antonio, in Alameda County	April 25, 1863	From passage	1863	341	499
	[Supplemented and amended by Act approved March 28, 1868.]					
82	An Act to amend an Act entitled "An Act to provide for the incorporation of railroad companies, and the management of the affairs thereof, and other matters relating thereto," approved May 20, 1861	April 27, 1863	From passage	1863	400	610
	[Amended by Act approved March 30, 1868.]					
83	An Act to authorize the Board of Supervisors of the County of Calaveras to take and subscribe $50,000 to the capital stock of the Stockton and Copperopolis Railroad Company, and to provide for the payment of the same, and other matters relating thereto	April 27, 1863	From passage	1863	418	673
84	An Act to authorize the Board of Supervisors of the County of Tuolumne to take and subscribe $50,000 to the capital stock of the Stockton and Copperopolis Railroad Company, and to provide for the payment of the same, and other matters relating thereto	April 27, 1863	From passage	1863	419	679
85	An Act to grant the right to construct a wooden or iron railroad from the State Range Mountains, in the County of San Bernardino, to Kern River, in the County of Tulare	April 27, 1863	From passage	1863	424	696
86	An Act to authorize the Sacramento, Placer, and Nevada Railroad Company to sell and convey their road, and other matters relating thereto	April 27, 1863	From passage	1863	487	749
87	An Act to authorize the Board of Supervisors of Placer County to levy a special poll tax for county purposes	March 1, 1864	From passage	1863-4	129	116
88	An Act to aid the construction of the Central Pacific Railroad, and to secure the use of the same to this State for military and other purposes, and other matters relating thereto	April 4, 1864	From passage	1863-4	320	344
	[Repeals Act approved April 25, 1863.]					

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COMPILATION OF RAILROAD ACTS—Continued.

Number.	TITLE OF ACT.	Date of Passage.	Took Effect.	STATUTES. Year.	Chap.	Page.
89	An Act regulating the assessment and taxation of railroads and other roads, for revenue purposes, and other matters relating thereto [Repealed by Act approved March 27, 1868.]	April 4, 1864	From passage	1864	325	357
90	An Act to authorize the Board of Supervisors of the County of El Dorado to subscribe $100,000 in addition to the amount heretofore subscribed by said county, to the capital stock of the Placerville and Sacramento Valley Railroad Company, and to provide for the payment of the same, and other matters relating thereto [Compare Act passed March 28, 1863.]	April 4, 1864	From passage	1863–4	341	378
91	An Act to authorize the Board of Supervisors of the County of Napa to take and subscribe to the capital stock of the Napa Valley Railroad Company, and to provide for the payment of the same, and other matters relating thereto [Amended by Act approved January 25, 1866.]	April 4, 1864	From passage	1863–4	342	383
92	An Act to confer additional powers upon the Board of Supervisors of the City and County of San Francisco, and upon the Auditor and Treasurer thereof, and to authorize the appropriation of moneys by said Board [Compare Act approved April 22, 1863.]	April 4, 1864	From passage	1863–4	344	388
93	To confer certain powers on the Boards of Supervisors of the Counties of Santa Clara and San Mateo, and the City and County of San Francisco, in relation to the interest and stock held by said counties and city and county in the San Francisco and San José Railroad Company	April 4, 1864	June 3, 1864	1863–4	386	437
94	An Act amendatory and supplementary to an Act in relation to liens of mechanics and others, approved April 26, 1862	April 4, 1864	From passage	1863–4	411	465
95	An Act to aid in carrying out the provisions of the Pacific Railroad and Telegraph Act of Congress, and other matters relating thereto	April 4, 1864	From passage	1863–4	417	471
96	An Act authorizing the Yuba Railroad Company to change its northern terminus	April 4, 1864	From passage	1863–4	460	509
97	An Act to authorize the Board of Supervisors of Butte County to loan certain money [Repeals Act approved April 21, 1863.]	April 4, 1864	From passage	1863–4	475	533
98	An Act to amend an Act entitled "An Act to authorize the Board of Supervisors of the County of Napa to take and subscribe to the capital stock of the Napa Valley Railroad Company, and to provide for the payment of the same, and other matters relating thereto," approved April 4, 1864	Jan. 25, 1866	From passage	1865–6	41	25
99	An Act to confirm a certain contract for sale of stock held by the County of San Mateo in the San Francisco and San José Railroad Company	Jan. 29, 1866	From passage	1865–6	53	36
100	An Act to amend an Act entitled "An Act to authorize the Board of Supervisors of the County of Solano to take and subscribe $200,000 to the capital stock of the San Francisco and Marysville Railroad Company, and to provide for the payment of the same and other matters relating thereto," approved April 16, 1859 [Repealed by Act approved March 26, 1868.]	Jan. 31, 1866	April 1, 1866	1865–6	63	46
101	An Act to authorize the County of Yuba to donate $65,000 to the Yuba Railroad Co., and to provide for the payment of the same, and other matters relating thereto. [Supplemented and amended by Act approved March 24, 1866.]	Feb. 13, 1866	From passage	1865–6	95	75
102	An Act to legalize and confirm a certain contract made between the County of Santa Clara and the Board of Supervisors thereof and the Western Pacific Railroad Company, bearing date March 28, 1865	March 3, 1866	From passage	1865–6	176	157
103	An Act to authorize the California Northern Railroad Company to hold an election	March 20, 1866	From passage	1865–6	270	304
104	An Act granting to the Black Diamond Coal Mining Company the right to construct a tramroad or railroad from the mines of said company, at Monte Diablo, to the San Joaquin River	March 20, 1866	From passage	1865–6	275	307
105	An Act to amend an Act entitled "An Act to provide for the incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto," approved May 20, 1861	March 20, 1866	From passage	1865–6	278	310
106	An Act to confirm a certain contract for the sale of stock held by the County of Santa Clara in the San Francisco and San José Railroad Company, and to give effect to the same	March 20, 1866	From passage	1865–6	298	330
107	An Act to authorize the Board of Supervisors of Butte County to sell certain bonds and to provide for the redemption of the bonds of the county, and for other purposes connected therewith [Compare Acts approved March 14, 1860, and April 8, 1863.]	March 20, 1866	From passage	1865–6	305	338
108	An Act supplementary and amendatory to an Act entitled "An Act to authorize the County of Yuba to donate $65,000 to the Yuba Railroad Company, and to provide for the payment of the same, and other matters relating thereto," approved February 13, 1866	March 24, 1866	From passage	1865–6	326	373
109	An Act to authorize H. B. Tichenor and R. G. Byxbee to construct a railroad and railroad bridge in Mendocino County	March 31, 1866	May 30, 1866	1865–6	401	489
110	An Act to amend an Act entitled "An Act to authorize the Board of Supervisors of the County of Stanislaus to take and subscribe $25,000 to the capital stock of the Stockton and Copperopolis Railroad Company, and to provide for the payment of the same, and other matters relating thereto," approved April 17, 1863 [Repealed by Act approved February 21, 1868.]	March 31, 1866	From passage	1865–6	434	543
111	An Act to authorize James Nelson to extend his present line of railroad	March 31, 1866	May 30, 1866	1865–6	446	568
112	An Act to authorize the construction of a tramroad, or railroad, in the County of Contra Costa [Compare Act approved March 30, 1868. Amended and supplemented by Act approved March 30, 1868.]	March 31, 1866	May 30, 1866	1865–6	447	569
113	An Act to allow the Western Pacific Railroad Company and the San Francisco and San José Railroad Company, and other parties, the right to take gravel from the channel of Coyote Creek, in the County of Santa Clara	March 31, 1866	From passage	1865–6	452	584
114	An Act supplementary and amendatory of an Act entitled "An Act to authorize the County of Placer to subscribe to the capital stock of the Central Pacific Railroad Company of California, and to provide for the payment of the same, and other matters relating thereto" [Supplementary and amendatory of Act approved April 2, 1863. Amended by Act approved April 4, 1870.]	March 31, 1866	From passage	1865–6	488	628
115	An Act granting to F. K. Shattuck, Wm. Hillegas, J. H. Haste, and C. Kirke, their associates or assigns, the right to construct and maintain a tramroad or railroad from the Central Coal Mine at Monte Diablo, in Contra Costa County, to the San Joaquin River	April 2, 1866	June 1, 1866	1864–6	525	685
116	An Act to authorize the Board of Supervisors of the County of Calaveras to take and subscribe $50,000 to the capital stock of the Stockton and Copperopolis Railroad Company, and to provide for the payment of the same, and other matters relating thereto	April 2, 1866	From passage	1865–6	547	759

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COMPILATION OF RAILROAD ACTS—Continued.

Number.	TITLE OF ACT.	Date of Passage.	Took Effect.	STATUTES. Year.	Chap.	Page.
117	An Act concerning the Napa Valley Railroad Company, authorizing an election, and other matters relating thereto	April 2, 1866	From passage	1865-6	584	810
118	An Act to authorize all the counties south of Santa Clara County to aid in the construction of the Southern Pacific Railroad	April 2, 1866	From passage	1865-6	591	816
119	An Act to legalize the location of the San Francisco and Alameda Railroad, from Hayward's to Washington Corners, in the County of Alameda	Jan. 15, 1868	From passage	1867-8	7	5
120	An Act to authorize the Board of Supervisors of the County of Los Angeles to take and subscribe the sum of $150,000 to the capital stock of the Los Angeles and San Pedro Railroad Company, in the County of Los Angeles, and to provide for the payment of the same, and other matters relating thereto [Amended and supplemented by Act approved March 25, 1868.]	Feb. 1, 1868	From passage	1867-8	24	14
121	An Act to authorize the Mayor and Common Council of the City of Los Angeles to take and subscribe $75,000 to the capital stock of the Los Angeles and San Pedro Railroad Company, in the County of Los Angeles, and to provide for the payment of the same, and other matters relating thereto [Amended and supplemented by Act approved March 25, 1868.]	Feb. 1, 1868	From passage	1867-8	25	20
122	An Act to repeal an Act entitled "An Act to amend an Act entitled 'An Act to authorize the Board of Supervisors of the County of Stanislaus to take and subscribe $25,000 to the capital stock of the Stockton and Copperopolis Railroad Company, and to provide for the payment of the same, and other matters relating thereto,' approved April 17th, 1863," approved March 31st, 1866	Feb. 21, 1868	From passage	1867-8	74	66
123	An Act authorizing the construction of a wharf in the County of Yolo, and to build a railroad in connection therewith	March 10, 1868	From passage	1867-8	157	134
124	An Act to authorize H. B. Tichener and R. G. Byxbee to construct a railroad, railroad wharf, and toll bridge in Mendocino County	March 11, 1868	From passage	1867-8	158	135
125	An Act to authorize Titus Hale, Austin Walrath, Wm. McCall, and Richard P. Tenny, their associates and assigns, to construct a railroad from the City of Monterey to the Rancho Natividad, and to construct a wharf at the City of Monterey	March 11, 1868	From passage	1867-8	159	137
126	An Act to authorize the County of Sutter to give its bonds to the California Pacific Railroad Company, a corporation organized and working by and under the general railroad laws of this State, and to provide for the payment of said bonds	March 13, 1868	From passage	1867-8	176	155
127	An Act to authorize the County of Sonoma to donate bonds to a railroad company, and to provide for the payment of the same	March 18, 1868	From passage	1867-8	197	189
128	An Act concerning railroad companies in the City and County of San Francisco	March 21, 1868	From passage	1867-8	213	204
129	An Act to authorize the construction of a railroad from San José to Santa Clara, in the County of Santa Clara	March 24, 1868	From passage	1867-8	246	259
130	An Act to authorize the County of Yolo to give its bonds to the California Pacific Railroad Company, a corporation organized and working by and under the general railroad laws of this State, and to provide for the payment of said bonds	March 24, 1868	May 23	1867-8	248	263
131	An Act amendatory of and supplemental to an Act to authorize the Mayor and Common Council of Los Angeles to take and subscribe $75,000 to the capital stock of the Los Angeles and San Pedro Railroad Company, in the County of Los Angeles, and to provide for the payment of the same, and other matters relating thereto, approved February 1, 1868	March 25, 1868	*From passage	1867-8	276	294
132	An Act amendatory of and supplementary to an Act to authorize the Board of Supervisors of the County of Los Angeles to take and subscribe the sum of $150,000 to the capital stock of the Los Angeles and San Pedro Railroad Company, in the County of Los Angeles, and to provide for the payment of the same, and other matters relating thereto, approved February 1, 1868	March 25, 1868	*From passage	1867-8	283	299
133	An Act amendatory of and supplementary to an Act entitled "An Act to authorize the Board of Supervisors of the County of Solano to take and subscribe $200,000 to the capital stock of the San Francisco and Marysville Railroad Company, and to provide for the payment of the same, and other matters relating thereto," approved April 16, 1859, and to fund a part of the debt of said County of Solano, and other matters relating to said railroad company [Repeals Act approved January 1, 1866.]	March 26, 1868	From passage	1867-8	298	331
134	An Act granting William W. Waddell and his assigns the right to maintain a wharf and railroad in Santa Cruz County	March 26, 1868	From passage	1867-8	301	342
135	An Act to repeal an Act entitled "An Act regulating the assessment and taxation of railroads, and other roads, for revenue purposes, and other matters relating thereto," approved April 4, 1864	March 27, 1868	From passage	1867-8	335	404
136	An Act to authorize the Township Assessors of the Townships of White Oak and Mud Springs, in the County of El Dorado, to assess the property belonging to the Placerville and Sacramento Valley Railroad Co. in said townships, in the year A. D. 1866, and to provide for the collection of the unpaid taxes thereon for said year	March 27, 1868	From passage	1867-8	336	404
137	An Act supplementary to and amendatory of an Act entitled "An Act to authorize the San Francisco and Alameda Railroad Company to construct and maintain a wharf at the western end of the Encinal of San Antonio, in Alameda County," approved April 25, 1863	March 28, 1868	From passage	1867-8	355	427
138	An Act to authorize the California Pacific Railroad Company to extend its road to Suscol, in Napa County, and receive subscriptions to its capital stock, and other matters relating thereto	March 28, 1868	May 27, 1868	1867-8	357	428
139	An Act to provide terminal depot grounds for the Terminal Central Pacific Railroad Company [Supplemented and amended by Act approved March 31, 1870.]	March 28, 1868	From passage	1867-8	386	473
140	An Act to provide for the transfer of certain funds in the County of Placer [Amended by Act approved April 4, 1870.]	March 28, 1868	From passage	1867-8	389	477
141	An Act to authorize the County of Contra Costa to donate bonds to the Martinez and Dansville Railroad Company, and to provide for the payment of the same [Compare Act approved March 31, 1866.]	March 30, 1868	From passage	1867-8	417	531
142	An Act to make certain Acts take effect immediately	March 30, 1868	May 29, 1868	1867-8	423	538
143	An Act to confirm and legalize certain contracts entered into by Peter Donahue and others, with the County of Santa Clara	March 30, 1868	May 29, 1868	1867-8	437	559
144	An Act concerning the foreign miners' license tax in the County of Placer	March 30, 1868	From passage	1867-8	439	563
145	An Act concerning the San Diego and Gila, Southern Pacific and Atlantic Railroad Company, and to extend the time of performing certain acts [Compare Act approved May 2, 1868.]	March 30, 1868	From passage	1867-8	462	616
146	An Act amendatory of and supplementary to an Act to authorize the construction of a tramroad or railroad, in the County of Contra Costa. Passed March 31, 1866	March 30, 1868	From passage	1867-8	463	617

* See Act approved March 30, 1868.

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COMPILATION OF RAILROAD ACTS—Continued.

Number.	TITLE OF ACT.	Date of Passage.	Took Effect.	STATUTES. Year.	Chap.	Page.
147	An Act authorizing the Board of Supervisors of Plumas County to take and subscribe to the capital stock of the Oroville and Virginia City Railroad Company, and to provide for the payment thereof [Repealed by Act approved February 26, 1870.]	March 30, 1868.	From passage.	1867-8	471	630
148	An Act to aid in giving effect to an Act of Congress, relating to the California and Oregon Railroad Company	March 30, 1868.	May 29, 1868.	1867-8	483	655
149	An Act to authorize the construction of a tramroad or railroad in the County of Santa Clara	March 30, 1868.	From passage.	1867-8	484	656
150	An Act to amend an Act entitled "An Act to provide for the construction of a railroad from Mokelumne City to Woodbridge, in the County of San Joaquin," approved March 27, 1862	March 30, 1868.	From passage.	1867-8	485	657
151	An Act to authorize the construction of a railroad bridge across Napa Creek, at or near Suscol, in the County of Napa	March 30, 1868.	From passage.	1867-8	493	663
152	An Act to confer upon the California Pacific Railroad Company, duly incorporated and working under the general railroad laws of this State, certain rights and privileges	March 30, 1868.	From passage.	1867-8	499	671
153	An Act to aid in carrying out the provisions of an Act of Congress, relating to the Stockton and Copperopolis Railroad Company	March 30, 1868.	May 29, 1868.	1867-8	502	673
154	An Act to amend an Act entitled "An Act to amend an Act to provide for incorporation of railroad companies and the management of the affairs thereof, and other matters relating thereto, approved May 20, 1861," approved April 27, 1863	March 30, 1868.	From passage.	1867-8	531	705
155	An Act to confer power upon the Board of Supervisors of the City and County of San Francisco	March 30, 1868.	From passage.	1867-8	542	716
156	An Act to survey and dispose of certain salt marsh and tide lands belonging to the State of California [Compare Acts approved April 2, 1870, and March 6, 1872.]	March 30, 1868.	May 29, 1868.	1867-8	543	716
157	An Act to repeal an Act entitled "An Act authorizing the Board of Supervisors of Plumas County to take and subscribe to the capital stock of the Oroville and Virginia City Railroad Company, and to provide for the payment thereof" [Repeals Act approved March 30, 1868.]	Feb. 26, 1870.	From passage.	1870	107	102
158	An Act to transfer money from one fund to another in the County of Solano	March 28, 1870.	From passage.	1870	315	414
159	An Act amendatory of and supplementary to an Act entitled "An Act to provide terminal depot grounds for the Terminal Central Pacific Railway Company," approved March 20, 1868	March 31, 1870.	From passage.	1870	381	525
160	An Act to empower the County of San Joaquin to aid in the construction of the Stockton and Visalia Railroad	March 31, 1870.	From passage.	1870	387	532
161	An Act to empower the City of Stockton to aid in the construction of the Stockton and Visalia Railroad	April 1, 1870.	From passage.	1870	396	551
162	An Act to amend an Act entitled "An Act to provide for the incorporation of railroad companies, and the management of the affairs thereof, and other matters relating thereto," approved May 20, 1861	April 1, 1870.	May 31, 1870.	1870	413	577
163	An Act to extend the time allowed to the Southern Pacific Railroad Company and the Western Pacific Railroad Company, in which to make the terminus of their roads upon certain lands donated to them by the State for that purpose in the City and County of San Francisco [Compare Act approved March 30, 1868, and March 6, 1872.]	April 2, 1870.	From passage.	1870	461	669
164	An Act to authorize and empower the President and Trustees of the City of San Diego to donate lands to the San Diego and Los Angeles Railroad Company, to aid in the construction of said railroad	April 2, 1870.	From passage.	1870	473	696
165	An Act to empower the City and County of San Francisco to aid in the construction of the Southern Pacific Railroad, and other purposes	April 2, 1870.	From passage.	1870	484	707
166	An Act to empower the Boards of Supervisors of the several counties of the State to aid in the construction of a railroad in their respective counties [Supplemented by Act approved April 4, 1870. Partially repealed by Act approved March 21, 1872. Wholly repealed by Act approved January 14, 1874.]	April 4, 1870.	From passage.	1870	507	746
167	An Act supplementary to an Act to empower the Boards of Supervisors of the several counties of the State to aid in the construction of a railroad in their respective counties, approved April 4, 1870 [Partially repealed by Act approved March 21, 1872. Wholly repealed by Act approved January 14, 1874.]	April 4, 1870.	From passage.	1870	505	744
168	An Act to confer additional power upon the Board of Supervisors of Yuba County	April 4, 1870.	From passage.	1870	524	782
169	An Act to authorize the Board of State Harbor Commissioners to lease a portion of the water front in the City and County of San Francisco	April 4, 1870.	From passage.	1870	535	799
170	An Act to amend an Act entitled "An Act to provide for the transfer of certain funds in the County of Placer," approved March 28, 1868	April 4, 1870.	From passage.	1870	542	807
171	An Act amendatory of an Act entitled "An Act supplementary and amendatory of an Act entitled 'An Act to authorize the County of Placer to subscribe to the capital stock of the Central Pacific Railroad Company of California, and to provide for the payment of the same, and other matters relating thereto,'" approved March 31, 1866	April 4, 1870.	From passage.	1870	570	866
172	An Act to aid in giving effect to an Act of Congress relating to the Southern Pacific Railroad Company	April 4, 1870.	From passage.	1870	579	883
173	An Act authorizing a telegraph between Los Angeles and Wilmington, in Los Angeles County	Feb. 13, 1872.	From passage.	1871-2	90	87
174	An Act to confirm a certain contract for the sale of stock held by the County of Santa Clara in the Western Pacific Railroad Company, and to give effect to the same, and amendatory of an Act entitled "An Act to authorize the Board of Supervisors of the County of Santa Clara to take and subscribe $150,000 to the capital stock of the Western Pacific Railroad Company, and to provide for the payment of the same, and other matters relating thereto," approved April 14, 1863	Feb. 21, 1872.	From passage.	1871-2	132	139
175	An Act to extend the time allowed to the Southern Pacific Railroad Company, and the Western Pacific Railroad Company, in which to make the terminus of their roads, upon certain lands donated to them by the State for that purpose, in the City and County of San Francisco [Compare Acts approved March 30, 1868, and April 2, 1870.]	March 6, 1872.	From passage.	1871-2	217	282
176	An Act for the relief of the Central Pacific Railroad Company	March 20, 1872.	From passage.	1871-2	318	432
177	An Act to repeal an Act entitled "An Act to empower the Board of Supervisors of the several counties of the State to aid in the construction of a railroad in their respective counties," approved April 4, 1870, and an Act entitled "An Act supplementary to an Act to empower the Board of Supervisors of the several counties of the State to aid in the construction of a railroad in their respective counties,					

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COMPILATION OF RAILROAD ACTS—Continued.

Number.	TITLE OF ACT.	Date of Passage.	Took Effect.	STATUTES. Year.	Chap.	Page.
	approved April 4, 1870," approved April 4, 1870, except as to certain counties therein named [Repealed by Act approved January 14, 1874.]	March 21, 1872.	From passage	1871-2	335	444
178	An Act to add additional sections to the Political Code [Sections 3663 and 3830.]	March 27, 1872.	From passage	1871-2	417	586
179	An Act to repeal certain Acts herein mentioned, known as "The five per cent subsidy Acts." [Repeals Acts approved April 4, 1870, and March 21, 1872.]	Jan. 14, 1874.	From passage	1873-4	26	26
180	An Act granting to the Sierra Iron Company the right to construct a road in Sierra and Plumas Counties	March 11, 1874.	From passage	1873-4	239	341
181	An Act to legalize, ratify, and confirm Ordinance No. 38, entitled Charter Ordinance No. 38, granting right of way to the Texas and Pacific Railroad Company, and repealing Ordinance No. 35, passed and approved by the Board of Trustees of the City of San Diego, on the 20th day of June, 1873	March 16, 1874.	From passage	1873-4	271	370
182	An Act to provide for the construction of a railroad from Colfax, in the County of Placer, to Nevada City, in the County of Nevada, and to regulate freights and fares thereon	March 20, 1874.	From passage	1873-4	336	492
183	An Act to provide for the construction of a railroad from the Bay of San Luis Obispo, in the Couny of San Luis Obispo, to Santa Maria, in the County of Santa Barbara [Supplemented by Act approved February 28, 1878.]	March 27, 1874.	From passage	1873-4	464	695
184	An Act to authorize the City of Los Angeles to issue bonds in payment of certain indebtedness	March 27, 1874.	From passage	1873-4	497	724
185	An Act to provide for the construction of a railroad from Independence, in the County of Inyo, to the City of Los Angeles, Los Angeles County, and to regulate the fares and freights thereon	March 28, 1874.	From passage	1873-4	535	772
186	An Act to provide for the construction of a railroad from the City of Marysville, in the County of Yuba, to Knights Landing, in the County of Yolo, and to regulate fares and freights thereon	March 28, 1874.	From passage	1873-4	545	780
187	An Act to grant land for the right of way to the Arcata Transportation Company	March 25, 1876.	From passage	1875-6	346	486
188	An Act to provide for the redemption of the outstanding railroad bonds of Butte County	March 27, 1876.	From passage	1875-6	360	501
189	An Act concerning certain taxes in the Counties of Placer and Nevada	March 31, 1876.	From passage	1875-6	436	621
190	An Act to authorize the Board of Supervisors of the County of Santa Cruz to arrange with the Santa Cruz Railroad Company to change its railroad so as to pass through the Town of Watsonville	April 1, 1876.	From passage	1875-6	480	725
191	An Act to provide for the appointment of Commissioners of Transportation, to fix the maximum charges for freights and fares, and to prevent extortion and discrimination on railroads in this State. [Repealed by Act approved April 1, 1878.]	April 3, 1876.	From passage	1875-6	515	783
192	An Act to provide for the payment of certain coupons	April 3, 1876.	From passage	1875-6	586	881
193	An Act supplementary to an Act entitled "An Act to provide for the construction of a railroad from the Bay of San Luis Obispo, in the County of San Luis Obispo, to Santa Maria, in the County of Santa Barbara [Supplementary to Act approved March 27, 1874.]	Feb. 28, 1878.	From passage	1877-8	105	114
194	An Act to provide for the payment of certain coupons upon bonds issued to the Central Pacific Railroad Company, and known as State Aid Bonds	March 19, 1878.	From passage	1877-8	274	335
195	An Act to provide for the construction of a railroad from the Town of Truckee, Nevada County, to Tahoe City, Lake Bigler, in Placer County, and to regulate fares and freights thereon	March 29, 1878.	From passage	1877-8	456	698
196	An Act to provide for the construction of a railroad from Ione, in the County of Amador, to a point in or near the Towns of Sutter Creek, or Jackson, in said county, and to regulates fares and freights thereon	March 30, 1878.	From passage	1877-8	539	841
197	An Act to enable railroad companies to complete their railroads	April 1, 1878.	From passage	1877-8	597	944
198	An Act imposing a tax on the issue of certificates of stock companies	April 1, 1878.	April 1, 1878.	1877-8	613	955
199	An Act to create the office of Commissioner of Transportation, and to define its powers and duties; to fix the maximum charges for transporting passengers and freight on certain railroads, and to prevent extortion and unjust discrimination thereon [Repeals Act approved April 3, 1876.]	April 1, 1878.	From passage	1877-8	641	969
	EXTRACTS FROM THE CODES.					
	The Civil Code—Sections 283 to 403: General provisions applicable to all corporations. Sections 454 to 491: Railroad corporations. The Code of Civil Procedure—Sections 1227 to 1233: Of the voluntary dissolution of corporations. Sections 1237 to 1263: Of eminent domain.					

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STATEMENT OF BONDED INDEBTEDNESS

Of the Counties of the State of California, incurred in aid of Railroad Companies.

NAME OF COUNTY.	Name of Railroad Company.	Date of Act Authorizing Issue.	Amount of Bonds Issued by County.	Rate of Interest.	Amount of Bonds Redeemed.	Realized from Sale of Railroad Stock.	Amount of Bonds Outstanding June 30th, 1878.
Butte	California Northern	March 14, 1860	$200,000*	10 per cent.	$67,000	None.	$133,000
El Dorado	Placerville and Sacramento Valley	March 28, 1863	200,000†	10 per cent.	53,500	None.	146,500
Placerville							
Los Angeles	Los Angeles and San Pedro	Feb. 1, 1868	150,000†	10 per cent.	14,000	None.	136,000
	Southern Pacific	April 4, 1870	377,000‡	7 per cent.	None.	None.	377,000
Los Angeles (City)	Los Angeles and San Pedro	Feb. 1, 1868	75,000†	10 per cent.	None.	None.	75,000
	Southern Pacific	April 27, 1871	13,000‡	7 per cent.	None.	None.	13,000
Marin	North Pacific Coast	April 4, 1870	160,000‡	7 per cent.	None.	None.	160,000
Napa	Napa Valley and California Pacific	April 4, 1864 March 28, 1868	250,000†	10 per cent.	22,000	None.	228,000
Placer	Central Pacific	April 2, 1863	250,000†	8 per cent.	250,000	250,000	None.
Sacramento (City and Co)	Central Pacific Railroad of California	April 25, 1863	300,000†	8 per cent.	222,500	210,000	77,500
San Francisco (City and County)	San Francisco and San José	April 19, 1861	300,000†	7 per cent.	298,500	1,000	1,500
	Central Pacific	April 22, 1863	400,000‡	7 per cent.	23,000	None.	377,000
	Western Pacific	April 4, 1864	250,000‡	7 per cent.	None.	None.	250,000
San Joaquin	Western Pacific	March 21, 1863	(a) 250,000†	8 per cent.	None.	None.	None.
	Stockton and Visalia	March 31, 1870	80,000‡	7 per cent.	None.	None.	80,000
City of Stockton	Stockton and Visalia	April 1, 1870	120,000‡	7 per cent.	None.	None.	120,000
San Mateo	San Francisco and San José	April 9, 1861	(b) 100,000‡	7 per cent.	None.	None.	None.
Santa Clara	Western Pacific	April 14, 1863	150,000†	7 per cent.	None.	100,000	150,000
	San Francisco and San José	April 9, 1861 May 6, 1862	200,000†	7 per cent.	200,000	100,000	None.
Santa Cruz	Santa Cruz	March 21, 1872	114,000‡	7 per cent.	None.	None.	114,500
Solano	San Francisco and Marysville Afterwards to California Pacific	April 16, 1859 March 26, 1868	200,000‡	7 per cent.	None.	None.	200,000
Sonoma	Sonoma County, California Pacific, San Francisco, and North Pacific	March 18, 1868	267,000‡	8 per cent.	None.	None.	267,000
Yuba	San Francisco and Marysville	April 28, 1857	100,000‡	10 per cent.	67,500	None.	(c) 32,500
	Yuba	Feb. 13, 1866	65,000‡	8 per cent.	65,000	None.	None.
Totals			$4,571,000		$1,283,000	$661,000	$2,938,000

The State of California guarantees the interest upon $1,500,000 of seven per cent. bonds of the Central Pacific Railroad Company for twenty years.

(a) San Joaquin County issued $250,000 of county bonds to cover her subscription to the Western Pacific Railroad Company stock. The railroad company refusing to deliver the stock, the county sued the company, and the matter is still in litigation, the company wishing to compromise for $100,000 worth of bonds, but the county refuses to accept, still claiming the stock.

(b) The principal and interest of these San Mateo County bonds have been paid by the Southern Pacific and San José Railroad Company.

(c) Funded July, 1868, into eight per cent. county bonds.

* In exchange for railroad county bonds.

† Subscription to railroad company's stock.

‡ Subsidy.

THE PRESIDENT. The communication and accompanying documents will lie on the table.

ORDERED PRINTED.

MR. THOMPSON. Mr. President, I move that four hundred and eighty copies of the proposition introduced by me yesterday, relative to the hours of labor, be printed.

THE PRESIDENT. The Secretary will read the proposed amendment.

THE SECRETARY read:

ARTICLE —.

SECTION 1. The hours of labor on all contracts performed for the State, county, and municipal governments shall not exceed eight hours a day.

SEC. 2. The hours of labor on all work done for corporations doing business under charter from this State shall not exceed eight hours a day.

SEC. 3. All State offices, county and municipal, shall remain open for the transaction of business eight hours each business day.

SEC. 4. Eight hours shall constitute a legal day's work in each and every department of the State, county, and municipal governments.

SEC. 5. This article shall be enforced by appropriate legislation.

The motion prevailed, on a division, by a vote of 46 ayes to 39 noes.

THE PRESIDENT. The article will be printed and referred to the Committee on Miscellaneous Subjects.

QUESTION OF INFORMATION.

MR. STEDMAN. Mr. President: I rise for a question of information. I have been in the habit, as a great many members of this Convention have, of coming to this chamber in the evening and doing writing, and studying, and reading books, pamphlets, papers, etc. Now, Mr. President, I have my room and can read there just as well as in this chamber, but I understood that this chamber was for the use of this Convention in the evening as well as during the day. Last night I came here, as several other gentlemen did; we found that the hall was not lighted, and, on looking around the chamber, we found a great many members with lighted candles on their desks. The information I wish is, how this comes? I was absent, and the Convention may have taken some action, but I understand that the lights were put out by the order of Hon. S. G. Hilborn. I desire to know by what authority that gentleman gave this order; whether it was by the authority of this Convention, or by the assumed authority of the Chairman of the Committee on Contingent Expenses, and whether this chamber is to be lighted in future, or not?

MR. HILBORN. Mr. President: I am very happy to give the gentleman the information he wants. In the first place, no corrupt Legislature was ever so wasteful of the people's money as to light up the Assembly chamber at night when the Assembly was not in session. It is left for this body to establish a different precedent. There never was any right on the part of the Sergeant-at-Arms to spend thirty dollars a night in lighting up this large chamber for a half-dozen stragglers to come here and read at the expense of the State. It has never been the practice in any Legislature to light up these chambers for the benefit of half a dozen men who might come in here to read. It has been the practice among corrupt legislators, when they wanted to come here to read, to have the gas lighted in some of these side brackets and leave their own desks and go there to read. They never asked that this great hall should be lighted at the expense of the State for their individual convenience. I say that this has never been asked by any one before until these reformers—these people who come up here to stand by the rights of the people—come here and demand a different practice. I certainly was not aware until a few days ago that this thing was going on; and yesterday morning I went around among as many of these people as I could see, and asked if there was any necessity of continuing this improper expenditure. Now, of course, I have no right to order the Sergeant-at-Arms—and I merely asked him why he was doing it. He said he had done it at the request of some of the members; and I merely told him that it was not the practice when the Legislature was in session, and that if I was him I would not do it. I did not order him. I merely told him that if I was him I would shut it off, and then if the Convention ordered it, he could turn it on again. I have been trying to beat some economical sense into this senseless body. [Laughter.]

MR. FILCHER. Will the gentleman inform the Convention by what authority the hall has been lighted all this time?

MR. HILBORN. I suppose at the suggestion of some of these reformers.

MR. REYNOLDS. I would like to inquire of the Chairman why he did not cut off this expense sixty-five days ago, and save the Convention Fund some one thousand nine hundred and fifty or two thousand dollars? Why wait until this late day?

MR. HILBORN. It was only two or three days ago that I heard this thing was going on. I do not come here evenings. I buy coal oil for my own hotel.

MR. WATERS. I have met the Senator here myself when the light was burning.

MR. REYNOLDS. So have I.

MR. STEDMAN. I desire to inform the Convention that the gentleman from Solano voted for an appropriation of two dollars a day for the purpose of lighting this room and other rooms, consequently I am satisfied that he did know it was lit, and I have seen him here, too.

THE PRESIDENT. There is no question before the Convention.

MR. REYNOLDS. Since economy is the order of the day, I would like to be informed where he has started the skating rink.

MR. HILBORN. I do not understand——

MR. REYNOLDS. With the three hundred pounds of ice.

THE RAILROAD COMMISSION.

MR. ESTEE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

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Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section twenty and pending amendments are before the committee.

SPEECH OF MR. JOHNSON.

MR. JOHNSON. Mr. Chairman: Nothing can exceed the patience and toleration of this committee, in hearing the discussion of the report of the Committee on Corporations. I do not propose to inflict upon it any prolix speech. We are at length drifting from the open sea to the shore, slowly if not surely. Now, I wish, for the purpose of voting advisedly, to pass hurriedly over the substitute reported by the committee, and the amendments that have been suggested, and in doing so, I shall not read from this substitute, or from the proposed amendments, anything that relates to the qualifications of these officers, or to the mode of their selection, but simply as to the powers of this Railroad Commission. I do this for the reason that the gentleman from Alameda, Mr. Campbell, has left out everything in respect to the qualifications of the officers, or the manner in which they shall be chosen, whether elected by the people or appointed. The substitute reported by the committee is as follows:

"Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear complaints against railroad and other transportation companies, to send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action, and enforce their decisions and correct abuses through the medium of the Courts, and perform such other duties as may be prescribed by law; to report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing sections."

In the first place, I will premise that if nothing better is obtained than this substitute, I shall vote for it, but at the same time I think that something else better and clearer and less ambiguous can be adopted by this committee. But I do not base my qualified opposition upon the same grounds as the gentleman from San Francisco does. He says that there is nothing binding in it; that the rates to be established by this Commission are not binding, or at least that there are no words in this substitute which say that they shall be binding. That is entirely unnecessary. If the word "shall" is used, it necessarily implies something like permanence. The received meaning is that it does not mean simply to point out or to designate, but the idea of permanence is associated with the word "shall;" therefore, when the committee say that "they shall have power and it shall be their duty to establish rates of charges," the idea of permanence is associated more or less with that expression, and it is not necessary to add that their rates shall be binding. Just as in the Constitution of the United States we have the words that Congress shall have the power to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies; and the words themselves, *ex vi termini*, imply permanence. I do not stand, therefore, on the same ground of opposition to this substitute as the gentleman from San Francisco. The substitute says they shall have power "to examine the books, records, and papers of all railroads and other transportation companies, and for this purpose they shall have the process of the Courts, to hear complaints against railroad and other transportation companies, to send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action, and enforce their decisions, and correct abuses through the medium of the Courts, and perform such other duties as may be prescribed by law; to report to the Governor annually their proceedings, and such other facts as may be deemed important." Now, the query suggests itself, what kind of complaints? The word complaint is understood by all lawyers. It covers a bill in equity or a suit at common law. What is the meaning of this word complaint, and why is it that afterwards it is added: "Nothing in this section shall prevent individuals from maintaining actions against any such companies?" In other words, you can go into the Supreme Court and institute your suit. But what does this word "complaint" mean? Does it mean that this Board of Commissioners is to be a forum, and when we come into that forum we have a right to litigate any kind of a complaint. Or does it leave to some future Legislature to define this clause and the meaning of this word "complaint?" I say that it is ambiguous. This language would have to be construed hereafter. We know not what construction will be placed upon it, and it will be a poor subterfuge for us to say hereafter that we did not vote understandingly upon the substitute; that we did not know the precise meaning of the word "complaint;" that we did not know what meaning would be attached to that phraseology; that we supposed a different meaning would be attached to it than what the Courts will attach to it. That will be a poor and lame excuse. It is for us to feel our way, and be sure of the phraseology in framing fundamental laws. "To hear complaints." Complaints of what kind? Complaints of undue or unjust discrimination? Complaints of extortion? It does not say so. It says complaints, and therefore we will have to depend upon some future Legislature to define that word.

Now, sir, there has been a great deal said about our Legislatures. They have been attacked mercilessly, and I think often without cause, and yet it is proposed to relegate to some future Legislature to this divided body the definition of the word "complaint," and to enact laws that will carry out the supposed meaning of the framers of this Constitution. "To hear complaints against railroad and other transportation companies, to send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action, and enforce their decisions and correct abuses through the medium of the Courts." In the original section the word "penalties" was used. This leaves it out. The word "decisions" is used now, and seems to take the place of the word "penalties." What, then, is the nature of this forum? How will an attorney draw up a complaint in it? And after he has gone through its routine, what is the necessary process for us to get into the Superior Court? I say this language is shrouded in ambiguity. If this provision was borrowed from some other Constitution, if it had the light of judicial construction shed upon it, then we could also incorporate with it the judicial construction which has been given to it in the Courts of that State or county from which we borrow it. The parentage of this section is not shown us, but we do know that this whole language is shrouded in mystery. I read further, "and perform such other duties as may be prescribed by law; to report to the Governor, annually, their proceedings, and such other facts as may be deemed important." Now, if it is proposed to combine the legislative, executive, and judicial departments in this tribunal, if it is proposed to make it a coördinate department of the grand departments of this State, in the distribution of powers, then it would be subject to the criticism which has been expressed against it; subject in a great degree to the criticisms of the gentleman from Alameda. It would be a kind of composite tribunal. Its jurisdiction would not be well defined. It would have legislative power, executive power, and judicial power.

Now, sir, I have gone hurriedly over this substitute. At the same time, I admit that the learned committee who have gotten it up have been actuated by the best of motives, and that their object is to accomplish a good end; but, before I vote for a proposition, I at least want to be informed of what it means. If it does not come to us from any other State or country, then we should be a little more particular as to the language, unless the language is so clear that any one can understand it at first blush.

The gentleman from San Francisco, Judge Hager, proposed an amendment. I will leave out of his amendment so much as relates to the qualifications of this Board of Commissioners, and how they shall be chosen, and simply read so much as refers to their powers:

"The Commissioners, or a majority of them, shall have power, and it shall be their duty, to establish reasonable and just tariffs and rates of charges for the transportation of passengers and freights by all railroad corporations; and for this purpose they shall have power to administer oaths, to examine the books and papers of such corporations, to summon and examine the officers and stockholders thereof, and other witnesses, to hear complaints, inquire into and correct abuses, prevent partial and unjust discriminations and extortion in the rates of charges and the tariffs for the transportation of freights and passengers. They shall publish, semi-annually, full statements of the tariffs and rates of charges established and authorized by them, and of all abuses, discriminations, and extortion, and report the same to the Governor. Whenever such tariffs and rates shall be established and published, they shall be binding upon, and must be observed by, all such corporations doing business in this State, and may be enforced by the Commissioners, or by any party in interest, through the Courts; but nothing herein shall prevent any person from maintaining an action for injury or damage against such corporations. The Legislature shall confer on the Commissioners such further powers as shall be necessary to enable them more fully to perform their duties; and it shall pass laws, with adequate penalties—to the extent, if necessary, of forfeiture of the franchises of such corporations—to enforce the action of the Commissioners. The Commissioners, and each of them, may be removed from office by the Legislature, by a majority vote of all the members elected to each house, and shall also be liable, personally and on their official bonds, to any party aggrieved, for neglect of duty, or any malfeasance or corruption in office."

The word "reasonable" is used in this amendment, and also in Judge Campbell's. "To hear complaints"—this same objectionable phraseology occurs in this amendment. "Prevent partial and unjust discriminations." I undertake to say that these words—"to prevent partial and unjust discriminations"—are not in harmony with the previous section, which we have already adopted. This committee has adopted a section that there shall be no discrimination. Why, therefore, add any words of this character: "to prevent partial and unjust discriminations?" Why, that would imply that there could be discrimination. It says that the discrimination shall not be unjust, but it implies that there may be discrimination, and that is not in harmony with the section which we have already adopted, that there shall be no discrimination. It is upon that familiar principle of law, as old as the days of Lord Bacon, "that, as exception strengthens the force of a law in cases not excepted, so enumeration weakens it in cases not enumerated." Therefore, it would seem to be implied from Judge Hager's amendment, that there may be discrimination, and I say that that is not in unison with the section we have already adopted. I read further: "Prevent partial and unjust discriminations and extortion in the rates of charges and the tariffs for the transportation of freights and passengers. They shall publish, semi-annually, full statements of the tariffs and rates of charges established and authorized by them, and of all abuses, discriminations, and extortion, and report the same to the Governor. Whenever such tariffs and rates shall be established and published, they shall be binding upon, and must be observed by all such corporations doing business in this State, and may be enforced by the Commissioners, or by any party in interest, through the Courts."

Now, the distinguished gentleman from San Francisco says: "What sanctions are there in this substitute report of the committee?" I inquire of him what sanctions are there in his amendment? He says that something may be enforced through the medium of the Courts, but I find none of these sanctions which he speaks about. Therefore, it seems

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to me that his amendment is equally objectionable. Now, we are all endeavoring to arrive at the same result. We should abandon this pride of opinion, this disposition simply to carry a proposition because it comes from a certain source. It is for us to be sure of the phraseology; put upon it the proper construction, and see that it accomplishes the end for which we design it. It is not to be supposed that our work will be entirely perfect; that it will rise like some Doric column, the base corresponding to the die, the die to the shaft, and the shaft to the capital; but, at least, we should know something of the materials which enter into the structure, and of the order of architecture which it attempts to illustrate.

Now, I will proceed to consider the amendment offered by the gentleman from Alameda, Mr. Campbell. He leaves for a subsequent section the definition of the qualifications of these officers and how they shall be chosen, but he says this:

"Said Commissioners shall have power, and it shall be their duty to examine the books, papers, records, and documents of all railroad corporations organized or hereafter to be organized under the laws of this State, or any portion of whose road shall be in the limits of this State, to investigate their affairs, ascertain their receipts and disbursements, and by a majority vote to establish reasonable rates of fares and freights upon all or any of such roads, or upon any portions thereof, whenever and as often as they may deem necessary, and alter the same when in their judgment it shall be proper, and to make and publish schedules of such rates. Said Commissioners, and each of them, shall have access to the books, records, papers, and documents of all such corporations, and any officer of any such corporation, or any person having the care, custody, or control of any such books, records, papers, or documents, who shall, at any reasonable time, refuse to any Commissioner access thereto, shall be deemed guilty of a misdemeanor, and fined not more than five thousand dollars, or imprisoned in the county jail not more than one year. Said Commissioners, and each of them, shall have power in the discharge of their duties to administer oaths and affirmations, issue subpœnas for and examine witnesses under oath or affirmation; and any witness who shall willfully swear or affirm falsely to any material matter before said Commissioners, or either of them, shall be liable to all the pains and penalties affixed by law to the crime of perjury; and any witness who shall fail to attend or shall refuse to testify in any material matter before said Commissioners, or either of them, shall be punished for contempt by the Superior Court, as in other cases of contempt. Such Commissioners shall annually, and whenever requested by him, report their proceedings and such information as may be proper, to the Governor. Any such corporation refusing to conform to such reasonable rates as shall be established by said Commissioners, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not exceeding twenty thousand dollars, and shall be liable to the party injured for all damages sustained by him, and, in the discretion of the Judge or jury trying the case, for exemplary damages; and every officer, servant, or employé thereof, who shall willfully refuse to conform to such rates, or who shall demand or receive rates in excess thereof, shall be fined not exceeding five thousand dollars, or be imprisoned in the county jail not exceeding one year. These provisions shall be deemed self-executing, but the Legislature may enforce them by additional legislation, and may confer additional powers and duties upon said Commissioners. The rates of freights and fares established by said Commissioners shall in all controversies and proceedings, whether civil or criminal, be deemed prima facie just and reasonable. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations, and returns thereof shall be made to said Commissioners whenever required by them, or either of them, and any railroad corporation failing to keep such accounts, or to make such returns when so requested, shall forfeit its road and franchise."

He says they shall have power to "establish reasonable rates of fares and freights upon all or any of such roads, or upon any portions thereof, whenever and as often as they may deem necessary, and alter the same when, in their judgment, it shall be proper." Now, here is no unnecessary phraseology, and yet the power is reserved expressly, in words that are clear and unambiguous, that this Commission may at any time alter their rates. Suppose that the Courts should consider these rates as unreasonable. As soon as that decision is had the Commissioners can revise the rates. The language is clear and expressive, and is not subject to two constructions. "Said Commissioners and each of them shall have access to the books, records, papers, and documents of all such corporations, and any officer of any such corporation, or any person having the care, custody, or control of any such books, records, papers, or documents, who shall, at any reasonable time, refuse to any Commissioner access thereto, shall be deemed guilty of a misdemeanor, and fined not more than five thousand dollars, or imprisoned in the County Jail not more than one year." There is a sanction. We do not have to go to the gentleman from Alameda to ask him where his sanctions are, but we realize as we read his amendment that there is a sanction, a sanction founded upon an iron constitutional provision. It is not subject to the whims or caprices of a subsequent Legislature, but it is defined, and it is self-executing. "Said Commissioners and each of them shall have power in the discharge of their duties to administer oaths and affirmations, issue subpœnas for and examine witnesses under oath or affirmation, and any witness who shall willfully swear or affirm falsely to any material matter before said Commissioners, or either of them, shall be liable to all the pains and penalties affixed by law to the crime of perjury." That looks like a sanction. "And any witness who shall fail to attend, or shall refuse to testify in any material matter before said Commissioners, or either of them, shall be punished for contempt by the Superior Court, as in other cases of contempt." That looks like a sanction. "The rates of freights and fares established by said Commissioners shall in all controversies and proceedings, whether civil or criminal, be deemed prima facie just and reasonable." That is a good provision. In other words we start with the prima facie case, that these rates are reasonable, and the burden is upon the contestant or complainant to show that the rates are unreasonable. His counsel may attempt to show, and may succeed in showing, that these rates are not reasonable, but it is for him to overcome the presumption, that the rates are reasonable, and that the Commissioners have done their duty.

"Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations, and returns thereof shall be made to said Commissioners whenever required by them, and any railroad corporation failing to keep such accounts or to make such returns when so requested, shall forfeit its road and franchise." That looks like a sanction. Now, sir, I can understand the language of the gentleman from Alameda. It does not need any interpretation. It interprets itself. It is not dependent upon the construction which may be given to it by the Supreme Court or by the various Superior Courts of this State as heretofore established. We all understand it, and it stands there in the face of these railroad corporations and monopolies, so that while running their roads they may read it. They know exactly what they must confront, and knowing the range of these punishments, from one dollar up to twenty thousand dollars, and from one dollar up to five thousand dollars, they will understand its full significance. It seems to me that this amendment commends itself to our approval.

I do not stand here in the attitude of doing any injustice to these railroads. I fully recognize their advantages. I know that they have largely contributed to the development of this State. I know that they are doing a great deal in civilizing this State, and all the cities in this State, and I want to see more of them. I hope to see the day when the innovation upon the old ruts of the past by that taciturn man, George Stephenson, who in England essayed for the first time to build his road on the quaking morass between Liverpool and Manchester, thus laying the foundation of the great system of railways between the Tyne and the Arundel; I say, I hope to see this same innovation speeding its way over the hills and through the valleys of this great State, extending, as it does, seven hundred miles in length by two or three hundred in width, from the Sierras to the sea, rich in its mineral products and richer still in its agricultural wealth. I hope we will all live to see the day. Then, it will be asked, "Why do you take this position?" To such interlocutor I respond, "Why do you concede to us the power to establish rates of freights and fares?" You say that we have the power. In whose interests should that power be exercised? Is there only one party to be benefited—the party that has gotten the franchise—or should the benefit accrue equally in favor of the people of this State? If we have the power to regulate it, in whose interests should it be regulated? Most certainly not solely in the interests of the corporations, but in the interest of all. The distinguished gentleman from San Francisco, Mr. Wilson, says that he admits the power, and I will just say here, he is always clear in his announcement of the law. He admits the power—whether by virtue of the reservation—in our present Constitution, which reserves the right to the Legislature to alter or abolish the charter, or whether it be derived from the police power of the State, he admits that the power does exist. It may be argued either from the police power or from the reserved power in our present Constitution, in respect to corporations. This power, then, existing, should it not be exercised in the interests of the people? Surely I think so.

As I said before, if nothing better can be adopted than the substitute reported by the committee, I shall give it my support, but I see the difficulties attendant upon it, and I think that by the adoption of the amendment of the gentleman from Alameda, we will have clear sailing. No amendment has been offered in respect to the time and mode in which these Railroad Commissioners shall be chosen, but that has nothing to do with the power. We have simply been discussing the powers, and the legitimacy of their exercise as proposed by this substitute, and by these amendments. Therefore, I hope that the amendment of the gentleman from Alameda will prevail.

MR. ESTEE. Mr. Chairman: Is there any such amendment before the house?

THE CHAIRMAN. The Chair is not aware of any such amendment.

SPEECH OF MR. HAGER.

MR. HAGER. Mr. Chairman: After this prolonged debate, I feel reluctance in further occupying the attention of the committee on this subject, but the substitute for section twenty, reported yesterday by the Committee on Corporations, has, to some extent, revolutionized the subject and this debate, by the recommendation of a new proposition upon which we are suddenly called upon to act. As I said last evening, I do not think that this new report is an improvement on the one first presented. I believe if this substitute should be adopted, it will prove to be inoperative, and will not effect the purpose intended to be accomplished by the committee. In my opinion the powers to be conferred upon these Commissioners should be ministerial—entirely ministerial. The enforcement of action should be through the judicial and legislative departments of the government. I am not in favor of clothing them with exclusive judicial powers, or semi-judicial powers, or with legislative powers, any further than may be necessary to the full performance of their ministerial duties. I must confess, this substitute to me is incomprehensible. I could not very well interpret its meaning. Perhaps my powers are inadequate, but if I were called upon as a Judge, to explain and enforce its provisions, I could not do it. I may be compelled to vote for it, as it is, if it cannot be improved, but if I do, I may live perhaps to see the day when I will regret that I ever favored a proposition of such questionable powers and doubtful phraseology. As it reads, the Commissioners shall have the power "to establish rates of charges for the transportation of passengers and freights." That is all well enough. "To examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have the process of the Courts." I presume the process of the Courts is limited to the books and records. I presume it is

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so intended. They are given the process of the Courts for the purpose of examining the books, records, and papers of the railroad company. Next, "to hear complaints against railroad and other transportation companies." To hear complaints. For what purpose and in what form? Whether it is a legal investigation on complaint, where parties are summoned to appear and answer, nobody can tell. How are they to hear and inquire into these complaints? As a Court, or as a jury, or both? And how are they to pronounce judgment, etc.? "To send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action." Does this mean that complaints shall be filed with the Commissioners against railroad companies, and thereupon a regular trial, with or without a jury, is to be had and a judgment is to be pronounced? How is all this to be accomplished, and by what machinery? Is it a Court of record with a seal, and with Clerks, Sheriffs, etc.? "Report cases of contempt to the Courts for their action." What constitutes a contempt within the meaning of this section? What action are the Courts to take? The section does not inform us. In this respect it is indefinite, and would probably puzzle Philadelphia lawyers, who have the reputation of being experts in such matters, to determine the mode of proceeding.

MR. ESTEE. Mr. Chairman: I will ask what our statute prescribes for the punishment of contempts, if it regulates, except to limit the penalty, and in what class of cases?

MR. HAGER. Mr. Chairman: Our Courts of justice have powers for punishing contempts, and these are regulated by statutory laws; but this Commission is not a Court, or a part of the judicial department, as established by the old, or even this proposed new Constitution, and our statutes regulating contempts and their punishment will have no application to this proposed tribunal, unless made so by express words. It has not the ordinary powers of a Court to enforce its judgments and orders, or even to preserve order in its presence. The section further reads, "and enforce their decisions and correct abuses through the medium of the Courts, and perform such other duties as may be prescribed by law." Now, what decisions are they to enforce through the Courts, and in whose name, and by what manner of proceeding is it to be done? I would like to have the Chairman of the Committee on Corporations explain these matters, and inform us as to what is intended, and the manner in which it is to be done by the authority of the section as reported. How are the Commissioners to enforce their decisions and correct abuses through the medium of the Courts? Is there to be a trial before the Commissioners only, or is there also to be a trial before the Courts?

Mr. ESTEE. I will state what the committee means. First, their decision establishing rates of charges for the transportation of passengers and freight; second, any action that they may take as to the examination of the books, papers, and records of railroad and other transportation companies; any action they may take as to the subpenaing of witnesses and hearing testimony.

Mr. HAGER. But that is not contempt of Court.

MR. ESTEE. They report that to the Court if they fail to obey. I suppose that the intention of that sentence relative to contempt was this: If they issued a subpœna, and the witness failed to appear, they could report that fact to a competent Court having jurisdiction of the subject matter, and of course that Court, under statute regulation, would enforce their orders and compel the attendance of witnesses, or compel the companies to produce their books, papers, and records.

MR. HAGER. If it had been sufficiently comprehensive for such purposes we would understand it; but it does not say so. It reads they shall have power to "examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have the process of the Courts," and then goes on to say, "to hear complaints against railroad and other transportation companies, to send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action." For what?

MR. ESTEE. It was not intended to make this a code of laws. This section merely declares the powers and principles, and of course, the Legislature would have to come in and attend to the details. We admit that this section is not intended as a code.

MR. HAGER. There is the difficulty. It is inoperative of itself. It must be construed by the Courts before you can make it operative at all; and in the absence of legislation what construction will they put upon it? As I have said, I am unable to determine.

MR. ESTEE. Will the amendment proposed by the gentleman himself be self operating?

MR. HAGER. It will.

MR. ESTEE. Without any action of the Legislature?

MR. HAGER. I think so.

MR. ESTEE. Then I cannot read English.

MR. HAGER. They here have the power to establish rates of fares and freights. There is no doubt about that. But as I said last night, after they are established there is no provision that makes them binding on the companies or that requires a company to obey.

MR. ESTEE. Will the gentleman allow another question. Under the Constitution there are certain Courts organized in the State—the Supreme Court, the District Courts, and County Courts. I want to ask the gentleman, if the Legislature had given no powers or provided no means for the carrying out of their jurisdiction, if they could perform their duties at all, under the present Constitution. Take the jurisdiction of District Courts. Could District Courts operate or perform their duties, establish rights and try cases, without the enabling Acts of the Legislature prescribing the means?

MR. HAGER. They might, to some extent, exercise certain inherent powers pertaining to all Courts, and in other respects they might have none. If the Constitution of itself clothed them with express jurisdiction and authority, I presume they could exercise such without the aid of legislation. An enabling Act might confer additional powers, and regulate the procedure. But, as I said, this is not a Court; it is not a Legislature. It is a Commission, with no inherent or implied powers, and ought only to exercise ministerial functions. If the intent be to invest them with full judicial powers, then the language of the section is not sufficiently comprehensive or susceptible of easy and definite interpretation. Constitutional provisions ought to be so clear and definite that any ordinary mind can understand their meaning.

Now, in regard to the amendment that I gave notice of some time ago, it was as follows:

"There shall be elected at the next general election, and every four years thereafter, by the qualified electors of this State, a Board of three Railroad Commissioners, whose term of office shall be four years, with such salary as may be fixed by law, not to exceed —— thousand dollars a year. Such Commissioners shall be qualified electors, and for five years citizens of this State, and shall not be interested pecuniarily, or by employment, or in any other capacity, in any railroad or transportation company, or in the business of common carrier of passengers or freight. They shall each take the constitutional oath of office, and before entering upon, and for the faithful performance of the duties of their office, they shall each give a bond, with two sureties, in the sum of twenty thousand dollars, to be approved by the Governor. The Commissioners, or a majority of them, shall have power, and it shall be their duty, to establish reasonable and just tariffs and rates of charges for the transportation of passengers and freights by all railroad corporations, and for this purpose they shall have power to administer oaths, to examine the books and papers of such corporations, to summon and examine the officers and stockholders thereof, and other witnesses, to hear complaints, inquire into and correct abuses, prevent partial and unjust discriminations and extortion in the rates of charges and the tariffs for the transportation of freights and passengers. They shall publish, semi-annually, full statements of the tariffs and rates of charges established and authorized by them, and of all abuses, discriminations, and extortion, and report the same to the Governor. Whenever such tariffs and rates shall be established and published, they shall be binding upon, and must be observed by all such corporations doing business in this State, and may be enforced by the Commissioners, or by any party in interest through the Courts; but nothing herein shall prevent any person from maintaining an action for injury or damage against such corporations. The Legislature shall confer on the Commissioners such further powers as shall be necessary to enable them more fully to perform their duties; and it shall pass laws with adequate penalties, to the extent, if necessary, of forfeiture of the franchises of such corporations, to enforce the action of the Commissioners. The Commissioners, and each of them, may be removed from office by the Legislature by a majority vote of all the members elected to each house, and shall also be liable personally, and on their official bonds, to any party aggrieved for neglect of duty, or any malfeasance or corruption in office."

This I have redrafted and changed as I will now explain, and I propose, if the opportunity is given, to offer it as redrafted. This amendment provides for a Commission similar to that of the substitute, but with a limited salary. By the recommendation of the committee the salary is unlimited.

MR. ESTEE. The salary is to be fixed by law.

MR. HAGER. Yes, but I propose to limit that salary by fixing the maximum. I require the Commissioners to give a bond of twenty thousand dollars, take the oath of office, and so on. Then their powers are defined, and I propose to limit these to transportation by and upon railroads. Why should we extend their powers to transportation companies doing business on the navigable waters of this State? Now, any individual may run a vessel to carry produce, etc., or a farmer, or a company of farmers, may own a boat and transport their own or their neighbors' produce by water to market, and why should we interfere in such cases?

MR. ESTEE. The reason is this: to meet the question of transportation companies like the Star Line, the Red Line, the White Line, Wells, Fargo & Co., and others, which are not railroad companies, as well as transportation companies by water.

MR. HAGER. Why did not the committee say so, and make it applicable to all railroad and other corporations engaged in transportation by railroad? I think it is better to apply it to railroad transportation only. Our people do not complain of the transportation companies on the high seas, or on the bays, or navigable waters of this State. The Act of Congress under which we became a component part of the Union—when we were admitted as a State—contains a condition that the navigable waters should be free and open to the commerce of the world. There can be no monopoly here, and I would prefer to leave them open to all, as they are free to all, and let unshackled competition regulate fares and freights on these waters. A railroad is a different thing. That is a highway over the lands of the State, conceded by authority of the Legislature, which, by our State Constitution we have the power, and ought to have the power to regulate. It is not the enjoyment of a right, but a special concession, dependent on the legislative will. Such is not the case with the navigable waters of the State. In my proposed amendment I include all railroad corporations, and all people doing business thereon. That includes all lines and companies referred to by the Chairman of the Committee on Corporations, and which he proposes to include in the provision.

"And for this purpose," as I provide, "they shall have power to administer oaths; to examine the books and papers of such corporations; to summon and examine the officers and stockholders thereof, and other witnesses."

I have also provided that the Commissioners shall have the direction and control of the books and account keeping of these corporations. Competent and well informed persons tell me it is essential that the manner of keeping their accounts should be directed and controlled by the Commission, otherwise they will know nothing about their business.

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Then my amendment proceeds: "Inquire into and correct abuses; prevent partial and unjust discriminations and extortion in the rates of charges, and the tariffs for the transportation of freights and passengers. They shall publish, semi-annually, full statements of the tariffs and rates established and authorized by them, and of all abuses, discriminations, and extortion, and report the same to the Governor." Now, here follows an essential provision: "Whenever such tariffs and rates shall be established and published, they shall be binding upon and must be observed by all such corporations doing business in this State, and may be enforced by the Commissioners, or by any party in interest, through the medium of the Courts." Corporations shall not charge in excess of the rates established by the Commissioners. It will be binding upon all such corporations doing business in this State, and may be enforced through the medium of the Courts. The Commissioners perform their ministerial act by establishing and publishing the tariffs and rates, and the railroad companies and those doing business thereon cannot charge in excess of these rates; and then it is left for the Commissioners or any party in interest to enforce these rates of tariffs through the medium of the Courts. The Commissioners may do it; any party aggrieved may do it. Then follows the clause: "Nothing herein shall prevent any person from maintaining an action for injury or damage against such corporations. The Legislature shall confer on the Commissioners such further powers as shall be necessary to enable them more fully to perform their duties." If the powers of the Commissioners should prove to be inadequate, then the Legislature shall confer on them such further powers as may be necessary to enable them more fully to perform their duties. And the Legislature "shall pass laws, with adequate penalties, to the extent, if necessary, of the forfeiture of the franchises of such corporations, to enforce the action of the Commissioners." Now, it seems to me that this would afford a complete remedy. The Commissioners perform the ministerial act of fixing the rates of fares and freights, such as in their judgment may be reasonable and right. They have all the power to examine books, direct the mode in which they shall by kept, subpœna witnesses, hear complaints of abuses, discrimination, and extortion, and make reports in regard to these matters to the Governor, who of course will lay them before the Legislature. Then I provide, in the event of their being unfaithful to the trust imposed upon them: "The Commissioners, and each of them, may be removed from office by the Legislature, by a majority vote of all the members elected to each house, and shall also be liable personally and on their official bonds, to any party aggrieved, for neglect of duty or any malfeasance or corruption in office."

MR. ESTEE. I hold in my hand the amendment proposed by the gentleman a few days ago, and it is not the same as he is reading.

MR. HAGER. I have changed the phraseology and provisions, as I have stated, in some particulars, upon the suggestion of a number of gentlemen, and I am reading it as now amended, and which I propose to offer as a substitute for the whole section. I am not tenacious about having my name connected with this amendment. I am perfectly willing, so far as I understand it, to support the one offered by Judge Campbell, except that I prefer to have the Commission elected by the people. I do not care which may be adopted, provided we get something that will answer the purpose that we are desirous of effecting.

MR. CROSS. This will always leave it open to the Courts to determine whether the rates fixed by the Commissioners are just and reasonable.

MR. HAGER. My original draft did not contain the words, "just and reasonable," but they have been interlined at the suggestion of some gentlemen who thought they should be there. In almost all of the railroad Acts, the same clause will be found. I thought it proper and right that the Constitution should require that they be reasonable and just. That is all we ought to ask. But it is clearly provided that when the rates are once established, the railroads throughout the State will be bound by them. It is not a question for their determination, whether or no they are just and reasonable, but the action of the Commissioners might become a subject of inquiry before the Legislature in a proceeding for their removal from office. But there is no power to fix or control freights and fares, except by the Commissioners themselves.

MR. ESTEE. I find in the gentleman's amendment that he provides, among other powers, that they shall have power "to hear complaints; inquire into and correct abuses," etc. I want to know if that duty is not the same that is imposed on the Commissioners in the section as reported by the committee, and if that is not a judicial duty?

MR. HAGER. If I am led into an error by these words I have my friend's precedent as a justification. I do not say that they shall punish for contempt, and enforce their decisions through the Courts; but I say that they shall report these abuses or complaints, that the Legislature may be informed in regard thereto. There is a difference between the two propositions. One is to hear complaints, with a view to a trial and judgment by the Commissioners; the other is to hear complaints for the purposes of fixing fares and freights, and reporting to the Governor, etc., without undertaking to enforce obedience as a matter of contempt of the Commission, but it gives them, or any party in interest, the power to apply to the Courts to enforce their action; and in that respect I think it is right.

Now, as I said, I feel reluctant in addressing this Convention at this late day in the debate; but we are now on the battle-ground of this Constitution, in acting on this portion of the report of the Committee on Corporations. We stand here on the watch towers, overlooking this wide plain, with the people on the one side and the railroad corporations on the other; and it remains to be seen whether the organic law that we may present to the people will proclaim for their future emancipation or servitude. No one denies to this Convention the power of regulating fares and freights, either by putting a provision in the Constitution, which of itself will accomplish it, or by constituting a Commission for such purpose. The question which has been debated is one rather of expediency than of power. It has been said by some who have addressed the Convention that no complaints have been made against these corporations. That no petitions have been presented here; that no issue has been raised before the people in regard to fares and freights, or in regard to the charges made by railroads.

I have a copy of the platform under which you, Mr. President, and I, and some of my friends around me here were elected, and to which we have given our adhesion. In that platform I read: "That the State shall ever retain and maintain the perfect control over all its corporations and their franchises, to the end that the people may forever have full protection against all extortionate charges, unjust discriminations, or unfair exactions, of any description, by such corporations." This issue was, therefore, distinctly made at the time of our election as delegates to this Convention.

MR. BEERSTECHER. I would ask what platform that is?

MR. HAGER. That is the Non-Partisan platform.

MR. BEERSTECHER. Never seen it before.

MR. HAGER. It says "that the people may forever have full protection against all extortionate charges, unjust discriminations, or unfair exactions of any description whatever, by such corporations." If we give this power to the people do we not strictly, and to the very letter, perform our duty in regard to the injunction of this platform?

MR. BEERSTECHER. I would ask the gentlemen whether that platform was ever published.

MR. BARNES. Yes. It was read to the great meeting at Platt's Hall, where the candidates met, and where, I understood, some of the gentleman's friends had determined to attack me because I had stood up for my coachman. It was also printed and sent to every voter in the City and County of San Francisco. Myself and my colleague, Mr. Casserly, prepared that platform, and, so far as I am aware, notwithstanding the intimation of our friend from San Francisco, I know of no reason why we are not standing up to it.

MR. BEERSTECHER. I am under obligations to ascertain who was the creator and originator of it.

MR. ESTEE. It was indorsed by the entire delegation. I do not think there is any doubt about that.

MR. BARNES. I think it was indorsed by the entire delegation. That was the platform, Mr. Chairman, that I alluded to yesterday, which, I said, was a very good platform, but the people did not believe it—did not think we meant it. [Laughter.]

MR. HAGER. Mr. Chairman: I believe I have the floor. I allude to this matter, not for the purpose of intimating that any gentleman on this floor who indorsed the platform has not conformed to it in his action here, but I refer to it as a matter of history, and in reply to the position taken by the gentleman from Sacramento, Mr. McFarland, who told us that in regard to these matters no issue had been made before the people; that no petitions had been presented here, and therefore we were not called upon to engraft into this Constitution any provision in regard to fares and freights. My purpose in reading it was to show that it was an issue before the people at the election of delegates, and I think in one section the platform of all parties contained some provision in regard to railroad monopoly, so also every platform that has been adopted by any political Convention in the last five, six—yes, ten years—has contained some similar provision. I alluded to this platform in reply to the gentleman from Sacramento, Judge McFarland, not for the purpose of calling on any member of the Convention to perform his duty, nor for the purpose of charging any one as with having violated it. But, I do say for myself, that I intend to observe this platform on which I was elected, and I believe I am doing so in endeavoring to establish this Commission.

The history of legislation in this State, in regard to railroad fares and freights charges, has been referred to. The first Act was in eighteen hundred and fifty, before we had a railroad, which fixed maximum charges. The next was in eighteen hundred and fifty-one. The next was in the session of eighteen hundred and fifty-three and eighteen hundred and fifty-four. I happened to be a member of the State Senate in that early day. A railroad bill was acted upon; but it created so little excitement that I had forgotten such a bill was before the Legislature, but I find it among the laws of that session. In eighteen hundred and sixty-one there were railroad bills. In eighteen hundred and sixty-five, when I was a member of the State Senate, another railroad bill was introduced which has not been alluded to here, but it passed both branches of the Legislature. There is another gentleman upon this floor who was a member of the Senate at the same time. I believe I was the only person that rose in his place in the Senate to resist the passage of that measure. Notwithstanding the opposition that I made, it passed the Senate and Assembly, went to the Governor, and was vetoed. That veto message may throw more light upon what was intended to be accomplished by the legislation of that day, and also subsequent legislation in this State. I will read only part of this message. It is found in the Journals of the Senate of the sixteenth session:

"I herewith return, without my approval, substitute for Senate bill number one hundred and three, an Act establishing the rates of fare on railroads, and other matters relating thereto.

"The first section of the bill provides that every railroad company accepting its provisions shall do what every company is now required to do by law, and what would be done naturally, without any law—transport passengers and freight at such times and in such convenient manner as the corporation may, by regulation, prescribe, on the due payment of the fares and tolls thereon.

"They shall also, during any war, insurrection, or invasion, give the troops and munitions belonging to this State preference of transportation over other freight, except that of the United States.

"The second section provides that all companies accepting the provisions of the bill shall have and enjoy the right and privilege of collecting certain rates, according to the elevation above the level of the sea, as follows: At an elevation of less than one thousand feet, seven

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cents per mile for each passenger and ten cents per mile for each ton of freight; over one thousand and less than two thousand feet elevation, nine cents per mile for passengers and twelve and one half cents for freight; over two thousand and less than three thousand feet elevation, twelve and one half cents per mile for passengers and fifteen cents for freight; over three thousand feet elevation, fifteen cents per mile for passengers and twenty-five cents for freight.

"These were considered by the railroad company as reasonable fares and freights in that day—eighteen hundred and sixty-six.

"Section three provides that in case a company collects more than the prescribed rates it shall be liable to pay to the injured party treble the amount collected, and this is virtually the only penalty for overcharging for freight or passengers.

"Section four provides, that any company desiring to enjoy the benefits of the Act shall file in the office of the Secretary of State a profile of the road, and an agreement and acceptance, duly signed and sealed, agreeing therein, in consideration of the rates and compensation provided for in this Act, to abide and perform its requirements.

"This bill, were it to become a law, would clearly create a contract between the State and every company accepting its provisions—a contract that no subsequent Legislature could repeal or repair. The rate of fare for every passenger, and price for every ton of freight passing over any road, is fixed beyond legislative control during the life of the charter of the corporation. The only consideration for this contract is that the accepting company shall, in time of war, give State troops and munitions of war preference of transportation. For such a consideration I cannot consent to give my approval to a law that will establish the fare and freight for half a century on every railroad accepting the contract proposed, and placing it beyond the power of any future Legislature to lessen the burden, if it proves so to be.

"The proposition is monstrous; and I am persuaded that the bill could not have received that scrutiny at the hands of the Legislature which its importance merited. The history of legislation in some of the Atlantic States furnishes us with examples where States have improvidently, and without due consideration, bound themselves by such contracts, which have weighed heavily upon the energies of the people.

"Travel and traffic should not by law be hampered by unbending rates and rules for long terms of years; and it is unjust to those who are to come after us, if not to ourselves, thus to tax the traveling and trading public by the enactment of laws, similar to the one under consideration, which cannot be modified or repealed."

By that veto the Governor shielded the State from a contract intended to be binding during the life of every existing corporation of this State, fixing fares and freights by a scale of charges, the maxima being, for passengers, fifteen cents per mile, and for freight, twenty-five cents per mile, and which, if a binding contract, would have been in full force at this day. The passage of that bill was pressed at the time by the railroad corporation, and that was the first time I saw them active in the halls of legislation struggling to obtain special legislation for their company. The veto message of the Governor came up for consideration on the question of the passage of the bill over the veto. I am happy to report the result of that vote—ayes, 0; noes, 33. This was in eighteen hundred and sixty-five. At a subsequent session substantially the same bill was offered, and was defeated. Then came the "Freeman bill," regulating fares and freights, which passed the Assembly and was smothered in the Senate. Then came the "Archer bill," which also passed the Assembly, but failed in the Senate. Then was passed the Act constituting a Railroad Commission, under which were appointed General Stoneman and Messrs. Doyle and Smith. Examine this Act and I think it will be found that it substantially gives to the Commission all the power necessary to control the subject. I would be satisfied to have that Commission restored and proceed in the performance of its work. But when that Commission got into operation and was actively engaged in the performance of its duties, by some pressure we have heard about, but care not to speak of, because, personally, we know nothing about it, the Act constituting the Commission was repealed, and the Commission was abolished while they were in the very act of enforcing their authority in our Courts. Commissioner Doyle says, in his report:

"You are aware that several actions of mandamus were brought to compel railroad companies to afford statistical information demanded by the present Commissioners, and which they had refused to furnish. These actions are pending in the Supreme Court on appeal from judgments rendered below in favor of the State. They were set for argument for December third last, but postponed, and finally, by consent, were set for hearing on March fourth. On that day they were pressed by the counsel for the Commissioners, but postponed a week at the instance of the railroad companies. On Monday, the eleventh instant, when they again came up, the same counsel applied to continue them for the term, on the ground that one branch of the Legislature had passed an Act abolishing the Commission, and the other would probably concur. The Court, thus called upon to discount the action of the Senate, did not hesitate to do so, and postponed the cases for the term."

The railroad company spurned and defied the action of the Commissioners under the law, and they had no fear of the Legislature. I do not think that either legislation or the judgment of our Courts has any terrors for them. This Commission Act was passed at the time the "Archer bill" was pending, in order, as it was said, to get rid of that effort to regulate fares and freights. The railroad company passed it, then defied it, and then had it repealed. The District Court decided in favor of the law and the powers conferred on the Commission, but the railroad company appealed to the Supreme Court, where the case remains undetermined at this day, in consequence of the repeal of the law. The Legislature giveth; the Legislature taketh away. Blessed be the name of the Legislature! So far as laws are concerned, they pay about as much respect to them as they would to the decrees of Emperor Norton.

MR. ESTEE. If they have no regard for the Courts, or for the Legislature, wouldn't it be wise to have a Commission?

MR. HAGER. I am in favor of a Commission. I do not intend to say our Courts cannot be relied upon. The Courts decided against them, they took an appeal, and before the Supreme Court acted upon the matter, the law was repealed. Therefore, the action of the Courts had no terror for them. I do not mean to assert that they have no respect, but no fears for our Courts.

MR. ESTEE. I see in my friend's amendment, that he proposes to offer, that "the Legislature shall confer on the Commissioners such further powers as shall be necessary to enable them more fully to perform their duties, and it shall pass laws, with adequate penalties, to the extent, if necessary, of forfeiture of the franchises of such corporations." Now, if the Legislature cannot be trusted, will the Legislature provide these penalties?

MR. HAGER. I hope my friend will read the preceding portions of the amendment, in regard to establishing fares and freights. I take good care of that, but if all things prove inefficient, I then call upon the Legislature for such additional powers as may be necessary. If my friend and colleague will read the preceding part of the proposition I offer, he will find that the ministerial duties of the Commission are complete, to fix fares and freights, and to enforce their tariffs through the Courts themselves, and also any party that has any interest therein, may do so. Now if all that fails, I provide that the legislative power may be invoked. The authority of a future Legislature, elected by the people, may be invoked to give any additional powers to enforce the acts of the Commission, if such as are conferred should prove to be inefficient. It may dismiss these Commissioners from office, if they prove unfaithful. It may provide penalties and forfeitures for disobedience on the part of the railroad companies. But it is this tendency to disregard the law, which is daily manifesting itself, and rendering the law powerless, that we should, as far as possible, guard against. It is related of Frederick the Great, of Prussia, that when at the zenith of his power, he was desirous of improving his palace grounds, at Potsdam, by adding thereto some adjoining property, owned by a miller, and upon which stood a windmill, used for grinding corn, he sent word to the miller that he wished to buy the property. The miller said he did not wish to sell. After sending several times, and with the same result, Frederick himself then went to the miller, who again declined to sell. Frederick told him if he did not sell the ground he would take it; that he wanted it, and if he would not allow him to purchase it, he would take it. The miller replied, "No, sire, you will not take it; we have laws in Prussia." The King bowed his head in acknowledgment of the supremacy of the laws of Prussia, and retired. In after years the King obtained the property by purchase. It was added to the palace grounds with the windmill standing; and by the royal order it is kept and preserved at this day in complete repair, as a monument dedicated to justice and the supremacy of the laws of Prussia. It affords an example for us. In that great nation, with its monarchical institutions, the laws are supreme, and even the King himself must yield them obedience. So they should be with us—supreme over all—the people and the corporations.

But, sir, as I have said, the Legislature has failed to give to the people the relief they demand. The Courts have failed, I do not mean because they are unwilling to do so, but perhaps on account of the intricacies or the uncertainty of the law. After this long experiment and failure I object to further trusting the Legislature with the sole power to regulate fares and freights, as has been done heretofore.

It is no secret, sir, that the railroad company does exercise an influence on legislation in this State. I presume, without any impropriety, we can say this much. During the time I was a member of the Senate of this State, they did influence legislation in all matters affecting their interest. Situated as they are, with their vast interests, perhaps they did what many others would have done under like circumstances. If their intent was merely to protect themselves from hostile legislation, introduced for purposes of extortion or blackmail, we might justify their action; but the fact exists they have obstructed and influenced legislation in regard to all matters relating to railroad corporations. They also have a controlling influence over the press—the great palladium of our liberties. I presume all who are familiar with history are willing to admit this fact. To some extent they also exercise an influence upon political conventions—not of one party only, but of both political parties—and shape nominations to subserve their own private purposes, in total disregard of the interests of the public. Some gentlemen remarked that nowadays there was but one political party—nominally a Democratic party and nominally a Republican party—but for all that, really there was but one party, and that was the railroad party. That the railroad company is a power in the land, and that they exercise a great influence over all branches of the government, and over all political organizations, no one will dispute. It remains to be seen if they will also control the people—the only lodgment of political power remaining which has not been subordinated to the interests of their corporation.

Now, sir, with these facts before us—and I suppose I have alluded to nothing more than every one knows—it is proposed that we incorporate a provision in the Constitution establishing a Board of Railroad Commissioners, who shall have charge of this matter of fares and freights. A Railroad Commission is no new thing, as we all know. We have had them in this State, and we have one now composed of one Commissioner. Many of the other States have what is called a Railroad Commission. We have also other Commissioners in this State—the Bank Commissioners, the Insurance Commissioner, the Harbor Commissioners, and others. Why should any one object to a Railroad Commission?

But this question of railroad control involves a problem which has occupied the attention of statesmen and governments in the old world and in the new, and it has become one of great importance and magni-

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tude. I will read, in this connection, though perhaps it may be a little tedious, some few observations of others which may give us some light. I have here an article from the International Review, entitled "The Domestic Commerce of the United States." It was published by the Cheap Transportation Company, of the City of New York, composed of Benjamin B. Baker, President; Henry B. Claflin, and others, Vice Presidents, and a list of Directors. It was written by Hon. S. Shellabarger, of Ohio. There are some things in it so eloquently appropriate to the condition of things in our young State, that I would ask the indulgence of the Convention to read a portion of it:

"Here, then, we start with our mighty subject upon us. Seen at large, its field is a continent. It is a new continent. It is a continent of capabilities and of natural wealth absolutely and literally inconceivable. It is a continent untouched and virgin as to nine tenths of these natural resources—virgin as to, perhaps, three-fourths of its surface also. And then it is, as a refuge and home for our own and other civilized peoples, the last of the continents. Beyond *our* 'Pillars of Hercules' there is nothing. Ours is the veritable *Ultima Thule.* In disposing of it we dispose of 'the last of earth.'

"Such then is the dignity of this subject, seen with the telescope, and in larger aspects, as it is explored by the legislator in his search after the answer to the amazing question: Has the Republic, as such, any duty upon it touching this commerce of the people, the wealth, the productions of this continent, or has it not? Is the commerce of these States among these States, confided by the organic law to the pleasure of the supreme Legislature of the Union or to railway Presidents? Which?"

* * * * * * * * * * *

"In countries even moderately free, institutions can not be guaranteed before their time; so neither can they be long defrauded out of their coming. There never yet was any enlightened people, in whom, among whom, and over whom there was not one grand, slow-moving, aggregate thought—a force, a spirit—caused by nobody, and yet by everybody; voiceless, but the sum of all voices; nameless, but bearing every name; silent, but speaking in all whispers and in all storms; having no magistracy, but wielding all scepters; holding no Courts, but pronouncing all judgments; keeping no armies, but deciding all wars; having no Parliaments, but making all laws. This incomprehensible but all-comprehending presence indicates its duration, as well as its resistlessness, by the song of the 'babbling brook,' and reminds States that—

"'Men may come, and men may go,
But I go on forever.'

"It has not very ostentatious 'ways,' but they are very impressive. Its formulas are few, but fearfully suggestive. One is: 'The mills of the gods grind slow, but fine;' one, that 'man proposes, God disposes;' one that 'if I make the songs of the people, you may make their laws;' one, that 'bayonets think;' one, that 'war legislates;' one, that 'revolutions go not back;' one, that 'everybody knows more than anybody.' The author of Civilization in England wrote severely, but profoundly, when he said that 'every system must fall if it opposes the march of opinions.'

* * 'The vigor of public opinion is not exposed to casualties; it s unaffected by the laws of mortality; it does not flourish to-day and decline to-morrow; and so far from depending on the lives of individual men, it is governed by large general causes, which, from their very comprehensiveness, are in short periods scarcely seen, but, in a comparison of long periods, are found to outweigh all other considerations, and reduce to insignificance those little stratagems by which princes and statesmen think to disturb the order of events, and mold to their will the destinies of a great and civilized people.'"

We must sooner or later yield to this public opinion in this State. A public opinion which exists, and is speaking to this Convention; and will continue to speak in the future in tones louder and more audible than it does now. I read further:

"We have seen the hives of our common humanity in easy reach of us, but outside of our coasts, starving and clamoring and reaching out skeleton fingers for our bread, but that bread denied because some diabolical element of our Constitution is imagined to forbid its sending! We have seen millions of our own men, women, and children 'having bread enough and to spare'—and to burn—but in rags for want of those necessities of life, which those starving abroad are eager to exchange for our food; imploring their Government to permit the exchange; and having heard their Government, in the very wantonness of mockery, reply by holding weekly debating schools in Congress of Saturday afternoons, arguing the 'vested rights' of railway monopolists, under which they are licensed to pauperize the races of men, and impoverish or dwarf a continent!"

Now, sir, how does that apply to us? When the grain of the fertile valleys of this State often remains in the warehouses because it is unable to bear the expense of transportation to tide water.

"We have seen our country endowed with two thirds of the fuels of the world, two thirds of the ores of the world, nearly all the virgin soils of the north temperate zone; with natural facilities for home and foreign exchanges of production unmatched upon the earth, and to occupy, possess, and develop which population is crowding from all other lands, and augmenting in our own, until the demonstration is reached that, at the same rate of progress, this generation will end with two hundred millions here; and we have asked: May these occupy, possess, develop, and, without unjust impositions and burdens, exchange? We are answered that our Government, about all this and these, has no care; and if she had, some infernal element in her union has put upon her an eternal mandate, never to 'take care!'

"Has he learned the alphabet of history who thinks that this people will, for another decade, permit either a party, or a Constitution, or a code of laws to exist which fails to take care that interests and values like these shall be by their own Government respected and defended?"

Next he proceeds to discuss another matter, as to what has been done by other nations in regard to this railroad problem, and he says this:

"And in eighteen hundred and sixty-seven, in organizing that North Germany out of all the members of the Fatherland, which has suddenly become the first power of the Eastern Continent, and at once the terror and admiration of all surrounding States, her matchless wisdom and sagacity have created one 'Federative Empire,' under a constitutional charter, by which they form the fifteen States into one 'Eternal Union' (Ewigen Bund), for the protection of the territory of the Union and its laws, as well as for the care of the welfare of the German people," and to the Federal Council and Parliament of that Union their charter has given the exclusive legislative control over, first, the customs; second, *the commercial legislation;* third, the coining of money, the weights and measures; fourth, banking questions; fifth, questions relating to the rights of nations and aliens; sixth, patents for inventions; seventh, the *protection of German trade;* eighth, the *railways and roads, the postal and telegraph services;* ninth, *the navigation of rivers;* tenth, the common law procedure, the commercial law, and the laws upon change.

"Our limits will admit of no further appeals to the principles and practices of all enlightened States in the nurture, protection, and defense of the internal and foreign commerce of the entire people. But these are ample in demonstration of the truth that by the settled principles of such governments that commerce which is common to all the people must be under the care of that government which is over all the people, and that such care is exclusive and plenary, embracing every power and duty needed to foster, develop, defend, and regulate the commerce itself and all its instruments and channels."

My friend and colleague, Mr. Wilson, the other day in his remarks said he did not believe that the glory would belong to this Convention of sending back the news to England, and France, and Belgium, and all those countries, that we in California, with so little experience, had mastered the situation. Germany has mastered the situation by taking the control. I will inform him also that Belgium has mastered the situation by taking governmental control of the railroads, and they are the best and cheapest railroads in the world.

MR. WILSON, of First District. Do you mean that Belgium owns the roads?

MR. HAGER. Yes. I will also inform my friend that France controls but does not own their railroads. The French laws are exact and stringent. No one can even receive an injury from a French railway without the company being held absolutely liable for all damages. Whilst I was once on a visit to that country an American received an injury—a sprained ankle—whilst traveling on one of the railroads. He did not think it a very serious matter, but after he reached his hotel in Paris, a surgeon and a nurse, sent by the railroad company, came to his relief. Next a person was sent to inquire what compensation he was willing to accept for the injury. After offering various sums they finally offered him five thousand dollars, which he accepted. He was about leaving for home in New York, and they also offered to furnish him with a surgeon and nurse for the voyage. They begged him to accept the compensation rather than to go into the Courts, because by the French law they are held liable, and no excuse will be received to discharge them from liability. In all cases the presumption is the railroad is at fault.

MR. BARNES. Is not that so here?

MR. HAGER. I do not think the Central Pacific Railroad would in a like case pay voluntarily, or without litigation. If I had a case I would turn it over to the gentleman to see how he would succeed in that line. As I have said, in Germany, Belgium, and France, and, if I am not mistaken, in Italy, the railroads are under governmental control. Now, in regard to Great Britain, this article says this:

"These facts we can only point to as indicative of the ceaselessness and the magnitude of the work and the care bestowed by the British Government upon the single matter of her internal commerce, and especially the rates of charge by the railroads and canals of the Kingdom; and we cannot, for want of space, do more than indicate the principles reached in these managements of internal commerce.

"This ministerial and parliamentary attention to railroad charges had its most distinctive developments about the time of Victoria's accession to the throne. One of the very first steps taken for the securement of equable and just rates of charge for transportation was the organization of a committee of Parliament, in eighteen hundred and thirty-nine, of which Sir Robert Peel was a distinguished member, charged with this duty; and which pursued their investigations for years, and with the most thorough research. Their reports, and those of similar committees in succeeding years, resulted in the two Acts of Parliament attempting the regulation of this subject, passed in the 3, 4, 5 and 6 Vic. In eighteen hundred and forty-four, a strong committee was appointed, with Mr. Gladstone at its head, to consider the whole subject of the prices of fares and freights, competition, consolidation, etc., which made long and searching reports, three in number, and resulted in the Act of 7 and 8 Vic. (1844), regulating the rates of profit and charges allowed to railroad companies, and providing for government purchase of these roads on certain terms. In eighteen hundred and forty-five, Lord Dalhousie's Railway Board was constituted, under and with the Board of Trade, charged with the duty of reporting on all new railroad schemes, etc., and which made elaborate series of reports on these subjects to Parliament. Other series of reports were made by the Board of Trade each year, upon every possible view of all these subjects of freights, fares, leases, amalgamations, consolidation, competition, government regulation, government ownership, etc. In 8 and 9 Vic. an Act was passed allowing canals to vary their rates of tolls to enable them to 'compete' with and restrain railroad freights; and another to enable canals to lease other canals, and to thus form 'competing lines' with railroads, and to secure 'greater competition for the public advantage.'

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Since eighteen hundred and forty-five the following clause has been introduced in all railway Acts:

"Nothing herein contained shall be deemed or construed to exempt the railways, by this Act authorized to be made, from the provisions of any general Act relating to railways, or the better and more impartial audit of the accounts of railway companies now in force, or which may hereafter pass during this or any future session of Parliament; or from any further revision or alteration under the authority of Parliament of the maximum rates of fares and charges, or of the rates of small parcels authorized by this Act.

"As already remarked, these samples are given as mere indicia of that thorough, systematic, eternal vigilance which England is wont to apply to every great material interest of her people, and which for a full third of a century she has already applied to this single matter of 'cheap transportation' upon the railways and water lines of the Kingdom. A mere catalogue of all the Acts of Parliament and reports of parliamentary committees and boards of trade, and the like, which her government has produced in the struggle to accomplish this single end, 'cheap transportation' for her people, would occupy more space than is allowed for this entire article. It must suffice, therefore, to add to the specimens above given, showing how early and earnestly this work was begun in England, the statement that as in the case of her foreign commerce, so in that of her domestic, there has not been an hour, day or night, in the last thirty-five years, when her government has ceased to be at work investigating, debating, reporting, experimenting, legislating, adjudicating, and solving the single problem, How shall England secure to her internal commerce the lowest rate of charge for transportation which is consistent with the just claims of the capital embarked in these channels of commerce?"

Now, what have we done as a State in regard to our internal commerce to obtain the lowest rate of charges for the transportation of passengers and freight? Nothing. It is left entirely to the railroad to charge just what they see fit, and there is no law that controls them in regard to these charges.

Whilst I was a member of the Senate of the United States, a committee made a report—the Select Committee on Transportation Routes to the Seaboard—of which Mr. Windom was Chairman. I will read just a few paragraphs, so far as relates to the proposition which we have here before us. Mr. Windom says: "In several of our States, and nearly all the countries of Europe, legislative regulation of rates and fares has been tried in almost every form, but I have yet to learn that such experiments have resulted in a material reduction of charges." That committee make many recommendations, which I commend to those who take an interest in this subject, and who think this whole matter should be left to legislation.

Now, I have but one more paragraph to read, and that is from one of the Commissioners under the Act of this State, which I have referred to as being repealed. He has favored me with a long communication, containing a great deal of information on this subject, and especially in regard to the regulation of fares and freights, and which would be useful to the Convention if printed so as to be easily read. It argues the question of the difficulty of attempting to regulate fares and freights by legislative enactment. It says it is impossible. It is from Mr. Doyle, who has made this subject, in all its bearings—the different classification of freights, etc.—one of personal inquiry and investigation. After reviewing the question fully, in all its bearings, Mr. Doyle concludes as follows:

"The foregoing is an outline of the considerations which lead me to suggest the following propositions for railroad reform."

Of these recommendations I only read the following:

"A Board of Railroad Commissioners, to be created by the Constitution, consisting of three or five members, with ample powers of visitation over all railroad corporations. They should have the right of investigation by written requisition or subpœna, and oral examination of witnesses or parties; their powers in this respect to be full and ample. They should also have authority to establish full or partial classifications of freights moved by rail, and the rates of transportation to be the same on all goods of the same class."

Now, Mr. Chairman, all other modes hitherto attempted by legislation, of regulating fares and freights, having failed, the inquiry is still presented: What is to be done? What is left for us to do? In my opinion, expediency, policy, and past experience point to a Railroad Commission to be created by the Constitution. Now, my friend from Sacramento, Mr. Edgerton, has told us that this would bring the railroad into politics. I would ask if they are not now in politics. I would ask my friend whether they did not try to defeat him two years ago when he was running for the Legislature? I think about that time he had the best evidence in the world that they were actively in politics.

My friend from Marin, Mr. Shafter, says that it will put the Railroad Commission in the hands of the railroad. Now, I ask my friend if he really has any fear that this will take place? Does he have any apprehension that the railroad will get control? And for that reason does he oppose the Commission? And if he should answer affirmatively, I would ask him if the people, in such case, would be in any worse condition than now? Do not the railroad companies now have full control of fares and freights? And if they should control the Commission would it be any more to our disadvantage? Why, in such event, the railroad could not complain, and the people would certainly say it could be no more burdensome than it is at the present time. He further said they could control the three Commissioners easier than they could control the Legislature. Others have argued here that the Commission would bankrupt the railroad companies. Thus the arguments antagonize themselves.

But, Mr. Chairman, I see no other remedy but the one suggested to create this Commission, and to give the election of its members to the people. As proposed they are to be elected by districts—three districts—into which the State is to be divided. They will not be nominated by the State political conventions, but by sectional conventions, in the respective districts, and elected by those sections. It is not like an election for Governor, which takes place throughout the whole State. But it will be in sections where the people can make their nominations and elect their Commissioners in three separate districts; and if we cannot trust the people in the performance of this work, then we must proclaim to the world that popular government—popular sovereignty—is a failure. We must admit that in this free government we cannot choose and elect three just men who will take charge of this business and do what is just between the railroads and the people.

I have heretofore alluded to the fact that this railroad was built by the munificence of the Government of the United States, and the people of the State of California—one half composed of the Union Pacific and the other of the Central Pacific—constitute our great transcontinental road. If the Central Pacific had remained satisfied with this great transcontinental road, there probably might have been less complaint against them. They have been ungrateful to their benefactors. They are not only controlling their end of this great transcontinental road, but it has been and is their intention and ambition to control all the railroads and all the avenues of commerce in this State. They have obtained by purchase, and have control of the San José road, running between San José and San Francisco, the Western Pacific, the California Pacific, the Copperopolis and San Joaquin Valley roads, the Sacramento Valley road, and the Santa Monica road. They have also purchased the Steam Navigation Company's boats which control the trade on our bays and rivers. They run a line of steamers to China in opposition to the Pacific Mail Steamship Company, and if they had not agreed upon terms of prorating with that company, as it has been publically stated, they would have put a line of steamers on the route to New York via Panama. They have also the control of Wells, Fargo & Company's Express. They own also the Southern Pacific Railroad, which they are now constructing—not without a subsidy, as my friend from Sacramento has told us, for they have a valuable land subsidy; not for the purpose of controlling the trade of Arizona, as has been said, but for the purpose of heading off Tom Scott and other parties in building a competing transcontinental road, which might interfere with their monopoly. For this purpose they had their lobby in Washington City, while I was a member of the Senate Committee on Pacific Railroads, opposing further subsidy to the road represented by Mr. Scott.

All this indicates that the coils of the anaconda is gradually but surely encircling the people of this State, their commerce, industrial interests, and transportation. It is the determination of this railroad company to control all the thoroughfares of travel—all the avenues by land and water, of the commerce of this State—that makes them justly censurable and obnoxious to the complaints of our people. They ought to have been satisfied with their great transcontinental road, built, not by them, but for them, through the munificence of the people and by public donations. But they have gradually obtained the control of all the carrying trade of the State, and they will not tolerate either competition or opposition.

It is a vast power to be used by five or six men, even if used wisely. I think the people have good reason to complain that the railroad company has shown this grasping disposition; and, in this condition of things, they have also good reason to expect our new Constitution will afford some relief for their produce and their industries from arbitrary exactions.

Such, I believe, sir, is the public sentiment among the people, and if they speak their sentiments, so they will tell you. My friend from Sacramento, Mr. McFarland, says he has heard no complaint against this railroad, and he thinks I committed hari-kari by saying that I did not know their charges were exorbitant. I never sent freight by or did business with the railroad, and I don't know personally whether their charges for freights are excessive or not; but if he asks me if I have heard any complaints against their charges, I will tell him yes, many, and almost universal complaints. These complaints generally come in a whisper, because men have told me that they did not dare to complain. Men doing business, when that business is dependent upon the good will of the railroad, dare not complain, or they might discriminate to their disadvantage and to the destruction of their business. But that there are complaints no one who breathes the atmosphere of California can dispute. But so far as I am personally concerned I cannot say that their charges are excessive, because I am without experience. The passenger fare between this city and San Francisco is not, in my opinion, unreasonable, or in disproportion to what is paid elsewhere.

Now, Mr. Chairman, I was opposed, as I said once before, to the calling of this Constitutional Convention. I voted against it. I was nominated as a delegate without any solicitation on my part, and I did not know anything about it until I saw in the newspapers that I was nominated. I did not speak to a member of that Convention in solicitation, and I had no desire to be a member. If it had depended on my own action I would not have been here. But since I am here, with malice toward none and charity for all, I intend, as far as I can, to do justice to all. For eight years I was a member of the Senate of the State of California, and for six or seven years have been on the bench. During that time I had an opportunity of observing the workings of our State government, in its legislative, its executive, and its judicial departments, and I regret that I have not been placed upon some committee concerning those departments, where my past experience would have been at least of some service to myself if to no one else. But not having been placed on any except one working committee, necessarily the labor that I have to perform must be in the Committee of the Whole, and the Committee of the Whole, as we all know by experience, is a most unfavorable place for the accomplishment of efficient work. We must sit in our places, prepare amendments, and act upon them, without sufficient opportunity of examining their phraseology or import. In this

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way we are framing a Constitution, by turning ourselves into a debating society, as was said by Mr. Shellabarger in regard to Congress on railroads and railroad monopolies. Our present Constitution is a good one in many respects. I think that twenty-five men might have been selected from our body, who in twenty or thirty days could have agreed upon some few amendments in regard to taxation, special legislation, corporations, municipal indebtedness, and Chinese immigration, which would have accomplished the work before us. A few provisions might have been taken from the new Constitutions of Illinois, Pennsylvania, Missouri, and Colorado, engrafted in ours, and given us all the improvements required. If the Committee on Corporations had taken from these Constitutions, or any of them, their provisions on corporations and railroads, they might have been received by our people with satisfaction.

Notwithstanding all that has been said in regard to the dimensions to which this article on corporations is expanding, it does not contain as much matter as is contained in the same article of either of the Constitutions to which I have just referred.

Now, sir, this proposition to create a Railroad Commission is not, as has been asserted, intended to confiscate the property of railroad companies; but it is intended to regulate their charges and put a check upon their powers. It may have the effect to take them out of local politics. I trust it will. We may then hope to see free and independent men elected as our Governors, our legislators, and Judges—men who will be under no obligation to them for place, and will be beyond their control—for the best of reasons: they will have no purpose in seeking to control them, in order, as they say, to protect themselves from hostile action in regard to fares and freights. This will be left to the Commission, composed of three men, selected and elected by the people, from different parts of the State. But it has been said we cannot trust the people to elect these men. Does any one here fear the people? Dare you tell them so? Go home and tell your constituents you were in favor of a Railroad Commission, but you voted against it because you dared not trust the people with their election; that you could not even trust the constituents who sent you here, with the election of these men. Say to the farmers, the merchants, the manufacturers, and miners of this great State, "Toil on, and pay tribute to the powers that be—to the railroad company—whatever they may demand; you are not capable of regulating fares and freights; the railroad company will do that for you; you are not qualified to select men who will do justice between the people and the railroad company." Tell them the railroad company will continue to transport their grain, produce, etc., when the market is good, at the highest price it will bear, and when the market is depressed, at the highest price it will bear—so that the people have the accommodation and the railroad the profits; and if it will not bear transportation with any profit, leave them in the warehouses. Tell them to submit, and toil on, and with bowed and obsequious heads to thank God that they have a railroad company and a transportation company, one and inseparable.

But, sir, the power of this gigantic corporation will be broken. It will fall by reason of its own stupendous magnitude. It has expended itself in taking within its grasp the commerce of our entire State, and it will fall before the storm-breath of public opinion. In this enlightened age no despot is so shrouded in the panoply of power but that public opinion will make itself heard; and no corporation is so surrounded by its stipendiaries but that public opinion will make itself obeyed. It may not come to-day; it may not come through this Constitution; but it will come—railroads will be regulated by law and by properly constituted authority.

I have not yet lost confidence in popular government. I am willing to trust the people with the election of this Commission, as I am willing to trust them with the election of the Governor, and other officers. I should like, however, to see some renovation of governmental administration, and some purification of the political atmosphere. Let us go back to the principles of the founders of the republic, when economy, and honesty, and purity, prevailed in the administration of public affairs, State and Federal. Let us get rid of the corrupting influence that surrounds State and Federal legislation, and let us ask the people to assist. Do this, and our country may yet live in prosperity and grandeur, to bless us and future generations, "as ages on ages its splendors unfold."

With its popular government, its free institutions, and its liberal laws, our country is worthy of our love and our devotion. Compare it with any and all the nations of the earth. How great, how grand, how beautiful it is! Great in its natural advantages, and magnificent proportions; great in all that a progressive civilization has accomplished; great in its mechanical and engineering triumphs; great in its agricultural progress; great in the better and higher development of the human family, and human happiness; and above all, great in its system of common schools, its educational institutions, and its liberal laws, by which our people are not only made equal before the law, but placed on equality in that ever enduring contest for social and political advancement. Whatever there is worth struggling for in life, in the mechanic arts, in the fields of labor and science—whatever there may be in the triumphs of eloquence and of song—is before the American citizen. The soil on which he treads is his, and wealth ample to his utmost wish may be his if he has the greed or the ambition to seize it. Every avenue that inventive genius, industry, or perseverance, may unfold, is open to him and his exploration; and the fruit of success, and all that his own brave heart and hand may accomplish, is of right his reward and his enjoyment. Yet with all these advantages, great as they are, we must admit, humiliating as may be the confession, for years in the past, corruption and demoralization in the administration of Federal and State employments, have been fast overspreading the land, and pervading all departments of government. If Legislatures, and Congresses, and Executives have failed us, where can we turn but to the power which is sovereign over all—to the people.

If we hesitate to perform our duty in exercising the public trust we have accepted—if we fail to set the seal of our condemnation upon corruption in the past—we must expect greater corruption in the future, and before another century rolls around, our republic, now so grand and beautiful, like those which have preceded it, may be remembered as a delusive meteor, which rose full of promise, dazzled with momentary splendor, and left the world in greater darkness than before.

SPEECH OF MR. HOWARD.

MR. HOWARD. Mr. Chairman: I propose to address myself for a few moments to the amendments now pending before the committee. The Chairman of the Committee on Corporations has said, and he has said repeatedly here to gentlemen who oppose this report, that we are not stickling for any formulation of words. We are not committed to any set phrases. If you who object to this report have anything in your heads or your hands that can address itself to the judgment of this committee, show it to us and we are ready to adopt it. Now, sir, what has been the course here by the opponents of this report? It is carping at words; simple criticisms, unworthy the dignity of this subject. That has been the course here, sir. I acknowledge, however, in answer to the eloquent and forcible remarks of the gentleman from San Francisco, who has just taken his seat, and also to the observations of the distinguished gentleman from Alameda, that they have produced some just criticisms. Now, I propose to consider their amendments very briefly. In the first place, sir, let me say that I will not consent to abate one jot or tittle from the report as made by the committee; and I say to the friends of reform here, so far as the report of the committee goes, stand to your guns! and do not allow your votes to be frittered away by the carping observations of the enemy of all reform. But, sir, certain suggestions have been made by the distinguished gentleman who has just taken his seat, and others by the gentleman from Alameda, which are worthy of consideration, and which I propose to consider. Now then, as to the amendment proposed by the gentleman from San Francisco, who has just taken his seat, and the one proposed by the gentleman from Alameda—they are substantially, or nearly the same. And particularly, as the gentleman from Alameda has reformed and amended his, it commends itself to me. I will ask him now to have his present amendment, as he now proposes it, read.

THE SECRETARY read the amendment suggested by Mr. Campbell, as follows:

"Add to the section: 'Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations or companies, and they shall keep their accounts according to such system. Any railroad corporation or transportation company which shall fail or refuse to conform to such reasonable rates as shall be established by said Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commissioners, shall be fined not exceeding twenty thousand dollars for each offense; and every officer, agent, or employé of any such corporation or company who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or imprisoned in the county jail not exceeding one year. In all controversies, civil, or criminal, the rates of fares and freights established by said Commissioners shall be deemed prima facie just and reasonable, and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture or otherwise."

Now, Mr. Chairman, it will be seen that this is in aid of the report of the committee and in opposition to its provisions in no respect. But it does give the legal sanction which even the opponents of all action here have demanded. And above all does it give the sanction which the eloquent gentleman who addressed us yesterday demanded, for he said his objection to the report of the committee was that it did not go far enough, that it did not give the provisions which were given in the English statute and in other laws. With that I agree. If there is any objection to this report, it is that it lacks the legal sanction which the amendment of the gentleman from Alameda supplies, and for that amendment I shall vote, sir. But I regretted to see, on yesterday, the amendment offered by the gentleman from Placer, I think it was, adopted, because if it is persisted in, it will inaugurate here the old system of lobbyism, and I need not say will make the Legislature the scenes of transactions which ought to be avoided.

Now, sir, the gentleman from San Francisco who spoke yesterday, Colonel Barnes, was eloquent when he told us that this report lacked legal sanctions and legal force, and I propose to accommodate him so far as my votes go on these amendments. I congratulate him upon his speech of yesterday. I always listen to him with pleasure, for what he says he says so well that it is always agreeable to hear him. And I congratulate him upon the address with which he managed it: with which, in certain language, he abused the railroad, and in other language he praised the railroad; with which in one sentence he favored the Commission, and in another he opposed the only practical method of carrying it out.

MR. BARNES. Will the gentleman allow me to ask him in what part of my feeble remarks I approved of a Commission, and in what part I went against it; where I condemned the railroad, and where I praised it? I am not aware of any such thing. And let me say here, and now, that I am in favor of a Commission. I believe that it should have the powers necessary to carry out the work for which it is established, but that these powers should be vested in competent men, and my idea was that the Governor should appoint them.

MR. HOWARD. So I understood the gentleman, and my impression is that to give it to the Governor is to defeat it altogether. But I cer-

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tainly cannot be mistaken about having heard him speak highly, and I agree with him, about what the railroad has done; and it seemed to me that he managed the subject as a very fond mother manages her child. First she whips him, and then if he cries she gives him a sugar plum to dry up and hush. [Laughter.]

Now, Mr. Chairman, I say that the criticisms upon this report have failed, and failed utterly, except so far as they go to show that we have not gone quite so far as we ought to have gone. It has been said that there is no instance of a Commission being invested with these powers. Now, sir, let me read a solitary instance in regard to the law of Illinois, from the report of the Chief of the Bureau of Statistics:

"In May, eighteen hundred and seventy-three, another law was passed prescribing what should be prima facie evidence of extortion and unjust discrimination, the burden of proof being thrown upon the railroad company. Under this law the Railroad Commissioners are required to prepare certain schedules of rates which shall be deemed reasonable until overruled in specific cases by a jury."

This report does no more. This report don't go an inch beyond it—not an iota. And yet the gentlemen tell us that there is no example of such a law. I commend them to the history of their country.

I hold in my hand the Acts of the British Parliament. In an Act regulating railway and canal traffic, passed in eighteen hundred and seventy-three, I find this:

"SECTION 12. Subject to the provisions in the last preceding section contained, the Commissioners shall have full power to decide that any proposed through rate is due and reasonable, notwithstanding that a less amount may be allotted to any forwarding company out of such through rate than the maximum rate such company is entitled to charge, and to allow and apportion such through rate accordingly."

The fifteenth section read thus:

"The Commissioners shall have power to hear and determine any question or dispute which may arise with respect to the terminal charges of any railway company, when such charges have not been fixed by any Act of Parliament, and to decide what is a reasonable sum to be paid to any company for loading and unloading, covering, collection, delivery, and other services of a like nature. Any decision of the Commissioners under this section shall be binding on all Courts in all legal pleadings whatever."

And now gentlemen come here and say there is no example for the report of the committee. The statement, to say the least, is unsupported by evidence, and without foundation. Now it does appear extraordinary that this course of comment has been pursued here. It is unwarranted; it is undeserved. I had almost said it is misrepresentation. It is unparliamentary.

There is another objection urged to this section, which I shall very briefly notice, and that is the objection which seems to alarm some gentlemen—that we have given to this Commission legislative, judicial, and executive powers. They say that it is contrary to the framework of American government. That there is no instance of any such power having been given to a Commission, and in that gentlemen are equally as unfortunate as when they say no law exists which confers upon Commissioners the power to regulate freights and fares.

The gentleman from Alameda, Mr. Van Dyke, the learned Chairman of the Committee on Preamble and Bill of Rights, the patent right author of the "palladium," referred to the Federalist the other day. A more unfortunate allusion could not have been made; a more unfortunate reference could not have been found; for in the forty-sixth and forty-seventh articles of the Federalist, Mr. Hamilton examines this subject with the power of illustration and force of logic for which he has always been celebrated. He says that the truth is, that while that is the general principle, that these departments are constantly being blended, and running the one into the other. He sums up the Constitutions of the States adopted up to that time, and shows conclusively that these powers run the one into the other. He says, for instance, the President is a part of the legislative power, because he is required to approve laws unless he vetoes them. He says that the treaty-making power is conferred upon the President and the Senate by the Constitution of the United States. He says that the appointment to office as an executive power is given to the President and to the Senate—that is, to both the legislative and executive departments. He says that the power of impeachment is a judicial power, but that the power of impeachment is given to the Senate upon the presentation or preferment of articles by the House of Representatives; and he goes through the whole thing. And every writer on constitutional law in the United States, and every Judge who has spoken upon the subject, has admitted the same thing.

I shall now only refer to the learned work of Mr. Pomeroy, in which he says that while the general plan of the Government assumes three coördinate, independent departments, and while these several departments are, in the main, free from each other's control, they are very closely linked together, and one does, at times, perform some of the particular duties of the other. That, sir, is the law. I refer to a late case which has been commented upon and indorsed by the Supreme Court of this State—a case in the 1st Gilman—which holds that, although the Legislature may not divest itself of its proper functions by delegating its general legislative authority, it may authorize others to do those things which it might properly do, yet cannot understandingly or justly do itself. That is the precise case here. This provision authorizes the Commission to do what the Legislature cannot do understandingly; what the Legislature, any more than we, do not fully understand, and which only a separate tribunal, constituted for the purpose, can, after a full investigation, come to understand.

Now, sir, I desire to refer, upon this subject, to a declaration of the Chief Justice of England, Lord Campbell. In England, sir, they have felt the malign influence of corporations. The railroad corporations in England had, for years, been strong enough to override public sentiment, because the power to adjust had been delegated to the Courts of law, instead of some tribunal possessing a practical acquaintance with the subject. Upon this point, the following is the view of Lord Campbell, expressed during a debate in the House of Lords on the Canal and Railway Tariff Act of eighteen hundred and fifty-four:

"They were to form a just judgment on all matters of complaint relating to railway management that might come before them, and they were to lay down a code of regulations for the government of railways. The Judges, and himself among them, felt themselves incompetent to decide on these matters."

That, sir, is the strongest reason in favor of this Commission, that no Legislature, of any character, is competent to discharge this duty. The provision, which the committee has reported, of regulation by the Commission, with the Courts in the background, is, in my opinion, the acme of reason and the best possible disposition that can be made of the subject.

Now, sir, I submit that all of the criticisms of this measure, except the one that the report does not go far enough, are utterly futile; futile to the degree that they amount to imbecility. The objection urged, and that seems to be the only one, is that raised by Governor Stanford in his letter. It has been amplified here, and nothing more. It was, that if there was a Commission elected by the people, it might be hostile to the railroad; that it might confiscate the property of the railroad. But if it has been guilty of the corruption, of the extortion, and of all the acts, or any of them, which have been charged, it ought to go down in shame and be punished for its crimes. But, if honest, it need not fear.

As to the method of election, I have but one word to say, and I do not intend to repeat to-day what I said upon a former occasion. It has been urged in the course of this debate, that the election would fall into party management, and that the Commissioners would be elected by party. I think the gentleman from San Francisco, who just took his seat, returned a sufficient answer to that, but if it were so, it is no objection. The Judges even in England are by appointment. They are the friends and supporters of the administration, and the Minister in power at the time of the appointment. And in this country, as the gentlemen know, Judges have been elected by parties and by party machinery; and they have been appointed by party machinery. Chief Justice Marshall, perhaps as great a man as ever sat on any bench—and certainly not inferior to any—was appointed by John Adams, a party man certainly, because he would so mold the Constitution as to put some iron ribs into it. Judge Story's was a party appointment, made by Mr. Madison, because he was then a Democrat, supporting the administration of Mr. Madison, and because, also, that he was eminently qualified, and a man whose worldwide reputation in the realm of jurisprudence admits of no attack. And Chief Justice Taney; his was a party appointment—appointed by General Jackson—a man whose extended and exact knowledge of the common law is without rivalship in this country, or any other. Now, then, suppose they are nominated and elected by party. Is it in any worse condition than if they are to be appointed by the Governor? Will not the Governor be compelled to appoint his own partisan if the appointment is given to him? And worse than all that, he will have in addition to party considerations, that of his own ambition and that of nepotism. It does not become gentlemen here, with the examples fresh before us of executive appointments, to commend that to us as a perfectly safe course of action. Why, what was done by one of the late Presidents of the United States? He did not, as it has been said of some man, send all his wife's relations to war, but he appointed them all to office. Look at the Supreme Court of the United States. Who does not know that that Court was packed by the Executive for the greenback decision. Mr. Chairman, I am opposed, above all other things, to the appointment of those Commissioners by the Executive. I have had some observation in that matter.

I became a resident of Mississippi many years ago, and the judiciary was so organized that the Judges were elected by the people. I lived under the system for several years. I thought I had seen some abuses under that system. I went to Texas, and in the Constitutional Convention of Texas I joined with those who favored the appointment by the Governor and confirmation by the Senate, but the action of the Governor was so unfortunate that the Constitution was amended and the election given to the people. If you cannot trust the people you cannot trust anybody. All other departments of this government—at least the legislative and executive departments—have been weighed and found wanting, and if we cannot confide this election to the people, we might as well abandon the whole system of government at once. If the people cannot be trusted, who can? I wish that answered—who can be trusted if the people cannot? If the people cannot be trusted, then, I repeat, our government is an ignominious failure. But, Mr. Chairman, I trust the people. I do not say so to flatter the people, for all who know my humble course know that I have in no instance hesitated to put myself in opposition to the views of the people when my judgment told me that they were wrong.

Mr. Chairman, some years ago, in eighteen hundred and fifty, just before his great spirit took its flight from this earth, I heard Mr. Calhoun declare that, unless the corruptions of this Government could be arrested, it would end either in dissolution of the Union or monarchy. I have thought of it often during the last few years. The purpose of dissolution has passed by, I trust forever, but monarchy is directly in front, staring us in the face, and unless we can arrest the course of corruption, of tyranny, of corporation corruption and corporation plunder in the United States, this Government will end inevitably in monarchy. And I do not hesitate to say, that when it comes to the question of being ruled by a moneyed aristocracy, concentrated in corporations, give me one gentleman, above temptation, with a sword by his side and spurs on his heels. I prefer him to Vanderbilt, and I prefer him to Jay Gould and his trunk lines and India rubber accounts. If this Government cannot be rescued from its downward tendency by the people, it is gone, and gone forever; and I agree with what the gentleman from San

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Francisco has so eloquently said upon that subject. But, sir, it will be rescued! I have seen the people of this country tried. It will be rescued! They will stop its downward tendency. They will build up this republic again on its ancient foundations. They carried it through the war of the revolution. It was the people in the last conflict that maintained the Government, and not the politicians or army. It was the great, stout-hearted, and stout-handed American people. For when the history of that transaction comes to be written, it will be proved incontestably, by the evidence of Cabinet officers, that the then President and his Cabinet were willing, in the language of one, to let the wayward sisters slide; and it was only after the firing on Fort Sumpter, when they heard the roar of the multitude on the outside, that the administration wheeled into line and took sides in favor of the Union. The people of this country will preserve this Government! They will preserve its honor and rebuke the corruption with which it is now surrounded. I have no fear of the people. I prefer them to all other sources of power. In fact, there are none except the people, for take it and put it into as few hands as you may, it comes back to the people at last.

And now, Mr. Chairman, I say in conclusion, I hope we shall take time to do this thing well, for it is a momentous thing, and we should not hurry it, so as to make it imperfect and unworthy of the indorsement of the people.

MR. ESTEE. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress, and ask leave to sit again.

The Convention then, at twelve o'clock and forty-eight minutes P. M., took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called and quorum present.

THE RAILROAD COMMISSIONERS.

MR. SHAFTER. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. Section twenty and pending amendments are before the committee.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. Chairman: I do not desire to trouble the committee at any length. There has been some fault found with those who oppose this report, because they have not offered amendments, which seems to convince them that the section ought to be adopted. It must be remembered that the committee have had this report under discussion and consideration about sixty days. We have been in session sixty-eight days, and this subject has been considered by the Committee on Corporations for nearly the whole of that time. They had plenty of time to examine the subject and make a report. They made a report, and then called upon this Convention to stand by their guns and support the committee, and carry the doctrine through, because it was all right. They would tolerate no amendments, because the report needed none. The report was all right. "Stand by your guns," shouted the Chairman; "the report is right, and let us adopt it." I and others upon this floor were endeavoring to point out the weak places in the report, but our counsels were not heeded. I do not think it comes with very good grace from the Chairman of that committee to talk about our not offering amendments, when those we did offer were voted down and brushed aside, utterly regardless of the arguments with which we supported them. It seems to me the Committee on Corporations ought to have been able to decide upon something definite in this matter in sixty days. Instead of that we find them bringing in a report entirely different from the first one. They have at last come to see that the first report was not right, and the committee themselves have been the first to abandon their guns. Mr. Hale and Mr. Campbell have presented amendments which have been taken by the committee and engrafted in their last report. Why, sir, the other day I had occasion to comment upon this twentieth section. I said that it would shake the whole basis of republican institutions; that there would be a conflict between these Commissions and the other great departments of government; that nobody would have any control over them; that the Courts would have nothing to do with them except to enforce their mandates; that they constitute a fourth department of government, superior and above all the others. I declared then, that this thing, if adopted, would sap the very foundation of our system of government. That idea has been indorsed by the gentleman from Sacramento, the gentleman from Santa Clara, and other eminent gentlemen on this floor. The gentleman from San Francisco, Mr. Vacquerel, struck the key-note the other day when he said that there was no necessity for any such thing in a republican form of government. Now, I do not propose to go over this ground again. There has been no answer made to such arguments as these, and there can be none. There has been no attempt to answer them, on the part of any gentleman on this floor. Gentlemen have asserted here that we ought to have these Commissioners, because the people have sent us here to provide for it, and all that sort of thing. How do they know what the people want? This Commission was invented on this floor, and was not an issue in any political canvass that I ever heard of. So far as this matter is concerned, as well as in all other matters, I shall act as my best judgment and my conscience tell me to act; and, unless a proposition can be supported by reason and argument, I shall not give my assent to it. The bare unsupported statement of gentlemen that the people want this thing, or that thing, or the other thing, is not entitled to any consideration.

Now, in regard to the question of the appointment of these Commissioners. It seems to me it is time we should stop in our crazy career and reflect a little. I think there is abundant room for reflection. We were called upon to come forward and support the report of the committee. Our own sense of right and justice prevented us from doing it, and now, after all this discussion, the committee themselves come forward and acknowledge that it was wrong, and they have called themselves together, and have drawn up and presented another section, and bring it in here this morning, and have sprung it upon us without thought or time for reflection, and they expect us to adopt it, without even knowing what it contains. It has been read to us for information, but if we are forced to a vote upon it to-night, it will certainly not be an intelligent vote. I most respectfully submit that we can accomplish nothing. Now, the original section reads:

"Three Railroad Commissioners shall be elected by the qualified voters of this State at the regular gubernatorial elections, and whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the sole power, and it shall be their duty, to correct abuses by railroad corporations or other transportation companies; establish rates of charges for the transportation of passengers and freight."

The committee now report the following section:

SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear complaints against railroad and other transportation companies, to send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action, and enforce their decisions and correct abuses through the medium of the Courts, and perform such other duties as may be prescribed by law; to report to the Governor, annually, their proceedings and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the foregoing sections.

They have struck out the word "sole." Now, as I have so often said, I am opposed to a Commission, upon principle. But I recognize the objects sought to be attained, and I say you cannot adopt a section that will more effectually defeat those objects than this will. It leaves great questions to be determined—questions of interpretation—and when you get to work under it, and it comes into the Courts, you will have to send your lawyers there, unless you shall conclude to send farmers and bricklayers; you will probably have to elect lawyers to the Supreme Court, and they will have to pass upon these matters. The committee have taken away the word "sole," and deprived the section of its vitality. If they are given the *sole* power to do these things, that would exclude the Courts and the Legislature. The striking out of this word may be decided to leave this power jointly in the hands of the Commission and the Legislature, and it certainly will be a question that will have to be decided by the Courts as to where this power belongs. Now, if that makes any change at all, what do you do? Why, you leave the power in the Board of Commissioners and in the Legislature equally. That is the legal result of it. The Legislature, undoubtedly, have the power to regulate freights and fares. How shall both of these bodies exercise that power? Suppose the Legislature does pass a statute fixing freights and fares, and the Commissioners pass another rule or order—one stands to one thing and one to another. Which is going to prevail? How are they going to enforce their decrees? The railroad cannot obey both. They will take the middle ground, and steer between them, because there is a conflict of authority. What is the result? Nobody but God can tell. No human being can tell what the result will be. That is the condition of things that will result from having the word *sole* stricken out.

Now comes the other point made by the gentleman from San Francisco, Judge Hager: "They shall examine the books, papers, etc., and for this shall have process of the Courts."

Now, we have already passed some portions of the Constitution, which I do not suppose we shall change at all. I hope my friends, right and left, won't forget what I say, or recollect anything which I don't say. Section nineteen of the Bill of Rights, as adopted, reads as follows:

"SEC. 19. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable seizures and searches, shall not be violated; and no warrant shall issue but on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized."

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Now, these conflicting statements and provisions will give rise to never-ending litigation. The question will have to be determined in the Courts, as to what constitutes an unreasonable seizure and search, and all that sort of thing. This section goes on to say that they may examine the books and papers of all railroad and other transportation companies, and for that purpose they shall have process of the Courts. There is absolutely no limit to their power in that regard; no limit as to time or place; no limit as to the subject-matter to which it applies. *All* books, *all* papers, and *all* records must be exhibited, without reservation, no matter whether they are applicable or not. Why, sir, is such a thing as this to be tolerated for a moment? Look at it. What do you mean by "process of Court?" Will it be held that these Commissioners, under this section, can order the companies to produce their books, papers, and documents, and if they refuse, the Courts must enforce the demand? I think not. It would be a pretty state of affairs that the railroad company could not be allowed to come before the Courts and present their side of the case. They would be. The Court would exercise a discretionary power in the matter. Is the whole course of justice to be disturbed by these men thus exercising absolute and arbitrary power? If the process of Court is resorted to, it must be upon application by them, showing what the purpose is, supported by affidavits, upon notice to the parties, charging the facts; and then the Court will make the order. It would be a singular state of things if they should be condemned without notice or an opportunity of being heard. It will be an unending source of litigation. All these things must be decided in the Courts.

Then, again, they are to hear complaints against the railroad and other transportation companies. One gentleman proposes to make the fine for a violation of the commands of the section twenty thousand dollars. Now, is that a legitimate, proper expression of the public desire to vindicate the law against a man who violates the letter of the law openly and under a claim of right? I think not, sir. My sense of justice revolts at the idea. To what madness are we coming to? Now, these Commissioners have no power of their own to enforce any of their decrees. They sit there like a bump on a log and make orders. They go to the Court. They have subpœnaed one of the officers, and he refuses to answer their questions. They go to the Court and say, this man refuses to obey us. We want you to punish him for contempt. The Court says, I will not send him to jail until I find out whether he is guilty or not. The Court has to make an inquiry. Notice must be given—for the Court will not punish this man for alleged contempt without giving him notice, and then the case is brought up and regularly tried. If he is guilty, the Court says, you must go back and answer the question, or you will be punished for contempt. Well, he goes back; the question is asked again, and he answers it. The next time the Commissioners come along they put the question to him again, and he says, I won't answer it. Then they go to Court again, and the same thing is repeated. Where will the thing end, and how will they accomplish anything?

Now, they are to enforce their decisions through the medium of the Courts, correct abuses, and so on. What decisions; what abuses? What is an abuse? I suppose when a man enters a car and fills my face full of foul smoke from a bad cigar, that might be termed an abuse. I think, perhaps it is, and if I thought this Commission could prevent it, I don't know but I might be induced to vote for it. But how are they going to correct that or any other abuse. It has no power, under this section, to enforce its decrees. They can do nothing without going into the Courts, and any private citizen has that right now.

Now, sir, if this Convention is going to have a Commission, for the sake of the credit of this body I hope we will make it of some practical benefit. If we are to have such a scheme, let us have an intelligent one, with proper sanctions and penalties. I do not believe these railroad companies have been guilty of half the things they are charged with. But there is one thing that we all know, and that is, that they have an immense power, and if they choose to do so, they can use it to the detriment of the country. This they ought not to be permitted to do.

MR. MCCALLUM. Mr. Chairman: I desire to offer a corrected amendment in place of the one I presented last evening, which I think will be acceptable to the amendment offered by the gentleman from Sacramento. I ask that it be read.

THE SECRETARY read:

"Amend section twenty as follows: In line two, strike out 'Gubernatorial,' and insert 'General;' in line three, strike out 'four,' and insert 'six,' and at the end of line three, add 'provided, that the three Commissioners elected at the first election shall so classify themselves by lot that one of them shall go out of office at the end of two years, one at the end of four years, and one at the end of six years, so that after the first election one Commissioner shall be elected at the general election every two years, and shall hold the office for the term of six years."

MR. MCCALLUM. Mr. Chairman: My proposition last night was to elect two Commissioners for two years, and one for four years. In presenting this amendment I have tried to consult the wishes of the members upon this floor.

MR. CAMPBELL. Mr. Chairman: I desire to offer another amendment to this section.

THE SECRETARY read:

"Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies, and they shall keep their accounts according to such system. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by said Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by said Commissioners, shall be fined not exceeding twenty thousand dollars for each offense; and every officer, agent, or employé, of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or be imprisoned in the County Jail not exceeding one year. In all controversies, civil or criminal, the rates of freights and fares established by said Commissioners shall be deemed prima facie just and reasonable; and in any action against such corporation or company for damages sustained by charging excessive rates, the plaintiff, in addition to actual damages, may, in the discretion of the Judge or jury, recover exemplary damages. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture, or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined upon them in this and the foregoing section."

SPEECH OF MR. CAMPBELL.

MR. CAMPBELL. Mr. Chairman: I have but a few words to say in explanation of this amendment. Some time ago I prepared an amendment to section twenty, as reported by the Committee on Corporations other than Municipal, with a view to offering it at the proper time. But after a lengthy discussion on the provisions of the section, the committee introduced a substitute for it, and that substitute in its main features seems to meet the approval of a large portion of this body; and so many gentlemen seem to be in favor of preserving the features of the amendment as offered, that I deem it unwise to offer the amendment which I prepared originally; but I have introduced in place of it this addition to the section, or substitute, reported by the committee. This addition embraces most of what was contained in the amendment which I had originally intended to offer.

Now, there have been some strictures made by the gentleman from Marin, Judge Shafter, upon at least a portion of this amendment. Now let us see if that amendment is prejudiced in favor of or against the corporations; or if it is not right and fair and just. That amendment provides, it is true, for the imposition of a fine of twenty thousand dollars. Some gentlemen have said that I ought to have put in a minimum also, and suggest the words, "not less than five thousand dollars." I preferred to leave that matter to the discretion of the Court, so that if the Court sees a disposition manifested on the part of the corporations to override the law and to disobey its mandates, and the case is one of such an aggravated character as to affect the interests of the community, that the Court should have the power to impose a fine to the amount of twenty thousand dollars if it thinks fit. Now, the gentleman thinks twenty thousand dollars an outrageous fine. If he will refer to the Penal Code of this State he will find that precisely such an act as that is punishable by imprisonment for not less than one year, and such imprisonment may extend to the lifetime of the person. If I steal half a dollar from the person of another, I am liable to imprisonment in the State Prison, under the same Code, for a period not less than one nor more than ten years. So that before the gentleman talks about the penalties being excessive and severe, he had better first consult the statutes of the State, which are universally recognized and enforced by the Courts of the State in dealing with crime.

Another one of his criticisms was that the provision giving the Commissioners power to examine the books and papers of these corporations is in conflict with, and inconsistent with the provisions of the Bill of Rights, because, by the latter article, the people are to be secure against unreasonable seizures and searches. Well, is it unreasonable that these Commissioners, invested with the power of fixing freights and fares, acting for the public, in regard to public corporations, which has a public duty to perform, should be authorized to examine these books and papers, for the purpose of enabling it to act intelligently? Are the books of these corporations to be concealed from their scrutiny, when it is absolutely necessary for the Commissioners to have access to them in order to make an intelligent bill of freights and fares? Is it unreasonable for them to have access to these books in order to obtain the requisite information to enable them to carry out the mandates of the Constitution? Is it in any way inconsistent with this provision of the Bill of Rights which secures persons against unreasonable searches and seizures?

Are these powers unreasonable and without precedent, as the gentleman says? Let us look at the powers which are now vested by law in the Bank Commissioners of this State—powers which are being exercised confessedly to the very great advantage of the public; powers, through the exercise of which, the greatest abuses are to-day being corrected. Let us look at those powers:

"SEC. 4. It shall be the duty of one or more of the Bank Commissioners, as designated by the Commissioners, once in six months, and as often as in their judgment may be deemed necessary, without previous notice, to visit and to make personally a full examination of each bank, saving bank, saving and loan society, or other society, association, company, or institution incorporated under the laws of this State, or any other State or country, and doing business in this State for the accumulation and investment of funds and savings, or any trust company receiving any valuable thing in trust, or money on special deposit, or any person publicly receiving money on deposit for safe keeping; to inspect all books, papers, notes, bonds, or evidences of debt of such corporations, and all securities; to ascertain the condition of every such corporation, its solvency, its ability to fulfill all its obligations, and report its condition to the Attorney-General as soon as may be after such examination."

Who in this State, the gentleman from Marin included, has complained of that power in the Bank Commissioners to examine papers, books, etc., of the institution? But, says one gentleman, it will interfere with the private books of the Directors. It does nothing of the kind. The books of a corporation are the books of a public corporation, organized under the laws of the State, and having certain obligations and duties towards the people, deriving its life from the State, and con-

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ducting and carrying on its business under the sanction of our laws; and to say that any such institution may refuse to the proper public authority the right to investigate, the right to examine the books of the institution, is to say that swindling, whether through railroad, banking, or other corporations, is not an offense under the laws of the land. That it is to be permitted and encouraged by a sort of constitutional guaranty and sanction which gentlemen seek to spread over all the frauds that may be proposed under corporate mismanagement. Why, sir, it requires but little argument to answer such a proposition. Their own statements are a sufficient refutation of them.

Another thing: the gentleman does not like it that the word *sole* has been stricken out. He claims that under the section the power to fix freights and fares is a concurrent power; that we have not taken it away from the Legislature, but that it remains there, and that the Legislature may at any time set aside the action of the Commission, and may substitute for any tariff of freights and fares established by the Commissioners something of its own creation. I deny that this is a correct proposition of law. The rule is, that the expression of one thing is the exclusion of the other. If this Constitution rests in a Board of Commissioners the power to do these things, to fix freights and fares, it is exclusive in its nature. You cannot have two bodies exercising the same power at the same time; and in attempting to regulate freights and fares the Legislature would in effect be repealing this section of the Constitution. The criticisms which this gentleman has presented, are all equally defective. There may be questions that will be raised by the corporations as to the construction of the language; no doubt there will be. But I would like to know where the statesman is who can draft a code of laws under which a question of construction cannot be raised. If the gentleman supposes that either he or any other member of this Convention, or any committee of this body, is wise enough to construct a provision, either constitutional or legislative, that will not be susceptible to different interpretations, he will find himself very widely mistaken. I admit that some parts of this section will necessarily be open to judicial construction. So will the language of every section which we adopt here. It is comparatively a new subject in this State, and whatever language may be adopted, either by the Convention or by the Legislature, necessarily must become a subject for judicial inquiry and judicial construction.

Now, sir, as far as this provision goes, with the amendment attached to it, I believe it is the best that can be adopted under the circumstances. I would myself, in some respects, have it go farther, and in others, perhaps, not so far; but I do believe this provision as it now stands represents the average judgment of the Convention, and I think, of the people.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I shall not detain the committee but a few moments, as I suppose they are ready to come to a vote. I wish to say that it strikes me as a little strange that my distinguished friend from Marin, who has just addressed this Convention, should say that it is time for us to reflect, and warning us about getting excited; that we must treat the subject with the utmost gravity; that these are questions of the greatest concern; that we must approach them by slow degrees; that reason must prevail. For one, he said he intended to address himself entirely to the question; that he was not going to wander from the question at issue, and would address himself to section twenty, and the amendments then pending. And then my distinguished friend proceeded to talk about everything else but section twenty and the amendments, and then closed his remarks by saying how terribly wicked it would be to punish a man for robbing his neighbor. For one, I confess I do not comprehend the logic of the distinguished gentleman, when he undertook to convince this Convention that the section did not mean anything, and in half an hour after he attempted to show you that, if it was adopted, it would be the greatest outrage ever perpetrated upon an enlightened community. That is the logic of the gentleman. That, in effect, is the logic and the argument of all the opponents of this measure. The question for us to consider, calmly and deliberately, here is, whether this amendment is right. If it is right, let the friends of the measure stand squarely up to it, and defend it against every assault. If it is wrong, then it should be defeated. There is no member of this Convention, there is no friend of regulation on this floor, who desires anything placed in the Constitution of this State that will imperil or endanger any of the great interests of the State. There is no member of this Convention who desires a word or a sentence placed in that section, or in the Constitution, which will imperil the rights of any corporation in this State, however much these corporations may have infringed upon the rights of individuals. The question, sir, is not whether the language pleases the gentleman; not whether he is afraid the corporations will be pleased with the adoption or rejection of this Constitution; not whether that section will be of advantage to this or that particular interest, but rather whether it will be a permanent good to the whole people of this great State. If it will, then it ought to be adopted. If it will not, it ought not to be adopted, and the people, when it is passed, will sustain it.

Now, I have failed to hear any argument to-day to show that this section, with all its provisions, would imperil any of the material interests of this State. I have failed to hear any argument showing that the establishment of rates of charges for freight and fares by Commissioners elected by the qualified electors of this State, would be a wrong upon any of the material interests of the corporations even. It is admitted by gentlemen all around us that the Legislature has that power. It is admitted that the Legislature has power to regulate freights and fares. Then they tell us that the Legislature cannot do it, because they have not the time to devote to the subject. Now, in reply, we admit that the Legislature, under the power which they have, could do it if they would—they possibly might do it honestly if they knew how—but they have not the time, opportunity, experience, or learning, to qualify them to go on and deal with this important question. But we do say that if you elect three citizens of this State for that specific purpose, that they will soon become capable of handling the subject, and that they will handle it so as not to destroy any of the interests of the State. Where is the State officer that ever has? Why, sir, your Governor, year after year, has stood between the Legislature and the people and vetoed bill after bill in defense of the people's interests. When some great corporation has succeeded in passing measures through that were detrimental, the Governor has come to the rescue and exercised the veto power in their behalf; and why? because the Governor, as the Chief Executive of the State, occupies a position towards the people whereby he is held strictly accountable for what he does. He knows the whole people of the State will look upon him as their protector; that it is his constitutional duty to defend their rights; and, occupying that sacred and exalted position, he exercises that power in the interest of the people, and not in the interest of the corporations. I remember when a bill was passed here giving to one corporation nearly all the tide land around San Francisco, and your Governor vetoed it, and his veto was sustained only by a small majority. I do not see why the Commissioners, elected by the same people, under the same circumstances, will not stand between the people and the corporations, and do justice to both. I believe they will. I believe the powers, if they were absolute—if they had absolute and unrestricted powers—these three men, elected by the people of this State, would endeavor to do justice alike to the people and to the corporations, when elected for that specific purpose.

Now, sir, ridicule is said to be the strongest argument that can be made by the enemies of any just cause. Ridicule is always resorted to when the enemies have no other kind of argument to advance. It is sometimes easy to get up a laugh and laugh a thing down, but when a distinguished gentleman, like the gentleman from Marin, gets up and makes an illustration that will make somebody laugh, he need not think it takes the place of argument. It does not. Some of his illustrations are exceedingly illogical. He went on to say that this provision would amount to nothing; that it was absolute folly—the idea that one hundred and fifty men elected and sent here to make a Constitution, should be carried away by such irrational, irresponsible propositions as these. He went on to show that no railroads could exist if this provision should be enforced. O, no; you must not destroy them. They ought to be free to carry on their own business. This thing of compelling them to obey the mandates of the Constitution, and not allowing them to discriminate as they see fit; stop their cars here and not there, and only carry freight through to certain points ——

MR. SHAFTER. I said nothing of the kind—nothing in reference to it. I only spoke about discrimination between places where it is material to have stations.

MR. ESTEE. If it is material enough to have a station, it is material enough to ship freight from it. I may have misunderstood the gentleman. I could not hear all that he said. I understood him to justify the practice of the railroads in closing up certain stations and refusing to ship small shipments. Now, if it is true that they do that, I think we had better have Commissioners to say that it shall be shipped where the freight is; and they should see to it that the man who lives five miles from a town shall not be compelled to pay a higher price for passage to that town than the man who lives twenty miles away. If that is justice, I cannot see it. I think the illustration given by the gentleman from Sacramento, Mr. McConnell, in reference to shipments over the Sierra Nevada Mountains, a very apt one; and I have heard no answer to his argument yet. The strangest thing is that rational men will make any such contracts as these men say they have made with the Eastern companies.

Now, a great deal has been said relative to the interpretation of this language. I took occasion recently to say that language represents ideas; and when language fails to represent some great idea, then language is a failure. Some of the most beautifully rounded sentences which may be placed in this Constitution which might attract a great many gentlemen on this floor, when you come to take them into Court for judicial determination, may, in fact, mean very little. I wish to read a few lines from McCauley's History of England, page 579, second volume:

"It was moved that King James the Second, having endeavored to subvert the Constitution of the kingdom by breaking the original contract between King and people, and by the advice of Jesuits and other wicked persons, having violated the fundamental laws, and having withdrawn himself out of the kingdom, had abdicated the government, and that the throne had thereby become vacant. This resolution has been many times subjected to criticism as minute and severe as was ever applied to any sentence written by man; and perhaps there never was a sentence written by man which would bear such criticism less. That a King, by grossly abusing his power, may forfeit it, is true. That a King who absconds without making any provision for the administration, and leaves his people in a state of anarchy, may, without any violent straining of language, be said to have abdicated its functions, is also true; but no accurate writer would affirm that long continued misgovernment and desertion, added together, make up an act of abdication. It is evident, too, that the mention of the Jesuits and other evil advisers of James, weakens, instead of strengthening, the case against him; for surely more indulgence is due to a man misled by pernicious counsel than to a man who goes wrong from the mere impulse of his own mind. It is idle, however, to examine these memorable words as we should examine a chapter of Aristotle or of Hobbs. Such words are to be considered, not as words, but as deeds. If they effect that which they are intended to effect, they are rational, though they may be contradictory. If they fail of attaining their end, they are absurd, though they carry demonstration with them. Logic admits of no compromise. The essence of politics is compromise. It is therefore not strange that some of the most important and most useful political instruments in the world should be among the most illogical compositions that ever were

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penned. The object of Somers, of Maynard, and of the other eminent men who shaped this celebrated motion was, not to leave to posterity a model of definition and partition, but to make the restoration of a tyrant impossible, and to place on the throne a sovereign under whom law and liberty might be secure. This object they attained by using language which, in a philosophical treatise, would justly be reprehended as inexact and confused. They cared little whether their major agreed with their conclusion if the major secured two hundred votes, and the conclusion two hundred more. In fact, the one beauty of the resolution is in its inconsistency."

The highest evidence we have that this section means something is, that all the gentlemen who are opposed to it say it means nothing. It means a great deal, and that is what troubles them. One gentleman says that it will cost from six thousand dollars to twenty thousand dollars a year to get a man capable of acting as Railroad Commissioner. I don't know. I admit that it would be impossible to secure the services of the gentleman for twenty thousand dollars a year, but I think there are many gentlemen in this State who are perfectly capable of acting in this capacity, and doing absolute justice to the people and to the corporations, for two thousand dollars or three thousand dollars a year. I do not see why we cannot educate somebody up to this position as well as the company. I can remember very well when the gentlemen who own these railroads knew nothing about railroads. They lived here in this city. They educated themselves up to it. I do not believe but what there are plenty of men capable of filling this position, who will serve the people for a reasonable salary. I do not wish to detain the Convention any longer, as they are anxious to come to a vote. I merely wanted to answer some of these criticisms.

THE PREVIOUS QUESTION.

MR. INMAN. Mr. Chairman: I believe we have spent time enough on this thing, and I call for the previous question.

MR. WEST. I desire to offer an amendment to the amendment of the gentleman from Alameda, and see if he will not accept it.

MR. INMAN. I will withdraw the motion temporarily.

MR. WEST. I move to amend the amended section by striking out all after the word "company's," in the third line from the bottom, and adopt the amendment of Judge Campbell. The latter portion of the section, as printed in the Journal, reads as in the latter clause of the Campbell amendment. The language will be duplicated if the Campbell amendment is adopted. Therefore, I hope Judge Campbell will accept the amendment.

MR. CAMPBELL. I accept the amendment.

MR. INMAN. I now insist upon the previous question.

The previous question was seconded by Messrs. West, O'Donnell, Larkin, and Cross.

THE CHAIRMAN. The first question is on the amendment of the gentleman from Alameda, Mr. McCallum.

Division was called for, and the amendment was adopted by a vote of 70 ayes to 41 noes.

MR. ESTEE. Mr. Chairman: I have an amendment which I wish to send up.

THE CHAIRMAN. No amendment is in order at present. There is another amendment pending. The question is on the amendment of the gentleman from Alameda, Mr. Campbell. The Secretary will read it.

THE SECRETARY read:

"Said Commissioners shall prescribe a uniform system of accounts, to be kept by all such corporations and companies, and they shall keep their accounts according to such system. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by said Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by said Commissioners, shall be fined not exceeding twenty thousand dollars for each offense; and any officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or be imprisoned in the county jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commissioners shall be deemed prima facie just and reasonable. In any action against such corporation or company for damage sustained by charging excessive rates, the plaintiff, in addition to actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture, or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined upon them in this and the foregoing section."

Also, amend by striking out of the section all after the word "companies," which was accepted by Mr. Campbell.

MR. HALE. Mr. Chairman: I ask to have the words read that were stricken out.

THE SECRETARY read:

"It shall be the duty of the Legislature to confer all such further powers on the Board of Railroad Commissioners as shall be necessary to perform the duties enjoined on them in this and the foregoing section."

MR. HALE. Mr. Chairman: I would inquire whether the language of the amendment, as presented, is not broad enough to strike out the amendment offered by myself and adopted by the committee last night?

THE CHAIRMAN. It is not in order to move to strike words out of the section.

MR. WEST. Is it not in order to strike out?

THE CHAIRMAN. Not under the previous question.

MR. WEST. To strike out that with other matters?

THE CHAIRMAN. It is not in order.

MR. JOYCE. I ask to have the amendment of Mr. Campbell read as amended—both amendments.

THE SECRETARY read them again.

THE CHAIRMAN. The question is on the amendment of the gentleman from Alameda, Judge Campbell.

Adopted.

MR. ESTEE. Mr. Chairman: I offer an amendment.

THE SECRETARY read:

"Amend the amendment of the gentleman from Placer, Judge Hale, by adding after the word 'therein,' in the fourth line, the words 'by impeachment, as in other cases.'"

MR. McCALLUM. I raise a point of order. The point of order is, that the amendment having been adopted cannot be amended.

THE CHAIRMAN. The point of order is well taken. The amendment is not in order. It should have been offered when the amendment was pending.

MR. ESTEE. It only adds to the section. I have never known of an instance where such an amendment could not be made.

THE CHAIRMAN. Well, you know of an instance now, then.

MR. REYNOLDS. And I appeal from the decision of the Chair.

MR. JOYCE. I move an amendment to the original proposition.

THE SECRETARY read:

"Amend by adding between the words 'companies,' in line eleven, section twenty, 'provided that the profits accruing from such charges shall not exceed eight per cent. on the assessed value of such railroad or other transportation company.'"

MR. JOYCE. My reasons for offering this——

MR. HERRINGTON. Mr. Chairman: I may as well raise a point of order here——

MR. ESTEE. Mr. Chairman: I ask to have the section read, as amended, with all the amendments adopted. We had better know how it reads.

THE CHAIRMAN. The Secretary will read.

THE SECRETARY read the section as amended as follows:

SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State at the general election, whose salary shall be fixed by law, and whose term of office shall be six years; *provided*, that the three Commissioners elected at the first election shall so classify themselves by lot that one of them shall go out of office at the end of two years, one at the end of four years, and one at the end of six years, so that after the first election one Commissioner shall be elected at the general election every two years, and shall hold office for the term of six years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear complaints against railroad and other transportation companies, to send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action, and enforce their decisions and correct abuses through the medium of the Courts, and perform such other duties as may be prescribed by law; to report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies; *provided*, the Legislature shall have power to remove any one or more of said Commissioners from office for dereliction of duty, corruption, or incompetency therein; and whenever, from any cause, vacancy of office shall occur in said Commission, the Governor shall fill the same by appointing a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified. Said Commissioners shall prescribe a uniform system of accounts, to be kept by all of such corporations and companies, and they shall keep their accounts according to that system. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by said Commissioners, or shall charge rates in excess thereof, or shall fail to make their accounts correspond with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense; and any officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or imprisoned in the county jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commissioners shall be deemed prima facie just and reasonable. In any action against any such corporation or company, for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage may, in the discretion of the Judge or jury, recover exemplary damages. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined upon them in this and the foregoing section."

THE CHAIRMAN. The question is on the amendment proposed by Mr. Joyce.

MR. JOYCE. The reasons why I offer that amendment is simply this. Most all the parties favoring the original proposition are in favor of giving the Commissioners all the power absolutely necessary for them to regulate freights and fares. With that all agree as far as that is concerned. But it is a very well known fact that the people never set out to bribe their own officers. Now, the great question is, can we put any

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more confidence in the Commission than we can in the Legislature. I say if the people be fairly represented in this Convention, and I think they reasonably are, that we had better limit the possibilities of both the Legislature and the Commission on the side of the people. We are very careful about abolishing special legislation. Now the Commissioners stand within the power on the part of the people. I say let us limit them as to the height they can allow freights to be risen. Might they not escape the order to lower them—they being so well known as Railroad Commissioners—they being so much infringed on year after year with millions upon millions. I think there is a wide margin for fraud, and we ought to limit them. I say lest these Commissioners might be bought up we had better limit them to the height at which fares and freights can be risen. Now, Mr. President, I think this limit is a just one. They must go to the Assessors' books and find the assessed value. That is fair. Then the question will rise, how did that assessment come there? Were the corporations in the habit of placing such assessments there. If they are unjust let them be raised, and then the people will be the gainers for the raise in taxation. If they are satisfied with this manner of doing business, I don't see what they should want. It is as easy to get a valuation on railroad property, as any other property. If they were to bring them down to first principles, I think it is very easy to do it. But by going to the Assessors' books they will compel them to prove what the value of the property is, and it will be for the Commissioners to dispute such facts as they prove were facts. By this means we will be able to get the actual value and allow them a fair assessment upon it.

THE CHAIRMAN. The question is on the amendment.

MR. LAINE. Mr. Chairman: I wish to offer a substitute for the entire section.

THE CHAIRMAN. The question is on the amendment.

The amendment was rejected.

MR. LAINE. Mr. Chairman: I offer a substitute.

THE SECRETARY read:

"Strike out section twenty of the report of the Committee on Corporations other than Municipal, and substitute therefor the following: 'The Legislature shall pass laws to correct abuses and prevent unjust discrimination in the rates of freight and passenger tariffs on the different railroads of this State, and shall, from time to time, pass laws establishing maximum rates for the transportation of passengers and freight on such railroads; *provided*, such maximum rates shall not exceed three cents per mile for passenger rates, nor three cents per ton per mile for freight, which maximum rates are hereby fixed and established until the same shall be lowered by the Legislature. The Legislature shall enforce this section by adequate penalties."

MR. LAINE. In submitting that substitute, I desire simply to say that I believe this is essentially a legislative power. I have no confidence in the Commissioners. Now, if we mean to do anything, let us do it. This is the place to do it.

THE CHAIRMAN. The question is on the substitute of the gentleman from Santa Clara, Mr. Laine.

Lost.

MR. ESTEE. I move that the committee rise—["No." "No." "No."] Wait until I get through. I move the committee rise, report progress, and recommend to the Convention that this section be referred back to the Committee on Corporations to formulate it—["No." "No." "No."] Mr. Chairman, I have the floor, and I know what I am doing.

THE CHAIRMAN. The question is on the motion of the gentleman from San Francisco, Mr. Estee.

MR. HALE. Allow me to make one suggestion. There are one or two sections of this report that have been passed over. I would ask the Chairman of the committee whether he recollects that fact.

MR. ESTEE. Certainly, I do. That is the only way to reach it. I make the motion that the committee rise, and recommend to the Convention that this section be referred back to the committee to formulate it, with the ideas contained in it. If the gentlemen will allow me, the reason for this is that these various amendments do not all come in their proper places, and the section ought to be rearranged. Let it go to the Judiciary Committee, if you wish. ["No." "No." "No."]

THE CHAIRMAN. The question is on referring the section back.

MR. HOWARD, of Los Angeles. Mr. Chairman——

THE CHAIRMAN. The motion is not debatable.

MR. HOWARD. I don't want the report tinkered by the committee.

THE CHAIRMAN. The question is on the motion of the gentleman from San Francisco, Mr. Estee.

Lost.

MR. HERRINGTON. Mr. Chairman: I move to take up the section offered by myself on December fourth, which was referred to the Committee of the Whole, to constitute section twenty-one.

THE CHAIRMAN. Are there any further amendments to section twenty?

MR. HERRINGTON. I will read the proposed section:

"Amend article (proposition number four hundred and forty-four) as reported by the Committee on Corporations other than Municipal, by inserting therein, next after section twenty as reported, the following:

"SEC. 21. Said Railroad Commission, in the execution of its powers, shall so fix, and from time to time regulate, the charges for freights and fares collectible by said railroad and other transportation companies, that the revenue derived therefrom, over running expenses and expenses for repairs by such companies, shall not, in the aggregate for any year after the adoption of this Constitution, exceed, but may be less than, ten per centum of the true cash value of the works, machinery, and property invested and in actual use by such corporations in the business of transportation, as the same shall be assessed annually for State taxation."

THE CHAIRMAN. Are there any further amendments to section twenty?

MR. SMITH, of Fourth District. I have a suggestion to make. These Commissioners will be elected at the general election, at the time the Legislature is elected, and before the Legislature meets to fix their salaries. Now, I do not think they should be elected upon any uncertain salaries. Therefore I offer this amendment.

THE SECRETARY read:

"*Provided*, that each of the Commissioners elected at the next general election shall be allowed a salary of five thousand dollars per annum, during their term of office, respectively."

MR. HOWARD, of Los Angeles: I hope it will be voted down.

MR. HUESTIS. I should like to offer an amendment. It will be voted down, I expect.

THE SECRETARY read:

"But the Legislature shall have power, by a two-thirds vote of both houses, to modify and control the actions of said Board of Commissioners in all matters of fact passed upon by them."

MR. HOWARD, of Los Angeles. I rise to a question of order. It is inconsistent with the section, and therefore out of order.

THE CHAIRMAN. It is further adding to the section as it stands. The question is on the adoption of the amendment.

Lost.

MR. KLEINE. I offer an amendment to section twenty.

THE SECRETARY read:

"Amend section twenty by striking out the words 'fined not exceeding twenty thousand dollars,' and insert the words 'hanged by the neck until he be dead.'"

THE CHAIRMAN. Out of order.

MR. HALE. Mr. Chairman: I trust we shall not proceed to the consideration of section twenty-one before the committee rises. I will state the reason why. I have a proposition which, in its nature, is germane to section twenty, but it really ought to be framed as an independent section, and ought to be acted upon by the committee at this stage. I hope, therefore, that the committee will rise, and allow me to present it to-morrow morning; and in that view I move that the committee rise, report progress, and ask leave to sit again.

Lost.

MR. HALE. I beg leave, then, to offer a section, to be known as section twenty-one.

THE CHAIRMAN. Are there any further amendments to section twenty?

MR. WILSON, of First District. Mr. Chairman: I have an amendment to section twenty.

THE SECRETARY read:

"Add to the section: 'But no member of this Convention shall be eligible to the office of Railroad Commissioner at the first election under this Constitution.'"

["Division!" "Division!"—"Ayes and noes."]

MR. LARKIN. I don't think it is necessary. I think the action of this Convention here for the last sixty days will determine that question.

MR. WILSON, of First District. I think it better to be sure, and put it in the Constitution.

[Laughter.]

THE CHAIRMAN. Division has been called for.

The amendment was rejected, by a vote of 55 ayes to 61 noes.

MR. JONES. I move the committee rise, report progress, and ask leave to sit again.

Lost on division—ayes, 38.

MR. TULLY. I offer a substitute for section twenty.

THE SECRETARY read:

"SEC. 20. The Legislature, at its first session after the adoption of this Constitution, shall establish and provide a system for the enforcement of an equitable tariff of rates, fixing the maximum that can be charged for the transportation of passengers and freight by the railroad and transportation companies of this State, which may be altered or amended from time to time; and by all proper legislation prevent undue and unreasonable discrimination in such charges, or in the facilities for the transportation of the same classes of freight and passengers, by such companies, between persons or places, and shall compel the observance of the provisions of this section by fines and forfeitures upon such railroad or transportation companies, or by the imprisonment of the officers and employés, at its discretion."

REMARKS OF MR. O'DONNELL.

MR. O'DONNELL. I hope there will be no more tampering with the section. The majority of this Convention are tired of these amendments. They are offered for no other purpose than to get up a discussion. We have been here sixty-five days, and have not got a single section of the Constitution. We have spent about twenty-five thousand dollars to get in this one section. Now the idea of gentlemen offering such amendments as that to go in the Constitution is ridiculous. [Laughter.] Who has any confidence in the Legislatures that have been in this State for the last fifteen or twenty years? Look at the last one. It was one of the most corrupt and venal Legislatures that ever convened in this State. Most of us members were sent here for the purpose of regulating freights and fares. This thing has been settled in San Francisco. They came up and wanted fifteen millions for the waterworks, and if it had not been for the Workingmen's party getting up a big indignation meeting, it would have passed both houses. You all know that to be a fact. [Laughter.] Now don't you leave this thing to the Legislature. We are sent here for the purpose of electing these Commissioners to regulate freights and fares. Most of the corporation lawyers say it is confiscation. If it means that, I say it is just and right. Let the people get back some of the land they have been robbed of. I hope there will be no more tampering with this section. The majority of the members on this floor honestly intend to vote for the section, and nothing else. I hope we will not leave here to-day without passing the section.

[Cries of "Question," "Question."]

MR. O'DONNELL. What do *you* want of the question? You have

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spent thirty-six hours yourself on this floor for nothing. [Laughter.] I don't want to detain this committee any longer. ["Go on; go on." Laughter.] We are ready now to vote on this section. We want no more tampering. It has been said that they intend to get up amendment after amendment, and discuss them, until we get disgusted and leave here. I want them to distinctly understand that I am the last man to leave this hall until this Constitution is framed. I will now give way to my friend from Santa Clara, Mr. Herrington.

MR. HERRINGTON. Mr. Chairman: I wish to raise a point of order. My point of order is, that the gentleman from Santa Clara, Mr. Laine, offered a substitute to section twenty, embracing precisely the same matter which is embraced in this substitute. I maintain that the substitute having been voted down, it is not competent to entertain the same matter again.

THE CHAIRMAN. It is not the same matter. The question is on the substitute.

Lost.

MR. HUESTIS. I move the committee rise, report progress, and ask leave to sit again.

Lost.

THE CHAIRMAN. If there are no further amendments, the Secretary will read section twenty-one.

MR. McCALLUM. I desire to insert a single word in this section, in order to express the idea intended. Insert, between the words "transportation" and "company," in line five, as printed in the report of the committee, the word "railroad."

THE CHAIRMAN. That is the way it reads now. [Laughter.]

MR. HALE. Mr. Chairman: I desire to make an amendment by way of a new section, to be known as section twenty-one. I desire to have the ruling of the Chair upon it. I understood from the ruling of the Chair, the other day, that it could not be done until the report had been gone through with. If that is the rule, of course this section would be out of order at this time. I desire to understand the ruling on that point.

THE CHAIRMAN. The gentleman can offer it as an independent section after we get through with the report, but not now. The Secretary will read section twenty-one.

THE SECRETARY read:

SEC. 21. The State shall be divided into three railroad districts, as nearly equal in population as practicable, from each of which one of the three Railroad Commissioners shall be elected.

MR. HERRINGTON. Mr. Chairman: There was a section referred to this Committee of the Whole, by the Convention, on the fourth of December, the one which I read a few moments ago. I call for it now.

THE CHAIRMAN. Are there any amendments to section twenty-one.

MR. HERRINGTON. That is an amendment to section twenty-one, which I offer.

MR. ROLFE. I don't know as I understand this——

MR. HERRINGTON. I have the floor. I am offering this section as section twenty-one.

THE SECRETARY read:

"SEC. 21. Said Railroad Commission, in the execution of its powers, shall so fix, and from time to time regulate, the charges for freights and fares collectible by said railroad and other transportation companies, that the revenue derived therefrom, over running expenses and expenses for repairs by such companies, shall not, in the aggregate for any year after the adoption of this Constitution, exceed, but may be less than, ten per centum of the true cash value of the works, machinery, and property invested and in actual use by such corporations in the business of transportation, as the same shall be assessed annually for State taxation."

MR. ROLFE. I rise to a point of order——

THE CHAIRMAN. That is not an amendment to section twenty-one.

MR. HERRINGTON. Then I will offer it as an independent section.

THE CHAIRMAN. Not at present.

MR. ROLFE. Mr. Chairman: I move that section twenty-one be stricken out. It is unnecessary, and it is in conflict with the previous section already adopted. It commences by saying that three Railroad Commissioners shall be elected by the qualified voters of this State. Now, this section says the State shall be divided into three railroad districts, as nearly equal in population as practicable, from each of which one of these Commissioners shall be elected. Now, the only fair construction is, that each railroad district shall elect one Commissioner. The other provision is, that they shall be elected by the qualified voters of the State. I think the two sections are in direct conflict. If it is passed, it will put us in the condition so forcibly described by the gentleman from Marin, Judge Shafter, when he said that the Courts would be constantly called on to construe the language.

MR. HALE. We certainly should have time to consider this matter, and I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, have made progress, and ask leave to sit again.

RESOLUTION.

MR. HUESTIS. Mr. President: I ask leave to offer a resolution.

THE SECRETARY read:

Resolved, That the debate in the Committee of the Whole on the report of the Committee on Corporations other than Municipal shall be closed at twelve o'clock M., on Friday, December sixth, eighteen hundred and seventy eight.

THE PRESIDENT. The question is on the adoption of the resolution. Division was called for, and the resolution was lost—ayes, 56; noes, 60.

ADJOURNMENT.

MR. WHITE, Mr. President: I move the Convention now take a recess until seven o'clock.

Lost on division—ayes, 58; noes, 63.

MR. WALKER, of Tuolumne. I move that the Convention do now adjourn.

Carried.

And at four o'clock and fifty minutes P. M., the Convention stood adjourned until to-morrow, at nine o'clock and thirty minutes A. M.

SEVENTIETH DAY.

SACRAMENTO, Friday, December 6th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A.M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Harvey,	Porter,
Ayers,	Heiskell,	Prouty,
Barbour,	Herold,	Reddy,
Barnes,	Herrington,	Reed,
Barry,	Hilborn,	Reynolds,
Barton,	Hitchcock,	Rhodes,
Beerstecher,	Holmes,	Ringgold,
Belcher,	Howard,	Rolfe,
Bell,	Huestis,	Schell,
Blackmer,	Hughey,	Schomp,
Boggs,	Hunter,	Shafter,
Boucher,	Inman,	Shurtleff,
Brown,	Johnson,	Smith, of Santa Clara,
Burt,	Jones,	Smith, of 4th District,
Campbell,	Joyce,	Smith, of San Francisco,
Caples,	Kelley,	Soule,
Casserly,	Keyes,	Stedman,
Chapman,	Kleine,	Steele,
Charles,	Laine,	Stevenson,
Cowden,	Lampson,	Stuart,
Cross,	Larkin,	Sweasey,
Crouch,	Larue,	Swenson,
Davis,	Lavigne,	Swing,
Dean,	Lewis,	Terry,
Dowling,	Lindow,	Thompson,
Doyle,	Mansfield,	Tinnin,
Dudley, of Solano,	Martin, of Alameda,	Townsend,
Dunlap,	Martin, of Santa Cruz,	Tully,
Edgerton,	McCallum,	Turner,
Estee,	McComas,	Tuttle,
Estey,	McConnell,	Vacquerel,
Evey,	McCoy,	Van Dyke,
Farrell,	McFarland,	Van Voorhies,
Filcher,	McNutt,	Walker, of Marin,
Finney,	Miller,	Walker, of Tuolumne,
Freeman,	Mills,	Waters,
Freud,	Moffat,	Webster,
Garvey,	Moreland,	Weller,
Glascock,	Morse,	Wellin,
Gorman,	Nason,	West,
Grace,	Nelson,	Wickes,
Graves,	Neunaber,	White,
Gregg,	Noel,	Wilson, of Tehama,
Hager,	O'Donnell,	Winans,
Hale,	Ohleyer,	Wyatt,
Hall.	O'Sullivan,	Mr. President.
Harrison,	Overton,	

ABSENT.

Berry,	Eagon,	Pulliam,
Biggs,	Fawcett,	Shoemaker,
Condon,	Murphy,	Wilson, of 1st District.
Dudley, of San Joaquin,		

LEAVE OF ABSENCE.

Leave of absence for two days was granted Mr. Wilson, of First District.

THE JOURNAL.

MR. BROWN. Mr. President: I move that the reading of the Journal be dispensed with and the same approved.

Carried.

ADDITIONAL COPIES.

MR. MANSFIELD. Mr. President: I move that four hundred and eighty additional copies of the memorial presented by the Committee on Agriculture, Manufactures, and Commerce, on the fourth instant, be ordered printed.

Carried.

TEXT-BOOKS.

THE PRESIDENT. I have a communication from the Superintendent of State Printing in reply to a resolution adopted by this Convention. The Secretary will read it.

THE SECRETARY read:

MR. PRESIDENT: In compliance with certified resolution from the Convention, dated December fourth, I have the honor to submit the following estimates. These figures are made upon the basis that the State possessed the text and copyright, and all the appliances necessary for doing such work. For the first one thousand, com-

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plete series, of a book in every respect equal to the Pacific Coast Readers, it would cost the State:

For composition	$449 06
For paper	352 90
For press-work	150 50
For binding	665 00
For engraving cuts	3,750 00
For electrotyping	568 80
Total	$5,936 26
Each additional thousand	1,168 40

The cost of publishing a series, equal in all respects to the McGuffey Readers, would be for the first thousand:

Composition	$489 61
Paper	267 50
Press-work	161 75
Binding	665 00
Engraving	3,500 00
Electrotyping	534 00
Total	$5,617 86
Each additional thousand	$1,094 25

Respectfully submitted.

F. P. THOMPSON,
Superintendent State Printing.

THE PRESIDENT. It will lie on the table.

MR. O'SULLIVAN. Mr. President: I move that the usual number of copies be printed.

USE OF CAPITOL ROOMS.

THE PRESIDENT. It will be printed in the Journal. The Chair also has a communication from the Sergeant-at-Arms, in answer to a resolution passed by this Convention, which the Secretary will read.

THE SECRETARY read:

To the honorable President and Members of the Constitutional Convention.

GENTLEMEN: In reply to a resolution of inquiry, passed by your honorable body on yesterday, asking me for information as to the authority by which others than members of the Convention occupy committee-rooms and other parts of this building to the inconvenience of members of the Convention, I will say that the rooms now used by the Convention for committees and other purposes were obtained from the Secretary of State, on request, by resolution passed for that purpose.

I gave no one authority to occupy the rooms, and I retained the keys in my possession; yet some of them were occupied Wednesday and Thursday evenings by others than members of the Convention.

On inquiry, I was informed that permission was obtained from the Secretary of State.

Respectfully submitted.

T. J. SHERWOOD,
Sergeant-at-Arms.

THE PRESIDENT. The communication will lie on the table.

LAND MONOPOLIES.

MR. BEERSTECHER presented the following memorial, signed by several hundred citizens of San Francisco, in regard to land monopoly and equal taxation:

To the Constitutional Convention:

Your memorialists, believing that the monopoly of land is a denial of natural right which should not be tolerated in a republican State; believing that it inevitably produces an undue concentration of wealth on the one side, and distress and pauperism on the other; that it is mainly responsible for the hard times, low wages, and business depression, that now prevail in California; that its abolition would give new life and vigor to every branch of trade and industry, and would cause an unprecedented increase in population, in wealth, and in everything which constitutes real prosperity, respectfully recommend to and urge upon your honorable body that in framing a new Constitution to be submitted to the people no provision shall be included which shall in any way forbid or hamper the abolition of this monstrous injustice.

Conscious of the differences of opinion that exist, your memorialists do not ask that your honorable body shall pass upon the best method of getting rid of the evils of land monopoly, nor even that any effort to that end shall be enjoined, but simply that no obstacle shall be interposed between the will of the people and the carrying out of any plan of taxation which for this purpose the people may hereafter decide to adopt. They therefore ask that instead of prohibiting discrimination by requiring the equal taxation of all property, the new Constitution shall leave the matter of taxation to the discretion of the law-making power, simply providing that all laws imposing taxation shall have uniform operation, and that whatever exemptions may be made, or whatever cumulative rates or increasing probate duties may be imposed, shall apply equally to all individuals under the same conditions.

Referred to Committee on Land and Homestead Exemptions.

RAILROAD SUBSIDY.

MR. DOWLING offered the following resolution:

WHEREAS, The Honorable Alexander H. Stephens has introduced a bill in the House of Representatives of the United States, providing government aid in building the Texas and Pacific Railroad, and as the government is fully secured in said bill by a first mortgage on the road, and on all the land granted said railroad company by the United States and the State of Texas; and, whereas, by the provisions of said bill, the said Texas and Pacific Railroad is to remain forever an independent and competitive transcontinental line, to be constructed solely by white labor; therefore, be it

Resolved by the Constitutional Convention of the State of California, That our Senators and Representatives in Congress be requested to support the said bill, and use all reasonable and honorable means to secure its enactment into a law.

Resolved, That the Secretary be requested to forward to each of our Senators and Representatives in Congress a copy of these resolutions.

MR. AYERS. I second the resolution.

MR. DOWLING. Mr. President and gentlemen of the Convention: I offer that resolution in consequence and in harmony with the spirit of the speech delivered on this floor, by Colonel Barnes, of San Francisco. His argument was beyond criticism, as solid as a cannon ball, and as true as fate. We are, to-day, at the mercy of one great monopoly, having charge and sole control of all the avenues of transportation, from Mount Shasta, where it kisses the sky, to San Diego, and from the Sierras to the sea, sir. Every imaginable place of egress or ingress is controlled by the Central Pacific Railroad Company. Now, sir, in this dilemma, it is absolutely necessary that we should turn our attention to some other means of egress and ingress to the State of California. The only place we have to look at is the Texas Pacific Railroad. It is to be maintained as an independent company, and consequently, if we have it, we shall be no longer at the mercy of this great monopoly.

Now, in the course of Mr. Barnes' speech, he says, referring to the railroad: "It has invaded the wilderness, and put to flight its repose and peace by the music of successful labor. It has ended the mission of the pioneer; it has left him no solitude to conquer." It was the same way when Rome was in her grandeur. Her sons were dying on her battle fields when they were substituted at home by hordes of slaves. In California we have no pioneers to-day. The music which summons the railroad pioneer is no more to be heard. He has gone; and where has he gone to? He has gone to destruction, to crime, to despair, to death, and on his prostrate form stands the noble Chinaman. He has no alternate section of railroad land. He has no home to go to. He has no pillow to repose his head on. And, sir, I looked at the twentieth section of the report of the Committee on Corporations, as the Magna Charta of California, as the second Declaration of Independence, to raise up this State from the iron heel of corporate power; but I do not look at it in that light now, for in the condition it is now in, it is worse than the non-partisan platform, which is nothing at all. It is forsaken by its mother, and disowned by its father. It is like a shorn sheep, sir. It is a nullity. It is like a lamb without a tail.

Now, sir, it will be remembered that last Winter we had thousands and thousands of idle men parading the streets of San Francisco. It will be remembered that they went up in thousands to the Mayor of the city, to try to get a day's work. He had no work to give them. They were there. They were almost goaded by hunger to desperation or despair. I am not a champion of any class, nor a political aspirant, but I tell you that the handwriting is on the wall, and we have got to get some avenue in which to place these men to earn their daily bread, and this is the only immediate avenue that I see, the opening up of this great continental line. It will be a ray of joy penetrating the gloom that hangs over our State to-day, and it will let one beautiful ray strike upon the form of our golden State. I hope this resolution will be adopted, gentlemen; and, if it is, we will have something to compete with the great Central Pacific Railroad Company.

For the information of the Convention, I will read from the evidence taken before the Chinese Commission that assembled in San Francisco nine months ago. F. F. Low testified under oath:

"A.—That is my belief; I do not know. These people deny that such are the facts; practically, the Chinese come here through means advanced by these companies or individuals, or by people here through these companies. I think it is by no means sure that the Southern Pacific Railroad Company is not importing Chinese to-day through these companies. I know the Central Pacific Railroad Company did it.

"MR. EVANS. Oftentimes friends and relatives here send for their friends and relatives there, don't they?

"A.—There may be individual cases, but not many. I know the Central Pacific Railroad Company imported thousands and thousands of coolies through Chinese agents, and that they advanced money for passage, and took it out in work, with a bonus."

Now, sir, if that is not true, ex-Governor Low is a libeler; and if it is not true the Central Pacific Railroad Company should stand up and deny it. But on this great railroad there are no serfs or slaves to be employed. There are thousands of white laborers to-day wandering over the State that would be only too glad to get work.

MR. WELLIN. Mr. President: I am very much surprised at the position assumed by my friend from San Francisco. It seems to me that the voice of the people from one end of the country to the other has been expressed long and loud, that the Government should do no more towards building railroads and enriching a few privileged citizens. I for one object to it, and shall never vote for the resolution. I think our good old friend, Uncle Sam, has had business enough with railroads, and somehow they get the best of him. I think that to start in and build the railroad that the gentleman has referred to, would only result in some millions of dollars for the people to pay, and more corruption. I hope that the resolution will not be acted upon by this body. I hope that it will meet that fate which it deserves, and I move that it be laid upon the table.

MR. O'SULLIVAN. Mr. President: I second the motion. I concur with my friend from San Francisco, who has just spoken.

THE PRESIDENT. The motion is not debatable. The motion is to lay the resolution on the table.

The motion prevailed.

LAND AND HOMESTEAD EXEMPTION.

MR. WYATT. I ask leave to introduce a resolution.

THE SECRETARY read:

Resolved, That the Committee on Land and Homestead Exemption be requested to make a report to this Convention at as early a day as practicable, and if unable to report soon, that the committee make a statement of the reasons for its delay.

MR. SMITH, of Santa Clara. Mr. President: I will state that the committee will make a report to-morrow or next day, or on Monday.

MR. WYATT. That is satisfactory.

GOD IN THE CONSTITUTION.

MR. AYERS presented the following memorial, signed by a number of citizens of Los Angeles County, against any mention of God in the Constitution:

LOS ANGELES, California, September 10, 1878.

To the Constitutional Convention:

WHEREAS, We have heard that an effort will be made to have the new Constitution recognize God, the Bible, and the Christian religion. We therefore respectfully but earnestly protest against such partiality against many religions to favor one religion. Our State is not a church State, and should be entirely separated from all church matters of gods, creeds, faiths, ordinances, and finances, and should

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alike protect the worshippers of Joss, Jehovah, Jupiter, Allah, Bramah, and believers in no God and other gods. We also protest against the Legislature having a right to grant charters, except general ones, or make donations of money or land, or any special privileges to any church, corporation, or society, nor to make special laws for churches, societies, companies, or individuals. We believe that all laws should be general, except that some laws, well defined and carefully limited, should be optional by a vote of the people, but not for the benefit of companies, churches, or individuals.

Referred to the Committee on Preamble and Bill of Rights.

THE RAILROAD COMMISSION.

MR. VACQUEREL offered the following new proposition, which was read, to be supplementary to the report of the Committee on Corporations other than Municipal:

Resolved, That after said Commission shall be duly constituted, each railway or transportation company doing business in this State shall issue to said Commissioners a free pass over their line, said free pass not transmissible to any other person, and to be available only when on official duties. After the Commission shall have established a just rate of freights and fares, the charge in no case shall exceed three cents per mile for passengers, and three cents per mile per ton for freight. Any railway or transportation company doing business in this State shall be obliged by law to run at least a train daily on each line, or branch, or section now running, and any infraction of said section shall forfeit the franchise and legal rights of said company or corporation. After the report of the schedule establishing the value of the property of the railway companies in this State, and after a mutual understanding between the Legislature and the managers of the companies for the acquisition of such property of the railways, it shall be submitted to a vote of the people at the next general election, asking them for their consent for such acquisition of property by the State.

MR. VACQUEREL. I move it be printed.

MR. GRACE. I move that the resolution be allowed to lie on the table, and that it be not printed.

The motion prevailed.

MR. O'DONNELL. Mr. President: I offered a minority report the other day, which was laid on the table. I wish it taken up and ordered printed.

THE PRESIDENT. It was printed in the Journal.

MR. ESTEE. I move that the Convention resolve itself into Committee of the Whole for——

POWERS OF THE CONVENTION.

MR. BELCHER. Mr. President: I have a report from the Committee on Judiciary and Judicial Department which I am requested to present:

THE SECRETARY read:

MR. PRESIDENT: Your committee to whom was referred the communication of the Hon. W. B. C. Brown, dated December second, eighteen hundred and seventy-eight, concerning the pay of the members of this Convention during its late recess, from November twenty-seventh to December second, and concerning the funeral expenses and per diem of the late Hon. J. M. Strong, beg leave to report that they have duly considered the same.

In view of the doubts which exist as to the true construction of the statutes and the rights of this Convention, we recommend the passage, by the Convention, of the following resolution:

Resolved, That the President appoint a committee of three members to confer with the Attorney-General of this State, and present, with him, an agreed case, so as to obtain from the Supreme Court, at as early a day as possible, a decision involving the true construction of the Act of the Legislature of this State, entitled "An Act to provide for a Convention to frame a new Constitution for the State of California," approved March thirtieth, eighteen hundred and seventy-eight, and a determination of the various questions pending regarding the power of this Convention over the fund referred to in said Act, and whether the stationery and like things furnished the members, and the printing, are payable out of said fund; and also, a determination of the other matters in which the views of the State Controller are in conflict with the views of this Convention.

S. M. WILSON,
December 5th, 1878. Chairman Judiciary and Judicial Department.

The report was received, and the resolution accompanying the same unanimously adopted.

The President appointed as the committee under the foregoing resolution, Messrs. Laine, Shafter, and Terry.

SPECIAL ORDERS.

MR. EDGERTON. Mr. President: I move that the report of the Committee on Revenue and Taxation be made the special order immediately after the disposition of the report of the Committee on Legislative Department. I suppose it is a matter which involves a considerable discussion, and it seems to me that in view of the great amount of time we have expended that we should get to the consideration of that subject at an early day. I therefore make that motion.

Carried.

MR. TERRY. Mr. President: I ask that the report of the Committee on Legislative Department be made the special order immediately after the report of the Committee on Corporations other than Municipal.

MR. MILLER. Mr. President: The report of the Committee on Chinese was made the special order immediately after the disposition of the report of the Committee on Corporations other than Municipal.

THE PRESIDENT. The report of the Committee on Chinese is the special order after the report of the Committee on Corporations other than Municipal is disposed of, but it can be superseded by a vote.

MR. MILLER. Then the motion is to substitute the report of the Committee on Legislative Department.

THE PRESIDENT. If the motion should prevail it will supersede the other order.

MR. MILLER. Great interest is felt on this proposition in regard to the Chinese. If the Convention sees proper to make the substitution, of course I shall not complain, but I desire members to understand how they are voting upon this motion and what would be the effect of it. The Convention made the report on Chinese the special order, and I doubt whether this motion now is in order.

MR. ESTEE. Mr. President: I move that the Convention resolve itself into Committee of the Whole.

THE PRESIDENT. There is a motion pending.

MR. AYERS. Mr. President: I hope the motion will not prevail. The consideration of the report of the Committee on Chinese has been made the special order immediately following the report of the Committee on Corporations other than Municipal. A great many gentlemen in this Convention are anxious that that matter should come up and be disposed of. I do not think it well that it should be postponed indefinitely.

MR. BLACKMER. Mr. President: If I am not wrong in my remembrance, this report of the Committee on Chinese was made the special order to follow the report of the Committee on Corporations, and I submit that we cannot change that order unless we reconsider that vote. I think I am correct. The Convention voted to make that the special order.

MR. TERRY. Mr. President: I withdraw the motion.

RAILROAD COMMISSION.

MR. ESTEE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The pending question is the motion of the gentleman from San Bernardino, Mr. Rolfe, to strike out section twenty-one. The Secretary will read the section.

THE SECRETARY read:

SEC. 21. The State shall be divided into three railroad districts, as nearly equal in population as practicable, from each of which one of the three Railroad Commissioners shall be elected.

MR. ROLFE. Mr. Chairman: I merely brought that matter up for the purpose of showing the inconsistency of that section twenty-one—as it now stands—with section twenty. I understand that there are gentlemen who favor the election of these Commissioners from certain districts—that is, elect them by the voters of the State at large, but who shall be residents of respective districts. I can say that I am not particular about that matter, but I do see an inconsistency between section twenty-one as it stands now reported by the Committee on Corporations, and section twenty as finally adopted by the Committee of the Whole. Therefore, I made this motion to strike out section twenty-one, that the matter might be properly passed upon and corrected by this committee. I understand that there are gentlemen who are going to suggest or offer amendments to the effect that these Commissioners, when they are elected, shall be respectively residents of different sections of the State. I am not prepared to say now whether I shall be tenacious on that question one way or the other. I now send up the motion in writing.

THE SECRETARY read:

"Strike out section twenty-one as reported by the committee."

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. I offer the following amendment: Add to the end of section twenty-one as follows: "By the qualified electors of such district." If that amendment to this section be adopted it will settle the difficulty which the gentleman from San Bernardino seems to desire to obviate by striking out the section, and it is plain to see will provide that the Commissioners shall be elected by the qualified electors of the respective districts. That section, with this amendment, will qualify section twenty as already adopted, and will make the whole consistent and plain. I ask that the section be read as it would stand when amended.

THE SECRETARY read:

"SEC. 21. The State shall be divided into three railroad districts, as nearly equal in population as practicable, from each of which one of the three Railroad Commissioners shall be elected by the qualified electors of such district."

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: It seems to me that the gested amendment is in direct conflict with section twenty, as adopted. Section twenty reads: "Three Railroad Commissioners shall be elected by the qualified electors of the State." In section twenty-one the gentleman from San Francisco would have it read so that one Commissioner should be elected from each district, by the qualified electors of their respective districts. It seems to me, speaking of section twenty-one, that we have made a great mistake in the adoption of the amendment to section twenty, offered by the gentleman from Alameda, Mr. McCallum. His amendment, as I understand, provides that one of these Commissioners shall be elected every two years. Now, if, as indicated by section twenty-one, they are to be elected by districts, I can readily perceive, Mr. Chairman, how the railroad corporations might colonize these districts, if it is true that they sometimes do such things, and thereby, at each biennial election, secure a man for that position suitable to them, or as nearly as possible in sympathy with their interests. Since we have provided that these Commissioners shall be elected, one every two years, it occurs to me that it is a better plan, in the interests of the people, that they should be elected by the whole State.

MR. ESTEE. But from the districts.

MR. FILCHER. But residents of the districts. I have no objection to that. In fact, I think the idea is a good one. They ought to be selected from different parts of the State.

MR. WEBSTER. I send up an amendment, to be read for information, and if the other is voted down, I shall offer it.

THE SECRETARY read:

"Insert the following: 'Said Railroad Commissioners shall be elected by the State at large, one of whom shall be chosen from each of the three districts, as hereinafter provided.'"

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MR. FILCHER. Mr. Chairman: I have no objection to the idea suggested in that amendment. It occurs to me that it is the right idea. In fact, as I understand section twenty-one, taken with section twenty, as amended, one of the Commissioners must come from each of the districts herein specified, and by leaving that section as it is, section twenty, as adopted, would carry with it the idea that they must be elected by the people of the whole State. In defense of right and the interests of the people, and to prevent the corporations from controlling the election of this Commission, and thereby defeating the whole object that we have been here two or three weeks trying to accomplish, I would suggest that the amendment offered by the gentleman from San Francisco be defeated, and the section be allowed to stand as it is, provided it is clear that it covers the idea that these Commissioners shall be residents of the various districts. If that idea is not clear from the section as it now stands, the amendment suggested by the gentleman from Alameda, Mr. Webster, would make it so.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: After the adoption of the amendment proposed by the gentleman from Alameda, Mr. McCallum, providing that one of the Commissioners should be elected every two years, I think it would be quite necessary to have the Commissioners elected by the whole State, but coming from the districts as reported by the committee, and the reasons seem obvious. It would be very easy, I apprehend, if it was a very closely contested election, to control that election by the colonization of three, four, or five hundred votes in that district. I think the amendment proposed by the gentleman from Alameda, Mr. Webster, is a good one, and I think the words convey the proposition very clearly that each Commissioner shall come from his particular district, and that he shall be elected from the State at large. That becomes necessary after the adoption of the amendment proposed by the gentleman from Alameda, Mr. McCallum. It cannot do any harm, and it certainly would relieve us of the danger of colonization which might occur otherwise.

REMARKS OF MR. REYNOLDS.

MR. REYNOLDS. Mr. Chairman: It is wholly a matter of indifference to me which one of these amendments is adopted. I offered the amendment for the purpose of precisely defining what we meant, and also to meet the objections of some gentlemen. In conversation with some of the friends of this measure, I have suggested that the Commissioners be each selected at large, and not from the several districts, as is provided in this section twenty-one. To that objection was immediately raised that they wanted to have the Commissioners to come each from a separate district. One gentleman said: "I want to see the man I am voting for;" and hence I offered this amendment. The difficulty arises from patching the report of the committee by making one of the Commissioners elected once every two years, instead of all every four years. And, further, the whole State at large has to vote upon one Commissioner from only one district. Objection is also made to that. That is another reason why I offered this amendment; but, if the committee desires to accept the other, I will agree to accept the amendment.

REMARKS OF MR. HAGER.

MR. HAGER. Mr. Chairman: I regret that the amendment of the member from Alameda was adopted, yesterday, changing the term of office, so that one Commissioner shall be elected every two years. As I understand it now, there are three Commissioners, whose term of office shall be six years, and they shall be elected every two years; and it is proposed that they shall be elected by districts. As reported by the committee, they would be elected all at the same time, in three districts, throughout the State. No, sir; I think there is safety in that mode of election. They should be elected at the same time in three distinct districts of this [illegible], and then there could be no colonization from one district to another, by the railroads transporting their workmen from one district to another. If they are elected throughout the State one at a time, it will perhaps give them the control; but if they are elected at the same time in three different districts, according to my opinion it will be under the control of the people; and I would prefer that this section should stand as it was originally drafted by the committee, so far as these Commissioners are concerned; that is, that they should be elected at the same time in three distinct districts throughout the State; that the people in each district may select their own man and elect him. They can reëlect him if he turns out to be a good man. Let them be elected at the same time. It is stated they will acquire experience. They will be continued in office if they are good men. If the people understand them to be good men, they will be continued in office; and if they are not good men, let them not be continued in office—let them be changed every four years, if necessary. I would suggest to the Chairman of the Committee on Corporations, if I could get his ear—I would suggest to the Convention, that this section twenty be recommitted to the Committee on Corporations, with instructions to restore that provision as it was originally reported; that is, to amend section twenty so that it will provide for the election of the Commissioners every four years. Now, we can get that back, and then elect them by districts, as proposed originally; and we will accomplish a purpose that would be for the safety of the State. I think we had better adopt that course—recommit section twenty to the Committee on Corporations, with instructions to amend it so that these Commissioners shall be elected at the same time, one in the north, one in the middle, and one in the south, so that there can be no colonization from one district to another. If the Chairman of the Committee on Corporations will accept that proposal, I will move it, or leave it for him to move that it be recommitted, with instructions to change it back. I will make the motion. I move that section twenty be recommitted to the Committee on Corporations other than Municipal, with instructions to amend so that it shall provide for the election of three Railroad Commissioners, by districts, at the same time, and make their term of office four years.

THE CHAIRMAN. The gentleman's motion is not in order. The Committee of the Whole cannot recommit.

REMARKS OF MR. MCCALLUM.

MR. MCCALLUM. Mr. Chairman: I understand that the motion of the gentleman from San Francisco is not entertained. A question is pending, first, to strike out section twenty-one, and next to amend it so that the Commissioners shall be elected by districts, or so that the Commissioners shall be residents of the different districts, but elected by the State at large. Now, Mr. Chairman, I desire to say that while it was no part of my object to effect the election of these Commissioners by the State at large by offering the amendment, and the reasons were stated at the time, I believe it has accomplished a good thing if it has had a tendency to secure the election by the State at large. And I must say that the views of the gentleman from San Francisco are about as crude on this question as they were on his proposition, in arguing it the other day in his general speech, that if it was by districts then we would not have any party connected with it. Who ever heard of a District Convention being made up except by parties, and the State Convention being divided by its delegates into different districts?

MR. HAGER. I am still in favor of electing by districts, and that will take it out of party.

MR. MCCALLUM. Mr. Chairman: District Conventions are simply the State Convention divided up into districts, and the parties nominate just as in the State at large. The fact is, that these different delegates make their arrangements beforehand as to who they will vote for in the different districts when in the State Convention. Now, Mr. Chairman, in my humble judgment, we have done remarkably well so far as we have gone on section twenty, but we would lose much if we adopted the idea of electing by districts. I prefer to have the whole people of the State vote for the Commissioners. Make the field wider, the voters more numerous, then there is less opportunity for that concentrating of the power of one great element in our politics. The more you narrow that element—the fewer the voters, the better the opportunity for control. The argument used the other day by the gentleman from Sacramento, Mr. Edgerton, has not been answered as to the probable ability, in a particular district, to colonize voters, by which means the great corporations may secure the election of a delegate from that particular district. No, sir, in this mighty conflict, now fully inaugurated, culminating in these last few days in the State of California as nowhere else in the nation, and as we are told nowhere else in the world, I am glad that we have to make the conflict first, here, on the great and main question of absolute control. In that conflict I want to see the whole people of the State of California have an opportunity to stand up on one side or the other on the election of every Commissioner. As to the amendment of my colleague, that these Commissioners shall be elected by the State at large, but one shall be chosen from each district, I care very little; but I think the best amendment is simply to strike out section twenty-one. Section twenty implies that they are to be elected by the State at large, but to come from districts. I am in favor of striking it out, because it ought to be stricken out. Then, as to selecting them—they would undoubtedly be selected from different parts of the State. Districts to be formed for what purpose? Simply for the purpose of selecting the locality in which these three gentlemen may reside. There is no such thing as a railroad district in the State. There would be, it is true, if section twenty-two was adopted; but in my judgment section twenty-two should also be struck out, when we come to it. In case that section was adopted, it would only be to say, "you shall select one of these Commissioners from this list of counties, and another from that list, and another from this other list of counties." Even then two Commissioners out of the three would be elected almost in San Francisco, because I notice Alameda in one of those districts and San Francisco in another. I understand that gentlemen have anticipated, or feared, that the City of San Francisco would get all or most of these Commissioners. I do not apprehend it, sir, for one moment. There will be at least two parties, perhaps three. I believe it is understood that there are three, and we might as well look at the facts. A party that would select all the delegates from one part of the State would furnish an argument against itself; and the managers of each party would be anxious enough to distribute these Commissioners throughout the State, without any constitutional provision to say that they shall be so and so distributed. It is unbecoming the dignity of a Constitutional Convention to say that these Commissioners shall be elected one from each of three particular parts of the State. I have no doubt it would likely result in that now, without a constitutional provision to that effect. I care little; but it seems to me that the better way is simply to strike out section twenty-one, and then strike out section twenty-two.

I must say, that in taking this position, in defending as I try to, and voting as I try to continually to give the most absolute control consistent with justice, I am governed by no such prejudice as seems to be implied in the resolution here this morning; no prejudice against any corporation, but a desire to assert the authority of the government to control the corporations. If the resolution which was offered here and laid on the table, had not taken up more than enough time, I would like to have urged an amendment expressing the very opposite of that resolution—that is, requesting, as the Constitutional Convention, our Senators and members in Congress to vote against the proposed subsidy to the Texas Pacific and all other roads. The idea of inviting competition to regulate this question! We want control. Competition results in nothing but an agreement not to compete. Absolute control is what we want. I care not if the Central Pacific Railroad Company owns every road now, or should own every road in the State hereafter.

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REMARKS OF MR. BARBOUR.

MR. BARBOUR. Mr. Chairman: This illustrates the mischief of interfering with the report of the committee. The system of rotating, which struck the fancy of the gentleman as a good thing, is dependent entirely upon what shall be done in other articles. For instance, there may be no more biennial elections in this State. I understand that the Legislative Committee will report a section abolishing biennial elections, and providing for four years terms for county officers, as well as State officers. I do not know whether it will actually——

MR. McCALLUM. The Legislative Committee have done no such thing.

MR. BARBOUR. Mr. Chairman: That makes no difference. The proposition will be considered. We had this matter discussed in the Committee on Corporations, and we determined, in the first place, that the Commissioners should be elected, not by the State at large, but by districts. Now, it is said that there is a difficulty or confusion with regard to the construction placed upon the language of sections twenty and twenty-one. The twentieth section seems to provide that it shall be by the State at large, although the words "at large" are not used, and in section twenty-one that the election is by districts. Now, it ought to have remained as reported by the committee. The proposition of the gentleman from Alameda, Mr. Webster, is that whilst the candidates shall be residents of the districts, the election shall be by the State at large, and the Chairman of our Committee on Corporations immediately gives up the only vital thing there was in the whole proposition, and says he has no objection to that amendment.

MR. ESTEE. Mr. Chairman: I stated that if the amendment presented by the gentleman from Alameda, Mr. McCallum, remained in section twenty, then I think that we ought to have some such provision. I am still in favor of the original report, and it ought to be adopted.

MR. BARBOUR. Mr. Chairman: It makes no difference, it seems to me, whether the rotating principle of the gentleman from Alameda be incorporated or not, but the gentleman to be elected from a district should be voted for only by the residents of that district. Now, that is all there was in the idea of districts, because there was a presumption that the voter would have some acquaintance with a candidate presented where he lived in the district, and the vote was confined to the district, and he would have no acquaintance with him if he was voted for by the whole State. In other words, that a voter in Siskiyou County, voting for a candidate in the southern district, would not be presumed to have acquaintance with him. I insist, sir, that the only way for the Convention now to get out of the confusion into which this whole subject has drifted, is to retrace their steps and recommit it to the Committee on Corporations to provide for the election of these Commissioners at the same time, at the gubernatorial election. That is the only way by which these difficulties can be avoided, such as the colonization of voters. I therefore hope that it will be recommitted, and I move that the committee rise, report progress, and recommend that sections twenty-one and twenty-two be rereferred to the Committee on Corporations other than Municipal, to correct only the matter in reference to the election of these Commissioners.

MR. ESTEE. Mr. Chairman: I second the motion.

MR. ROLFE. Mr. Chairman——

THE CHAIRMAN. It is not debatable.

The motion prevailed on a division, by a vote of sixty-seven ayes to thirty-eight noes.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Corporations other than Municipal, and report it back with the recommendation that sections twenty and twenty-one be recommitted to the Committee on Corporations other than Municipal, with instructions to reconstruct the same so as to harmonize section twenty-one with the action of the Committee of the Whole on section twenty.

MR. ESTEE. I move that the recommendation of the Committee of the Whole be adopted, and that it be so referred.

MR. McCALLUM. Mr. President: I understand a resolution was adopted here upon yesterday that the discussion on the report of the Committee on Corporations be closed to-day at twelve o'clock.

THE PRESIDENT. That motion was lost.

MR. McCALLUM. I am very sorry that it was lost, or that at any rate some motion was not adopted for the conclusion of the discussion and action upon the report of the Committee on Corporations. I believe we have been in session upon that report about four weeks, and I fully concur in the sentiment expressed by General Howard, that this report ought not to be referred back to the Committee on Corporations for any more tinkering. If it is proposed to amend section twenty, or any other section after the consideration it has received in Committee of the Whole, it can be amended in Convention.

MR. ESTEE. I rise to a point of order. There is no question before Convention.

THE PRESIDENT. The question is on the motion to recommit.

MR. ESTEE. I thought that had prevailed.

MR. McCALLUM. Mr. President: I am a little surprised that such a parliamentary gentleman as the gentleman from San Francisco is continually making these mistakes. If the gentlemen should agree with the idea of the gentleman from San Francisco, Mr. Barbour, that amendment can be adopted in Convention. All of these questions, or the most important ones, will come up in Convention. Then, why have another two weeks of discussion in Committee of the Whole by referring them back at this time. Now, when the discussion is fresh in the minds of all, and when we have reached the last two sections, why not take it up and dispose of it. I think that a large majority are opposed to electing by districts, and for reasons that it is not necessary to reiterate. And it is that sole idea, and the idea that there is something adopted yesterday which prevents it. We can take a vote on that. The judgment of the Committee of the Whole can be obtained on the pending amendments. I cannot see any necessity for a further delay. I have listened to the set speeches of many hours, occupying the time about one month, and the idea of referring it back now and not finishing up the business, it seems to me is wholly unfounded on any good reason.

MR. ANDREWS. Mr. President: I hope that the report of the Committee of the Whole will be adopted. I differ with the gentleman from Alameda. I believe that a majority of this Convention are in favor of electing the Commissioners from districts, by the people of the districts from which they are elected. I am in hopes that the report of the committee will be adopted.

MR. BARBOUR. Mr. President: I hope my friend from Alameda will not urge his objection. I have no disposition to take anything away from the section, but section twenty is passed, and we can do nothing with it in Committee of the Whole. I took this course so as to get it into a place where we can harmonize sections twenty and twenty-one.

MR. WATERS. Mr. President: I rise for information. I do not know that I understand the scope of the report of the Committee of the Whole. Is it to be the understanding that these sections, twenty and twenty-one, are to be referred back to the Committee on Corporations, with full power to do as they please with them?

MR. BARBOUR. It is only in reference to the subject of the election of the Commissioners.

MR. WATERS. With that understanding I shall support the report.

MR. SCHELL. Mr. President: I hope it will not be referred back to the Committee on Corporations. I think the past history shows that it is entirely out of the power of the Committee on Corporations, or any other Committee, to harmonize anything in this Convention, and I do not consider that it stands any better show to be reported back to this Convention in a way that will be satisfactory to the Convention, than it did before, and it seems to me that it is taking an unnecessary time for the disposition of this section. I hope the Convention will not refer it back to the committee.

MR. HALE. Mr. President: I do hope that this will not be done. What necessity is there for this action? What the Committee of the Whole has already accomplished, after nearly four weeks work, is that three Railroad Commissioners shall be elected by the State. That is one of the propositions. That is in section twenty. Another proposition adopted is that these Commissioners shall hold office for a term of six years, except that those elected shall determine among themselves by lot, the terms that they shall hold, two, four, or six years; and that at each general election, after the first election, one Commissioner shall be elected by the electors of the State. That is the next proposition adopted. Then follow the powers of the Commission, and the penalties inflicted under the supervision and direction of the Commission for violation of the rules they may prescribe. Another provision is adopted, placing the Commission itself under the restraint of the Legislature; giving the Legislature the power to pass all needed legislation to carry the powers of this Commission into effect. Now, sir, there is a compact, unified, harmonious whole, consistent in all its parts, amounting to a system both in the personnel of the Commissioner, the powers to be exercised, and the restraint under which they are to be placed. Now, what difficulty requires this to go back to the committee. The motion here made is to give the committee power to remodel according to their ideas. I think we have had enough of their work. The Convention has passed upon their work and adopted this language in lieu of theirs, adopting as much of theirs as was applicable, and modifying it where, in the sense of the Convention, they deemed it wise to do so. Why not complete the work of this article and have done with it, and pass to something else? It is suggested that section twenty-one does not seem to be in harmony with section twenty. One single, simple amendatory clause will bring them into perfect harmony. Bear in mind that we have already enacted in section twenty that the electors of the State at large shall elect the Commissioners. We have decided in the same way in Committee of the Whole, that they shall be elected at each general election, two years apart after the first election. Now, what further requires to be done? Section twenty-one reads now: "The State shall be divided into three Railroad Districts, as nearly equal in population as practicable, from each one of which one of the three Railroad Commissioners shall be elected." Now, sir, section twenty says that the electors of the State shall elect. Then this one prescribes in addition to that, that the electors of the State shall elect from each one of these districts one of these Commissioners. Now, sir, if there is any doubt about the interpretation of the two sections, then add after the word "elected" in section twenty-one, these words only: "by the electors of the State at large." But it is not necessary, because section twenty already enacts the same thing. Then, sir, section twenty-two proposes to divide the State into these three districts, as provided in section twenty-one. We do not need to go back unless we are dissatisfied with the work of the Committee of the Whole; and I submit that after we have spent as much time as we have upon this subject, and in view of the lapse of time, we cannot afford to go back and fight the battle all over again. We can adopt that single amendment, and I believe we shall give satisfaction to the body of the Convention, and to the people that sent us here. I hope that we shall not send it back, but that we will complete our work upon this article and go on with the other work.

MR. WEST. Mr. President: I wish to address the Convention for a few minutes, with regard to the plan proposed to divide the State into three districts and elect simultaneously the three Commissioners. Some of the reasons urged in the committee for a course of that kind were: first, that the election simultaneously in the several districts would prevent the colonization of voters in the localities to be affected. In the second place, that in conformity with the growing sentiment in the State

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we should adopt the system of local self government. That we should bring the election of the officers and servants of the people right directly under the control of those whose interests would be immediately affected thereby. It has been urged, and urged by a very respectable number of people, that even the members of the house of representatives of the State Legislature should be elected by single districts, and that each locality should be represented on the floor of the Legislature by a man selected from their own locality. We are situated very peculiarly as a State. Our geographical limits are somewhat unique—somewhat peculiar to California—some seven or eight hundred miles by the shore line. It is very expensive for the people to properly represent themselves in State Convention; and I refer to this simply because the affairs of the State must of necessity be controlled by political organization; and it is a very expensive task to send delegates from the remote parts of the State to Sacramento to attend a State Convention. The result is, that you place the nominating conventions in the hands of the political managers of the respective parties. Then you elect a man from the southern part of the State, and a man from the northern part of the State, with whom, perhaps, the majority of the voters in the remote part of the State have no personal acquaintance. They know nothing of the qualifications of the men they are voting for. Again, sir, the committee proposed that these elections should be held simultaneously, and that the term should be four years. Then the people of the northern district and the central district and the southern district——

MR. REYNOLDS. Mr. President: I feel impelled to rise to a question of order. The question before the Convention I understand to be a motion to refer to the Committee on Corporations, and the adoption of the report of the Committee of the Whole.

THE PRESIDENT. The gentleman's point of order is correct.

MR. REYNOLDS. Tally one for the gentleman from San Francisco, Mr. President. [Laughter.]

THE PRESIDENT. The Secretary will enter it on the record. [Laughter.]

MR. WEST. Mr. President: I am very much pleased that the gentleman has been gratified for once, and I will endeavor to conform to the ruling of the Chair. Another reason for electing by districts is that the people, who are the only sovereigns, can reëlect a man if he has been a good and faithful servant, and if the corporations should get control of this Board the people will have an opportunity to pass upon the fitness of these men once in four years. I am in favor of referring the sections back to the committee, and I shall move that the further consideration of the report of the Committee on Corporations be laid on the table for the time being, and that the Convention proceed to the consideration of the next question—the report of the Committee on Chinese. In that way we will not lose any time and yet effect what the Convention seeks to do—perfect the section.

MR. REYNOLDS. It does seem to me that I shall be obliged to call for another tally.

THE PRESIDENT. The gentleman will confine himself to the question.

MR. WEST. I sympathize with the gentleman's fastidiousness. I am in favor of this reference, from this consideration. There has been a new construction of this section. While we were in a demoralized condition last evening—while we were in a rather combustible condition—there was interjected into the bowels of this bantling a poison, a virus, that has thrown it into convulsions, and I think it should be permitted to be referred back for a little nursing, for it will certainly die if left in the demoralized condition in which we left it last night.

MR. REYNOLDS. Mr. President: I will not go all over this question in any remarks, but I rise simply to state that I offered the amendment to section twenty-one in good faith, in order to construe the amendment adopted to section twenty.

MR. HAGER. I rise to a point of order. The gentleman is not at his seat. He is violating the rule.

MR. REYNOLDS (from his own seat). That amendment, gentlemen, seemed to me to confuse the committee. The committee rose for the purpose of referring the matter again to the Committee on Corporations, in order to straighten it out and construe this matter to suit their views. Now we are in Convention, and the question is on the adoption of the report of the Committee of the Whole. The friends of that measure are anxious to proceed and perfect that report and explain the action of the committee already had, so that it will be made consistent with itself. But what do we find here? The enemies of the measure commence a system of guerrilla warfare for the purpose, not of doing anything, but of obstructing everything. And hence this debate, not for the purpose of perfecting the article so as to be consistent with itself, and so that the Commissioners can be elected by districts, or all at once, or at large, or any other way. That is not the object. It is the same kind of guerrilla warfare that this Convention meets at every step, on every question. It is for the purpose of wasting the whole session; of destroying the Convention; of bringing the Constitution into disgrace. It is a part of the programme that has gone forth, and every little bucolic editor is singing his little tune that the Convention will never amount to anything, and that the Constitution which it proposes will never be adopted. That is what these obstructive speeches mean when we attempt to get this thing referred back to the Committee on Corporations. I hope that the motion will be adopted; that the Committee on Corporations will have an opportunity of straightening out and defining what the Committee of the Whole intended by adopting these sections.

MR. BEERSTECHER. Mr. President: I would like to have the motion read, in order to ascertain exactly the nature of it.

THE PRESIDENT. It is a motion to recommit sections twenty and twenty-one to the Committee on Corporations other than Municipal, with instructions to harmonize these sections in conformity with the action of the Committee of the Whole.

MR. McCALLUM. What is the action of the Committee of the Whole?

THE PRESIDENT. To reconstruct sections twenty and twenty-one, in relation to the election of these Commissioners—whether by district or by the whole State.

MR. McCALLUM. To reconstruct how? Are they instructed to direct that they shall be elected by the State at large?

THE PRESIDENT. No, sir. The Chair understands that they are to harmonize section twenty, as it now stands, with the action of the Committee of the Whole.

MR. BEERSTECHER. Mr. President: I am in favor of a recommittal, providing that recommittal be limited in its terms; that is to say, that they have the power, and the power only, to so arrange the section that the Commissioners may be elected from districts. But if this matter is to be recommitted, and this committee is to have power to reconstruct everything, then, in my humble judgment, we are going to have a rehash of everything that has been said here for a month. We will be obliged to go over the whole matter again. As the matter now stands, I shall be obliged to vote against the motion.

MR. STEDMAN. I move the previous question.

MR. TULLY. Mr. President: I hope this motion will not prevail. We have had four weeks' discussion upon the matter, and when I have to take bad medicine, I want to take it at the earliest moment. I do not see any reason why it should be referred. It has been discussed and rediscussed from every standpoint conceivable. And why refer it back to the Committee on Corporations? It is well known that they never change front. When the Chairman makes a speech he stands by it. It is an unnecessary consumption of time. I hope that the committee will take charge of the matter and dispose of it at once.

MR. HOWARD. Mr. President: I am opposed to any more recommittals. We can do all this just as well in Convention. I do not propose to debate it, but call for the previous question.

MR. BEERSTECHER. I second the motion.

MR. WYATT. Second the motion.

MR. BROWN. I second the motion for the previous question.

MR. STEDMAN. So do I.

MR. HAGER. If the gentleman will allow me to put in writing the instructions, I would like to instruct the Convention as to what they should do, and I have drawn up a proposition on which they should act. That is, to recommit to the Committee on Corporations, with instructions to amend, so that it shall provide for the election of three Railroad Commissioners, by districts, at the same time, and making their term of office four years.

MR. SCHELL. I rise to a point of order.

THE PRESIDENT. There has been a call for the previous question and it has been seconded. The gentleman from Los Angeles has no power to accept anything under the previous question. The question is, Shall the main question be now put?

The motion prevailed.

THE PRESIDENT. The question is on the motion to recommit sections twenty and twenty-one to the Committee on Corporations other than Municipal, with instructions to harmonize them with the action of the Committee of the Whole.

MR. HALL. Mr. President: I call for the ayes and noes.

The ayes and noes were also demanded by Messrs. McCallum, Wyatt, Joyce, and Van Dyke.

The roll was called, and the sections were referred, by the following vote:

AYES.

Andrews,	Gorman,	Neunaber,
Ayers,	Hager,	O'Donnell,
Barbour,	Hall,	O'Sullivan,
Barnes,	Harrison,	Overton,
Barry,	Herold,	Reddy,
Barton,	Herrington,	Reed,
Bell,	Holmes,	Reynolds,
Blackmer,	Huestis,	Ringgold,
Boggs,	Hughey,	Shafter,
Boucher,	Hunter,	Shurtleff,
Burt,	Inman,	Smith, of San Francisco,
Casserly,	Johnson,	Soule,
Chapman,	Kelley,	Stedman,
Charles,	Keyes,	Steele,
Cowden,	Larkin,	Stevenson,
Cross,	Larue,	Stuart,
Crouch,	Mansfield,	Swenson,
Davis,	McComas,	Thompson,
Dean,	McConnell,	Tinnin,
Edgerton,	McCoy,	Townsend,
Estee,	McNutt,	Turner,
Evey,	Miller,	Tuttle,
Farrell,	Moffat,	Walker, of Marin,
Filcher,	Moreland,	West,
Finney,	Morse,	Wickes,
Freud,	Nason,	White,
Glascock,	Nelson,	Wilson, of Tehama—81.

NOES.

Beerstecher,	Graves,	Kleine,
Belcher,	Gregg,	Laine,
Brown,	Hale,	Lampson,
Campbell,	Harvey,	Lavigne,
Caples,	Heiskell,	Lewis,
Doyle,	Hilborn,	Lindow,
Dudley, of Solano,	Hitchcock,	McCallum,
Estey,	Howard,	McFarland,
Garvey,	Jones,	Mills,
Grace,	Joyce,	Noel,

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Ohleyer,	Swing,	Waters,
Porter,	Terry,	Webster,
Prouty,	Tully,	Weller,
Rhodes,	Vacquerel,	Winans,
Rolfe,	Van Dyke,	Wyatt,
Schell,	VanVoorhies,	Mr. President—50.
Sweasey,	Walker, of Tuolumne,	

FURTHER INSTRUCTIONS.

MR. TINNIN. Mr. President: I desire to offer a resolution.

THE SECRETARY read:

Resolved, That further instructions to Committee on Corporations other than Municipal:

That section twenty be amended so as to provide for the election of three Railroad Commissioners by districts, at the same time, and making their term of office four years.

Also, that the Legislature may remove a Commissioner by a two-thirds vote of all the members elected to each house.

MR. TINNIN. Mr. President: It is evident to me, sir, that as section twenty now stands, it is not worth the paper it is written on, and if this Convention would be consistent with itself it would strike out the section. As amended by the gentleman from Placer, simply a majority of the Legislature can remove any and every Commissioner thereon; and it simply relegates the whole subject-matter back to the Legislature, where it is now; and if this Convention desires to do anything on that subject we must adopt some system by which these Commissioners will have some status or standing before the people, and not subject to the biennial meetings of the Legislature to destroy them and take them from power.

REMARKS OF MR. CROSS.

MR. CROSS. Mr. President: I concur with the remarks of Mr. Tinnin and the resolution which he offers. We have got that section in this shape and think it is time we understood it. There was a power in this State to regulate fares and freights—the Legislature. We have now taken the power away from the Legislature. We have placed that power in a Commission of three men. When we have placed that power in the hands of three men, we say that whenever the Commission has established the rate of freights and fares that that rate is prima facie just and reasonable. I say that those rates can be upset in Court by one witness swearing that they are not reasonable, for they are in Court merely prima facie rates. Now the condition in which we have got the thing is this. The Legislature cannot establish rates of freights and fares, but the Commissioners can draw up a schedule of rates, and any man injured by a company charging him higher than those rates can have an action in Court. He brings his suit in a Court, and to make a prima facie case he presents the rates as established by the Commission. Having his rates as established by the Commission, he proves that the railroad company has charged him higher rates, and with that he rests his case. Now these cases will be tried where there is a station, because there is the only place where the railroad company can commit the offense. The case being tried in Court having reached this point, Leland Stanford runs a train there with a load of employés, every one of whom swears that the rates are unreasonable. When he is done with those witnesses, here comes another train, and so on with six or seven thousand employés, every one of whom will be in favor of high rates, because that means high wages. And when they have brought into this Court and sworn their six or seven thousand men that these are not reasonable rates, where is the man who is in the case to find six or seven thousand witnesses to swear that they are reasonable? What man has the ability to do it? We have fallen in the snare of the Central Pacific Railroad Company, and the fact is, that it has the Convention in its hand and shakes it up and down, and has us under its feet. There could not be a more favorable provision to the railroad company than the one we have adopted. After we have removed from the Legislature the power to regulate fares and freights, and placed it in the hands of the Commission, we say that the rates established by them shall be the prima facie rates. Leland Stanford's oath is more binding under our rules of civil proceeding than are the rates established by that Commission.

Let us understand it. Let us see what we are doing. We have got to send this back to the Committee on Corporations and change this, or let it go out to the people of this State that this Convention has fallen into the hands of this railroad company; that a gentleman here by a strong anti-railroad speech, and sandwiching in this word prima facie, blinded this Convention, and made us the tools of the railroad. I assert, and stand by it, that the result of this whole provision, as adopted, is that the oath of one of Leland Stanford's employés is stronger in a Court of this State than is the prima facie case of the rates of fares and freights established by the Commission, for the rate of freights and fares is merely prima facie evidence that they are just, and one witness beats a prima facie case.

MR. HERRINGTON. Mr. President: I move to amend the resolution so that it shall read:

Resolved, That the Committee on Corporations other than Municipal——

[Cries of "louder."]

MR. HERRINGTON. I will send it up.

THE SECRETARY read:

Resolved, That the Committee on Corporations other than Municipal so report this action upon sections twenty and twenty-one as to have the Commissioners elected by the State at large, but selected from districts.

REMARKS OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: I desire, if it is possible, to be heard upon this question, and the only possible way to be heard is to keep the newspapers quiet, and to cease whispering and talking. The question is a very interesting one, and requires a very little argument on either side. In the first place, by the election at large—as the Committee of the Whole have determined that the Commissioners shall be elected for six years, one member of the Commission every two years—it places the advantage of the election in the hands of the people of the State at large. It compels the expenditure of labor and money on the part of the railroad company at the election of each Commissioner that it would require to expend in the election of two Commissioners upon any other basis. By an election in districts, it is but a little trouble for the railroad companies to colonize for the election of any member of that Commission. I care not whether you have the election in two districts at the same time or one district, it only amounts to a question of numbers with the railroad company as between one district and two. When the election is at large, the whole body of the people are called upon to pass in judgment upon the question. Each time we have a jury of the whole people, and we are not compelled to abide the results of the action of the railroad company in shipping a portion of their employés from one district to carry by the weight of numbers in another. That is an advantage which we cannot well do without. This is a proposition which we cannot put aside and permit to be engrafted upon the Constitution in any other form. Any other action on the part of this Convention places us as completely in the power of the railroad corporations as we could possibly be, either in organizing a Commission or giving to the Legislature the power which they already have to control railroads. I am not particular as to the mode of the election of these Commissioners, whether two for two years, or one for four years, or whether, as the Committee of the Whole have established it, by electing one every two years to serve six years. I say I am not very particular about that; but that the Commission should be elected by the whole people of the State, we cannot dispense with. It is an indispensable method to the election of this Commission. Now, I say that this committee ought to be instructed to so arrange sections twenty and twenty-one that one Commissioner should be selected from each district, but elected by the State at large.

REMARKS OF MR. TINNIN.

MR. TINNIN. Mr. President: I am unalterably opposed to the amendment offered by the gentleman from Santa Clara, Mr. Herrington, for the reason that I do not want the agents of the San Francisco Gas Company, and the San Francisco Water Company, or the San Francisco railroad delegates who happen to get into the political conventions, to say to me who shall be nominated in the northern district of this State. We have but little of that element among us, and the people of that portion of the State are fully competent to say who shall represent them as Railroad Commissioners. If this idea is proceeded upon, the people who live in the districts of the State outside of San Francisco can say nothing about who shall be the nominee from those districts. We all know that these corporations control, to a great extent, the political conventions of this State, I care not what that convention is, whether Democratic, Republican, or Workingmen. The power of these corporations will be felt in these bodies, and they have the whole control of nominations; and this has invariably been through the San Francisco delegations that come into the several conventions of this State. For that reason I hope the gentleman's amendment will be voted down.

REMARKS OF MR. HOWARD.

MR. HOWARD. Mr. President: I am in favor of the resolution offered by the gentleman from Trinity, Mr. Tinnin. I am in favor of stopping there. I think the Committee on Corporations are pretty well instructed out of their boots already. I am opposed to destroying the Commission by indirection, and therefore I am opposed to the Trojan horse of the gentleman from Placer.

REMARKS OF MR. HALE.

MR. HALE. Mr. President: It seems to me we occupy a very peculiar position this morning. We have been in Convention and in Committee of the Whole discussing very largely section twenty of the report of the Committee on Corporations other than Municipal. We thought yesterday we could see the end of this discussion and labor; at least so far as the action of the Committee of the Whole is concerned. This morning, however, we have a new style of attack—new to me at least—in parliamentary usage. I do not rise for the purpose of raising any point of order. Of course I understand that what is done in Committee of the Whole only becomes the action of the Convention when the Convention adopts the action of the Committee of the Whole, and therefore the Convention, at the proper time, would proceed to the adoption or rejection of the work of the Committee of the Whole. But we have got a new style of getting at it now. We have got the committee to rise and recommend the Convention to refer back the matter to the Committee on Corporations, with instructions to harmonize the two sections, and then comes the gentleman from Trinity, with his new dodge, and asks the Convention to instruct the committee to review, in substance, all we have been doing in the Committee of the Whole for the last two weeks. That is the motion. Now, of course, if this question is to come up in this manner for determination, I suppose those who have favored these various propositions which have been adopted in the Committee of the Whole will be called upon to defend them now in Convention, under this modified form of attack, and also to argue and defend all the questions so that the Convention may pass upon each of these questions seriatim, just, in substance, as the Convention would do on a motion to adopt the action of the Committee of the Whole.

In the first place, the gentleman says he wants the committee to report back section twenty-five, so as to eliminate the amendment which is called the Hale amendment. Now what is that amendment? I propose to speak of that first, because it appears to be the most prominent in the mind of the gentleman. He says the Convention never should adopt section twenty with that amendment in. Now sir, that amendment is in these words, at the end of section twenty, and as qualifying the preceding clause:

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"Provided, the Legislature shall have power to remove any one or more of said Commissioners from office for dereliction of duty, corruption, or incompetency therein. And whenever, from any cause, a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified." Of course I expected that when we came into Convention there would be a resistance to the adoption there of the action of the Committee of the Whole on this amendment. But by this modification of attack it comes up here for trial again. Now, sir, I offered this amendment, and it was adopted in Committee of the Whole. On account of the previous question being called, I did not have the opportunity of which I intended to have availed myself of discussing this question a little in detail, and, perhaps now, that this attack is made upon it, it is proper that I should do it.

Mr. President, I find it very difficult to even hear myself speak on account of the confusion and noise in this hall.

THE PRESIDENT. Order! Order! Gentlemen will take their seats and preserve order.

MR. HALE. Mr. President: In support of the proposition in this amendment which is under discussion and examination, to allow the Legislature, by a majority vote of all the members of each house, to remove a Commissioner, I wish to say a word. It is objected, first, that the proper way to reach this, if by the Legislature at all, should be by the power of impeachment. To that, I answer that this remedy is cumulative. In other words, this proposition does not cut off the right of impeachment. It is merely an additional remedy. Then it is objected that it ought not to be done by a simple majority of each house of the Legislature. Now, that, of course, is the principal point of objection. Upon that point I wish to say a word. Let us take the converse of this proposition. For instance, it is suggested that it should require a two-third vote of all the members. Let us take that proposition and see where we are left. Two thirds of each house is required to remove a Commissioner, and I may say before entering upon that branch that the grounds upon which they may be removed, are dereliction of duty, corruption in office, or incompetency in office.

MR. REYNOLDS. Mr. President: I am compelled to rise to a question of order. As I understand it the resolutions before the house touch the election, and not the impeachment or removal of these Commissioners.

MR. HALE. Mr. President: I am speaking to the pending motion to instruct this committee, and for the purpose of showing that I am within the rule, I ask the Secretary to read the pending resolutions.

THE SECRETARY read:

"By Mr. Tinnin:

"*Resolved*, That further instructions to the Committee on Corporations other than Municipal:

"That section twenty be amended so as to provide for the election of three Railroad Commissioners by districts, at the same time, and making their term of office four years.

"Also, that the Legislature may remove a Commissioner by a two-thirds vote of all the members elected to each house.

"By Mr. Herrington:

"*Resolved*, That the Committee on Corporations so report their action on sections twenty and twenty-one as to have the Commissioners elected by the State at large, but selected from districts."

THE PRESIDENT. The gentleman is in order, and will proceed.

MR. HALE. Mr. President, and gentlemen of the Convention: The precise proposition presented by the pending instruction, then, is to amend the amendment which was offered by myself so that the Legislature only could remove for dereliction of duty, for corruption in office, or for incompetency in office, by a two-thirds vote of each house. Now, Mr. President, what are the probabilities?—and here no rule of law can be invoked—it is simply that common sense which every member on the floor possesses, founded upon the common experience pertaining to matters in the community in which he lives. What is the probable danger which will invoke the power of the Legislature to remove one of these Commissioners at all. Why, I answer, in the sentiment, if not in the language—for I am unable to quote—of the gentlemen who have addressed the committee upon this whole subject during the last three weeks—that the State by this plan of a Commission proposes in general terms to invest this Commission with its powers of regulation, and its discretionary powers over railroads in the management of their property as involving the rates of freights and fares. It has been objected by many members on the floor, and with large reason, that while they concede that the State had the power to regulate, and the exigencies of the case are such that it is expedient for the State to exercise that power, yet that it is dangerous to put this power in the hands of a Commission of three men, who, as they say, will be in the power of the railroad company, who will always be interested in regulating their own fares and freights without the dictation of the public, or the control of these Commissioners; that they would, if possible, get control of this Commission, so that through the Commission they will have the power of making their own rates. Now it cannot be denied that this consideration is entitled to very serious consideration. When you have placed all the power of the State in the hands of three men, and in so important a matter as this, obviously there will be strong temptation, strong inducements, for these transportation companies to exercise all possible influence to get the control of that Board, and through such control to dictate the action of this Commission. And it is obvious that if they should accomplish this result, that this Commission, so far from being a means of security to the people against oppression, would become an engine of oppression beyond all precedent; because, as the power will have been placed in the hands of the Commission, and taken away from the Legislature, if, then, the railroad company can obtain such control, they would in fact control the whole question, though every citizen in the State be aggrieved at the manner in which they had done it. There, I suspect, is the real point of danger.

That is the strongest objection that has been urged against the system of the Commissioners. Of course on the other side it has been said, and I think with conclusively good reason, that because the Legislature will not have the practical ability, will not be sufficiently informed upon the matters involved in the regulation of fares and freights, for that reason the Legislature in the future will not, as in the past it has not, make any beneficial regulation. Moreover, that by reason of the flexible, changeable condition of circumstances under which the rates of fares and freights must be established, that what might be proper on the first day of January, might be improper on the first day of July. What might be proper on one route might be improper upon another. It is, therefore, one of those matters that must be exercised by a Board or body having discretionary power to deal with any subject so as to have more flexibility in the application of the rule to different localities. Hence the necessity of giving this power of regulation to a Board who may be fully informed. That is a good idea. Then assuming that the State will regulate, and that it will do it by a Commission—I think, sir, that the other conclusion is also inevitable, that you must place your Commission under some responsibility. You must not put this Commission above the law, above the Legislature, and above the Government, and place ourselves unreservedly in the hands of these men. This might be a means of oppression. It would be a worse despotism than anything that has occurred in modern history. First, you have the power of impeachment applicable to every State officer. This amendment does not infringe upon that, and the object of the amendment adopted by the Committee of the Whole was, that it should be done by the Legislature, by a vote of two thirds of all the members. Now—and I will assume that the report of the Committee on Legislative Department will be adopted—they propose that the Legislature shall consist of sixty members of the lower house, and thirty members of the Senate; that the Assemblymen shall hold office for two years, and Senators for four years, therefore one half of the Senate will be elected at each election, and all the members of the house. Now, gentlemen, let us take the case of a Commissioner, who, having been elected by the people, by them believed to be qualified and faithful, has been induced to fall down, to use a popular phrase. The railroad company have induced him to disregard his oath, and duty to the people, and make him their servitor. Take that case. How will the people protect themselves against that corrupt policy, and the perpetuation of that wrong for the whole period of his term of office? Why, the transportation companies have need to secure only one third of one house. They can choose for themselves whether they will go to the Senate or the Assembly. The house will consist of sixty members. One third of sixty is twenty; twenty-one is more than one third of the whole body. If they can get twenty-one votes in the Assembly to maintain them, or deny the application to remove the Commissioner for dereliction of duty, corruption, or inefficiency in office, they have defeated the action of the whole Legislature, though every other member of both branches was in favor of his removal for notoriously good cause. Take the Senate. They say, "the Senate is our point of attack; we have more brains there than we have in the house." Ten is one third of thirty. If they can get eleven Senators, though eighty members of the Legislature are in favor of the removal these eleven men can stand in the way of any action, and prevent the removal of a corrupt, inefficient, and derelict officer.

In this way you might fasten upon the State a bad Commission, and the people have practically no power of removal. Suppose the power of impeachment is invoked. Impeachment articles must be adopted by the Assembly, and the Senate constitutes itself a Court. A Commissioner can only be impeached by a two-third vote there. That is no efficient remedy. Unless you give this power of removal to the Legislature, as proposed by the amendment now sought to be modified, you have lost all practical control over the Commission. Although they, or any one or more of its members, shall become derelict, so as to destroy its usefulness, the people will be practically remediless. In favor of the proposition as it stands, I suggest that to have the control of this Commission wisely and discreetly applied, it should be under the control of the people in the most direct and efficient manner in which it can be brought to bear. How can that be done? A man who is about to be removed has his case before the Legislature, all of one house and half of the other of which have just come from the people. If a man is known to be derelict in his office of Commissioner, the people will know it. They will elect Senators and Assemblymen with a view to that fact. I think there is no danger of the people sending their representatives here in favor of removing an officer from this Commission who has performed his duty to the people under the Constitution. I hope, therefore, that this portion of the resolution of the gentleman from Trinity will not be adopted. I leave to other gentlemen whose propositions are attacked to defend themselves, as I find myself unable to talk longer.

MR. HOWARD. I call for the previous question.

MR. HALE. I call for a division of the question.

MR. CAMPBELL. Mr. President: I hope the call for the previous question will not be made. I desire to make some remarks in answer to the gentleman from Nevada.

MR. HOWARD. I will withdraw it.

MR. CAMPBELL. Mr. President: I did not hear the remarks of the gentleman from Nevada, Mr. Cross, but, as they have been reported to me, I understand that they were to this effect: that the amendment introduced by me yesterday was an inspiration from Leland Stanford; that it was got up by him, or in his interest, and that it was introduced here in the interest of the railroad by a gentleman pretending to be in favor of curbing the power of the corporations.

MR. CROSS. You have not been correctly informed. I am sorry that you did not hear what I said. I said that the result of the word prima facie in that amendment was, with the rest of the amendment, to place

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this matter where the Legislature could not regulate freights and fares, and it placed it where, whenever a case came in Court, the oath of Leland Stanford would be more in law than the rates of freights and fares, as established by the Commission, upon this one point, whether the rates should control the price allowed to be charged.

MR. CAMPBELL. Of course, if that is the remark of the gentleman, I have been misinformed in regard to it, and have nothing further to say. But I doubt very much whether the vote of Leland Stanford, a party interested, would be preferred to the prima facie presumption of the law that the rates established are reasonable and preferred, also to the testimony of the Commissioners who would give evidence of the cause of establishing the rate, as to the basis on which it was established, and as to its reasonable character.

MR. HOWARD. Mr. President: I renew my call for the previous question.

Messrs. Wyatt, O'Donnell, McComas, Tully, and Evey seconded the call.

The motion prevailed.

THE PRESIDENT. The main question has been ordered. The first question is on the amendment offered by the gentleman from Santa Clara, Mr. Herrington, to the resolution offered by the gentleman from Trinity, Mr. Tinnin. The Secretary will read.

THE SECRETARY read:

Resolved, That the Committee on Corporations so report their action on sections twenty and twenty-one as to have the Commissioners elected by the State at large, but selected from districts.

The amendment was lost.

THE PRESIDENT. The question is on the resolution offered by the gentleman from Trinity.

MR. CROSS. I wish to ask a question with regard to the resolution, if it be in order.

THE PRESIDENT. The Secretary will read it first.

THE SECRETARY read:

Resolved, That further instructions to Committee on Corporations other than Municipal:

That section twenty be amended so as to provide for the election of three Railroad Commissioners by districts, at the same time, and making their terms of office four years.

Also, that the Legislature may remove a Commissioner by a two-third vote of all the members elected to each house.

MR. CROSS. Mr. President: I wish to ask if it be in order to offer an amendment to the resolution.

THE PRESIDENT. No amendment will be in order.

MR. BARBOUR. I call for the ayes and noes.

Messrs. Stedman, Brown, O'Sullivan, and Gorman seconded the call for the ayes and noes.

MR. STEDMAN. I call for a division of the question.

MR. HALE. Mr. President: Is it in order to call for a division of the question? There are two distinct propositions in the resolution.

MR. TINNIN. The house has just voted down one of the propositions, as offered by the gentleman from Santa Clara.

THE PRESIDENT. The resolution is divisible. Does the gentleman ask a division of the question?

MR. HALE. Yes.

MR. SHAFTER. How is it possible, when the house has already ordered the main question to be put?

THE PRESIDENT. The main question is the resolution, and a division is called for, which is in order.

MR. SHAFTER. That would be putting two separate questions to the body.

MR. JONES. I ask for a further division of the question. There are two distinct propositions in the first part—one in regard to the election of Railroad Commissioners from districts, and the other in regard to their term of office.

THE PRESIDENT. The Chair thinks the resolution not capable of any further division. Call the roll.

The roll was called on that portion of the resolution relating to electing the Commissioners, and it was adopted by the following vote:

AYES.

Andrews,	Gorman,	Nason,
Ayers,	Grace,	Nelson,
Barbour,	Gregg,	Neunaber,
Barnes,	Hager,	O'Donnell,
Barry,	Hall,	O'Sullivan,
Barton,	Harrison,	Reddy,
Beerstecher,	Heiskell,	Reed,
Bell,	Hilborn,	Reynolds,
Boucher,	Holmes,	Rhodes,
Brown,	Howard,	Ringgold,
Burt,	Huestis,	Schell,
Caples,	Hunter,	Smith, of 4th District,
Casserly,	Johnson,	Smith, of San Francisco,
Charles,	Joyce,	Stedman,
Cross,	Kelley,	Stevenson,
Davis,	Keyes,	Stuart,
Dean,	Lampson,	Swenson,
Doyle,	Larkin,	Swing,
Edgerton,	Lavigne,	Thompson,
Estee,	Mansfield,	Tinnin,
Evey,	McComas,	Townsend,
Farrell,	McConnell,	Turner,
Filcher,	McCoy,	Tuttle,
Freud,	McFarland,	Vacquerel,
Garvey,	Miller,	Walker, of Marin,
Glascock,	Moreland,	Waters,
Wellin,	Wickes,	White—82.
West,		

NOES.

Blackmer,	Jones,	Steele,
Boggs,	Kleine,	Sweasey,
Campbell,	Laine,	Terry,
Crouch,	Larue,	Tully,
Dudley, of Solano,	Lewis,	Van Dyke,
Estey,	Martin, of 2d District,	Van Voorhies,
Finney,	McCallum,	Walker, of Tuolumne,
Graves,	Mills,	Webster,
Hale,	Noel,	Weller,
Harvey,	Ohleyer,	Wilson, of Tehama,
Herold,	Overton,	Winans,
Herrington,	Porter,	Wyatt,
Hitchcock,	Prouty,	Mr. President—41.
Inman,	Rolfe,	

On that portion of the resolution relating to the removal of the Commissioners the roll was called, and it was adopted by the following vote:

AYES.

Andrews,	Gregg,	Ohleyer,
Ayers,	Hager,	O'Sullivan,
Barbour,	Hall,	Overton,
Barnes,	Harrison,	Porter,
Barry,	Harvey,	Prouty,
Barton,	Heiskell,	Reddy,
Beerstecher,	Herold,	Reed,
Bell,	Herrington,	Reynolds,
Blackmer,	Holmes,	Ringgold,
Boucher,	Howard,	Rolfe,
Brown,	Huestis,	Schell,
Burt,	Hunter,	Smith, of 4th District,
Campbell,	Inman,	Smith, of San Francisco,
Caples,	Johnson,	Steele,
Casserly,	Jones,	Stuart,
Charles,	Joyce,	Sweasey,
Cross,	Keyes,	Swenson,
Crouch,	Kleine,	Thompson,
Davis,	Larkin,	Tinnin,
Dean,	Larue,	Townsend,
Doyle,	Lavigne,	Tully,
Edgerton,	Mansfield,	Tuttle,
Estee,	Martin, of Alameda,	Van Voorhies,
Evey,	McComas,	Walker, of Marin,
Farrell,	McConnell,	Webster,
Filcher,	McCoy,	Weller,
Finney,	McNutt,	Wellin,
Freud,	Miller,	West,
Garvey,	Moreland,	Wickes,
Glascock,	Nason,	White,
Gorman,	Nelson,	Wilson, of Tehama,
Grace,	Neunaber,	Wyatt,
Graves,	O'Donnell,	Mr. President—99.

NOES.

Boggs,	Lampson,	Stevenson,
Dudley, of Solano,	Lewis,	Terry,
Estey,	McCallum,	Turner,
Hale,	McFarland,	Van Dyke,
Hitchcock,	Mills,	Walker, of Tuolumne,
Kelley,	Noel,	Winans—20.
Laine,	Rhodes,	

MR. TERRY. Mr. President: I move that the Committee on Corporations be instructed to further amend section twenty, so as to give the Commissioners power to punish for contempt of their orders and process in the same manner, and to the same extent, as Courts of record. As the section now stands, there is no power to punish any person for contempt of that Commission. They may summon a person. He may refuse to answer questions; he may refuse to produce papers. The Courts may say they have no power; that the Court has no power to punish, except for contempt of its own process. It is a separate, independent tribunal of its own; and it ought to be independent. I think this is absolutely necessary to the efficiency of the Commission.

THE SECRETARY read:

Resolved, That the Committee on Corporations be instructed to further amend section twenty, so as to give the Commissioners power to punish for contempt of their orders and process, in the same manner and to the same extent as Courts of record.

MR. SHAFTER. Mr. President: I hope that the committee will follow out its original views now. This was proposed and pointed out by three or four gentlemen, and it was declared by the Chairman of the Committee on Corporations and others that the provision was all perfect in the form in which it stood, and the committee so voted by a large majority. I trust that they will show their consistency by voting down these things. We have had several weeks' work on it, and the Committee of the Whole has got right, and there can be no mistake; and I hope that they will not stultify themselves by voting to-day contrary to what they voted yesterday.

MR. REYNOLDS. Mr. President: This is another exhibition of obstruction over again—always from the same side of the house—to any action of the friends of this measure. Whenever they undertake to perfect it, or to make it acceptable, or to suit themselves, they are eternally met with some obstruction, proposed from the same side of the house. I hope the resolution will be adopted.

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MR. SHAFTER. Mr. President: I want to say a single word in regard to this obstruction. I pointed this difficulty out in a speech yesterday, and dilated upon it. So did two other gentlemen. We put the Convention and the gentleman from San Francisco in full possession of the argument, and he was too stupid to see the force and effect of it. And, now, I wish that the other side of the house would relieve itself of a little of this prejudice which refuses to listen to the voice of reason, simply because it comes from the other side of the house.

THE PRESIDENT. The question is on the adoption of the resolution.

The resolution was adopted.

MR. McCALLUM. I wish to offer a resolution.

THE SECRETARY read:

Resolved, That the Committee on Corporations be further instructed to so amend section twenty as to strike out so much thereof as provides that the charges fixed by the Commissioners shall be only prima facie evidence of the correctness of such charges.

MR. CROSS. Would the gentleman not consent to amend his resolution so as to have the words "prima facie" stricken out and the word "conclusive" inserted?

MR. McCALLUM. I think it would be better, and would have no objection to it; but I propose to submit the sole idea to the Convention that to make their fixing of rates only prima facie destroys the whole object. There is no more reason that it should be prima facie in the case of the railroad company than on a toll road by the Board of Supervisors. If you make it a case of prima facie evidence you end the whole matter. Nothing can be done. The point made by the gentleman from Nevada this morning occurred to me yesterday, and I think it is conclusive. There could be no conviction under the section as it reads.

THE PRESIDENT. The hour having arrived, the committee will take a recess until 2 o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and quorum present.

IN REFERENCE TO RAILROADS.

THE PRESIDENT. The question is on the resolution of the gentleman from Alameda, Mr. McCallum.

MR. FILCHER. Mr. President: I desire to offer an amendment to the resolution of the gentleman from Alameda, Mr. McCallum.

THE SECRETARY read:

Resolved, That the Committee on Corporations other than Municipal be instructed to further amend section twenty, as adopted by the Committee of the Whole, by striking out the words "prima facie," as they occur near the last of the section, and inserting instead thereof the word "conclusively."

THE PRESIDENT. The question is on the amendment.

REMARKS OF MR. WATERS.

MR. WATERS. Mr. President: It does seem to me that this is a very queer manner of defeating all we have done in the last month. I certainly cannot regard it as a fair way of reconsidering the action of this Convention. When you consider and view this matter in all its various motions—all these various instructions; when you consider the vote by which these motions were carried, I think you will find it a dangerous course to pursue. Now, a certain gentleman moves to instruct the committee to amend this section in certain particulars. Now, when that motion comes up, all the opposing elements combine to carry that motion. In the first place, say there are thirty upon the floor who are opposed to regulation. They will all vote for it. Why? Because it tends to demoralize and destroy the combination made here yesterday of all the different elements who are in favor, in different ways, of regulating corporations. In other words, it combines the strength of those who are opposed to that particular part of the provision. Those, together with the thirty votes against regulation, can carry it. Then other gentlemen who voted against this particular clause, or that clause, will move to scratch out this thing, and put in that thing, and the motions will be carried by the same combination. Consequently, the wheel takes one more revolution backward. Then another gentleman gets up and moves that the committee be further instructed to put in another thing, and these same elements will combine and defeat the action. Now, the only way to avoid a disastrous result is for each one to give up his own individual ideas. We cannot expect to carry out all our own individual ideas. We must compromise on something. We must give way at this point and that point in order to accomplish anything at all. But by this going backwards, as we have been going since ten o'clock this morning, we will by night have accomplished nothing, and the enemies will gain a complete victory over us. The minority will, by these tactics, be able to defeat the will of the majority. Now, I cannot say that I think the section is good in every particular as it stood last night—it is not altogether perfect—but taken in the main, it is far better than nothing, and nothing is what you are fast drifting towards. I think we had better let this thing stand. If we do anything at all, let it go to the Committee on Revision, and if they cannot harmonize these different things, then let us take it up when we have thought about it more deliberately. Just think of it. Yesterday, we carried this section by a vote of eighty, and to-day, by combining these different elements against it, we are fast undoing all that we have done. I think we should rest here awhile. After we have worked a month, and finally agreed upon a plan that the majority of the Convention can indorse, we go to work the next day and refer it back to the committee to tear out this clause and the other, to put in this thing and that thing, and when we get through it will amount to nothing. Now, I think there ought to be some mutual concessions made here. We have already made a great many concessions, but the work must not be overturned now.

REMARKS OF MR. FILCHER.

MR. FILCHER. Mr. President: I must say that I do not agree with the gentleman who has preceded me. It does seem to me that this Convention should have the right and the privilege of correcting what may seem to be an error in its judgment; if it has not, it ought to have. We acted in somewhat of a hurry yesterday in reference to some of these amendments that were adopted to the section submitted as a substitute by the Committee on Corporations. But in reading the section and amendments as an entirety, we find it more or less unsatisfactory in certain particulars, and I want to know, sir, whether it is not right, whenever we find that we have made a mistake, to stop and correct it. We are not stultifying ourselves in any manner when we do it.

Now, in reference to the amendment or resolution sent up by the gentleman from Alameda, I wish to say this: I am opposed to the section containing the words "prima facie." The argument, as far as the Commissioners were concerned, was in favor of leaving the matter to the Commissioners. When it was suggested here that even the Legislature should have revisory power over them, it was voted down. This maiming the proposition to allow the Legislature to behead the Commissioners by a two-thirds vote was adopted. Now, it seems to me, as the section reads, allowing these rates to appear as prima facie correct, that instead of leaving this matter entirely to the Commissioners, we are merely giving them inquisitorial powers, and they can do nothing without appealing to the Courts. Now, it becomes a question whether you will give the Commissioners this power or not. Will you give them conclusive power, as the Legislature has, or will you give them merely inquisitorial power, that is the question? As it stands here, the Commissioners are to establish rates. These rates are taken into Court and declared prima facie just and reasonable. The railroad and other corporations are presumed to own two thirds of the Courts of this State. Through their influence the Judges are elected to place, who favor their cause. The case comes into Court, and they have to show to the Court that these rates are not just and reasonable.

The judgment of the Commissioners, whose power we have established for that particular purpose—to establish these rates—must go to the wall, and the judgment of the Court takes precedence? Now, sir, it appears to me that this is the situation. If I am wrong, I am open to conviction. It is with a view of reaching the conclusion we desire to reach, and of giving to these Commissioners the power we desire and intend to give them, that of regulating freights and fares, that I make these suggestions.

It is said that if these railroad corporations can secure the election of these Judges, they can also secure the election of Commissioners. I will admit it; but, sir, on that depends the whole weight of this provision. If the corporations can control the politics of California, then we are gone. If the people cannot elect competent and honest men for these places, then we are gone. If the people are in favor of regulating these corporations, let them combine and vote for Commissioners whom they know they can trust to deal fairly by all parties. There is a higher motive than any mere political consideration. But, sir, when we do elect competent and faithful Commissioners, we do not want to find that we have made a fatal mistake, one which will render them powerless to accomplish any good. I claim that these words will cripple the section. They ought to be stricken out, and the word "conclusively" inserted.

SPEECH OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: I had supposed that some of these gentlemen who are so much shocked at the words "prima facie," would in the course of the discussion in the Committee of the Whole, have presented their objections, and done something towards sustaining them by argument, not by mere declamation.

Now, these words were put in that amendment advisedly and correctly. I think I stated pretty freely on a former occasion, perhaps on more than one occasion, that the object of these words was to provide that in all controversies of any kind whatsoever, there should be a presumption in favor of the Commissioners, which presumption would have to be overthrown; that, for instance, when the question comes up in regard to these rates, if it should come up in Court, the presumption ought to be on the side of the people as against the corporations. Now, let us look at what the course of proceeding would be in a law suit under that provision as it stands now. The party injured by any oppression on the part of the corporations, by charging him rates in excess of those fixed by the Commissioners, brings a suit against the railroad corporation, setting forth in his complaint that on a certain day he transported by railroad from one point to another certain goods, and that the charge per ton fixed by the Commissioners was, say, $10; that the railroad company charged him in excess of that and received from him the sum of $5, making $15 in all; that would be his complaint. Now, what would be the answer of the corporation? It could not deny that the rates had been fixed by the Commissioners, because that would be a matter of record which no man would undertake to deny, or if he did, it would avail nothing. But the corporation would set up in its answer that the rates fixed by the Commissioners were unreasonable rates, that they were below living rates, and that it was impossible for the corporation to carry on business because of the unjust rates. It would have to make such an answer. Then upon the trial the plaintiff would not have to introduce any evidence whatever. It would stand admitted that these were the rates fixed by the Commissioners, and the law declares them just and reasonable; and it would then devolve upon the corporation to show affirmatively, by evidence, that the rates were unreasonable; and then the plaintiff would have the privilege of replying to that evidence by introducing testimony to show that the rates were just and reasonable; in other words he would be entitled to introduce testimony in support of the legal presumption. I presume there is no lawyer who will deny the fairness of that proposition. That being the case, the question simply comes to this; whether the Commissioners

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are to have absolute power, against which there is no restraint anywhere; whether they are to be regarded as absolutely infallible, and whatever they do, whether just or unjust, is to be final and absolute, without remedy before any tribunal upon earth. That is now the question. Or whether, when they act unjustly towards the corporations, the latter shall be at liberty to show before a Court or a jury that the act of the Commissioners was unjust. The Commissioners can be there as competent witnesses to testify in relation to the cause of their action, and their reasons for it. They could show, having access—as is provided for here—having access to the books of receipts and expenditures of the corporations, conclusively from those very books that their action was right and reasonable, and that the rates established were not unjust rates. Then the question would be brought before the jury. Now, I am not going to assume, as the gentleman who last addressed the Convention seemed to assume, that all the Courts are going to be corrupt; that the railroad corporations are going to own them absolutely, in fee-simple; or that they are going to own even two thirds of them, as the gentleman says. Whenever the time comes that two thirds of the Courts of the country are owned by any set of corporations on earth, it is time then to abandon republican institutions. I go upon no such violent assumption as that. Then, too, you must assume that juries will be equally corrupt, for you can always have these cases tried before a jury. The right of trial by jury is secured in the bill of rights, not cut out as one gentleman seems to infer. It is secured, and under the present condition of things they would have to corrupt three members of the jury in order to prevent a verdict, so that the opportunities for corruption are infinitely reduced.

There is another provision, also, which would tend to prevent the railroad companies from disputing the rates fixed by the Commissioners, except in very clear cases, and that is this: that in all cases where complaint is made upon that ground, the party, if successful, may, in the discretion of the jury, recover exemplary damages. If he is damaged to the amount of five dollars, he may recover five or ten thousand dollars. There is no limit fixed to the discretion of the jury. The jurors come direct from the people, and surely there is no danger of their being in the interest of the corporations. Now, while I am ready and willing to put any reasonable check upon the corporations, I am not willing to go to the length of creating a tribunal of three men, a majority of whom, by their action, can absolutely and without possible appeal to any human tribunal, in effect confiscate property to the amount of one hundred and fifty or two hundred millions; where, if at any time two of these Commissioners shall perpetrate an act that is absolutely unjust, there shall be no check, no appeal to any Court or tribunal on earth, and the only check which there will be upon their proceedings will be simply that the Legislature, when it meets, may, by a two-thirds vote, remove the Commissioners; that is the only thing in the nature of a check suggested here. On the other hand, we have the fact that when these rates are fixed by the Commissioners, the legal presumption is in favor of their correctness, and the plaintiff does not have to present any evidence, the burden of showing that the rates so fixed are not just and reasonable is thrown on the other side, and the plaintiff then has the privilege of rebutting, and, in addition to actual damages, the jury may award exemplary damages. Now, what rational man, what man not absolutely blinded by passion and prejudice, can wish for any stronger guarantees than these? I do submit to this Convention, that, while it is our duty here to take every proper method, and to go as far as we can, within the bounds of reason, to restrain the overshadowing power of these corporations, and the influence which they have exercised, at the same time, in so doing we must not lose sight of all principles of right and justice. While we are strict we must be just in our legislation; and whatever the feeling may be to-day towards corporations, I undertake to say that the State will not sanction any measure the result of which is to establish a tribunal in our midst with absolute, arbitrary, and unchecked powers. It has been likened to the case of the Board of Supervisors establishing rates of toll. There is a difference; in the first place, there is a body regularly organized by law, and constantly changing from time to time, and the power which it wields is a mere trifle compared with those it is proposed to confer upon these Railroad Commissioners. Fixing the rate of toll on ferries and toll roads is a matter of some importance to the individual, it is true; but it is a mere trifling matter as compared with the power of these three men, who have power over every railroad, every transportation company in the State; who can declare what the income of every railroad or transportation company shall be which are organized or doing business under the laws of this State.

I trust, Mr. President, that these instructions will not be given to the committee. I know and feel that they are vital in their effects, and that they will accomplish no good results. It would tend, in my opinion, to defeat the very object which we have in view, to control these corporations; and I do hope this Convention will give no such instructions to the committee.

SPEECH OF MR. TERRY.

MR. TERRY. Mr. President: I was not in favor of a Constitutional Commission, for the reason that I believed it was placing too much power in the hands of three men; but inasmuch as this Convention has decided that this Commission shall be formed for the purpose of regulating freights and fares, I submit to the will of the majority, and I now desire that the means to secure the end shall be made effectual; and I do think that with the amendment offered by the gentleman from Alameda, Mr. Campbell, the Commission will amount to nothing at all, and that we might just as well blot out the whole section as to retain the words "prima facie."

The gentleman says that the onus will be upon the railroad companies to establish the fact that the charges are unreasonable. That is true; but what does that mean? It only means that in the first instance the plaintiff need not introduce any testimony to show that the rates are reasonable and just. The plaintiff needs only to prove in the first instance that the charges fixed by the Railroad Commissioners were ten dollars, and those exacted by the company were fifteen dollars. But when evidence is introduced upon the part of the railroad companies to show the unreasonableness and injustice of the charges, then the plaintiff will be called upon to introduce evidence in rebuttal. The case will then depend, as usual, upon the weight of the testimony upon the one side or the other. "Prima facie" does not then weigh against the sworn testimony, but the Court will be guided by the sworn testimony upon the one side or the other as to whether the rates established by the Commissioners are just and reasonable. The case will, after all, be determined by the evidence. So that the effect of this section, as it now stands, is not to make the rates of freights and fares fixed by these Commissioners the legal and lawful rates, but the effect will be to make the Court or the jury in every case the arbiters—make them fix the rates of freights and fares in every instance. I say that the words are of no use in this section. You might as well say that the railroad and transportation companies shall charge reasonable rates for freights and fares, and shall be subject to penalties for charging unreasonable rates; and then a man who had been charged fifteen dollars for what he supposed could be done for ten dollars, could bring an action and allege that the charge was an unreasonable one, and then the jury would determine it. It would do just as much good.

The whole benefit sought to be derived from this Commission would be destroyed or rendered nugatory by the retention of these words. The fact of the business is it would amount to just this: The Commissioners would recommend a scale of charges, and the railroad companies would adopt just what suits them. The question would not be determined by one tribunal, for there is no one tribunal who could determine these questions. In every single case the Court or the jury summoned to try the case would determine whether that particular charge, for a particular distance, was reasonable or not. We would have no precedent established, no system established, for if the Commissioners established a rate it may be overcome by the verdict of a jury, or the judgment of a Court.

Now, it is proposed, as far as this Commission is concerned, to delegate to them a portion of the powers of the Legislature. It is proposed to say that, as far as fixing the charges for the transportation of passengers and freight is concerned, the legislative power is vested in these Commissioners. The question here is whether it should be left to the Commissioners to determine whether they are reasonable or not. Shall the edicts of this Commission have the same force and effect as a statute enacted by the Legislature?

Now, the gentleman says the duties performed by the Boards of Supervisors in fixing rates of toll on ferries and bridges are not so great as the duties of these Commissioners; that the amount of property is not so great. That is true, but the principle is the same; exactly the same. Here is a Board, constituted by law, and the members elected by the people, who are required periodically to say how much toll shall be collected upon a certain road, or upon a certain bridge or ferry. Who ever heard of an action being brought against them on the ground that these rates are unjust or unreasonable? Just as well might a criminal, when called up for sentence, after having been convicted, say the punishment was unreasonable, and ask to have the question left to the jury. If you desire—and it does seem to be the desire of the majority—to limit the power of these Commissioners in fixing rates to be charged, then the same force and effect must be given to their action as are given to the Acts of the Legislature of the State, passed in accordance with the Constitution. Unless that is done, you might as well have no Commissioners.

Now, gentlemen, I hope that these words, "prima facie," will be stricken out, and that the rates of freights and fares fixed by these Commissioners shall be *conclusively* just and reasonable; that the rates fixed by them shall be the rates which the companies shall charge, and no more. If there is any unreasonableness in the charge, then the objections must be made to the Commissioners themselves, who are presumed to be honest men, and just to the corporations as well as to the people; and they are the ones to be convinced that these charges are not reasonable. If they are so convinced they can alter them, just as the Legislature can repeal the statute. But it will never do to leave these words in there unless you wish this whole scheme to amount to nothing. It will be just so much money thrown away, from which the people will reap no good. It will not do to put the power in the hands of a Justice of the Peace to say whether it shall have any force and effect. I hope, therefore, that the motion to instruct the committee to strike out these words will prevail.

SPEECH OF MR. CROSS.

MR. CROSS. Mr. President: I would not trouble the Convention again were it not that I see that there is a misunderstanding regarding the matters presented by the gentleman from Alameda, Mr. Campbell. It may not be out of place to review the action of this Convention in relation to this most important subject. The men who in this Convention favored the regulation of freights and fares early in the session came forward with the proposition that the State has the right to regulate the rates of freights and fares to be charged by the common carriers. That proposition was opposed, and eminent lawyers on the floor of this Convention said the State had nothing to do with the matter, and the eminent gentlemen who opposed us used the same terms which the gentleman from Alameda, Mr. Campbell, used towards us in his last speech; that when the State undertakes to exercise that right, it undertakes to control, and undertakes to exercise the right to confiscate one hundred and fifty millions of property. But I notice, sir, that these same lawyers have uniformly opposed the remedies which we are trying to establish; or, if they have not opposed them, tried to destroy their efficiency by backbiting.

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Now, the proposition was that the State had the right to regulate the freights and fares. The next proposition that was presented for our consideration was, in what manner can this best be accomplished, and the answer of some was, by establishing maximum rates to be charged by common carriers. We came to an understanding on that. The next question was, what arm of the government shall we authorize to grapple with this subject of freights and fares; and the gentlemen who talk about the danger of confiscating one hundred and fifty millions of property, said the Legislature must exercise this power. Other gentlemen, among them the Committee on Corporations, said that power should be exercised by a Commission, to be elected for that special purpose. That this Commission should exercise that power. What power? Why, the power of establishing maximum rates of freights and fares to be charged by common carriers. We have fought over this for the past six weeks, and finally we have arrived at this conclusion, by a large majority of this Convention. The conclusion is that this matter could not be safely trusted to the Legislature, and why? Because the Legislature, during the short period allotted for its sessions, cannot gather the information necessary to enable them to act intelligently upon the question as to what should be the maximum rate of freights and fares. And when we had decided that it was not possible for the Legislature to gather that information, it became necessary to establish some branch of government, some authority, some body of men, who could gather that information and act upon it. We then agreed, by a strong majority of this Convention, that the matter must be submitted to the Commissioners, and that the Commissioners should establish the rates of freights and fares. Now, having an understanding on that proposition, we have got the matter down to this point, that the Commission, having in its hands the power to gain the information necessary, and having in its hands the power necessary to enable it to fix the rates of freights and fares, the next question was how the Commission should be constituted; and then came forward the gentlemen who were so afraid of confiscating this one hundred and fifty millions of property, and said: "Let the Governor appoint them; it would not do to have them elected by the people." And we voted upon that proposition; and again we won a victory for the people.

Let me say to these men who are so afraid of the Railroad Commissioners, that railroad and other transportation companies need not fear the people; but they must come and rest their heads where you and I rest our heads—upon the bosom of public justice. And we cannot rest there; when we cannot feel safe there, then, sir, we have no business in a republic. I have no fears about these Railroad Commissioners acting unjustly. Past experience has shown that all such officers are inclined to be too liberal to the railroad companies. And whatever is said about the Courts, let me say that the Courts have protected the rights of the people; they have rendered verdicts in favor of the people against these strong corporations; they have stood up manfully, but they cannot stand alone; they must have the law to help them.

Now, having reached a point where we agreed to confer upon these Commissioners legislative powers to fix the rates of freights and fares, then what more do we ask? We ask that when those rates have been established by this tribunal, that they shall have the same force and effect as a legislative enactment. If the Legislature passes a law that the rate of freight between certain points shall be three cents per ton per mile, would the railroad company be allowed to come into Court and set up that the law was unreasonable? That the rates established were too low? Not a bit of it. There is the law which a republican government, acting as a republican government always will act, in the interest of public justice, has passed, establishing these rates, and having been so established, if they are not binding they are nothing. They would amount to absolutely nothing. Now, you leave in these words "prima facie," and the men who have been talking about the danger of confiscating one hundred and fifty millions of property will vote for it. Strike out these words, and you give to the decisions of this Commission the same force and effect as any other legislative enactment; and these same gentlemen will fall down on the proposition. Let us act in this matter intelligently. Let no man in this Convention say that he will vote in favor of retaining these words without understanding what he is doing. I shall come out plainly as to what the effect of these words will be, and if I misinterpret, let any lawyer on the floor correct me.

To-day, if the railroad company charges unreasonable rates, you are without a remedy in the Courts, and for this reason, that all the information necessary to prove that these rates are unreasonable is in the hands of one party—in the hands of the railroad company; and although we know to a moral certainty that the rates are grossly unjust and unreasonable, yet we have no way of proving it in the Courts, because we cannot get at the information. When a case comes into Court, two thousand, or three thousand, or six thousand, or twelve thousand employés of the railroad company can be called in to testify as to whether they believe these rates to be reasonable or not. Now, the case under this section comes into Court; here are three men, who have received the confidence of the people of the State, and they have spoken and said that these rates established by them are just and reasonable. They have spoken, and it is the voice of the people; they have been elected by the people, and they have spoken and said what the rates shall be. The case comes into Court, and the question of law is submitted—and that question of law is so nearly a question of fact that it must go to a jury to determine as to whether the rates so established are reasonable or not. In every given case we must take the judgment of twelve men who ordinarily know nothing about these matters, instead of the judgment of the Commissioners, who have investigated the whole subject, and whose decisions are based upon actual information.

Now, the other day the gentleman from Sacramento, Mr. Edgerton, in speaking upon this question, made an argument which has influenced to some extent the minds of many men, with regard to a decision in the State of Illinois. Let me refer to that, and let the matter be understood, because members may be influenced by that decision. I know something about it, being indirectly connected with the case at one time. Mr. Edgerton gave us the impression that the rates of freights and fares must be merely prima facie——

MR. EDGERTON. I gave no impression about it—I read the case. I placed no construction upon it; I read the case itself.

MR. CROSS. The case left a false impression upon the minds of many in this Convention. Now, let us see what that case really is. The Constitution of the State of Illinois has in it a provision regarding freights and fares. It is this:

"The General Assembly shall pass laws to correct abuses, and prevent discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises."

Now, the Illinois Legislature passed a law something like this: that all discrimination was unjust discrimination. Then, under that, the plaintiff brought his suit in Court, simply pleading that the railroad company had discriminated, stating merely the fact that there had been discrimination. Now, when the instructions of the Court came to be given, the Court instructed the jury in the words of the statute instead of instructing in the controlling language of the Constitution; and, of course, in so far as the instructions under the statute varied from the instructions as would have been in accordance with the language of the Constitution, in so far was the decision wrong. So, when the case went to the Supreme Court, that tribunal decided that the Court below, in giving these instructions in the words of the statute, violated the principle as laid down in the Constitution.

Now, sir, we may talk about these three men being just or unjust, but somewhere must the authority be vested; somewhere must this power be lodged. Now, to say that these rates shall be prima facie just and reasonable only, is to say that the question henceforth shall rest just where it is to-day, and that is to say that the railroad company, with all its flunkeys, may come into Court and swear that the rates as established are unjust and unreasonable, and the man who makes a complaint must be prepared to wield a power and influence equal to theirs in order to establish the fact that they are not unjust. Taking the ground that the rates established by the Commissioners are unjust and unreasonable, the evidence of Leland Stanford will weigh more in law than the declaration of these Commissioners that the rates are not unreasonable. And if any different rule of law should be laid down by the Court trying the case, when it comes to the Supreme Court, they will reverse it and send it back; it will be no remedy at all. Our work will all have been thrown away, if we declare that the rates established by these Commissioners shall only be prima facie proof that they are just and reasonable.

The gentleman yesterday introduced a resolution which involved a large number of questions. The reason we did not notice these words at the time is a good one. Before any of us happened to get the floor, seven speeches on various portions of the proposition were made by gentlemen all on one side of the question; and, at that point, the previous question was moved, and sustained, and no man had a chance to say "prima facie" if he wanted to. Now, if those words remain, the provision amounts to absolutely nothing, and the friends of the original proposition might just as well join in and help to kill the whole thing. If these words are stricken out and the word "conclusively" inserted, then, when rates of freights and fares are once fixed by the Commissioners, they will have the same force and effect as an Act passed by the Legislature upon the same subject. I do not know why, if the people elect these three men, they should not be able to choose proper men, honest men, and able men. If they can elect one hundred and twenty men capable enough, and honest enough, as some of these gentlemen claim they can, to regulate this subject, in one hundred days, why should they not be able to choose three men with the same qualifications. I believe they can.

MR. SMITH, of Santa Clara. I move the previous question.

THE PRESIDENT. Is the motion seconded?

MR. MCCALLUM. I would like to have an opportunity to offer an amendment.

MR. SMITH, of Santa Clara. Mr. President: I withdraw the motion for the previous question, temporarily.

SPEECH OF MR. MCCALLUM.

MR. MCCALLUM. Mr. President: It does seem necessary that some one should have read the section as it now stands, in order that the Convention may proceed understandingly. Section twenty, as amended by the various amendments, reads as follows:

SEC. 20. Three Railroad Commissioners shall be elected by the qualified voters of this State at the general election, whose salary shall be fixed by law, and whose term of office shall be six years; *provided*, that the three Commissioners elected at the first election shall so classify themselves by lot that one of them shall go out of office at the end of two years, one at the end of four years, and one at the end of six years, so that after the first election, one Commissioner shall be elected at the general election every two years, and shall hold office for the term of six years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé; and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies; and for this purpose they shall have process of the Courts, to hear complaints against railroad and other

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transportation companies, to send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action, and enforce their decisions and correct abuses through the medium of the Courts, and perform such other duties as may be prescribed by law; to report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies; *provided*, the Legislature shall have power to remove any one or more of said Commissioners from office for dereliction of duty, corruption, or incompetency therein; and whenever, from any cause, vacancy of office shall occur in said Commission, the Governor shall fill the same by appointing a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies, and they shall keep their accounts according to that system. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by said Commissioners, or shall charge rates in excess thereof, or shall fail to make their accounts correspond with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense; and any officer, agent, or employé of any such corporation or company, who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or imprisoned in the County Jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commissioners shall be deemed prima facie just and reasonable. In any action against any such corporation or company, for damages sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined upon them in this and the foregoing sections.

Mr. President, I now ask the Clerk to read the amendment which I offer, and then the amendment offered by the gentleman from Placer.

THE SECRETARY read:

"By Mr. McCallum:

"*Resolved*, That the Committee on Corporations be further instructed to so amend section twenty as to strike out so much thereof as provides that the charges fixed by the Commissioners shall be only prima facie evidence of the correctness of such charges."

"By Mr. Filcher:

"*Resolved*, That the Committee on Corporations other than Municipal be instructed to further amend section twenty, adopted by the Committee of the Whole, by striking out the words "prima facie," as they occur near the last of the section, and insert instead thereof the word "conclusively."

MR. MCCALLUM. I suppose we are aiming at the same object in this matter. My idea is to strike out all the words between the words "not" in line blank, and "in" in the following line; also strike out the word "excessive," and insert the word "illegal." The section will then read as it is proposed to formulate it, and as some of us desire to have it read:

"In all controversies, civil or criminal, the rates of freights and fares established by such Commissioners shall be deemed prima facie just and reasonable."

Strike those words out entirely. You have said in one place that the Commissioners shall have power to establish rates of freights and fares. Having said that, this other is simply unnecessary, except upon the idea that you propose to say that the rates so established shall be only prima facie just and reasonable. This will leave the rates fixed by the Commissioners the legal rates, as in any other case where they are fixed by authority of law. They are either to fix the rates or not to fix them. As it reads at present it simply means that they shall suggest rates, and it is left to the Court to say whether they shall stand or not. Suppose the Commissioners fix the rate for this year, and somebody wishes to complain that the rates so fixed are excessive, there is no provision on the part of the people to test that question in any Court in the land. The right of trial and contest is given to one side and not to the other. Now, that is the shape in which it stands at present, and I would ask the gentleman from Placer to allow the committee to formulate it so as to carry out this idea. We have adopted the general idea, and the committee can formulate it. Now, if the Secretary will find where the words occur, and note the amendment, I will read the words to be stricken out. They are: "Upon all controversies, civil or criminal, the rates of freights and fares established by such Commissioners shall be deemed prima facie just and reasonable." These lines occur close to the bottom of the section. Then in place of the word "excessive," use the word "illegal," so that the rates fixed by the Commissioners shall be the legal rates.

THE PRESIDENT. It is too late to do that, except by the consent of the house.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. President: As far as the Committee on Corporations other than Municipal are concerned, they do not care about having this matter referred to them, but since the Convention desires to re-refer it, and desires to undo some of the things which it has done, I would suggest that we reconsider some of the amendments that have been added to the section. Now, for instance, the amendment proposed by the gentleman from Alameda, Judge Campbell, and which was adopted, fixes certain penalties for certain acts in violation of portions of the section. One of these penalties is fixed at twenty thousand dollars, not to exceed twenty thousand dollars, it may be two dollars and fifty cents, or twenty thousand dollars. Another penalty is not to exceed five thousand dollars, and that, too, may be two dollars and fifty cents. It seems to me you are attempting to put a Penal Code at the bottom of the section. It says one penalty shall not exceed five thousand dollars. That may be five thousand dollars, or it may be twenty-five cents. It means nothing, and the entire latter part of that section, in my judgment, brings the whole section into contempt. I hope I do not speak too strongly, for I have the highest respect for the gentleman from Alameda, but if this Convention allows this thing to remain in there it will be utterly meaningless, it will accomplish no good purpose. And the words "prima facie" are undoubtedly worse—worse than all. It makes the entire preceding portions of the section meaningless. In other words, the first part of the section says they shall have power to regulate freights and fares. The Commissioners may establish rates of freights and fares. Criticisms have been made here upon the amendment, that these rates shall be prima facie just and reasonable. The criticisms made by the gentleman from Nevada, Mr. Cross, and by the gentleman from San Joaquin, Judge Terry, they shall be prima facie just and reasonable. In other words, the fixing of rates by the Commissioners would amount to nothing in any Court of justice in the land. Why? You go in there and set out in your complaint that the Commissioners have declared that the railroad company shall have but three cents per mile for freight per ton. The defendant comes in and admits that, but they say, that is only prima facie, and they propose to show the Court that the rate so fixed is not reasonable, and they produce a host of witnesses to sustain them, and the result will be that each individual case will have to be decided upon the testimony.

The next proposition is that of the gentleman from Placer, Mr. Filcher, which provides for striking out the words "prima facie," and inserting the word "conclusively." That would not be right at all; and why? You leave the section as it stood, and it provides that the Commissioners shall fix the rate of freights and fares. That, it is true, is conclusive. That is conclusive beyond any question. But down at the bottom you have added: "In all controversies, civil or criminal, the rates of freights and fares established by such Commissioners shall be deemed prima facie just and reasonable." Now you propose to insert the word "conclusively;" and that will make it read: "In all controversies, civil or criminal, the rates of freights and fares established by such Commissioners shall be deemed conclusively just and reasonable." In other words, you are going to convict a party upon a declaration in the Constitution.

Now, let us take a medium course, and settle this if we can. If you want to refer the matter back to the committee, trust a little to their intelligence and their intentions to do what is right. If you cannot do this, then do not refer it at all. Leave the committee some discretion in the matter, or else refer it to the clerk, and have him strike out what you propose to have stricken out.

Again, this amendment prescribes that in all controversies, civil or criminal, the rates of freights and fares established by such Commissioners shall be deemed prima facie just and reasonable; in any question about damages sustained by charging excessive rates, the plaintiff, in addition to actual damages, may, in the discretion of the Court, recover exemplary damages, etc. He can do that now. In any action for damage for injury to person, of course he can. It doesn't add anything to it. Those are mere catchwords. They are attractive words, but they mean nothing.

MR. CAMPBELL. He can recover actual damage sustained.

MR. ESTEE. If he is put off the car he can. The Commissioners may make a rule whereby he cannot be put off the cars because he does not pay ten cents a mile. I can see no good result to flow from the last part of that section. They are mere idle words, and amount to nothing. Let us trust something to the Legislature, and something to the Commissioners. I hope the Convention will strike out the words "prima facie."

SPEECH OF MR. MCFARLAND.

MR. MCFARLAND. Mr. President: What have you done in this section? Not being satisfied with the established Courts of the country, not being satisfied with the Legislature of the State, you create and establish another tribunal. Now, you first establish this special tribunal. They are to be selected by the people. The corporations have no hand in it at all. Why, sir, you would not try a Chinaman before such a one-sided tribunal as that. You provide expressly that no man having any interest in such corporations shall be a member of the Board. You exclude everybody, even down to the lowest servants of the corporations. Then, having got such a tribunal as that, they say it is to decide justly between the people and the corporations. Why, sir, they are chosen entirely by the people. But having created this special tribunal, what else do we do? Go to work and overturn all the established rules of law. You say that in all actions, civil actions, the plaintiff may recover exemplary damages. The Courts, for the last twenty-five years, have held that you can do it, but only in cases where great wrong has been committed; where there are evidences of maliciousness. There are very few cases where the Courts will hold that a plaintiff may recover exemplary damages. But in this case you say that in any ordinary action the plaintiff may recover exemplary damages. That is not law. It is a violation of the very first principles of law. Having done all that; having created and equipped this special tribunal for one side, for the purpose of getting decisions favorable to the one side, what do you do then? You provide for criminal proceedings against either the corporation itself, or against some conductor, or ticket agent, or train agent, working for seventy-five dollars per month, and they are brought before the criminal Courts for a violation of some rule which these immaculate Commissioners have made, and you do not even allow them to have a chance to show that the rule is unjust or unreasonable. Why, was ever such a criminal Code as that made in the world? Where, on the face of God's earth, can you find anything like it? Suppose they come and show

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that these rules are unjust—grossly unjust—still they must be convicted, because these immaculate Commissioners have made the rule. Now, isn't it enough, in God's name, to say that the bill of freights and fares established by this Commission shall be prima facie right, so as to allow men to come in and show that it is not right? Why, sir, I never heard of any such criminal law as that. What do you want? Say what you want? How far do you propose to go? I think, sir, when a man comes to be tried for a criminal offense, he should have the right to prove, if he can, that the thing was unjust and unreasonable. I think he ought to be allowed to show that it was impossible for him to obey the rule laid down. He may have committed the crime without attempting to do it. Now, a conductor on one of these railroads takes a fare; perhaps unwittingly miscalculates the amount. He comes into Court, and, according to the rule sought to be laid down here, he is guilty as soon as he is accused, and there is no trial about it. He has no defense to make. There is no defense, under this proposed provision, that he can make. He is guilty, whether he is or not. You don't propose even to say that he must have done it willfully.

If he does it, even though it may have been purely a mistake, purely unintentional on his part, he has no defense in the world. He is guilty. Sir, I say I never heard of such an outrageous criminal provision in the world. I never heard of any such unjust provision in the world. I hold that there will be no such thing as justice, if these words "prima facie" are stricken out, for a man must be condemned without even the form of a trial. He may be fined, and he may be imprisoned. His liberty and his character are at stake. I don't suppose a freight agent would be able to pay the fine, and yet, under that provision, he cannot make any defense, and of course he must go to jail. Why, sir, are your Commissioners going to be immaculate? I do not see how they can be, unless they are to be taken from among the members of this Convention who voted, the other day, against the resolution that no member of this body should be eligible to the office of Railroad Commissioner. If you take them out of this body, of course, no one doubts that it would be the most eminently wise and just Board in the world; but if you are going to get them anywhere else, they are liable to be fallible. You talk about the people. Who represents the people? You say the Legislature does not represent the people. You are not willing to trust a jury, taken from the very heart of the people. Who are the people? Who are they who represent the people? Who is it that speaks for them? these Commissioners. They are to come from the people. The people are to elect them, and undoubtedly will elect them. Having elected them, with a view to their hostility to these corporations, you are afraid to allow a man to be tried under the ordinary rules of law, when he is charged by them with crime. Sir, I do hope that this Convention will not do such an unjust thing.

REMARKS OF MR. LINDOW.

MR. LINDOW. Mr. President: I am really very glad that it turned out this way. I have watched this thing from the very beginning, expecting that it would turn out just this way. The only thing that makes me glad that this thing has turned out this way, is because these gentlemen think they know everything. They have robbed the people of the State of a great deal of time; they have robbed the State of California out of all this money, and, now they have got it completed, it amounts to nothing. They got up here and offered amendments, and more amendments, which were made to hurt the people, and at the same time the Workingmen stood and laughed at them. Now, about this section for Commissioners, I never vote in favor of that, because I have got no faith in Commissioners. I think it is better to leave it to the Legislature. If they don't want to leave it to two thirds of the Legislature, then leave it to these three Commissioners. It is a nice fat job for any man. Mr. Campbell's amendment I vote for, and other amendments thrown in. But I see it would not fit. It won't make nothing at all. I am glad it turned out for the people that way. It shows that it was the Workingmen's party that has all the best men on this floor. But I am glad it has turned out this way. Now, let them fix it up again.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: I think my friend from Sacramento has not taken the trouble to analyze this provision. Suppose he should occupy the position of Judge of the Supreme Court, and we should pass a law here saying that his decrees should be prima facie evidence of the correctness of the decision. I think he would cry out against it as he has against this provision here. Now, sir, I am in favor of striking out the words "prima facie." They are not necessary, and ought not to be there. Because, if the Commissioners can decide, for instance, that five cents per ton per mile is the rate to be charged, then that decision is conclusive, unless we take the breath all out of it by saying that it shall be only prima facie. It is just as conclusive as a decision of the Supreme Court of the State, or any other Court; and the gentleman is mistaken when he says that no such Commission, armed with such powers, can be found in the world. The Act of the British Parliament, to which I have before referred, contains precisely this provision, omitting the words prima facie. It gives the whole power to the Commissioners, and whatever they decide is conclusive—just as conclusive as the decision of the Supreme Court of the United States. What would be the sense in saying that the decisions of our Courts should be prima facie just and right? There would be no sense in it at all. What would be the character of such a Court? What use would it be? What good would it do? The argument of the gentleman amounts to nothing at all. The idea is simply ridiculous. If you are going to give jurisdiction to the Commissioners, give them some authority; let their decisions be conclusive. But if you make their decisions only prima facie, then they will amount to nothing, and every time there is a violation of their orders, the question will have to be tried in the Courts, in order to determine whether the rates established are really just and reasonable. You might just as well strike out the entire section. You might just as well abandon the idea as to leave these words in there, for no good will be accomplished by it.

MR. WATERS. Mr. President: Is an amendment in order at this time?

THE PRESIDENT. No, sir, there is an amendment to an amendment pending.

SPEECH OF MR. WATERS.

MR. WATERS. Mr. President: Before this matter is voted upon, I wish to bring it down to what I consider the true merit of the proposition. The object seems to be here to give these Commissioners absolute power. Now, I wish to impress upon the minds of the members here that we are giving them absolute power over the people, as well as absolute power over the corporations. I wish you to consider that point. What are you doing? You are turning over the people of this State to this Board of three men. Don't flatter yourselves that you are merely turning the corporations over to the Commissioners—you are turning the entire State over to these three men—to their unlimited control. Now, if I could get an opportunity I would present the question fairly and squarely, by an amendment to the effect that the action of these Commissioners shall be only prima facie as against the people, and upon that I want to call the ayes and noes. I want to find out how many men will vote to make the action of this Board conclusive as against the people. I want to find out how many delegates will vote to do it. I don't think there will be many. You are carried away with this idea that this Commission is going to control the corporations alone. How will it be if the Commission establishes high and exorbitant rates of freights and fares? Will it not be conclusive as against the people? It will be binding upon the people as well as upon the corporations. Now, will you do this? Are you prepared to vote them unlimited power? I don't believe you will do it, if you are called upon to vote squarely upon that amendment. After the first amendment is disposed of, I shall offer the following:

Resolved, Instruct Committee on Corporations to provide that the rates fixed shall not be conclusive against the people, but prima facie only as against the people.

Now, that brings the question fairly before the Convention. I want to see how many members are prepared to vote to turn the people of this State over to the absolute control of these Commissioners. I want to see who will dare to do it. I do not believe this Convention will do it. I do not believe, with all our passion and prejudice against the corporations, that we are prepared to take this step.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. President: Like my friend from San Francisco, I expected this debate would at last reach about the position it now occupies. We have at last come down to the practical working of this provision, and we are beginning to understand exactly the position we occupy. The gentleman from San Joaquin, Judge Terry, has stated the position of affairs very clearly. I will say to the gentleman from San Bernardino, Mr. Waters, that he fails to comprehend what we have all along been contending for, and that is, that this Commission, being elected by the people, the people should be absolutely bound by its action, as well as the corporations. Has he yet to learn that when the Legislature passes an Act that Act is binding upon the people? We propose to give these Railroad Commissioners precisely the same power, so far as this subject goes, as has heretofore been vested in the Legislature. We vest the power of fixing freights and fares in this Commission. Their action must be binding upon the corporations and the people alike. The people have the right and the power to control these matters. The power of the people now rests in the Legislature, and now what we want is to delegate this power to this Commission, to act as our agents. That is what we want to do. Now, who has any objection? But some of these gentlemen say, that when our agents have gone on and fixed these rates, that somebody else must have a second say about it; that the decisions of this Commission shall not be final; that the parties may appeal from their decisions to the Courts. The rules established by the Commissioners are just as much law as though enacted by the Legislature. They act for both sides. They do not act especially for the people or against them. They are acting for the people and for the corporations alike. Now, what is the use of talking about it? Haven't you heard enough reasons? Wasn't the argument of the gentleman from San Joaquin clear enough? What more do you want? Do you want to say that this law shall bind the one side but not the other? It seems to me the most nonsensical proposition ever presented.

Why cannot we go on and do our work; do what we have the right to do; and what the corporations themselves agreed might be done; allow our agents to fix the rates of freights and fares? In God's name, can you not trust to their judgment, as well as to the judgment of a Court, when they are sworn officers as well as the Judges of your Courts? If they violate their obligations, or fail to perform their duties, let them be punished. When the Legislature enacts a law, you say it is the law of the land. When these Commissioners enact a law, as between the railroad companies and the people, that is the law of the land. Now, we have reached a point where this question is practical. We have come down to the point where we begin to understand ourselves, and when we have understood ourselves, let us act at once. What is the use of talking about this thing of absolutism. Is there not absolutism in an Act of the Legislature? Who dares to raise a voice against a law passed by the Legislature, upon the ground that it is unreasonable and unjust? No one. It is true that hardly any law passed, fails to work injustice in individual cases, but whoever heard of one being overturned on that account? If these Commissioners do wrong, punish them like any other tribunal; but do not stand up here and talk about nonsensical propositions, when the companies themselves understood, when they made the contract, that these were the conditions upon which the donations

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were made. Because we simply say that these Commissioners shall not be interested in these corporations, some gentlemen object. They say it will bar out anybody who happens to run upon a railroad. We simply do it as a precaution; as a protection to the railroad companies as well as to the people. We remove them from improper influences, the same as any other Judges.

Now, I hope that this question has been sufficiently discussed and sufficiently understood, even by the gentleman from Sacramento, and the gentleman from San Bernardino, Mr. Waters, who seems not to comprehend the obligations of the citizen to laws made by the people. There is no difference in the interest between the citizen and the railroad company. Their interests are identical. When the Commissioners act, they are acting and legislating for the companies, and their acts bind both sides. The gentleman asks, tragically, if any of us will dare to vote against the proposition that the people shall not be bound by the acts of their chosen representatives and agents. I dare. I dare. [Applause.] They are the Legislature for the time being. Their acts are the same, so far as the subject-matter over which they have jurisdiction is concerned, as the acts of the Legislature. They are both legislative bodies. The one is placed in a position where it cannot act intelligently, because of the want of time and opportunity to examine into the circumstances—to inform themselves—the sessions being too short. On the other hand, the Commissioners' sessions are eternal, and they can acquaint themselves with all the details, which is absolutely necessary as a basis of intelligent action. Then it will become a valuable thing dealing out justice to both the people and the corporations alike, and meting it out promptly. That is the kind of a tribunal we want to make it. That is what we are here for. We have been discussing and explaining it here for the past six weeks. We want them to have power enough to do something. We want them to have the same power which you admit exists in the Legislature. We are taking it from the Legislature, and we do not propose that that power shall lose anything by the transfer. This power and this right is in the people, and the railroad companies acknowledged it and agreed to it, and bound themselves to abide by it. They agreed to it, and we want them to stand by that agreement, and we propose to compel them to do it. We propose to elect Commissioners that will see that they do obey the commands of the people. Is that clear enough? Does the gentleman from San Bernardino understand us now? [Applause.] Let him send up his proposition, and he will see how many of us will dare to vote against it. It would be simply an outrage to say that the railroads should be bound while the people should not. I do not propose that you shall make it prima facie either for or against the people. I want it to stand together, binding alike upon the railroad companies and upon the people. We mean to give them actual power, and we propose that it shall be binding upon the corporations and the people. We do not expect to bind one side without binding the other. We expect the ligament to be equally strong upon us all.

SPEECH OF MR. CAMPBELL.

MR. CAMPBELL. Mr. President: I have but a few words to add. I must say that I am somewhat surprised to see the course that the Chairman of the Committee on Corporations other than Municipal has taken here. It seems to me he can blow hot and blow cold; blow from the north and blow from the south, with greater ease and facility than any gentleman I have ever seen. In fact, he can turn more somersaults than a clown in a circus, and in a shorter time. [Laughter.] Yesterday this amendment was all right. He was perfectly willing to support it. He invoked the attention ——

MR. ESTEE. If the gentleman will allow me—does not the gentleman from Alameda know that I voted against it yesterday?

Mr. CAMPBELL. No, sir.

MR. ESTEE. Well, I know I did.

MR. CAMPBELL. The gentleman spoke substantially for this amendment, because he appealed to the Convention to carry this thing through as it was—with the amendment—and to shut out all further amendments, and pass it just in the shape in which it then stood. I certainly so understood the gentleman in his closing speech. I certainly did understand him, in the course of the day, to be perfectly willing that this amendment of mine should be adopted. He examined it fully, as did other gentlemen here.

Now, the gentleman objects to the penalties. Why, the objection to the report of the committee was this: that the report contained no sanctions, no penalties, and was, in consequence, productive of no good. For instance, the Commissioners might fix rates, and the railroad company might disregard them, and all the penalties that exist would be those which exist now at common law. There was no provision that those rates fixed by the Commissioners should be regarded as prima facie, or conclusive, or anything, but merely that they might establish certain rates. There was nothing at all to compel the companies to conform to them in any way, no penalty, no sanction.

In regard to the objection that a man, under this amendment, may be fined five cents, I will say this: the amendment leaves that all to the discretion of the Courts, to be graded by the magnitude of the offense. Where, for instance, the railroad company willfully and repeatedly disregard any of these provisions, and where they show a contumacious spirit and disposition to violate the law, the Court, acting fairly, would impose the highest penalty. In any case of a bona fide contest of the rates established by the Commissioners, and where there should appear to be good reasons, the penalty would be a mere nominal one, as it should be in such cases.

Now, with regard to this amendment, it does not give absolute power to these Commissioners to fix these rates finally, so that no tribunal can ever interfere. The reason of that simply was, that it is an enormous power to vest in the Commissioners. It is an absolute power, the power of two men, not three, because a majority of the Board can bind the whole. The judgment of two men, I say, is absolute, without any appeal to any tribunal in the world; and the profit or loss, as the case may be, must be sustained by the company and by the people. In the first place, there might be a great deal of favoritism shown by the Commissioners between the different railroad companies. Such a thing would be possible. In such a case are the people to be left without a remedy, without appeal. In case these Commissioners establish rates themselves, which are generally oppressive, are the people to be left without appeal, and without any remedy?

The objection is made by the gentleman from San Joaquin, and it is the strongest and most forcible objection yet made to this provision, and that is that the power is not absolute; that they can go before a Court or a Justice of the Peace in any case where they consider that the rates are wrong. It is impossible to fix any human institution in such a way that it will be free from all objections. Now, look at the probabilities in relation to that. In the first place, to guard against any factious opposition on the part of the railroad companies to the rates fixed by the Commissioners, there is a provision here subjecting them to a criminal penalty in the event of the law being violated by themselves or their employés. Then there is the action of the individual, in which he can recover exemplary damages. Now, look at it as a matter of common sense. Do you suppose that where the rates established by the Commissioners are anywhere within the bounds of reason at all that the corporations would dare to dispute them, in view of the penalties imposed by this provision? Now, to illustrate: suppose the Commissioners fix the rate for passengers from here to San Francisco at two dollars; would the railroad companies say, that is too low, we will charge three dollars? What would be the result of such action on their part? Why, every man that comes from San Francisco to Sacramento would have an action against the railroad company, not merely for the dollar, but for any amount that the jury might be disposed to give him. And if the railroad company made any factious opposition they would be liable for heavy damages. Why, it must be apparent to everybody that they would make no such factious opposition. They would be liable to be ruined by damages if they did so. It would be in the power of the jury to say that where a single individual had been overcharged one dollar, the railroad company should pay him one thousand dollars, or five thousand dollars, or any amount they thought fit. I say that is a perfect safeguard, as this provision now stands.

The same thing is true with regard to freights. Why is it that the people do not do this now? It is simply because the people have not the power that the corporations have. It is because, in the great mass of instances, the amount is small in each individual case, and because, under the law at present, the right to recover is limited to actual damages sustained, and because, if you are overcharged, you cannot recover exemplary damages; hence it costs the citizen many times more than the overcharge amounts to to maintain his suit. Here you have the additional advantage, that when the Commissioners fix the rates, they are prima facie evidence that the rates so fixed are correct. This is certainly a safeguard, and why? Because, in the first place, there is the legal presumption which has to be overcome by evidence. They have to have evidence, not only to overcome the evidence of the plaintiff, but to overcome the legal presumption. The plaintiff does not need to introduce any evidence to make out a case, except to prove the rates to have been fixed by the Commissioners, and that he has been charged in excess of those rates. Then he has the close of the case. He can rebut the testimony of the defendant. If the corporation introduces twenty witnesses, the plaintiff can introduce thirty, or forty, or as many as he pleases.

MR. McCALLUM. What kind of evidence would be introduced in his complaint first?

MR. CAMPBELL. In the first place, evidence that these rates are the rates fixed by the Commissioners, who have access to the books and papers of the companies, so that they can ascertain what are reasonable rates; from their knowledge of the disbursements and receipts of the company; from their knowledge of what passes over the road, which knowledge, under this section, is open to them. But what I wish to impress upon the minds of gentlemen is this: that there would be substantially no controversies, because, under this section, as it now stands, with its sanctions and penalties, the railroad companies would not dare to set themselves up in opposition to the rates established by the Commissioners, unless in very extraordinary cases. There is the safeguard, there is the protection to the people.

Now, the gentleman from Nevada, Mr. Cross, made use of an expression in his remarks—I suppose it escaped him in the heat of debate—intimating that I and other gentlemen were advocating the part of the railroad corporations. I do not suppose he meant to say that I was in league with others for the purpose of defeating legislation adverse to the railroads.

MR. CROSS. Does the gentleman want an answer?

MR. CAMPBELL. Yes, sir.

MR. CROSS. I was a little afraid you were.

MR. CAMPBELL. If the gentleman meant to cast any such insinuation as that, I say it is utterly unfounded and false. There is not a single thing upon which he can rest it. My course upon this floor, and my course elsewhere, uniformly for years, upon this subject ——

MR. CROSS. I accept your apology.

MR. CAMPBELL. I do not require the acceptance of any apology. I have none to make. The gentleman himself is the one who ought to make the apology. I mean to say that for years I have occupied but one position upon this subject, from the time when the people first raised their voices against these railroad abuses—from that hour down to the present, I have stood in opposition to their encroachments and abuses. I was the first person to introduce in this Convention a proposition for the establishment of a Railroad Commission. I went before the Committee on Corporations other than Municipal, and urged it as

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a necessary and proper measure to correct the abuses which have grown up on the part of these corporations. In that amendment I have placed penalties which are as plain as day, and which will make this section of some practical utility. I say that such insinuations as that thrown out by the gentleman from Nevada, are not only unjust, but unmanly, discourteous, and improper.

SPEECH OF MR. BARBOUR.

MR. BARBOUR. Mr. President: I hope the resolutions of instructions to the committee offered by the gentleman from Placer, Mr. Filcher, will prevail, with the understanding that the committee be allowed some little scope to arrange the section. The manner in which the amendments were made demands, at the hands of those gentlemen who voted for them last evening, some explanation. I have no desire to indulge in criticisms, but gentlemen have been indulging somewhat in personalities, and I think I am entitled to complain somewhat of the gentleman from Alameda. I think he has not kept the letter nor the spirit of the promise he made in regard to having amendments made to the provision wherever it was objectionable. Now, the Committee on Corporations had two discussions over the words "reasonable" and "just" rates, in regard to conferring the power upon these Commissioners to establish that kind of rates. I, with others, opposed it, and it was rejected. Then the gentleman from Alameda came forward with a proposition which contained a provision for a system of keeping accounts, and other things, which I thought good, but contained these words: "just and reasonable." I told him if he would strike out those words I would support his proposition. I supposed they were stricken out all the way through, and on the strength of that supposition I voted for the proposition. Merely hearing it read at the desk, I did not know these words were still in there.

MR. CAMPBELL. The gentleman stood here and read that amendment over and over. I struck out the word in one place at the request of the gentleman from Los Angeles, Mr. West. Nothing else was stricken out, nor did I propose to do so.

MR. BARBOUR. Did you not promise to strike out the words?

MR. CAMPBELL. No, sir. I struck out the word "unreasonable" in one place at the request of the gentleman from Los Angeles, Mr. West. In regard to that part where it says it shall be prima facie evidence that they are just and reasonable, I never did say I would strike them out, neither in the presence of the gentleman or anybody else.

MR. BARBOUR. Then I will show that while the gentleman is complying in the letter he is not in the spirit.

MR. HOWARD. If the gentleman will allow me. There was no one, as far as I know, impeaching the good faith of the gentleman from Alameda. I was looking at the penalties and sanctions, and did not consider the words prima facie which were there. It was my fault, not his. I know he has acted throughout in the utmost good faith. The reason I objected to it was that it would leave it to the Court to determine what is reasonable, precisely as was done in England. I object to it because it throws it back upon the Courts.

MR. BARBOUR (continuing). I do not say that the gentleman intentionally violated his promise at all. I say this, that to leave it in the latter part, and strike it out in the first part does no good, for the section must be construed together—it must be construed as a whole. It amounts to just this: that if the rates established by these Commissioners are to be taken as prima facie just and reasonable, you might just as well say in the first part of the section that the Commissioners shall have power to establish just and reasonable rates. It would be a fallacy to say that the section taken as a whole would be construed otherwise. If these rates are to be deemed prima facie just and reasonable, it is the plain construction that just and reasonable rates are all the kinds of rates that the Commissioners can establish.

Now, sir, I have noticed a very remarkable and amusing circumstance in the debate which has just taken place in this Convention. In the earlier days of this discussion we were told that this Commission was an extraordinary body; that nothing like it was ever seen or heard tell of; that it was a triple-headed, autocratic despotism, binding all interests. For more than a week that kind of argument was hurled at us. It was the same old song about this most remarkable despotism on earth. But the cry failed. The plain, common sense men in this Convention could not be convinced that a set of their fellow citizens, taken up from among themselves, elected by themselves, made responsible to themselves, responsible by that great final appeal, the tribunal of public opinion; responsible on their very lives, almost, could ever obtain a character such as that; and that cry was abandoned, and another spectacle presented. Then we were told that the Commission could do nothing; that it was a nonentity. In the meantime, what was the style of argument? Gentlemen had before told us that we were undermining and destroying the foundations of the American system of government; that we were going too far, and all that sort of thing; and again, some have told us that we were not doing enough; that we are not conferring power enough to make the thing effective at all, and that more must be done. And as they were afraid the friends of the proposed measure would not be equal to the task, they were disposed to help us out by offering amendments. Now, the committee had been laboring over this thing, and we finally thought we had reached something that would be effectual in the interests of the people of this State, if they would only look to their own interests in the selection of these Commissioners. We thought we had something that would be good. But amendments which sounded well to our ears in the hurry of debate were slipped through, and when we came to look at them, by the light of day, we found they had run their knives into the bowels of the concern, and were trying to reach the vitals. One gentleman had the monstrous audacity to propose here in this Convention to put the whole thing right back in the Legislature, and confer upon the Legislature power and authority, by simple resolution, to do as they think proper. The next thing in point was this amendment now under consideration, to declare that the Commissioners shall have power to do what? Why, to bring railroad directors and employés up to some bar of judgment and compel them to show wherein these rates are not just and reasonable, which means simply this: that they are to fix upon a tariff of freights and fares, which will be mere suggestions to the railroad companies. These rates are nothing but suggestions to the railroad companies by the Commissioners, and that is all you can make out of it. That is a prima facie case. Why, these gentlemen, sworn to find a certain state of facts; obligated as officers to do so; selected by the people on account of their presumed capacity to do so; to make investigations into various matters; to make and publish to the world their findings of fact, and all this, they tell us, is to be prima facie. What is prima facie? Why, it is merely good until something else is shown; that is all it amounts to. Prima facie, we are entitled to sit here for one hundred days. Somebody may show that we are not. Prima facie, the appropriation is for one purpose; somebody may show to the contrary. So with regard to all classes of presumptions which are known to the law—prima facie good only until a breath blows the presumption away. An affidavit or evidence will rebut a presumption. How will it work, sir? On the road that runs from here to San Francisco, a certain rate is established. Suppose that is not a reasonable rate, not a just rate. No man who is interested in a railroad company would pretend for a moment that it was reasonable. It is attacked as unreasonable. Who makes the case? Why, suppose the railroad company makes the very first passenger, or the very first pound of freight over the road, pay in excess of the established rate. The case is taken into Court, and the company obtains a judgment against this prima facie case, showing that the rates are not reasonable. What becomes then of all the work of your Commission? What becomes then of the schedule of freights and fares which they have established? Knocked to smithereens by the judgment of one Court and one trial. Suppose it is taken to the Supreme Court, and the judgment of the Court below that the rates established by the Commissioners are not reasonable, is affirmed, then that becomes the law of the case, as far as freight and passengers are concerned, over that road. I say this thing should be sent back to the committee to be straightened out, so that we may have something tangible, something useful, and something powerful. Better have no Commission at all, than to have one without any power.

MR. SMITH, of Santa Clara. I move the previous question. We have had talk enough.

MR. ESTEE. Mr. Chairman: When there are personal allusions made to members on the floor it is customary to allow the member alluded to to address the Convention in reply.

MR. SMITH. I withdraw the motion for the previous question.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. President: The gentleman from Alameda has alluded to the Chairman of the Committee on Corporations other than Municipal. He says that he understood that I consented to the amendment which he proposed to the Committee of the Whole. I wish to appeal to the gentlemen of this Convention to bear me out if I did not say to him, yesterday, that the substance of his amendment was good, that is, his original amendment; that is, the power to send for and examine persons and papers, and to examine the books, but that the same thing was embodied in the report of the committee. Now, so far as my actions are concerned, I am willing to allow the Convention and the people to be the judge. I am not prepared to say that everything the Committee on Corporations does is right; I do not say that everything I do is right; but gentlemen should stand up and vote, not upon the character of the committee recommending it, but upon the merit or demerit of the measure itself. The provision itself is not rendered worthless because I am not worthy of his consideration.

MR. CAMPBELL. I haven't said anything of the kind. I always entertained a high respect for the gentleman. I said I understood you to say you were not opposed to my amendment; I understood you to say that it embodied what you thought good; that is, the previous amendment which I had prepared, and which has not been introduced. As far as the other amendment is concerned, I understood the gentleman not to dissent from it, but rather as being favorable to it. I may have misunderstood him, but that was my understanding.

MR. ESTEE. As far as I am concerned, while I have a great desire to maintain the confidence and respect of every gentleman on this floor, and of every good citizen in this State, and of the people generally, yet I propose to act as my judgment dictates upon all matters brought before me, and if it does not meet the views of other gentlemen, I am sorry for it. If other gentlemen present amendments and propositions which have merit, they should be adopted.

As far as talking upon the one side and then upon the other, blowing hot and blowing cold, I challenge the history of the debates upon this floor, and the records of the Committee on Corporations, if the committee have not uniformly stood by its report, until it was shown by overwhelming argument that something better had been presented. Now, Mr. Chairman, let these motions be passed or rejected, according to their merits. I confess, sir, that the report of the committee has necessarily taken up much time. Of course, our committee has been subjected to criticism, both here and elsewhere over the State. I confess that some of these criticisms are probably merited. We are only human. But so far as the action of the committee and its members are concerned, I challenge the truth of history that we tried to do right; but we may have been wrong. But that does not destroy the merits of our report as an entirety. If there is anything of good in the report, vote for it. If there is anything wrong in it, cut it out. I have heard a great deal about the report of the Committee on Corporations. I do not challenge the right of gentlemen on this floor to oppose it if they deem it wrong. I have not impugned the motives of the gentleman from Alameda. I

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have no doubt he has acted honestly and conscientiously in the matter. I have no reason to impugn the motives of any of the gentlemen who have argued upon the other side. But the committee, and its Chairman, have, day after day, and hour after hour, been the subject of criticism. The report has been attacked on all sides. Now, I say, if there are good principles embodied in that report, they deserve candid consideration. If there is anything wrong, it ought to be eliminated, and the committee has stood willing and ready at all times to modify the report when it was shown that the provisions were not right. Now, sir, I would not have said this much; I would not have spoken thus earnestly upon this subject, had it not been thrown up to us day after day, and week after week, that the Committee on Corporations was doing this thing and that thing; that we had taken up the time of this Convention uselessly; that we were proposing to take up still more time, and all that sort of thing. Gentlemen of the Convention, if this subject is not worthy of the time given to it, then it ought to be followed to its grave. This is a grave and important question. It is of such grave importance as to demand all the time that is necessary for its careful consideration, and I consider the time well spent.

THE PREVIOUS QUESTION.

MR. SMITH, of Santa Clara. Mr. Chairman: I now move the previous question.

The previous question was seconded by Messrs. White, Stedman, Wyatt, and Evey.

THE PRESIDENT. The question is, Shall the main question be now put?

The motion prevailed.

THE PRESIDENT. The first question is on the resolution of the gentlemen from Placer, Mr. Filcher, as an amendment to the resolution offered by the gentleman from Alameda, Mr. McCallum. The Secretary will read.

THE SECRETARY read:

Resolved, That the Committee on Corporations other than Municipal be instructed to further amend section twenty, adopted by the Committee of the Whole, by striking out the words "prima facie," as they occur near the last of the section, and inserting instead thereof the word "conclusively."

MR. MCCALLUM. I ask that the other resolution be read.

THE PRESIDENT. The Secretary will read the resolution.

THE SECRETARY read:

Resolved, That the Committee on Corporations be further instructed to so amend section twenty as to strike out so much thereof as provides that the charges fixed by the Commissioners shall be only prima facie evidence of the correctness of such charges.

THE PRESIDENT. The question is on the adoption of the resolution offered by the gentleman from Placer, Mr. Filcher.

It was adopted.

MR. WATERS. Mr. President: I wish to offer a resolution.

THE PRESIDENT. It is not in order under the previous question. The question is on the resolution of the gentleman from Alameda, Mr. McCallum, as amended.

Adopted.

MR. WATERS. I now offer my resolution.

THE SECRETARY read:

Resolved, Instruct Committee on Corporations to provide that the rates fixed shall not be conclusive against the people, but prima facie only as against the people.

THE PRESIDENT. The question is on the adoption of the resolution.

MR. WATERS. Mr. President: I want to know whether this Convention intends to turn over the people of this State, with their hands bound, to this Board of three Railroad Commissioners. On that resolution I demand the ayes and noes, if I can get a second.

SPEECH OF MR. HAGER.

MR. HAGER. Mr. President: This thing is in that condition now where the Committee on Corporations should have unlimited power. We cannot undertake to instruct them by piecemeal. Why not give them power to further revise it, and make an additional report? We are all satisfied that in the heat and hurry of debate, mistakes have been made. I voted for the Campbell amendment, but I am satisfied now that the committee erred. The section, as it now stands, says, in other words, that in every controversy that arises, every dispute, they may find thus and so. But in any action, civil or criminal, the rate of freights and fares established by the Commissioners shall be considered prima facie reasonable and just. That is, the presumption is that they are reasonable and just. But that presumption may be controverted at any time before a jury, and the question as to whether the corporations are to obey the mandates of the Commissioners must be adjudicated.

I believe, sir, that it is the sentiment of this Convention that there shall be a Railroad Commission. That has been decided. That a Railroad Commission should be elected by the people; that is decided. Now, what powers shall they have, and how shall they be enforced? are the questions that remain. I had a proposition which I thought would cover the case, but I did not offer it to the Convention because there were so many that had propositions. I accepted the amendment of the gentleman from Alameda, upon the recommendation of General Howard, without criticising them as I ought to have done. But, as I stated before, it is impossible to frame a Constitution in a Committee of the Whole. We cannot always know what we are voting for. It is impossible. Things which we voted for one day we may regret the next. I am satisfied that this provision is wrong, and that it would destroy the usefulness of the Commission. It would defeat the very purpose we have had in view in creating this Commission. If that is to be the purpose, let it be understood; if not, let it be proclaimed by the vote here. I hope we shall arrive at some point where the precise will of the majority can be ascertained. And when we have once ascertained it, let us stick to it. I offer the following amendment, to be added to the instructions already given: "For general revision and further report."

MR. ANDREWS. Mr. President: I think the amendment of the gentleman from San Francisco entirely uncalled for. The first instruction given to the committee says that it shall generally harmonize section twenty, in accordance with the views of the Committee of the Whole, and that it is substantially what is contained in the amendment of the gentleman from San Francisco.

MR. HOWARD, of Los Angeles. I am opposed to the amendment offered by my friend from San Francisco, because I do not want the whole subject brought back for another three weeks debate. I would like to see this thing closed at some time during the present century.

MR. HAGER. My proposition is to stop these special instructions by giving the committee general powers.

MR. HOWARD, of Los Angeles. I do not want the committee to have general powers. As to the fact that the gentleman voted for Judge Campbell's amendment on my recommendation, I shall certainly demur to that. I think he informed us here that he had been seven years on the bench, and he ought to be able to judge for himself.

MR. HAGER. I do not wish to misrepresent the gentleman. I understood him to say that he thought the addition of a portion of Judge Campbell's amendment would be satisfactory.

MR. HOWARD, of Los Angeles. So I did think. What I object to, is for a judicial officer in this Convention to throw the responsibility of his mistakes on me. I do not cast any censure upon the gentleman from Alameda. If I did not notice the objectionable clause, that was my fault and not his. Now, while I am in favor of holding to the penalties of the gentleman from Alameda, I am in favor of striking out the words prima facie. As to the amendment offered by the gentleman from San Bernardino, Mr. Waters, I am utterly opposed to it, because it would be a burning disgrace if we would not extend the same justice to the railroad companies that we extend to anybody else. In my opinion, it would be simply monstrous. Let us do justice to both sides. That is what I am trying to do. I do not want to say to the railroad companies, when they come into Court, you shall not have equal justice with the people. Let both parties stand equal before the law, and let them be dealt with impartially.

SPEECH OF MR. SMITH.

MR. SMITH, of Fourth District. Mr. President: My position to-day seems to be in conflict with my position yesterday, and I think I have a right to explain my position. I was in favor of the Campbell amendment, with a mental reservation in one particular, and that particular is in regard to the words prima facie, which has already been discussed here to-day. It appeared to me though, when I first saw that provision, that it would be a good thing to place that matter in the Courts; but after more mature consideration it seems to me better to leave it as the committee has left it. Now, there was one objection to that, it seems to me. The Commissioners had power to fix and establish rates of freights and fares. The schedule they should prepare and establish would be the law of the land—the highest law of the land. No one could dispute it—no one ought to dispute it. Now, there has been a great deal said about what would be reasonable. Their power, great as it is, would be restricted to what would be reasonable. I do not believe there is a lawyer on this floor, however distinguished in his profession, who will say that the railroad company, or any other company, have any right to charge anything more than reasonable rates.

Then again, the people would not have the right to exact anything more than reasonable rates; and if this constitutional provision be to allow these Commissioners to establish rates that will be unreasonable rates—I mean by that, taking away any reasonable and just profits, it would be in conflict with the constitutional provision that private property shall not be taken without just compensation. Now, suppose the Railroad Commissioners establish rates that would be an extortion upon the railroad companies—take their private property without just compensation—that is, take their reasonable earnings, personal earnings, then the law will step in—the higher law of compensation—and say that the schedule has no effect whatever. In that respect the railroad company would have a protection. They could go into the Courts and say, it is taking our private property, and the schedule would be declared null and void, and there would be no schedule. But where are the people to be protected? Suppose the Commissioners should fix the rates too high. Then the principle provided for in the amendment of Mr. Waters, or something like it, would be necessary; and that is all the objections I have to the report of the committee—that there is no protection on the side of the people in case these Commissioners, belonging to the railroad company, should establish the rate of freights and fares too high. Now, there may be objections to both these matters—that there is supposed to be too much latitude. I think this prima facie will give still more latitude. But I want it brought down strictly to the point, that while these Commissioners should have full power, yet, having that full power, let the people be protected as well as the railroad companies. Therefore, I shall favor the report of the committee, with some such reservation as that introduced by Mr. Waters.

Now, I have no sympathy with these alarmists. The tendency of all these things is to divide the friends of anti-railroad measures. I am inclined to point to the gentleman from Nevada, Mr. Cross, as an alarmist here. This is the second time he has done it.

MR. CROSS. I won't do it any more. [Laughter.]

MR. SMITH. The gentleman from San Francisco, Mr. Estee, Chairman of the Committee on Corporations, I think has shown by his endeavors here that he is a friend to anti-railroad measures.

MR. TINNIN. Mr. President: I rise to a point of order.

THE PRESIDENT. The gentleman will state his point of order.

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MR. TINNIN. The gentleman has no right to discuss the characters of the members of this body.

THE PRESIDENT. The point is well taken.

MR. SMITH. I was merely calling attention to these matters, to show that it has a tendency to delay business. I think it is a matter that has been noticed in this Convention, and if we were to call attention to it oftener we would get along with our business much better. Now, I voted yesterday for the Campbell amendment, because I thought there was a great deal of good in it. I voted in favor of taking out these words, because I think they ought not to be in there.

REMARKS OF MR. LARKIN.

MR. LARKIN. I am certainly opposed to the very remarkable proposition offered by Senator Hager, to give this committee full power to revise the work submitted to them by these resolutions. I would be willing to give them power to so revise sections twenty and twenty-one as to correspond with the ideas of this Convention. No general power should be conferred upon the committee in any manner to alter or change the substance of the section. I hope this Convention will vote down the proposition to give them any further power.

THE PREVIOUS QUESTION.

MR. AYERS. Mr. President: I move the previous question.

Seconded by Messrs. Howard, West, Evey, and White.

THE PRESIDENT. The question is, Shall the main question be now put?

Carried.

THE PRESIDENT. The first question is upon the amendment of the gentleman from San Francisco, Judge Hager, to the resolution offered by the gentleman from San Bernardino, Mr. Waters.

Lost.

THE PRESIDENT. The next question is upon the resolution offered by the gentleman from San Bernardino, Mr. Waters.

Lost.

ADJOURNMENT.

MR. NOEL. I move we now adjourn.

Carried.

And at four o'clock and forty-five minutes P. M. the Convention stood adjourned until to-morrow morning at nine o'clock and thirty minutes A. M.

SEVENTY-FIRST DAY.

SACRAMENTO, Saturday, December 7th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews,	Harrison,	O'Sullivan,
Ayers,	Harvey,	Overton,
Barbour,	Heiskell,	Prouty,
Barnes,	Herold,	Reddy,
Barry,	Herrington,	Reed,
Barton,	Hilborn,	Reynolds,
Beerstecher,	Hitchcock,	Rhodes,
Belcher,	Holmes,	Ringgold,
Bell,	Howard,	Rolfe,
Blackmer,	Huestis,	Schomp,
Boggs,	Hughey,	Shafter,
Boucher,	Hunter,	Shoemaker,
Brown,	Inman,	Shurtleff,
Burt,	Johnson,	Smith, of Santa Clara,
Campbell,	Jones,	Smith, of 4th District,
Caples,	Joyce,	Smith, of San Francisco,
Casserly,	Kelley,	Soule,
Chapman,	Keyes,	Stedman,
Charles,	Kleine,	Steele,
Condon,	Laine,	Stevenson,
Cross,	Lampson,	Stuart,
Crouch,	Larkin,	Sweasey,
Davis,	Larue,	Swenson,
Dean,	Lavigne,	Swing,
Doyle,	Lewis,	Terry,
Dudley, of San Joaquin,	Lindow,	Thompson,
Dudley, of Solano,	Mansfield,	Tinnin,
Dunlap,	McCallum,	Tully,
Eagon,	McComas,	Turner,
Edgerton,	McConnell,	Tuttle,
Estee,	McCoy,	Vacquerel,
Estey,	McFarland,	Van Voorhies,
Evey,	McNutt,	Walker, of Marin,
Farrell,	Miller,	Walker, of Tuolumne,
Filcher,	Mills,	Waters,
Finney,	Moffat.	Webster,
Freud,	Moreland,	Weller,
Garvey,	Morse,	Wellin,
Glascock,	Murphy,	West,
Gorman,	Nason,	Wickes,
Gregg,	Nelson,	White,
Hager,	Neunaber,	Wilson, of Tehama,
Hale,	Noel,	Wyatt,
Hall,	Ohleyer,	Mr. President.

ABSENT.

Berry,	Grace,	Pulliam,
Biggs,	Graves,	Schell,
Cowden,	Martin, of Alameda,	Townsend,
Dowling,	Martin, of Santa Cruz,	Van Dyke,
Fawcett,	O'Donnell,	Wilson, of 1st District,
Freeman,	Porter,	Winans.

LEAVE OF ABSENCE.

Leave of absence was granted to Mr. Graves for one day, and to Mr. Winans for four days.

THE JOURNAL.

MR. BROWN. Mr. President: I move that the reading of the Journal be dispensed with, and the same approved.

Carried.

REPORT FROM THE COMMITTEE ON CORPORATIONS OTHER THAN MUNICIPAL.

MR. ESTEE. Mr. President: I wish to make a report from the Committee on Corporations other than Municipal.

THE SECRETARY read:

SACRAMENTO, December 7th, 1878.

MR. PRESIDENT: Your Committee on Corporations other than Municipal, respectfully report back to the Convention section twenty of their report, amended in accordance with the instructions of the Convention.

And also recommend that section twenty-one be stricken out.

M. M. ESTEE,
V. E. HOWARD,
CLITUS BARBOUR,
WM. F. WHITE,
JOHN P. WEST,
J. V. WEBSTER,
GEO. STEELE,
JNO. M. RHODES,
JAS. A. DEAN.

SECTION 20. The State shall be divided into three districts, as nearly equal in population as practicable, in each of which one Railroad Commissioner shall be elected, by the qualified electors of their respective districts, at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years. Said Commissioners shall be qualified electors of this State, and of the district from which they are elected, and shall not be interested in any railroad corporation or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same, from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes in the same manner, and to the same extent, as Courts of record, and enforce their decisions, and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies, and they shall keep their accounts according to such system. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense, and every officer, agent, or employé of any such corporation or company who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or imprisoned in the County Jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commission shall be deemed conclusively just and reasonable; and in any action against such corporation or company, for damage sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. Said Commissioners shall report to the Governor, annually, their proceedings and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The Legislature may, in addition to the penalties herein prescribed, enforce this article by forfeiture of charters, or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the following sections. The Legislature shall have power, by a two-thirds vote of all the members elected to each house, to remove any one or more of said Commissioners from office for dereliction of duty, or corruption, or incompetency; and whenever, from any cause, a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.

MR. ESTEE. Mr. President: I move that the report be referred to the Committee of the Whole.

THE PRESIDENT. If there is no objection it will be so referred. The Chair hears no objection.

MR. O'SULLIVAN. If I understood the amendment yesterday the Commissioners were to be nominated by districts but voted for by the whole electors of the State at large. I certainly shall not vote to have them elected by districts, and I did not intend to do so.

MR. ESTEE. I ask to have the instructions on that part read over.

THE SECRETARY read:

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"By Mr. Tinnin:

"*Resolved*, That further instructions to Committee on Corporations other than Municipal, as follows: That section twenty be amended so as to provide for the election of three railroad Commissioners by districts, at the same time, and making their term of office four years."

MR. ESTEE. Those are the instructions under which we acted.

MR. SHAFTER. I would inquire whether there is any part of the report that goes beyond the instructions given the committee by the Convention. I understand there is something done in the report that was not included in the instructions. I would inquire of the Chairman of the committee whether that is the fact.

THE PRESIDENT. The report has been referred to the Committee of the Whole.

MR. ESTEE. When we go into Committee of the Whole I will answer the gentleman.

MR. SHAFTER. My inquiry is as to whether they have exceeded their instructions.

THE PRESIDENT. The report is not now before the Convention.

MR. SHAFTER. I understood it had been read.

THE PRESIDENT. Yes, sir, and referred to the Committee of the Whole.

MR. SHAFTER. I move to recall it.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: There are words in that section which are not contained in the instructions to the committee, but the committee have endeavored to carry out the idea of the Convention according to the best of our ability.

REMARKS OF MR. EDGERTON.

MR. EDGERTON. I wish to call attention of the Chairman of the committee to two matters that they have introduced which are not germane—which have no relation whatever to the instructions given to the committee. The instruction was to strike out a certain phrase and insert a certain word. Now, the committee have modified the report very materially in these two particulars. They have added the word "determine," and have added a clause which gives the Legislature power to provide for a forfeiture of charter.

REMARKS OF MR. ESTEE.

MR. ESTEE. Mr. President: I will state to the gentleman that we did not add that clause, it was in the original. As far as hearing and determining complaints is concerned, the resolution introduced by the gentleman from San Joaquin, Judge Terry, prescribed that these Commissioners should have the power to punish for contempt. Now, a majority of the committee held that if they punished for contempt, they had to punish for contempt of something, and unless the Commissioners could determine something of course there would be no contempt of its orders, So the committee reported back the words, "hear and determine." That was not in the original section. It was merely to hear complaints. I have not the section here now, but I will ask the Secretary to read it as it stood before being referred.

THE SECRETARY read:

SECTION 20. Three Railroad Commissioners shall be elected by the qualified voters of this State at the general election, whose salary shall be fixed by law, and whose term of office shall be six years; *provided*, that the three Commissioners elected at the first election of all so classify themselves, by lot, that one of them shall go out of office at the end of two years, one at the end of four years, and one at the end of six years; so that after the first election one Commissioner shall be elected at the general election every two years, and shall hold office for the term of six years. They shall be qualified electors of this State, and shall not be interested in any railroad corporation, or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies; and for this purpose they shall have process of the Courts; to hear complaints against railroads and other transportation companies; to send for persons and papers, administer oaths, take testimony, and report cases of contempt to the Courts for their action, and enforce their decisions, and correct abuses through the medium of the Courts, and perform such other duties as may be prescribed by law; to report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies; *provided*, the Legislature shall have power to remove any one or more of said Commissioners from office for dereliction of duty, corruption, or incompetency therein; and whenever, from any cause, a vacancy of office shall occur in said Commission, the Governor shall fill the same by appointing a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified. Said Commissioners shall prescribe a uniform system of accounts to be kept by all of such corporations and companies, and they shall keep their accounts according to that system. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by said Commissioners, or shall charge rates in excess thereof, or shall fail to make their accounts correspond with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense, and any officer, agent, or employé of any such corporation or company who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or imprisoned in the County Jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commissioners shall be deemed prima facie just and reasonable. In any action against any such corporation or company, for damages sustained by charging excessive rates, the plaintiff, in addition to actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. The Legislature may, in addition to any penalties herein prescribed, enforce this article by forfeiture or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined upon them in this and the foregoing sections.

MR. BARBOUR. Mr. President: I rise to a point of order.

THE PRESIDENT. State your point of order.

MR. BARBOUR. My point of order is that the subject-matter is not before the Convention.

THE PRESIDENT. The Chair has already so decided, but I supposed the gentleman contemplated making a motion.

MR. SHAFTER. I thought I had made a motion. I move that the vote by which the report was referred to the Committee of the Whole be reconsidered, so as to enable us to find out whether the Committee on Corporations, when it is instructed to do a specific thing by the Convention, has a right to disregard the mandate.

MR. ESTEE. Mr. President: I move the Convention do now resolve itself into Committee of the Whole, for the purpose of considering this question.

THE PRESIDENT. There is a motion pending to reconsider the vote by which this report was referred to the Committee of the Whole.

MR. TINNIN. I move to lay that motion on the table, Mr. President.

THE PRESIDENT. The question is on the motion of the gentleman from Trinity to lay the motion to reconsider on the table.

Carried.

MR. SHAFTER. Mr. President: I call for the ayes and noes on the motion to table.

MR. STEDMAN. I rise to a point of order.

THE PRESIDENT. State your point of order.

MR. STEDMAN. It is that a motion to reconsider requires one day's notice to be given, and therefore this motion of the gentleman from Marin is out of order.

THE PRESIDENT. That is so; the point of order is sustained.

MR. SHAFTER. I move to take the report from the Committee of the Whole.

MR. HOWARD, of Los Angeles. Mr. President: Is that motion debatable? If it is, I have a word to say.

MR. TINNIN. I move to lay that motion on the table.

THE PRESIDENT. It is not in order. The gentleman from Los Angeles has the floor.

SPEECH OF MR. HOWARD.

MR. HOWARD, of Los Angeles. Mr. President: The statement that the Committee on Corporations has exceeded its powers is a false clamor, without any foundation in fact. The amendment of the gentleman from San Joaquin, Judge Terry, provides that if the railroad companies disobey the orders of the Commissioners, they shall be punished for contempt, the same as they would be punished by a Court of record. Now, sir, I submit to this Convention, and to the common sense of anybody, that you cannot punish for contempt in any Court unless that Court has made some decision, or some order. To say that you can is absurd. I supposed that this thing was settled long ago. It has power to hear and determine, and unless it can hear and determine it has no jurisdiction. It has already been decided by the Supreme Court. How are you to punish for contempt, unless there is some order, some decision of the Commission is made and violated. Therefore, I say that putting in the word "determine" is in strict compliance with the instructions of this Convention, and not to have done so would have been to disobey the orders of this Convention. Again, it is true that the decisions of this Commission, unless some power is reserved, are final. That can not be disputed. Their decision is not subject to review by any Court. It is as conclusive and final as the decision of any Court in the country.

MR. EDGERTON. Mr. President: I rise to a point of order. I understood the motion of the gentleman from Marin to be to rescind the vote by which it was sent to the Committee of the Whole.

MR. HOWARD. So it was, and I am giving reasons why the motion should not prevail.

The PRESIDENT. The motion was to recall the report from the Committee of the Whole, and bring it before the Convention for consideration.

MR. REYNOLDS. I rise to a point of order.

THE PRESIDENT. The gentleman will state his point of order.

MR. REYNOLDS. This Convention has already sent that report to the Committee of the Whole. It cannot be recalled without rescinding the vote, and that cannot be done without reconsidering the vote by which it was sent there. Now, it has been ruled by the Chair, that it requires one day's notice, under the rule; therefore, it is impossible to reach the subject at all until the vote is reconsidered in due form.

THE PRESIDENT. The point of order is not well taken. The Convention can, at any time, recall a report from the Committee of the Whole. The gentleman from Los Angeles will proceed.

MR. HOWARD. I simply wish to say that there are three or four gentlemen in this Convention who I hope will never die, because parliamentary law will die with them. [Laughter.] I hope, therefore, they will do us the personal kindness at least to postpone their taking off until the final adjournment of this Convention. [Laughter.] Now, according to the decision of the Supreme Court of California, the decisions arrived at by these Commissioners are final and conclusive, unless some method of review is provided for. This Convention believed that this power of review should not be given; hence it was wisely decided that these words, "prima facie," should go out. I think some power should be left to the Commissioners. Now, sir, this is no nonentity; it is a real

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thing; it is to be a tribunal of some power. The Parliament of England understood it when they created their Commission on Highways and Canals, in eighteen hundred and seventy-three. The fifteenth section of that Act says: "The Commission shall have power to *hear and determine*." They know law enough to see that the power to hear without the power to determine, is a mere delusion. It amounts to nothing.

Now, I say we have simply obeyed the instructions of this Convention when we added the word "determine," and if we had not added the words, no sensible man can doubt that when the section came to be construed, it would be construed that the Commission has no jurisdiction. It is the friends of the railroads, the enemies of reform, who are raising these objections.

As to the grammar of the section, we have taken the suggestions of the gentleman from Sacramento, who, I understand, was once a teacher of boys back in Vermont. We have taken a lesson by his criticism, and corrected the grammar. As to the want of power and legal sanctions, the committee have adopted the suggestion of the gentleman from Marin. He said the Commissioners had no power, and if they made a request of the companies they would refuse to comply. We concluded that his criticism was good, and we corrected it to meet his ideas. We put in penalties, in connection with the power to punish for contempt, which will enable the Commission to fine and imprison if they are set at defiance by the officers of the railroad companies. Whenever it has been found faulty, and we thought the suggestions and criticisms of these gentlemen were well founded, we adopted them and corrected the section; and it does not become these gentlemen, after their suggestions have been adopted, to go back and say it is all wrong. It does not lay in their mouths. The gentleman from Marin ought not to go back on himself so soon.

Again, sir, we have adopted all the amendments (and they were able) of the gentleman from Alameda, Judge Campbell, except that we have stricken out the words "prima facie," because we thought that the retention of these words would destroy the force of the section, and render the Commission useless. Now, if they are to be in, let them go a little farther, and determine, so as to make this thing effective. The gentleman from Marin said we had been discussing this matter for three or four weeks; that we do one thing one day and undo it the next, and so on. That we do not stand up to what we have done. Well, haven't we been listening to him for the last three weeks, pointing out objectionable things, and suggesting how they should be corrected? And having corrected what he considered mistakes, I do not think he is in a condition to refuse us his support.

I submit to the Convention that the Committee on Corporations have not gone one iota beyond the instructions. If they had failed to insert the word "determine," they would have failed to comply with the spirit of the instructions of this body.

I believe, if I understood him correctly, the gentleman from Sacramento raised another objection: that the report contains a provision for the forfeiture of charters. But the amended section contained that. The word "charter" was not mentioned, but it is immaterial whether you call it a charter or franchise, so far as the purpose of this section is concerned, it is the same thing. Now, I do not care how long this thing is discussed. I like to hear the distinguished gentleman from Marin, though he talks to us about every other day; I do not begrudge the time, as time is not an element in the contract here. The thing is to get right, and having taken counsel from both the friends and the enemies of this report, having made this report, I hope the Convention will stand by it unanimously, at least so far as the friends of reform are concerned.

SPEECH OF MR. SHAFTER.

MR. SHAFTER. Mr. President: I do not suppose I was the one alluded to as the Vermont grammarian, but I have taught school in Vermont, and I must say that I never had as dull a class as this Committee on Corporations. [Laughter.] I used to take a long ferule and make an application, and that might have a salutary effect upon this committee. I think they would have come out nearer right at the end of sixty days. I think the gentleman from Los Angeles has no room to complain of long and numerous speeches, for he has been once or twice a day, for the past forty days, trying to beat some sense into this committee.

MR. LARUE. Is the gentleman in favor of corporeal punishment being put into the Constitution?

MR. SHAFTER. Yes, sir, I am. [Laughter.]

MR. CROSS. We object to having ideas beaten in at that end. [Laughter.]

MR. SHAFTER. God forbid that I should be guilty of such inhumanity, for in the case of the Committee on Corporations it might cause a concussion of the brain. [Laughter and applause.] Now, the Chairman of the committee has admitted that he has inserted matter into this report that was not called for in the resolution of instructions. My point is, that the committee has no right to put anything in that report which was not called for by the Convention, right or wrong. The committee had no right to thrust that word "determine" in there, and I shall not vote for it. The gentleman from Los Angeles has entirely perverted the doctrine of the case. I want the Convention to pass upon it here, and say whether the committee have a right to thrust it upon us contrary to the expressed wishes of the Convention. I wish to teach this committee to obey the orders of their superiors.

MR. LINDOW. I rise to move the previous question.

MR. LARKIN. I second the motion.

THE PRESIDENT. The question is on the motion to bring the report back from the committee.

Lost.

MR. ESTEE. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Corporations other than Municipal.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The question is on the supplemental report of the Committee on Corporations other than Municipal.

THE PREVIOUS QUESTION.

MR. LARKIN. I move the previous question on section twenty and section twenty-one.

Seconded by Messrs. Stedman, Evey, and Caples.

THE CHAIRMAN. The question is, Shall the main question be now put?

The committee divided, and the motion for the previous question prevailed, by a vote of 65 ayes to 35 noes.

THE CHAIRMAN. The first question is on the adoption of the substitute for sections twenty and twenty-one, reported by the Committee on Corporations other than Municipal. The Secretary will read.

THE SECRETARY read:

SECTION 20. The State shall be divided into three districts, as nearly equal in population as practicable, in each of which one Railroad Commissioner shall be elected, by the qualified electors of their respective districts, at the regular gubernatorial elections, whose salary shall be fixed by law, and whose term of office shall be four years. Said Commissioners shall be qualified electors of this State, and of the district from which they are elected, and shall not be interested in any railroad corporation or other transportation company, as stockholder, creditor, agent, attorney, or employé, and the act of a majority of said Commissioners shall be deemed the act of said Commission. Said Commissioners shall have the power, and it shall be their duty, to establish rates of charges for the transportation of passengers and freight by railroad or other transportation companies, and publish the same from time to time, with such changes as they may make; to examine the books, records, and papers of all railroad and other transportation companies, and for this purpose they shall have process of the Courts; to hear and determine complaints against railroad and other transportation companies, to send for persons and papers, to administer oaths, take testimony, and punish for contempt of their orders and processes in the same manner, and to the same extent, as Courts of record, and enforce their decisions, and correct abuses through the medium of the Courts. Said Commissioners shall prescribe a uniform system of accounts to be kept by all such corporations and companies, and they shall keep their accounts according to such system. Any railroad corporation or transportation company which shall fail or refuse to conform to such rates as shall be established by such Commissioners, or shall charge rates in excess thereof, or shall fail to keep their accounts in accordance with the system prescribed by the Commission, shall be fined not exceeding twenty thousand dollars for each offense, and every officer, agent, or employé of any such corporation or company who shall demand or receive rates in excess thereof, or who shall in any manner violate the provisions of this section, shall be fined not exceeding five thousand dollars, or imprisonment in the County Jail not exceeding one year. In all controversies, civil or criminal, the rates of fares and freights established by said Commission shall be deemed conclusively just and reasonable; and in any action against such corporation or company, for damage sustained by charging excessive rates, the plaintiff, in addition to the actual damage, may, in the discretion of the Judge or jury, recover exemplary damages. Said Commissioners shall report to the Governor, annually, their proceedings, and such other facts as may be deemed important. Nothing in this section shall prevent individuals from maintaining actions against any of such companies. The Legislature may, in addition to the penalties herein prescribed, enforce this article by forfeiture of charters or otherwise, and may confer such further powers on the Commissioners as shall be necessary to enable them to perform the duties enjoined on them in this and the following sections. The Legislature shall have power, by a two-thirds vote of all the members elected to each house, to remove any one or more of said Commissioners from office for dereliction of duty, or corruption, or incompetency; and whenever, from any cause, a vacancy in office shall occur in said Commission, the Governor shall fill the same by the appointment of a qualified person thereto, who shall hold office for the residue of the unexpired term, and until his successor shall have been elected and qualified.

The section was adopted.

NOTICE OF RECONSIDERATION.

MR. REYNOLDS. I give notice that I will, on Monday, move a reconsideration of the vote by which the substitute was adopted.

DISTRICTING THE STATE.

THE SECRETARY read:

SEC. 22. Until the Legislature shall district the State, the following shall be the railroad districts: The First District shall be composed of the Counties of Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Humboldt, Lake, Lassen, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba, from which one Railroad Commissioner shall be elected. The Second District shall be composed of the Counties of Marin, San Francisco, and San Mateo, from which one Railroad Commissioner shall be elected. The Third District shall be composed of the Counties of Alameda, Contra Costa, Fresno, Inyo, Kern, Los Angeles, Mariposa, Merced, Mono, Monterey, San Benito, San Bernardino, San Diego, San Joaquin, San Luis Obispo, Santa Barbara, Santa Clara, Santa Cruz, Stanislaus, Tulare, Tuolumne, and Ventura, from which one Railroad Commissioner shall be elected.

THE CHAIRMAN. If there are no amendments, the Secretary will read section twenty-four.

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THE SECRETARY read:

SEC. 24. The Legislature shall pass all laws necessary for the enforcement of the provisions of this article.

If there are no amendments, the Secretary will read section twelve, temporarily passed.

MR. FILCHER. Mr. Chairman: I gave notice some time ago that, after we had completed this article, I would propose a new section.

THE CHAIRMAN. Sections twelve and thirteen are before the Committee. The Secretary will read.

THE SECRETARY read:

SEC. 12. The Legislature shall provide by law that in all elections for Directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are Directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of Directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such Directors or managers shall not be elected in any other manner.

MR. ESTEE. Mr. Chairman: The committee, on November nineteenth, reported the following amendment to section twelve: Add to the section, "Except that members of coöperative societies, formed for agricultural, mercantile, and manufacturing purposes, may vote on all questions affecting such societies in the manner prescribed by law."

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: As far as the section now before the Committee of the Whole and the amendment are concerned, I will merely express the opinion which suggests itself to me, that the whole thing is unnecessary, because it is improper, to say the least. It says the Legislature shall provide by law so and so, and then goes on to state what kind of a law the Legislature shall pass. Why make it their duty to pass that law, when the law itself is inserted here in the Constitution. I do not consider it necessary to have it in the Constitution. Let the Legislature do it. The Legislature, in my opinion, will have the power if we strike out this section. If we are going to put the law in the Constitution, why say anything to the Legislature. If we are going to have the Legislature do it, let us leave it to legislative discretion. If we are going to direct right here what shall be done, why say that the Legislature shall do it. Now, I am opposed to this section because it is code legislation. I started in at the beginning, and I am going to carry it through to the end, to oppose everything in the shape of code legislation in the Constitution. And I may as well say right here, that I am opposed to all such things as imposing pains and penalties in the Constitution, or fines in the Constitution. We may find that a uniform rule will not work, and consequently these constitutional pains and penalties will not work.

THE CHAIRMAN. The question is on the adoption of the amendment.

REMARKS OF MR. SCHELL.

MR. SCHELL. Mr. Chairman: I believe I have the honor of belonging to the Committee on Corporations other than Municipal, but I did not have the pleasure of being present when the committee passed upon that amendment and agreed to it. For one, I do not understand the meaning of the word "coöperative societies," and I would like to have the Chairman of the committee explain it, or I shall be compelled to vote against it. If the word "coöperative" has any special meaning, I would like to know what it is. I do not wish to vote in the dark.

REMARKS OF MR. WEBSTER.

MR. WEBSTER. Mr. Chairman: The object of that amendment added to the report was to exclude from its provisions all coöperative societies which have been formed in the State, and which, under the Constitution as it now stands, supported by the decisions of the Supreme Court, that they are compelled to follow, as it is the law as laid down, that each share of stock shall be entitled to one vote. The object of this is to follow the plan, as adopted in England, governing coöperative societies, where each member of a society, without regard to the number of shares he shall hold, is simply entitled to one vote. The idea is here, that although there may be different amounts placed in the society of that kind by different stockholders, that each shall be equal in the matter of voting and in the regulation of these coöperative societies. We have a number of these societies in this State and they have operated well. The design is that individuals who have limited means may associate themselves together for the purpose of conducting business on the coöperative plan, by which each member receives a portion of the profits, according to the amount of capital he has invested, but in its government and control each is entitled to one vote, without regard to the number of shares he may hold. I don't suppose it is necessary to enter into the details of this matter. But it is necessary that we should give some encouragement to these societies, which have been of so much benefit to the laboring classes of this State. They have been a wonderful thing in England, and I think we ought to encourage them here. I don't think there can be any one serious objection to it on the part of any one, as it can work no harm, and we think will do a good deal of good.

REMARKS OF MR. BLACKMER.

MR. BLACKMER. Mr. Chairman: I think this amendment offered by the committee certainly should pass. It has been found by experience throughout the State, heretofore, that these coöperative societies have worked a great deal of good. But under the Constitution as it now exists, without legislative enactment, it will be impracticable, because it will be possible for certain parties to gather up large amounts of the stock and secure control of the institutions. The Legislature, last Winter, provided for this very thing, because the Constitution did not do it. They provided that the by-laws might be made so that only one vote should be cast by one stockholder. I read from the statutes of eighteen hundred and seventy-seven, page eight hundred and eighty-three, an Act defining the business of coöperative societies:

"A coöperative business corporation is a corporation formed for the purpose of conducting any lawful business, and of dividing a portion of its profits among persons other than its stockholders. Coöperative business corporations shall be formed under and governed by division one, part four, title one, of the Civil Code of this State, and when so formed may, in their by-laws, in addition to the matters enumerated in section three hundred and three of said Code, provide:

"*First*—For the number of votes to which each stockholder shall be entitled; and,

"*Second*—The amount of profits which shall be divided among persons other than the stockholders, and the manner in which, and the persons among whom, such division shall be made."

MR. SCHELL. It says, for the purpose of conducting any lawful business; is not a banking corporation a coöperative society?

MR. BLACKMER. The amendment here says, "formed for agricultural, manufacturing, and mercantile purposes." It reads:

"SEC. 12. The Legislature shall provide by law that in all elections for directors or managers of incorporated companies, every stockholder shall have the right to vote, in person or by proxy, for the number of shares of stock owned by him, for as many persons as there are Directors or managers to be elected, or to cumulate said shares and give one candidate as many votes as the number of Directors multiplied by the number of his shares of stock shall equal, or to distribute them, on the same principle, among as many candidates as he shall think fit; and such directors or managers shall not be elected in any other manner."

Then the amendment of the Committee on Corporations comes in. It reads thus—and the gentleman will see that there is no foundation for his criticism:

Add to section twelve: "Except that members of coöperative societies formed for agricultural, mercantile, and manufacturing purposes, may vote on all questions affecting such societies, in manner prescribed by law."

Now, this is merely an effort to incorporate this same principle into the Constitution, to give these associations an opportunity of organizing for agricultural, manufacturing, and mercantile purposes. It is to provide against the possibility of any man or set of men securing control of the majority of the stock, and by that means the control of the corporation. There is no harm in it, while there is a great deal of good.

REMARKS OF MR. SMITH.

MR. SMITH, of Kern. Mr. Chairman: I hope this amendment will be passed. It seems to me a very important matter that we should have coöperative capital. Now, then, the combinations of capital, under the influence of a few persons—and such is the case where each stockholder is limited and can have but one vote—are a very good thing. This has worked well in England; and there, too, each member is limited to one vote. Each member is permitted to vote under all circumstances, and is only limited as to the number of shares. Now, under the last clause this will be impossible, unless we put in this amendment. There would be no power to organize these societies unless we adopt this amendment. I hope, therefore, that the committee will pass it.

REMARKS OF MR. BARBOUR.

MR. BARBOUR. In the Committee on Corporations, there was a proposition presented by myself, which will be found in the minority report, providing for these societies. That proposition was made so that corporations could adopt this coöperative principle. I do not remember whether the gentleman from Stanislaus was present or not, but it was understood that it should only apply to agricultural, manufacturing, and mercantile societies. I hope this amendment will be adopted.

THE CHAIRMAN. The question is on the adoption of the amendment.

The amendment was adopted.

MR. ROLFE. I offer an amendment to section twelve.

THE SECRETARY read:

"Strike out in the first line these words: 'The Legislature shall prescribe by law that.'"

THE CHAIRMAN. The question is on the amendment.

REMARKS OF MR. ROLFE.

MR. ROLFE. Mr. Chairman: My object in offering this amendment is to prevent unnecessary legislation. Now, as I stated in the first place, I am opposed to putting such provisions as this in the Constitution. But I hope the fact of my being opposed to incorporating it in the Constitution will not prejudice gentlemen against any motion or amendment which I may offer, or reason that the amendment is not offered from the best of motives. I have no desire to thwart the will of the Convention, or to attempt to clog the provision in any way. I am disposed now to treat this section as a part of the Constitution, and my object is to put it in a better form than it now is. It is self-executing, and the superfluity of these words consists in this: that it requires the Legislature to do what we have done in the Constitution. It goes on and states that the Legislature shall provide by law just what is already provided in the section itself. If any gentleman can explain and convince me that all this is not fully provided for in this section, I will willingly withdraw the amendment. But until I am convinced that it is not a self-executing section; so long as I am not convinced that it is not full and complete, then I say I shall insist upon my amendment, because the requirement of this section merely is that the Legislature shall enact a law repeating the very words of this section. Would not that be a complete compliance with this section by the Legislature? But gentlemen may say there are further details necessary for the purpose of carrying out this section. I am not prepared to say whether any further legislation is or is not necessary. But if it should be ascertained that it will

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be necessary to have further legislation in order to enforce this section and put it into full execution, then the Legislature can pass such necessary enactment aside from this section. It would look inconsistent to me for this Convention to say what the rights of a stockholder in a corporation shall be by simply saying that the Legislature shall pass the following provision, and then go on and give the provision they are to pass. It is already provided for here, and what is the use of saying that the Legislature shall do it. It looks very plain to me, and I hope these words will be stricken out, unless some gentleman can show me wherein I am wrong.

THE CHAIRMAN. The question is on the amendment of the gentleman from San Bernardino, Mr. Rolfe.

The committee divided, and the vote stood: ayes, 37; noes, 31.

THE CHAIRMAN. There is not a quorum voting, try it again.

The vote stood: ayes, 45; noes, 33, and the amendment was adopted.

THE CHAIRMAN. The Secretary will read section thirteen.

THE SECRETARY read:

SEC. 13. The State shall not subscribe to or be interested in the stock of, or in any manner loan its credit to, any person, company, association, or corporation.

No amendments.

MR. ESTEE. As there is no amendment to section thirteen, I move that this article, as amended, be printed and referred to the Convention.

THE CHAIRMAN. That motion will have to be made in the Convention.

MR. HALE. Mr. Chairman: I desire to offer a new section, to be numbered section twenty-one; because it is germane to the subject-matter of section twenty.

THE CHAIRMAN. Send it up.

THE SECRETARY read:

SEC. 21. No railroad company or corporation shall establish or construct any line of railroad in this State, for the transportation of passengers or freights, except street railroads in incorporated cities and villages, nor establish any terminal point thereof, nor establish nor maintain any depot, station, or other business place for receiving or discharging passengers or freights, except with the approval, to be duly certified, of said Railroad Commissioners, or a majority of them; and said Commissioners shall have power, and it shall be their duty in said matters, to exercise general supervisory control over all railroads to be operated as public highways in this State, other than said street railroads, and the Legislature shall enact laws to render such control effective.

THE CHAIRMAN. The question is on the amendment.

SPEECH OF MR. HALE.

MR. HALE. Mr. Chairman: I desire to occupy about five minutes of the time of the committee to explain the objects of this amendment, or new section. This principle is new to our laws—I mean the laws of the State of California. It is not new in principle, however, as a law by which railroads are regulated. It is made for a purpose. It may be necessary, sir, to refer to matters of history. This proposition will be found in the printed bill of propositions, No. 451, and most of the members, I believe, have printed files on their desks. If you go back to the history of the construction of railroads in Great Britain, you will find this principle, and also in the United States, with the exception of the State of Iowa and the State of California. I believe there is no other exception. The principle upon which locations have been made for lines of railroad, has been by legislative discretion. In England there was an Act of Parliament passed, and in other European countries, by governmental edict or decree, the construction of lines of railroad was authorized and provided for. These prescribed the terminal points and the various places of business to be established and maintained by the railroad companies. In the United States it is also true that probably nineteen twentieths of all the railroads that have been constructed within the United States—now amounting to eighty thousand miles—have been constructed under special Acts of the Legislature, and charters and grants conferring upon the companies designated in the law, the right to construct and maintain a road at points designated. And this is all in pursuance of that general theory and policy of treating railroads practically as highways, as public institutions, and therefore subject to public control—the precise principle upon which section twenty has been established here. The Legislature by these means prescribes the route, the county to be gone through, fixes their terminal points, and establish generally, or hold the right to establish the places of business of these companies. This was in entire accord and harmony with the general system, the general policy pursued for the government of highways. As highways are for the public, to be established and maintained by public authority, and in their behalf, private property, for the public interest, may be taken for public use upon the payment of an adequate sum, it follows as a logical conclusion that the government has control of the whole proceeding in accordance with the system which prevails in reference to ordinary highways throughout the country. What is done then? The circumstances perhaps of others require that there shall be a highway between certain points. The needs of the community require it. They may present to the proper Board—under our laws the Board of Supervisors of the county—whose duty it is to pass upon the question whether a highway is needed between the points designated as terminal points, and also whether the petition rightly describes the alignment of the road. That being passed upon affirmatively—and, of course, it rests with the discretion of the Board as to whether a highway is there needed—then comes the question of proceeding to condemn and take private property for the public use. It all proceeds upon the basis, upon the principle, that the public need it, and that it is for a public use. And as I have remarked, the general policy of European governments, and of a majority of the States, is the equivalent of this course in respect to the railroads and their construction. The governments of Europe have treated them as highways. The States of this Union have treated them as highways. The State of California has treated them as highways. Our Courts have held them to be public highways; and because they are public highways, for the public use, private property may be taken for the purpose of constructing. The right of eminent domain is invoked for this purpose.

Now, the purpose of this new section is to bring our laws into general harmony with this theory of right. Under our law, it is provided that a given number of persons, originally nine, now five, may associate themselves together, subscribe to certain articles, make their acknowledgment to their terms before the proper officer, and declare their purpose to be to construct and maintain a railroad, which are privileges without restraint from any authority of the State. These five persons are privileged in their articles of incorporation, to fix the alignment of the road, designate the terminal points between which it is to be constructed, to survey and fix the line, and having done it, to file a map in the office of the Secretary of State, and in the county in which it is formed, and that becomes the established line of the road. Now, they are privileged to establish all places of business upon the line of the road. We all know practically that a railroad, to be operated for the transaction of the business of the country, must have a large number of places of business—usually called stations—where freights are received and discharged, and where passengers are received and discharged; where, in fact, the main business of the corporation is to be done. Now, in accordance with the policy of the law elsewhere—both in Europe and America—unless, perhaps, you may except the State of Iowa, and I am not at all certain about that—but in the other States it is true—that this question of determining the alignments of the road, fixing its terminal points, its places of business, etc., have been regularly prescribed by governmental authority. That is, sir, it is left alone to the discretion of the company, unrestrained by any officer or any authority of government.

Now, the object of this section which I propose is to set railroad corporations in this State in harmony with this general rule, and inasmuch as they are highways, and as they invoke the power of State to take private property, it is a public use, and the public should have a voice in determining where these roads should be constructed, and where their places of business shall be maintained. Hence, sir, the terms of this article should be: "No railroad company or corporation shall establish or construct any line of railroad in this State for the transportation of passengers or freights, except street railroads in incorporated cities and villages, nor establish any terminal point thereof, nor establish nor maintain any depot, station, or other business place for receiving or discharging passengers or freights, except with the approval, to be duly certified, of said Railroad Commissioners, or a majority of them; and said Commissioners shall have power, and it shall be their duty in said matters, to exercise general supervisory control over all railroads to be operated as public highways in this State, other than said street railroads, and the Legislature shall enact laws to render such control effective."

MR. LARKIN. I would like to ask the gentleman from Placer a question, if he will allow me.

MR. HALE. Certainly.

MR. LARKIN. Suppose the railroad interest of this State should secure control of this Commission; what then?

MR. HALE. They would only do exactly what they are doing now, and what they always have done—as they please. But I would say to the gentleman that the theory upon which we have approved and passed section twenty is, that the State exercises this control through this Commission. The Commissioners are elected by the people of this State, in the interest of the people of the State, as agents acting both for the people and for the railroad companies, to deal justly and to act fairly, and to adjudicate in all respects impartially between them. I apprehend that upon no other theory, or for no other purpose, could this committee have adopted section twenty; and it is upon that theory, and upon the doctrine enunciated in section twenty, that I engraft this proposition as section twenty-one, for the purpose of expressly adding to the powers already conferred upon these Commissioners.

For the want of such control as is here proposed, complaints have come up from all parts of the State. I have heard them from the North, and I have heard them from the South, and I have heard them from the center of the State. I cannot certify to the truth and to the justice of many of these complaints. I only know they are believed to be well founded. These railroads, which are highways—have been so declared by the Courts—have laid out their lines of road, fixed their terminal points, established their places of business, in numerous instances not only in disregard to the public interest, and to the interest of communities who support the road, but for the purpose often of establishing special and adverse interests. For instance, referring to a matter of history, the railroads here in this State—or the one great railroad corporation which has control of nearly all the railroads in the State—owns immense tracts of land, lying along and close to the roads. For instance, supposing a case, a railroad is being run down the San Joaquin Valley. It is a prosperous valley, because it is a great valley, inhabited by thousands of contented and happy people. They run down the valley until they come to the City of Stockton, one of the most prosperous and enterprising cities in the State. They say to these people, we will do one of two things. We have plenty of land, and we can locate our road where we please. We can have all the terminal points and all our places of business established just where we please. They come to a city and say to the citizens, come out and give us so much money, or give us such amounts of money, or such certain privileges, or we will make no station at your city; or else we will run our line of road just far enough away so that your city will go down, as has been done in more than one instance in this State. Now, sir, it needs no argument, no stretch of the imagination, to see that these things can be done at any time if this check is not

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put upon these railroad corporations. There is power in the State to prevent these abuses, and it would be a very wise policy on the part of this Convention to provide that this power should be exercised, to see that these lines of road are constructed only where the public convenience requires it; that their terminal points shall be selected with a view to the public interest and the public convenience, and their places of business established upon the same principles; that these Commissioners, as the agents of the people, should have the power of supervision over all the acts of these companies, and that the companies can only establish their lines of road, their terminal points, and their places of business under the direction and by the permission of these Commissioners.

MR. CAPLES. If the gentleman will allow me?

MR. HALE. Certainly.

MR. CAPLES. The gentleman, in his proposition, uses the term "public highways." I desire of the gentleman to know whether he places the same construction upon that term as the gentleman from San Francisco, Mr. Barbour, did in his amendment, which was offered in this Convention some time since; whether the gentleman from Placer places the same meaning upon that term that Mr. Barbour did?

MR. HALE. I do not know as I know what the gentleman is driving at. I will state, however, what meaning I attach to it. The Courts of Great Britain and Europe, and all over the world, wherever railroads have been established, in every State in this Union, including the State of California, have treated railroads as public highways of the land. They have declared them to be such in the plainest terms known to the law. Our Supreme Court has passed upon it, and it is no longer an open question. It is upon that ground, and upon that alone, that the power of the State can be invoked for the taking of private property.

MR. CAPLES. The gentleman appears not to have heard distinctly. The construction that Mr. Barbour put upon that term, when he offered his amendment, was that anybody had a right to put their cars and engines on the track and run them.

MR. HALE. Now I understand the gentleman's question; to which I simply reply that if my friend from San Francisco put that construction upon the term, I think it is entirely unwarranted by any authority that I ever heard of. In other words, the Courts have held this ——

MR. BARBOUR. If the gentleman will allow me? That is to be taken with a great deal of qualification, as the gentleman will find by reading the amendment. I never claimed any such extraordinary thing as the gentleman suggests.

MR. HALE. I desire no controversy on that point. I wish to say to the gentleman from Sacramento that the sense in which the Courts have held this term is this: not that they are highways in the same sense precisely that an ordinary highway is considered, upon which every citizen may go without restraint or condition, but that it is a highway, a roadbed, on which, though for public use, is under a reasonable control of the companies or corporations by which it is constructed, owned, and operated. The meaning of the term is, that these highways shall be open upon the same and equal conditions to all, for the conveyance of passengers and freight. Not that anybody can put cars on that road, except those who control and operate the road, but that all citizens shall have a right to its use, both for the transportation of persons and freight, under proper regulations prescribed by law. In that sense they are regarded as highways, and therefore a public use.

Now, we all know that when once those roads are established they supersede all other modes of conveyance, as far as the general mass of commerce, both freight and passengers, is concerned. We know that when once a road is established between points, or between different sections, the stage coach disappears, and all modes for the transportation of passengers or freight, other than railroads, disappear. Experience has demonstrated this, and therefore we know that when once a line of railroad is established, it becomes the exclusive highway. It is a monopoly, because it is better than anything else that can come in competition with it. The duty is all the more imperative upon the State to exercise a wise and sound and just control, because they transact all the business of the community. I think, for the reasons I have given, that this is a provision that ought to be adopted by this Convention.

SPEECH OF MR. AYERS.

MR. AYERS. Mr. Chairman: I shall oppose the adoption of this amendment, for the reason that I do not believe it would be proper to place the power in any set of men, or in the hands of any man, to deny the people of this State the privilege of competing with the railroad corporations. Under this provision it would be necessary to secure the consent of the Commissioners to build a local line. It may be the policy of these Commissioners to say that more lines of railroad are not necessary, and they have it in their power, at any time, to prevent the building of competing lines of road. It may become necessary for the necessities and convenience of the public to build new lines of road, and I do not want to place it in the power of the Commissioners to refuse them the privilege. So far as the supervision of railroads is concerned, the Commissioners already have full power, and I do not propose to place in their hands the power to put a veto upon the power of the citizens of this State to establish new roads in any part of the State. Mr. Chairman, I do not know whether I have said it here before, but there is so much force in the idea that I wish to say it now, that I look forward to the time when local railroads and canals will ultimately form a complete railroad system for the entire State.

MR. WICKES. I move the previous question.

SPEECH OF MR. BROWN.

MR. BROWN. Mr. Chairman: I do not propose to make any lengthy speech upon this question. Now, it is evident that we should not wish ourselves to be placed in a position where we will be compelled to take advantage of the people who sent us here to perform a certain duty. I am convinced that the amendment of the gentleman from Placer, if it should be carried, might have this effect upon our Commissioners. There is a very great responsibility, as far as actions of this kind are concerned, resting upon these Commissioners. The purpose has been that of establishing rates of freights and fares. Now, I am convinced that even in this there will be sufficient for them to do. But suppose the railroad is to be constructed, and there are different competing points which wish to secure stations. Certainly in such an event there will be a heavy pressure brought to bear upon the Railroad Commissioners. Do we not see that they would be placed in a position where they would be greatly tempted. This we wish to avoid. I am convinced that this matter has not been discussed before the people. The great and all-absorbing topic with them has been the regulation of freights and fares. If that is accomplished, it strikes me that we will have accomplished the grand purpose, and one which will meet the fullest expectations of the people in this State. And I believe if we proceed further there is danger of harm. I might continue upon this subject, and point out the rocks upon which we are liable to run, but I do not believe it is necessary. We have already accomplished a great deal—all I believe that it is wise to undertake—all I believe that the people expect or demand at our hands. Let us not try to do too much, lest we weaken that which has already been done.

REMARKS OF MR. LARKIN.

MR. LARKIN. Mr. Chairman: This provision is a most remarkable one. Had it not been for the eminent author, whom I know and believe to be sincere, I should be greatly inclined to look upon the provision with suspicion, and as an attempt to load down and weigh down the Constitution. This power, if placed in the hands of the Commission, can be used by them, if they choose to do so, to hinder and prevent the building of local lines of road. Not one single road could be built in this State unless by the consent of the Commissioners, which might be in the interest of the present railroads. This power should never be conferred, as the gentleman from Los Angeles, Colonel Ayers, has well said, should never be conferred upon any Commission. I do look forward to the time when every roadbed in this State, and in this nation, will be a toll road, open to every company and every individual who desires to go upon it, and when Commissioners will regulate the tolls and make the time tables. Now, this proposition will preclude the building of competing lines in this State; preclude any individual or company, unless they can clearly satisfy the Commission that the new road is for the benefit of the people. It is too much power to place in the hands of the Commission. I hope, therefore, that the Convention will vote it promptly down.

MR. FILCHER. Mr. Chairman: I offer an amendment to the amendment.

THE CHAIRMAN. Send up your amendment.

THE SECRETARY read:

Insert after the word "freights," in the sixth line, these words: "Nor abandon or discontinue the use of any depot, station, or other business place for the receipt or discharge of passengers or freight."

THE CHAIRMAN. The question is on the amendment.

SPEECH OF MR. FILCHER.

MR. FILCHER. Mr. Chairman: I confess I am greatly surprised at the opposition manifested to this section. However, I may possibly be laboring under a delusion myself. If, however, I am not mistaken, sir, this long-standing and justly complained of evil will be remedied by this provision. Now, sir, as already stated by my colleague, Judge Hale—though I do not know precisely the details of all the facts in the matter—I have heard indirectly repeated complaints, and I have heard them so often that it has come to be almost a universal cry, that the railroad corporations, in the construction of their lines, have located them, as well as their depots, stations, and terminal points, in many instances to the detriment of the community, and of wants, as they proceeded along through the country. The case of Stockton is a case in point. That city was almost left out in the cold. Visalia and other towns along the line are cases in point also. They have located their lines, and then, under an excuse that the road was going to cost more, and, under a threat of removal, they have levied blackmail upon the citizens. Unless a certain amount of bonds were given them, they changed the line of the road, to the injury of the people. But there is still another oft recurring abuse which this amendment I have offered proposes to correct, and that is, that they shall not abandon any station once established without the consent of these Commissioners. I know of instances in my own county that a man, because he had had the temerity to oppose the encroachments of the railroad corporations upon the people, was made the victim of their malice and revenge. He owned a piece of timber land. He had hired a lot of wood cut, which was piled up along the line of the road, near a switch which had been used for that purpose for some time. He had gone to San Francisco, and made good sale of it. He returned, and ordered a car to be left at the switch to take on a load of his wood. He was then informed that the switch had been abandoned. He appealed to the company, but it was useless. He went to the President of the road, but his reply was that he could not help it.

MR. ESTEE. Will not sections nineteen and twenty remedy all such abuses?

MR. FILCHER. I do not know that they will. Finally, the man's creditors came down upon him; the men who had been working for him wanted their pay, and finally, a man known to be in the interest of these corporations—known to be making money by the favors of this corporation—came to him and offered him a certain price for the wood, stating that, as he had teams to haul it, he could not pay but so much—a losing price to the owner—who had put in his whole Summer's work. He was compelled to take it. He could not afford to haul it to another station. In less than a week cars were left at that abandoned switch, while the purchaser was the gainer by several thousand dollars. Now,

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I say there is an abuse to be aimed at. This is only a single instance, but I have no doubt there are many others. We know how easy it is for the corporations, with the power that they wield, to crush out its enemies. We have seen them fall by the wayside. We have seen some exalted and others crushed in every community. We all know it by experience. There is the main evil which we wish to strike at. We are perfectly willing that these corporations should have justice—we do not wish to annihilate them; but we wish to curb this power which they have been wielding for evil, and bring them upon the same level as all other citizens before the law. We demand that they shall no longer have the power, by their enormous wealth, to crush all who may oppose them.

MR. HALE. I accept the amendment offered by my colleague from Placer.

THE CHAIRMAN. The gentleman accepts the amendment, and the question is upon the original amendment.

SPEECH OF MR. ESTEE.

MR. ESTEE. Mr. Chairman: I fail to see any necessity for the amendment proposed by the gentleman from Placer, Judge Hale. Section nineteen, as adopted, prescribes that no discrimination in charges, or facilities for transportation, shall be made by any railroad or other transportation company between persons and places. There shall be no difference in the facilities afforded to persons for the transportation of freight or passengers. That applies, also, to the amendment proposed by the gentleman from Placer, Mr. Filcher, and accepted by Judge Hale. Section twenty gives the Commissioners power ——

MR. HALE. Allow me a question.

MR. ESTEE. Certainly, sir.

MR. HALE. I will ask the gentleman if he thinks section nineteen confers any power upon the Commissioners to require the railroad companies to fix the time of their road, or designate the stations and places of business?

MR. ESTEE. Read just what it says: "No discrimination in charges, or facilities for transportation, shall be made by any railroad or other transportation company between places or persons, or in the facilities for the transportation of freight or passengers within this State, or coming from or going to any other State. Persons and property transported over any railroad, or by any other transportation company or individual, shall be delivered at any station, landing, or port, at charges not exceeding the charges for the transportation of persons and property of the same class, in the same direction, to any more distant station, port, or landing. Excursion and commutation tickets may be issued at special rates."

Now, I do not think you can get any language more specific and clear than that. It says that all citizens shall be treated alike in regard to the transportation of persons or freight. Now, section twenty says they shall have power to correct abuses—all classes of abuses, included in which are the abuses cited by the gentleman from Placer. They shall have power, and it shall be their duty, says the section, to exercise a general supervision and control over railroad and other transportation companies. Now, I think they have the fullest power, under that section, to correct all that class of abuses, and my opinion is that this proposed provision will only weight the article down. I think it will injure rather than benefit us. It will tend to defeat the whole article, and I hope the friends of this measure will vote it down. I know my friend from Placer is sincere, but I have not heard a single argument to show that every abuse designed to be corrected by this new section cannot be corrected under the provisions of sections nineteen and twenty. This very section which he now proposes was before the Committee on Corporations, was repeatedly discussed, and it was concluded by the committee that the other sections were ample to meet the evils complained of. I think the great danger now is in loading down the article. It is not that it does not mean enough, but that we will have so much in it as to load it down and destroy it. I do not pretend to say that there are not possibly evils which this article will not reach. I understand that; but when we are reaching out trying to correct all the evils that exist, we are in danger of reaching too far. I hope the amendment will be voted down. I do not think there is any necessity for such a provision, in the light of what we have already done, and there may be great danger in it.

THE PREVIOUS QUESTION.

MR. WALKER, of Tuolumne. I move the previous question.

MR. MURPHY. I second the motion.

MR. HOWARD. I second the motion.

MR. REDDY. I second the motion.

MR. HALE. I hope the gentleman will give way for a moment.

THE CHAIRMAN. The previous question has been called for. The question is, Shall the main question be now put?

Carried.

THE CHAIRMAN. The question is on the adoption of the amendment of the gentleman from Placer.

Lost—ayes, 21 (noes not taken).

MR. HERRINGTON. Mr. Chairman: I offer an amendment to the article, to be known as section twenty-three.

THE CHAIRMAN. Send up your amendment.

THE SECRETARY read:

"Every railroad corporation, or other incorporated company or association, existing under the laws of this State, or doing business thereunder at the time of the adoption of this Constitution, shall accept the provisions of this article in good faith before being entitled to claim or have the benefit of any future legislation thereunder."

THE CHAIRMAN. The question is on the adoption of the proposed new section. The gentleman from Santa Clara has the floor.

SPEECH OF MR. HERRINGTON.

MR. HERRINGTON. Mr. Chairman: I think the members of this Convention all understand the provision which I have offered, and the objects for which it is offered. This provision will be found in all the recently adopted Constitutions in this country. Nearly all of them have, in substance, provisions of such a nature. It is a provision against the possible contingency which may arise in the conflict between the instrument as adopted and any supposed agreements existing between the corporations and the State. I have endeavored to make this as plain as possible, and to cover home corporations. Mr. Chairman, I do not believe that members are striving in good faith to complete this article, for they seem to be more interested in their papers than they are in the consideration of this article, now before the Convention. I do submit that if this article is worthy of the serious consideration of this Convention, the section now proposed is equally as worthy of their consideration and their candid deliberation. I do not propose to weary you, but this is an important provision, and I do not want it to go by default. I ask your earnest attention to it, believing it to be absolutely necessary, in order to avoid future difficulties which may arise and conflicts which may occur before the Courts, particularly with reference to the present Constitution which we propose to submit to the people. Now, it is necessary, particularly with foreign corporations, before they receive any benefit from future legislation, that they should, in good faith, accept the provisions of this instrument. Where there are acquired rights, there may be serious difficulties which will arise, and complications which it will be exceedingly hard to adjust. The same conflicts are liable to arise between home corporations and the government. I think it does not require any extended argument to convince intelligent men of the necessity of a provision of this kind.

THE PREVIOUS QUESTION.

MR. REDDY. I move the previous question.

Seconded by Messrs. Murphy, Swing, Dunlap, and Cross.

MR. HOWARD, of Los Angeles. Mr. Chairman: Would it be in order for me to say, after the previous question has been moved, that this is a very good provision, and ought to be adopted?

THE CHAIRMAN. No, sir.

MR. HOWARD. Then I won't say it. [Laughter.]

THE CHAIRMAN. The question is, Shall the main question be now put?

Carried.

THE CHAIRMAN. The question is on the proposed new section proposed by the gentleman from Santa Clara.

It was adopted on a standing vote—ayes, 70; noes, 34.

MR. ESTEE. I move that the committee rise, report this article back to the Convention, with the recommendation that it be printed and placed upon the calendar, to be heard before the Convention.

MR. FILCHER. Will the gentleman suspend his motion for a moment?

MR. ESTEE. No, sir.

THE CHAIRMAN. The question is on the motion of the gentleman from San Francisco, Mr. Estee.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have had under consideration the report of the Committee on Corporations other than Municipal, have completed the same, and report the same back to the Convention, with the recommendation that the article, as amended, be printed and placed on the calendar.

MR. ESTEE. Mr. President: I move that nine hundred and sixty copies be printed.

So ordered.

REPORT OF THE COMMITTEE ON CITY, COUNTY, AND TOWNSHIP ORGANIZATIONS.

MR. HAGER. Mr. President: I ask leave to make a report.

THE PRESIDENT. If there is no objection the gentleman will have leave to send up his report.

THE SECRETARY read:

The Committee on City, County, and Township Organizations have had under consideration the subject-matter and the various propositions referred to them, and herewith report a number of propositions, with the recommendation that they be adopted by the Convention and incorporated in the proposed Constitution, under a separate article and heading, as follows: "Article No. —. Counties, Townships, Cities, and Towns."

The propositions relating to cities having more than one hundred thousand inhabitants, being only applicable to the City and County of San Francisco, are reported by the committee for the consideration of the Convention, with the understanding that each member of the committee is free to vote for or against the same.

The committee report back the propositions referred to them, numbered as follows: Numbers seven, eight, one hundred and sixty, two hundred and sixteen, three hundred and thirteen, three hundred and fifteen, three hundred and forty-nine, three hundred and seventy-six, four hundred and eleven, four hundred and twenty-two, four hundred and twenty-nine, four hundred and thirty-four, four hundred and thirty-eight, four hundred and fifty-three, four hundred and sixty-seven, four hundred and seventy-two, four hundred and seventy-nine, four hundred and eighty-six, four hundred and eighty-seven, four hundred and ninety-five, four hundred and ninety-seven, and five hundred and five, with the recommendation that they be laid on the table.

Respectfully submitted.

JNO. S. HAGER, Chairman.

December 7, 1878.

ARTICLE —.

CITIES, COUNTIES, AND TOWNS.

SECTION 1. The several counties, as they now exist, are hereby recognized as legal subdivisions of this State.

SEC. 2. County seats shall not be removed by special law, but such removals shall be provided for by general law. No county seat shall be removed unless two thirds of the qualified electors of the county, voting

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on the proposition at a general election, shall vote in favor of such removal. A proposition of removal shall not be submitted in the same county more than once in four years.

SEC. 3. No new county shall be established which shall reduce any county to a population of less than eight thousand; nor shall a new county be formed containing a less population than five thousand; nor shall any line thereof pass within five miles of the county seat of any county proposed to be divided; nor shall a county be divided, or have any portion taken therefrom, unless a majority of all the qualified electors of the county or counties affected, voting at a general election, shall vote therefor. New counties, when created, or portions of a county, when added to another county, shall be liable for their just proportion of all debts and liabilities, then existing, of the county or counties out of which they are respectfully formed or taken.

SEC. 4. The Legislature shall establish a system of county governments which shall be uniform throughout the State; and, by general laws, shall provide for township organization, under which any county may organize whenever a majority of the qualified electors of such county, voting at a general election, shall so determine; and, whenever a county shall adopt township organization, the assessment and collection of the revenue shall be made, and the business of such county and the local affairs of the several townships therein shall be managed and transacted in the manner prescribed by such general laws.

SEC. 5. The Legislature, by general and uniform laws, shall provide for the election or appointment, in the several counties, of Boards of Supervisors, Sheriffs, County Clerks, District Attorneys, and such other county, township, and municipal officers as public convenience may require, and shall prescribe their duties and fix their compensation. It shall regulate the salaries and fees of all county officers, in proportion to duties, and for this purpose may classify the counties by population; and it shall provide for the strict accountability of county and township officers for all fees which may be collected by them, and for all public and municipal moneys which may be paid to them or officially come into their possession.

SEC. 6. Corporations, for municipal purposes, shall not be created by special laws, but the Legislature, by general laws, shall provide for the incorporation, organization, and classification, in proportion to population, of cities and towns, and cities and towns heretofore organized or incorporated may become organized under and subject to such general laws. Cities and towns may become incorporated under general laws, whenever a majority of the electors voting at a general election shall so determine, and shall organize in conformity therewith.

SEC. 7. City and county governments may be merged and consolidated into one municipal government, with one set of officers, and may be incorporated under general laws providing for the incorporation and organization of corporations for municipal purposes. The provisions of this Constitution applicable to cities, and also those applicable to counties, so far as not inconsistent or not prohibited to cities, shall be applicable to such consolidated government. In consolidated city and county governments, of more than one hundred thousand population, there shall be two Boards of Supervisors or houses of legislation—one of which, to consist of twelve persons, shall be elected by general ticket from the city and county at large, and shall hold office for the term of four years, but shall be so classified that, after the first election, only six shall be elected every two years; the other, to consist of twelve persons, shall be elected every two years, and shall hold office for two years. Any casual vacancy in the office of Supervisor in either Board shall be filled by the Mayor.

SEC. 8. No person shall be eligible to a county or city office unless he has been a citizen and resident within such county or city for two years next preceding his election or appointment to an office therein.

SEC. 9. Any city having a population of more than one hundred thousand inhabitants may frame a charter for its own government, consistent with and subject to the Constitution and laws of this State, by causing a Board of fifteen freeholders, who shall have been for at least five years qualified electors thereof, to be elected by the qualified voters of such city, at any general or special election, whose duty it shall be, within ninety days after such election, to prepare and propose a charter for such city, which shall be signed in duplicate by the members of such Board, or a majority of them, and returned, one copy thereof to the Mayor, or other chief executive officer of such city, and the other to the Recorder of deeds of the county. Such proposed charter shall then be published in two daily papers of largest general circulation in such city for at least twenty days, and within not less than thirty days after such publication it shall be submitted to the qualified electors of such city at a general or special election, and if a majority of such qualified electors voting thereat shall ratify the same, it shall, at the end of sixty days thereafter, become the charter of such city, or if such city be consolidated with a county in government, then of such city and county, and shall become the organic law thereof, and supersede any existing charter and all amendments thereof, and all special laws inconsistent with such charter. A copy of such charter, certified by the Mayor, or chief executive officer, and authenticated by the seal of such city, setting forth the submission of such charter to the electors, and its ratification by them, shall be made in duplicate, and deposited, one in the office of the Secretary of State, the other, after being recorded in the office of the Recorder of deeds of the county, among the archives of the city, and thereafter all Courts shall take judicial notice thereof. The charter so ratified may be amended at intervals of not less than two years, by proposals therefor, submitted by the legislative authority of the city to the qualified voters thereof, at a general or special election held at least sixty days after the publication of such proposals, and ratified by at least three fifths of the qualified electors voting thereat. In submitting any such charter, or amendment thereto, any alternative article or proposition may be presented for the choice of the voters, and may be voted on separately without prejudice to others.

SEC. 10. The compensation or fees of any county, city, town, or municipal officer shall not be increased after his election or during his term of office; nor shall the term of any such officer be extended beyond the period for which he is elected or appointed.

SEC. 11. No county, city, town, or other public or municipal corporation, nor the inhabitants thereof, nor the property therein, shall be released or discharged from their or its proportionate share of taxes to be levied for State purposes, nor shall commutation for such taxes be authorized in any form whatsoever.

SEC. 12. Any county, city, town, or township may make and enforce within their respective limits all such local, police, sanitary, and other regulations as are not in conflict with general laws.

SEC. 13. Taxes for county, city, town, school, and other local purposes must be levied on all subjects and objects of taxation. In addition to that which may be levied for the payment of the principal and interest of existing indebtedness, the annual rate on property shall not exceed the following: For county purposes, in counties having two million dollars or less, shall not exceed —— cents on the one hundred dollars' valuation; in counties having six million dollars, and under ten million dollars, such rate shall not exceed——cents on the one hundred dollars' valuation; and in counties having ten million dollars or more, such rate shall not exceed —— cents on the one hundred dollars' valuation. For city and town purposes such annual rate on property in incorporated cities and towns shall not exceed —— cents on the one hundred dollars' valuation; and in any city and county with consolidated government, such rate shall not exceed —— cents on the one hundred dollars' valuation.

SEC. 14. The Legislature shall have no power to impose taxes upon counties, cities, towns, or other public or municipal corporations, or upon the inhabitants or property thereof, for county, city, town, or other municipal purposes, but may, by general laws, vest in the corporate authorities thereof the power to assess and collect taxes for such purposes.

SEC. 15. The Legislature shall not delegate to any special commission, private corporation, company, association, or individual, any power to make, control, appropriate, supervise, or in any way interfere with any county, city, town, or municipal improvement, money, property, or effects, whether held in trust or otherwise, or to levy taxes or assessments, or perform any municipal functions whatever.

SEC. 16. No State office shall be continued or created in any county, city, town, or other municipality, for the inspection, measurement, or graduation of any merchandise, manufacture, or commodity; but such county, city, town, or municipality may, when authorized by general law, and the public interest demands it, appoint such officers.

SEC. 17. Private property shall not be taken or sold for the payment of the corporate debt of any political or municipal corporation.

SEC. 18. All moneys, assessments, and taxes belonging to or collected for the use of any county, city, town, or other public or municipal corporation, coming into the hands of any officer thereof, shall, immediately on the receipt thereof, be deposited with the Treasurer, or other legal depositary, to the credit of such city, town, or other corporation, respectively, for the benefit of the funds to which they respectively belong.

SEC. 19. The making of profit out of county, city, town, or public school money, or using the same for any purpose not authorized by law, by any officer having the possession or control thereof, shall be a felony, and shall be prosecuted and punished as prescribed by law.

SEC. 20. No county, city, town, township, Board of Education, or school district, shall incur any indebtedness or liability in any manner, or for any purpose, exceeding in any year the income and revenue provided for them respectively for such year, without the assent of two thirds of the voters thereof at an election to be held for that purpose; and in cases requiring such assent no indebtedness shall be incurred (except by a county to erect a Court House or Jail) to an amount, excluding existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the assessment next before the last assessment for State and county purposes previous to the incurring such indebtedness, and unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within forty years from the time of contracting the same.

SEC. 21. No county, city, town, or other public or municipal corporation, by a vote of its citizens or otherwise, shall become a subscriber to the capital stock, or a stockholder in any corporation, association, or company, or make any appropriation, or donation, or loan its credit to, or in aid of, any person, corporation, association, company, or institution.

SEC. 22. No law shall be passed by the Legislature granting the right to construct and operate a railroad within any city, town, village, or on any public street or highway thereof, without the consent of the municipal or other proper local authorities having the control of such street or highway proposed to be occupied by such railroad.

SEC. 23. In any city where there are no public works owned and controlled by the municipality for supplying the same with artificial light and water, any company duly incorporated by the laws of this State shall, under the direction of the Superintendent of Streets of said city, have the privilege of disturbing and using the public streets and thoroughfares thereof, and of laying down pipes and conduits therein, and of making connections therewith, so far as may be necessary for introducing into and supplying such city and its inhabitants either with gaslight or other illuminating light, or with fresh water for domestic and all other purposes, for which the same or either may be used, upon the conditions following: Such company shall make good all damages to such streets and thoroughfares, except necessarily occasioned by the reasonable use thereof, and be liable to such city and its inhabitants therefor. Such company introducing and supplying gas-

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light or other light, and fresh water, or either, shall furnish the same, so far as necessary and required, free and without charge, to all public buildings, institutions, and school houses belonging to such city, and used for municipal purposes; and such company introducing and supplying water shall also furnish the same, free and without charge, to the Fire Department, and for the extinguishment of fires. Each company, its property and franchise, shall be liable to such city and its inhabitants for the performance of these conditions.

SEC. 24. In counties or cities having more than one hundred thousand inhabitants no person shall, at the same time, be a State officer and a city or county officer, nor hold two city or county offices.

SEC. 25. No public work or improvement of any description whatsoever shall be made or done, in any city, in, upon, or about the streets thereof, or otherwise, the cost and expense of which is made chargeable or may be assessed upon private property by special assessment, unless an estimate of such cost and expense shall be made, and an assessment in proportion to benefits, on the property to be affected or benefited, and shall be collected and paid into the city treasury before such work or improvement shall be commenced, or any contract for letting or doing the same authorized or performed.

SEC. 26. The Legislature shall not pass any local or special law in the cases following:

Regulating the affairs of counties, cities, towns, townships, wards, City or County Boards of Education, school districts, or other political or municipal corporation or subdivision of the State;

Authorizing the laying out, opening, altering, maintaining, or vacating roads, highways, streets, alleys, town plats, or parks;

Relating to cemeteries, graveyards, or public grounds not of the State;

Locating or changing county seats;

Incorporating cities, towns, or villages, or changing their charters;

Creating offices, or prescribing the powers and duties of officers in counties, cities, towns, townships, or school districts;

Regulating the fees or extending the powers and duties of county or municipal officers;

Regulating the management and maintenance of public schools, the building or repairing of School or Court Houses, and raising of money for such purposes;

Extending the time for the assessment or collection of county, city, or other municipal taxes, or otherwise relieving any Assessor or Collector of county or city taxes from the due performance of the official duties, or their securities from liability;

Legalizing the unauthorized or invalid acts of any officer or agent of any county or municipality thereof;

Directing the payment of money out of the treasury, or by any officer, of any county, city, or town, without the consent of such county, city, and town;

Directing the payment of money from out of the treasury, or by any officer of, or creating any liability against, a county, city, town, or any public or municipal corporation, without its consent.

MR. HAGER. I ask that the usual number be printed.

THE PRESIDENT. It requires a motion to print.

MR. HAGER. I move that the usual number, four hundred and eighty copies, be printed.

So ordered.

SUPPLEMENTAL REPORT.

MR. HAGER. I have another report from the committee, which is very short.

THE SECRETARY read:

The Committee on City, County, and Township Organizations have had under consideration a number of petitions and memorials, asking that the following proposition be inserted in the new Constitution, to wit:

"SECTION —. The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, voting precinct, town, or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors shall be prohibitied within the prescribed limits."

And the committee being equally divided in opinion at the time it was considered in the presence of eight members thereof, instruct me to report the petitions and memorials back, with the recommendation that the above proposition be committed to the Committee of the Whole for further consideration and action.

Respectfully submitted.

December 7, 1878. JNO. S. HAGER, Chairman.

MR. HAGER. I move that the report be received and referred to the Committee of the Whole.

RESOLUTION.

MR. BARNES. Mr. President: I wish to offer a resolution.

THE PRESIDENT. If there is no objection, the gentleman will send up his resolution. No objection.

THE SECRETARY read:

WHEREAS, The appropriation for the expenses of this Convention is now nearly exhausted, and the session is likely to be prolonged to the limit expressed in the Act of the Legislature convening this body, and perhaps beyond it;

Resolved, That when payments from said appropriation shall reduce the balance in the State treasury to the sum of seven thousand dollars, the President be and he is hereby directed not to certify any payroll for the per diem of members, and that said unexpended balance be reserved exclusively to the expenses of the Convention, other than per diem of members, and to the payment of salaries and wages of employés.

MR. BARNES. Mr. President: That resolution sufficiently explains itself. Now, as far as we are concerned, we are bound to stay here, pay or no pay, until the work shall have been accomplished. As far as the employés are concerned, there is no such contract, or obligation on their part, expressed or implied, and I think we ought to reserve a certain amount of the appropriation for their benefit. I think "the laborer is worthy of his hire."

MR. WHITE. I trust the resolution will not pass. If the employés are not willing to continue their work, I think we can get along very well without them, and by so doing we will set an example to the State, and show them that this host of attachés are entirely unnecessary. We can get along without them. If they do not want to stay on the same terms that we do, let them go. I intend to stay, and it is as hard for me to do it as it is for them. If the employés don't want to stay and run their chances of getting their money, the same as the balance of us do, let them go, and the sooner the quicker.

MR. BROWN. I move to lay the resolution on the table.

MR. BARNES. Ayes and noes.

MR. BARNES. I desire to say now——

THE PRESIDENT. The motion is not debatable.

The ayes and noes were demanded by Messrs. Barnes, Casserly, Freud, Edgerton, and Walker, of Tuolumne.

The roll was called, and the resolution was laid on the table by the following vote:

AYES.

Andrews,	Heiskell,	Nelson,
Ayers,	Herold,	Neunaber,
Barbour,	Herrington,	Noel,
Barry,	Holmes,	Ohleyer,
Barton,	Hughey,	Prouty,
Boucher,	Hunter,	Rolfe,
Brown,	Inman,	Schomp,
Burt,	Jones,	Shoemaker,
Campbell,	Joyce,	Smith, of San Francisco,
Condon,	Kelley,	Stedman,
Cross,	Keyes,	Steele,
Crouch,	Kleine,	Sweasey,
Davis,	Larkin,	Thompson,
Dean,	Larue,	Tuttle,
Doyle,	Lavigne,	Vacquerel,
Estee,	Lindow,	Waters,
Estey,	McCallum,	Webster,
Evey,	McComas,	Weller,
Farrell,	McConnell,	Wellin,
Filcher,	McCoy,	West,
Glascock,	Mills,	Wickes,
Gorman,	Moffat,	White,
Gregg,	Moreland,	Wyatt—71.
Harrison,	Morse,	

NOES.

Barnes,	Harvey,	Rhodes,
Beerstecher,	Hilborn,	Schell,
Belcher,	Howard,	Shafter,
Blackmer,	Huestis,	Shurtleff,
Boggs,	Johnson,	Smith, of 4th District,
Caples,	Lampson,	Soule,
Casserly,	Lewis,	Stevenson,
Chapman,	McFarland,	Swing,
Dudley, of Solano,	McNutt,	Tinnin,
Dunlap,	Miller,	Townsend,
Edgerton,	Murphy,	Turner,
Finney,	O'Sullivan,	Van Voorhies,
Freud,	Porter,	Walker, of Tuolumne,
Garvey,	Reddy,	Wilson, of Tehama,
Hale,	Reed,	Mr. President—47.
Hall,	Reynolds,	

ADJOURNMENT.

MR. MURPHY. I move we adjourn.

MR. HOWARD, of Los Angeles. I move we adjourn until Monday, at two o'clock.

THE PRESIDENT. The question is on the motion to adjourn.

Lost, on a division vote—ayes, 47; noes, 53.

MR. HOWARD, of Los Angeles. I move we now adjourn until Monday, at two o'clock.

The ayes and noes were demanded by Messrs. Stedman, Hunter, Larkin, Murphy, and Barbour.

The roll was called, and the motion lost by the following vote:

AYES.

Ayers,	Hager,	Mills,
Barnes,	Hall,	Murphy,
Beerstecher,	Harvey,	Porter,
Belcher,	Hilborn,	Reddy,
Boggs,	Howard,	Schell,
Campbell,	Hughey,	Shafter,
Casserly,	Keyes,	Sweasey,
Dudley, of Solano,	Lampson,	Townsend,
Edgerton,	McFarland,	Turner,
Estee,	McNutt,	Van Voorhies,
Garvey,	Miller,	Walker, of Tuolu'e—34.
Gregg,		

NOES.

Andrews,	Davis,	Heiskell,
Barbour,	Dean,	Herold,
Barry,	Doyle,	Herrington,
Barton,	Dunlap,	Holmes,
Blackmer,	Estey,	Huestis,
Boucher,	Evey,	Hunter,
Brown,	Farrell,	Inman,
Burt,	Filcher,	Johnson,
Caples,	Finney,	Jones,
Chapman,	Freud,	Joyce,
Condon,	Glascock,	Kelley,
Cross,	Gorman,	Kleine,
Crouch,	Harrison,	Larkin,

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Larue, Lavigne, Lewis, Lindow, McCallum, McComas, McConnell, McCoy, Moffat, Moreland, Morse, Nelson, Neunaber, Noel, Ohleyer, O'Sullivan, Prouty, Reed, Reynolds, Rhodes, Rolfe, Schomp, Shoemaker, Shurtleff, Smith, of 4th District, Smith, of San Francisco, Soule, Stedman, Steele, Stevenson, Swing, Thompson, Tinnin, Tuttle, Vacquerel, Waters, Webster, Weller, Wellin, West, White, Wickes, Wilson, of Tehama, Wyatt—83.

MR. HEISKELL. I move that the Convention do now adjourn.

MR. ROLFE. I move we adjourn until Monday morning, at ten o'clock.

THE PRESIDENT. Not in order.

The question being on the motion to adjourn, the ayes and noes were demanded by Messrs. Larkin, Stedman, Hunter, Andrews, and McCallum.

The roll was called, and the motion prevailed by the following vote:

AYES.

Ayers, Barbour, Barry, Barton, Belcher, Boucher, Brown, Campbell, Casserly, Chapman, Dunlap, Edgerton, Estee, Freud, Garvey, Glascock, Hager, Hale, Hall, Harvey, Heiskell, Herold, Herrington, Holmes, Howard, Huestis, Hughey, Johnson, Jones, Keyes, Lampson, Larue, McCallum, McCoy, McFarland, Miller, Mills, Moffat, Moreland, Morse, Murphy, Nason, Nelson, Noel, O'Sullivan, Porter, Reddy, Reed, Reynolds, Rolfe, Schell, Shafter, Shoemaker, Smith, of San Francisco, Sweasey, Townsend, Turner, Van Voorhies, Walker, of Tuolumne, Weller, West, Wyatt, Mr. President—63.

NOES.

Andrews, Blackmer, Burt, Caples, Condon, Crouch, Davis, Dean, Doyle, Dudley, of Solano, Estey, Evey, Farrell, Filcher, Finney, Gorman, Harrison, Hilborn, Hunter, Inman, Joyce, Kelley, Kleine, Larkin, Lavigne, Lewis, Lindow, McComas, McConnell, Neunaber, Ohleyer, Prouty, Rhodes, Schomp, Shurtleff, Smith, of 4th District, Soule, Stedman, Steele, Stevenson, Swing, Tinnin, Tuttle, Vacquerel, Waters, Webster, Wickes, White, Wilson, of Tehama—49.

And, at four o'clock and fifty minutes P. M., the Convention stood adjourned until Monday morning, at nine o'clock and thirty minutes A. M.

SEVENTY-THIRD DAY.

SACRAMENTO, Monday, December 9th, 1878.

The Convention met in regular session at nine o'clock and thirty minutes A. M., President Hoge in the chair.

The roll was called, and members found in attendance as follows:

PRESENT.

Andrews, Ayers, Barbour, Barry, Barton, Beerstecher, Belcher, Bell, Blackmer, Boucher, Brown, Burt, Campbell, Caples, Chapman, Charles, Condon, Crouch, Davis, Dowling, Doyle, Dudley, of Solano, Dunlap, Eagon, Edgerton, Estey, Evey, Farrell, Filcher, Finney, Freud, Garvey, Glascock, Gorman, Grace, Graves, Gregg, Hale, Harrison, Harvey, Heiskell, Herold, Hilborn, Hitchcock, Holmes, Howard, Huestis, Hughey, Hunter, Inman, Johnson, Jones, Joyce, Kelley, Keyes, Kleine, Laine, Lampson, Larkin, Larue, Lavigne, Lewis, Lindow, Mansfield, McCallum, McComas, McConnell, McCoy, McFarland, McNutt, Miller, Mills, Moreland, Morse, Murphy, Nason, Nelson, Noel, O'Donnell, Ohleyer, O'Sullivan, Overton, Porter, Prouty, Pulliam, Reddy, Reynolds, Rhodes, Ringgold, Rolfe, Schell, Schomp, Shoemaker, Shurtleff, Smith, of Santa Clara, Smith, of 4th District, Smith, of San Francisco, Soule, Stedman, Steele, Stevenson, Stuart, Sweasey, Swenson, Swing, Terry, Thompson, Tinnin, Townsend, Tully, Turner, Tuttle, Vacquerel, Van Voorhies, Walker, of Tuolumne, Waters, Webster, Weller, Wellin, West, Wickes, White, Wilson, of Tehama, Wilson, of 1st District, Winans, Wyatt, Mr. President.

ABSENT.

Barnes, Berry, Biggs, Boggs, Casserly, Cowden, Cross, Dean, Dudley, of San Joaquin, Estee, Fawcett, Freeman, Hager, Hall, Herrington, Martin, of Alameda, Martin, of Santa Cruz, Moffat, Neunaber, Reed, Shafter, Van Dyke, Walker, of Marin.

LEAVE OF ABSENCE.

Leave of absence was granted to Messrs. Herrington, Harvey, and Walker of Marin for one day; to Messrs. Cross, Casserly, and Estee for two days, and to Mr. Fawcett for one week.

THE JOURNAL.

MR. CAPLES. I move that the reading of the Journal be dispensed with, and the same approved.

So ordered.

RESOLUTION REGARDING A CHINESE MEMORIAL.

MR. DOWLING. I wish to offer a resolution.

THE SECRETARY read the resolution, as follows:

Resolved, That a committee of three be appointed by the Chair to draft petitions to be forwarded by this Convention to the Governors of Oregon, Nevada, and Washington Territory, requesting their Excellencies to memorialize the President of the United States and the Senate, on behalf of their States and Territory, for a modification of the Burlingame treaty, now existing between the Chinese Empire and the Republic of the United States of America.

THE PRESIDENT. The question is on the adoption of the resolution.

It was adopted.

CHINESE IMMIGRATION.

The Convention took up the special order for the day—the report of the Committee on Chinese, which was as follows:

ARTICLE —.

SECTION 1. The Legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary.

SEC. 2. Any corporation incorporated by or under the laws of this State, or doing business in this State, shall forfeit its franchises, and all legal rights thereunder, if it ever employs, in any capacity whatever, foreigners who are not eligible to become citizens of the United States under the laws of Congress. This section shall be enforced by appropriate legislation.

SEC. 3. No alien ineligible to become a citizen of the United States shall ever be employed on any State, county, municipal, or other public work in this State after the adoption of this Constitution.

SEC. 4. All further immigration to this State of Chinese, and all other persons ineligible to become citizens of the United States under the naturalization laws thereof, is hereby prohibited. The Legislature shall provide for the enforcement of this section by appropriate legislation.

SEC. 5. No person who is not eligible to become a citizen of the United States shall be permitted to settle in this State after the adoption of this Constitution.

SEC. 6. Foreigners ineligible to become citizens of the United States shall not have the right to sue or be sued in any of the Courts of this State, and any lawyer appearing for or against them, or any of them, in a civil proceeding, shall forfeit his license to practice law. No such foreigner shall be granted license to carry on any business, trade, or occupation in this State, nor shall such license be granted to any person

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or corporation employing them. No such foreigner shall have the right to catch fish in any of the waters under the jurisdiction of the State; nor to purchase, own, or lease real property in this State; and all contracts of conveyance or lease of real estate to any such foreigner shall be void.

SEC. 7. The presence of foreigners ineligible to become citizens of the United States is declared hereby to be dangerous to the well being of the State, and the Legislature shall discourage their immigration by all the means within its power. It shall provide for their exclusion from residence or settlement in any portion of the State it may see fit, or from the State, and provide suitable methods, by their taxation, or otherwise, for the expense of such exclusion. It shall prescribe suitable penalties for the punishment of persons convicted of introducing them within forbidden limits. It shall delegate all necessary power to the incorporated cities and towns of this State for their removal without the limits of such cities and towns.

SEC. 8. Public officers within this State are forbidden to employ Chinese in any capacity whatever. Violation of this provision shall be ground for removal from office; and no person shall be eligible to any office in this State who, at the time of election and for three months before, employed Chinese.

SEC. 9. The exercise of the right of suffrage shall be denied to any person employing Chinese in this State, and it shall be a sufficient challenge that the person offering to vote is employing Chinese, or has employed them within three months next preceding the election.

MR. TINNIN. Mr. President: I move that the Convention now resolve itself into Committee of the Whole, the President in the chair, for the purpose of considering the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

THE CHAIRMAN. The report of the Committee on Chinese is now before the committee. The Secretary will read the first section.

THE SECRETARY read section one, as follows:

SECTION 1. The Legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the State and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary.

MR. LARKIN. I would like to have a decision as to how this discussion is to be carried on. Will the debate be confined to the section under consideration, or will it range over the whole thing? I would like a decision on that point before we proceed.

THE CHAIRMAN. The debate will extend over the entire report.

MR. LARKIN. Would a resolution be in order?

THE CHAIRMAN. The first section is now under consideration. Under the rule each section has to be read.

MR. AYERS. The Chairman of the committee is not in the hall, I have understood.

THE CHAIRMAN. The first section is under consideration. The Secretary will read it again.

THE SECRETARY read:

SECTION 1. The Legislature shall have and shall exercise the power to enact all needful laws, and prescribe necessary regulations for the protection of the State, and the counties, cities, and towns thereof, from the burdens and evils arising from the presence of aliens, who are or who may become vagrants, paupers, mendicants, criminals, or invalids afflicted with contagious or infectious diseases, and aliens otherwise dangerous or detrimental to the well-being or peace of the State, and to impose conditions upon which such persons may reside in the State, and to provide the means and mode of their removal from the State upon failure or refusal to comply with such conditions; *provided*, that nothing contained in the foregoing shall be construed to impair or limit the power of the Legislature to pass such other police laws or regulations as it may deem necessary.

SPEECH OF MR. MILLER.

MR. MILLER. Mr. Chairman: It is expected by a great majority of the people of California, that this Convention will take some decisive action in respect to what is regarded by the people of this State as a great increasing and expanding evil in this country—the introduction and presence of large numbers of Chinese. I am sorry, Mr. Chairman, to be compelled to state that the committee to whom was referred this question, was not able to agree upon any definite plan to be adopted by the State for the extirpation of this evil. The committee found, directly after the discussion began, that its members were divided in opinion in respect to the measures that should be adopted. There was no division of opinion in respect to the character of this immigration, or upon its effects upon the country. All agreed that Chinese immigration was an evil, and that if possible the further influx of Chinese to this country should be stopped. But we differed in the measures which were to be adopted for remedying this evil. A report was made by a majority of the committee, but instead of devising or presenting a concise plan for adoption by the State, we presented three distinct plans. Now, while a majority of the committee were in favor of one or the other of these plans, it cannot be said that all the members of that majority were in favor of any of the plans, except the one embraced in the first section of the article. That section was agreed upon unanimously. But it was reserved to every member of the committee in Convention to support or oppose any part of this report. It was upon this consideration we all agreed and consented to make the report from the majority of the committee. My action in this respect has been misunderstood. I consented because I thought it was better that all these plans, all these provisions touching the Chinese question, should come in together and be considered at once in this Convention. And as it is a question not susceptible of division, I shall, in the brief remarks I have to make, consider the whole of this report together.

The first plan proceeds upon the theory that the State has not within itself the power to prohibit Chinese immigration. It proposes to deal with these people as a part of the population of the State, after they have once mingled with our people and become a part of the people. The Government of the United States, under the Constitution, has the power to regulate commerce, both foreign and inter-State, and the Supreme Court of the United States has decided that the power is vested exclusively in the General Government. The States, while they have the power to regulate internal affairs of the State, to prescribe rules and laws for the government of the people of the State—in short, while the State exercises home rule, still there is above and beyond the State a national sovereignty which deals with all these subjects, treaties between nations, intercourse with foreign nations, foreign commerce, and navigation. Whatever may be done under the first section, must be done under the police power of the State—that power of local regulation, or government of the people of a State which has not been delegated to the Government of the United States, and which has been reserved to the State, or the people of the State.

It is believed by the committee that the State has the power to protect itself against foreign and well known dangerous classes—classes that are admitted by all people to be dangerous and detrimental to the well being of the State, such as paupers, vagrants, criminals, persons suffering from contagious or infectious diseases, and we hold that the State has power to exclude these under the law of self-preservation, which is the first law of the State. That it does not interfere with foreign commerce to exercise this power. We propose, under this section, that the Legislature shall have power to enforce the details for executing this plan. We propose that tribunals shall be established, such as the established Courts, before whom persons alleged to be paupers or criminals may be brought for trial. If it shall be found upon examination that they belong to any one of these classes, we propose that a place shall be established in San Francisco for the safe keeping of those persons until they can be removed from the State. We propose, as to the criminal classes of Chinese, that, instead of being incarcerated in prison at the expense of the State, upon conviction, the Legislature shall empower the Courts to remand them to this place, to be afterwards removed from the State. In some sense it is a system of banishment of these people, as a punishment for crime. It was proposed that the State might impose conditions upon their residence; that is, a bond might be required that a party, under examination, will not become a charge upon the State, that he will not be a pauper, criminal, vagrant, or an inmate of any charitable institution maintained by the State. This is a condition of his residence in the State. Now, the State has attempted, on several occasions, to legislate upon this subject of Chinese immigration. It has exercised the power of taxation to discourage Chinese residence, and our Supreme Court has decided that those acts imposing a capitation tax were unconstitutional. It has also passed laws authorizing the Commissioners of Immigration to go on board of vessels and make examinations of the Chinese passengers for the purpose of excluding the dangerous classes, and more particularly as applied to lewd women. The Supreme Court of the United States has decided that these acts are unconstitutional. In every effort which the State has made to prevent and restrict this immigration it has been met by a constitutional objection, and these acts have been declared unconstitutional.

The first section proceeds upon a different plan. We do not in that section attempt to interfere with commerce. We do not go on board of vessels. We take these people after they have once become a part of our population, and subject to the laws of the State.

Now, as to the power of the State to protect itself against the dangerous classes of persons, I shall submit some authorities. I shall first read a decision in what is known as the Passenger Cases, page 125, 7th Howard, U. S. Sup. Court Reports:

"The States have also reserved the police right to turn off from their territories paupers, vagabonds, and fugitives from justice. But they have not reserved the use of taxation universally to accomplish that object, as they had it before they became the United States. Having surrendered to the United States the sovereign police power over commerce, to be exercised by Congress, or the treaty-making power, it is necessarily a part of the power of the United States to determine who shall come to and reside in the United States for the purpose of trade, independently of every other condition of admittance which the State may attempt to impose upon such persons. When it is done in either way, the United States, of course, subject the foreigners to the laws of the United States, and cannot exempt him from the internal power of police of the States in any particular in which it is not constitutionally in conflict with the laws of the United States. And in this sense it is that, in treaties providing for such mutual admission of foreigners between nations, it is universally said, 'But subject always to the laws and statutes of the two countries respectively; but certainly not to such of the laws of a State as would exclude the foreigner, or would add another consideration to his admission into the United States.'

"And, further, I may here remark that this right of taxation claimed for the States upon foreign passengers is inconsistent with the naturalization clause in the Constitution, and the laws of Congress regulating it. If a State can, by taxation, or otherwise, direct upon what terms foreigners may come into it, it may defeat the whole and long cherished policy of this country, and of the Constitution, in respect to immigrants coming to the United States.

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"But I have said the States have the right to turn off paupers, vagabonds, and fugitives from justice, and the States where slaves are, have a constitutional right to exclude all such as are, from a common ancestry or country, of the same class of men. And when Congress shall legislate—if it be not disrespectful for one who is a member of the judiciary to suppose so absurd a thing of another department of government—to make paupers, vagabonds, suspected persons, and fugitives from justice subjects of admission into the United States, I do not doubt it will be found and declared that such persons are not within the regulating power which the United States has over commerce. Paupers, vagabonds, and fugitives never have been subjects of rightful national intercourse, or of commercial regulations, except in the transportation of them to distant colonies to get rid of them, or for punishment as convicts. They have no rights of national intercourse; no one has the right to transport them without the authority of the law, from where they are to any other place, and their only rights where they may be, are such as the law gives to all men who have not altogether forfeited its protection.

"The States may meet such persons upon their arrival in port, and may put them under all proper restraints. They may prevent them from entering their territories, may carry them out or drive them off. But can such a police power be rightfully exercised over those who are not paupers, vagabonds, or fugitives from justice? The international right of visitation forbids it. The freedom of liberty of commerce allowed by all European nations to the inhabitants of other nations does not permit it; and the constitutional obligations of the States of this Union to the United States, in regard to commerce and navigation and naturalization, have qualified the original discretion of the States as to who shall come and live in the United States."

I will now read a brief extract to the same effect, from the opinion of Mr. Justice Grier, in the same case, 7th Howard, 450: "It must be borne in mind (what has sometimes been forgotten) that the controversy in this case, is not with regard to the right claimed by the State of Massachusetts, in the second section of this Act, to repel from her shores lunatics, idiots, criminals, or paupers, which any foreign country, or even one of her sister States might endeavor to thrust upon her; nor the right of any State, whose domestic security might be endangered by the admission of free negroes, to exclude them from her borders. The right of the State has its foundation in the sacred law of self-defense, which no power granted to Congress can restrict or annul. It is admitted by all, that those powers which relate merely to municipal legislation, or what may be more, properly called internal police, are not surrendered or restrained; and that it is as competent and necessary for a State to provide precautionary measures against the physical pestilence which may arise from unusual and infectious articles imported."

Now, these were cases in which the State of New York and the State of Massachusetts attempted to impose a tax upon passengers arriving from foreign countries; that is, they first attempted to require a bond from the master of the vessel that such parties should not become a charge upon the State. The Act provides that they might go on board the ship, take a list of passengers, see who they were and where they came from, exact a bond from the master of the vessel in the sum of five hundred dollars that these people should not become a government charge. In lieu of a bond it provided that they might accept a tax of one dollar and fifty cents from each passenger. The Court decided that this was a restriction of commerce, and therefore contrary to the Constitution of the United States and void. The opinions I have just read go to the extent of giving the State power to protect itself against paupers, vagrants, and criminals. The second plan presented here in this report goes to the extent of compelling prohibition of Chinese immigration.

The section which embraces it is as follows:

"All further immigration to this State of Chinese, and all other persons ineligible to become citizens of the United States under the naturalization laws thereof, is hereby prohibited. The Legislature shall provide for the enforcement of this section by appropriate legislation."

That is a separate and distinct plan from the other. And if we could—if the State had the power to enforce such a prohibition, it would certainly end the Chinese question at once. But I take the ground that the State has no such power. I think it is impolitic and unwise for us, at this time, to take any such position. The United States is a nation, and California is not a nation. It is not in the power of California to seal up the Golden Gate, and declare, virtually, there shall be no intercourse with foreign nations. Commercial intercourse, of every species and character, is a matter in which all the people of all the States are interested, and it is not in the power of any State to pass laws nullifying the Acts of Congress, or the treaties made in pursuance of the Constitution, regulating commerce or intercourse with foreign nations; and I may say here, that I consider this too plain for argument, and I would not argue it were it not that some distinguished gentlemen on this floor have taken the position that the State has this power, and they appeared before the committee and made arguments which convinced a majority of the committee that the State of California had the power to seal up the Golden Gate, and stop the Chinese. If this State has the power to interfere with commerce to the extent of prohibiting the subjects of China from entering the ports of the United States, within the State of California, then the State of New York has the power to close the ports of the United States, within that State, against the citizens of France or England. Neither the Constitution of the United States nor the treaties with foreign powers make distinction between the citizens or subjects of nations, with whom the United States are at peace, and with whom there are treaty obligations in respect to commerce, navigation, and the right of residence in the respective countries. I will now read brief extracts from the opinion of the Court in the case of Henderson vs. Mayor of New York et al., 2d Otto, 269, delivered by Mr. Justice Miller, United States Supreme Court. The Court says:

"As already indicated, the provisions of the Constitution of the United States, on which the principal reliance is placed to make void the statute of New York, is that which gives to Congress the power 'to regulate commerce with foreign nations.' As we said in United States vs. Halliday, 3 Wall. 417: 'Commerce with foreign nations means commerce between citizens of the United States and citizens and subjects of foreign governments.' It means trade, and it means intercourse. It means commercial intercourse between nations, and parts of nations, in all its branches. It includes navigation as the principal means by which foreign intercourse is effected. To regulate this trade and intercourse is to prescribe the rules by which it shall be conducted. 'The mind,' says the great Chief Justice, 'can scarcely conceive a system for regulating commerce between nations which shall be silent on the admission of the vessels of one nation into the ports of another;' and he might have added, with equal force, which prescribed no terms for the admission of their cargo or their passengers." (Gibbons vs. Ogden, 9 Wheat. 190.)

Further on Mr. Justice Miller says: "A law or rule emanating from any lawful authority, which prescribes terms or conditions on which alone the vessel can discharge its passengers, is a regulation of commerce; and, in case of vessels and passengers coming from foreign ports, is a regulation of commerce with foreign nations." He further says:

"The accuracy of these definitions is scarcely denied by the advocates of the State statutes. But assuming that in the formation of our government certain power necessary to the administration of their internal affairs are reserved to the States, and that among these powers are those for the preservation of good order, of the health and comfort of the citizens, and their protection against pauperism and contagious and infectious diseases, and other matters of legislation of like character, they insist that the power here exercised falls within this class, and belongs rightfully to the State.

"This power, frequently referred to in the decisions of this Court, has been, in general terms, somewhat loosely called the police power. It is not necessary for the course of this discussion to attempt to define it more accurately than it has been defined already. It is not necessary, because whatever may be the nature and extent of that power, where not otherwise restricted, no definition of it and no urgency for its use can authorize a State to exercise it in regard to a subject-matter which has been confided exclusively to the discretion of Congress by the Constitution."

Chief Justice Marshall, in a case reported, 9 Wheat. 210, says "that it has been contended that if a law passed by a State, in the exercise of its acknowledged sovereignty, comes into conflict with a law passed by Congress in pursuance of the Constitution, they affect the subject and each other like equal opposing powers. But the framers of the Constitution foresaw this state of things, and provided for it by declaring the supremacy not only of itself but of the laws made in pursuance thereof. The nullity of any act inconsistent with the Constitution is produced by the declaration that the Constitution is supreme. When the Federal Government has acted, he says: 'In every such case the Act of Congress or the treaty is supreme, and the laws of the State, though enacted in the exercise of power not controverted, must yield to it.'"

Again, in the case of Chi Lung vs. Freeman et al., 2 Otto, 279, the Court held the same doctrine. This was a case sent up from San Francisco, where the person had been arrested on board the vessel, under the statute against the landing of lewd women. Says the Court:

"We are not called upon to decide for or against the right of a State, in the absence of legislation by Congress, to protect herself by necessary and proper laws against paupers and convicted criminals from abroad, nor to lay down the definite limit of such right if it exists. Such a right can only arise from a vital necessity for its exercise, and cannot be carried beyond the scope of that necessity. When a State statute, limited to provisions necessary and appropriate to that object alone, shall, in a proper controversy, come before us, it will be time enough to decide that question. The statute of California goes so far beyond what is necessary, or even appropriate for this purpose, as to be wholly without any sound definition of the right under which it is supposed to be justified."

There is one more decision I desire to read, which illustrates the views of the Supreme Court of the United States upon this subject of the State protecting herself against paupers, vagrants, and others. In the case of "Railroad Company vs. Husen," the Court said:

"We are thus brought to the question whether the Missouri statute is a lawful exercise of the police power of the State. We admit that the deposit in Congress of the power to regulate foreign commerce and commerce among the States was not a surrender of that which may be properly denominated police power. What that power is, it is difficult to define with sharp precision. It is generally said to extend to making regulations promotive of domestic order, morals, health, and safety. As was said in Thorpe vs. The Rutland and Burlington Railroad Company, 27 Vermont, 149, 'it extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State.' It was further said, that, by the general police power of the State, 'persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State—of the perfect right of the Legislature to do which, no question ever was, or, upon acknowledged general principles, ever can be made, so far as natural persons are concerned.' It may also be admitted that the police powers of a State justifies the adoption of precautionary measures against social evils. Under it a State may legislate to prevent the spread of crime, or pauperism, or disturbance of the peace. It may exclude from its limits convicts, paupers, idiots, and lunatics, and persons likely to become a public charge, as well as persons afflicted by contagious or infectious diseases—a right founded, as intimated, in the passenger case, by Mr. Justice Greer, in the sacred law of self-defense. (Vide 3 Sawyer, 283.) The same principle, it may also

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be conceded, would justify the exclusion of property dangerous to the property of citizens of the State; for example, animals having contagious or infectious diseases. All these exertions of power are in the immediate connection with the protection of persons and property against noxious acts of other persons, or such a use of property as is injurious to the property of others. They are self-defensive. * * * Neither the unlimited powers of a State to tax, nor any of its large political powers, can be exercised to such an extent as to work a practical assumption of the powers properly conferred upon Congress by the Constitution. Many acts of a State may, indeed, affect commerce, without amounting to a regulation of it in the constitutional sense of the term; and it is sometimes difficult to define the distinction between that which merely affects or influences, and that which regulates or furnishes a rule of conduct. There is no such difficulty in the present case. While we unhesitatingly admit that a State may pass sanitary laws, and laws for the protection of life, liberty, health, or property within its borders; while it may prevent persons and animals suffering under contagious or infectious diseases, or convicts, etc., from entering the State; while, for the purpose of self-protection, it may establish quarantine and reasonable inspection laws: it may not interfere with transportation into or through the State beyond what is absolutely necessary for its self-protection. It may not, under the cover of exerting its police power, substantially prohibit or burden either foreign or inter-State commerce."

I think these cases sufficiently illustrate the law upon this subject: so that while the State may have the power to protect itself against these admitted dangerous classes, and to protect the life and health of its people, it has not the power to make any regulation which will interfere with commerce with foreign nations. Now, I do not pretend that this first section of the report is a complete system by which we can rid ourselves of Chinese immigration. I know it is not. But I am quite satisfied that it is not within the power of the State to establish any regulations which will prohibit Chinese immigration. I hold that to be a power which belongs to the General Government and not to the State. The people of this State cannot lawfully interfere with foreign commerce, which includes navigation and the carrying of passengers, except as indicated in the decisions I have read. But the people may memorialize the Congress or the Executive of the nation, including the treaty-making power, for relief from the Chinese evil. I propose, as soon as this discussion is over, that the Committee on Chinese shall prepare and present for the adoption of this Convention a memorial to Congress, in respectful terms, and giving briefly our reasons for asking Congress to legislate upon this subject, or the treaty-making power, to modify what is known as the Burlingame treaty, so that those persons known as Chinese coolies or laborers may be prohibited from coming into the United States. I desire in this matter that the State of California shall occupy a high and dignified position. We want no hysterical, unstatesmanlike effort towards legislation upon this subject. If we should declare here that the State of California intended to prohibit Chinese immigration, that no vessel should bring any Chinese to this State, we should simply incite indignation all over the Eastern States, and we would be said to be in rebellion against the United States, and that is a dangerous step for any State to take, to place itself in antagonism to the Government of the United States.

We have seen the evil of this in former times, and when a proud State like the State of California takes such a step, it is difficult to retrace it. Should we once declare that we intended to check immigration ourselves, without regard to the Federal Government, and against its power, we would be asserting the supremacy of the State over the National Government. It would be attempting to nullify the Acts of Congress and the treaties of the General Government. I say it is dangerous to take such a step. The State of South Carolina began in this way—began by attempting to nullify the Acts of Congress. It began by asserting the doctrine of State supremacy, and went on, step by step, until it found itself in actual open rebellion and war against the government. I cannot give my assent to any measure which would place California in rebellion against the authority of the United States. It has been said we must do something in order to convince the people that we are in earnest; that we must assert some principle, must pass some laws, to show that California is determined to extirpate this evil. It is thought by some that by such a course we would awaken interest in the subject in the Eastern States. But this style of argument is delusive. The people of the Eastern States will awaken to this subject in due time. We must convince them by argument. Assertion will not effect anything; declamation will not effect anything. A wild, spasmodic assertion of State supremacy will make California ridiculous. We must give the Eastern people facts and arguments to show that Chinese immigration is a great and threatening evil, not alone to the State of California, but to the whole Union.

Now, there is a third plan contained in the report, which is embraced in sections six, seven, eight, and nine, as follows:

"SEC. 6. Foreigners ineligible to become citizens of the United States shall not have the right to sue or be sued in any of the Courts of this State, and any lawyer appearing for or against them, or any of them, in a civil proceeding, shall forfeit his license to practice law. No such foreigner shall be granted license to carry on any business, trade, or occupation in this State, nor shall such license be granted to any person or corporation employing them. No such foreigner shall have the right to catch fish in any of the waters under the jurisdiction of the State; nor to purchase, own, or lease real property in this State, and all contracts of conveyance or lease of real estate to any such foreigner shall be void.

"SEC. 7. The presence of foreigners ineligible to become citizens of the United States is declared herein to be dangerous to the well-being of the State, and the Legislature shall discourage their immigration by all the means within its power. It shall provide for their exclusion from residence or settlement in any portion of the State it may see fit, or from the State, and provide suitable methods, by their taxation or otherwise, for the expense of such exclusion. It shall prescribe suitable penalties for the punishment of persons convicted of introducing them within forbidden limits. Shall delegate all necessary power to the incorporated cities and towns of this State for their removal without the limits of such cities and towns.

"SEC. 8. Public officers within this State are forbidden to employ Chinese in any capacity whatever. Violation of this provision shall be ground for removal from office; and no person shall be eligible to any office in this State who, at the time of election and for three months before, employed Chinese.

"SEC. 9. The exercise of the right of suffrage shall be denied to any person employing Chinese in this State, and it shall be a sufficient challenge that the person offering to vote is employing Chinese, or has employed them within three months next preceding the election."

These sections proceed upon the same theory, and form together a plan for dealing with the Chinese evil. This plan is directed to the employment of Chinese, to the denial of their right to the protection of the law. I do not propose to discuss it, but I characterize it as a plan of starvation by constitutional provision. If the Chinese are not to be employed by anybody, are not permitted to labor, they cannot live. Because by labor all must live, and if you deprive them of the right to labor, they must starve. That is the logical sequence of the position assumed by the advocates of this prohibition against the labor of these people. It is indefensible, for it deprives the prohibited people of the right of life. I hold that the right to labor is as high and sacred a right as the right to live. That you cannot deprive these people of this right under the treaty with China. That it is against the spirit of the age, against all laws of civilized communities. But this third plan goes still further, it strikes at the liberty of the citizens of the United States, who, as citizens, have the right to employ whoever they choose. I hold that you cannot abridge that right. It is one of the inalienable rights of American citizens. I do not care to discuss these four sections, but shall content myself by saying that I opposed them in the committee, and shall vote against them here. Now, as to the effect of this first section, it was said that the proposed measure does not go far enough. My answer is, it goes just as far as the State can go. It goes to the very verge of constitutional power, and the State cannot go any further. It is said that it will have no effect. I think that it will have a very marked effect. As I said in the beginning, the power to prohibit Chinese immigration rests entirely with the General Government, and this section is only in aid of such restrictive laws as the General Government may see fit to pass. Its effect will be to rid ourselves of the Chinese already here, to some extent, if not to the full extent, because it only relieves us of a certain class of the Chinese. Let us look for a moment at the benefits which will flow from laws passed in pursuance of this section. It is said, and we all know it to be a fact, that the great body of the Chinese immigrants to this State come from the southern and eastern provinces of China, along the seashore. That they are recruited largely from the criminal classes. Men who hang about the sea and rivers, living in boats. A sort of pirates, many of them, and all of them, or nearly all of them, thieves and bad men generally. Now, a very large proportion of the Chinese who came to California under labor contracts are of the criminal classes—a fact which we find illustrated in the criminal Courts of the State. I have here a letter from the County Clerk of San Francisco, dated November seventh, in reply to a letter of inquiry which I addressed to him. He says:

"For the twelve months ending October thirty-first, eighteen hundred and seventy-eight, two thousand four hundred and eighty-eight Chinese have been arrested, tried, and convicted in the various Courts of this city and county, of different crimes. Number of Chinese confined in the City Prison yesterday, November sixth, one hundred and fourteen; number of Chinese confined in County Jail yesterday, November sixth, one hundred and fifty-four."

My proposition is to regard those who are convicted of crimes in our Courts as belonging to the criminal class; that conviction of crime in our Courts shall be conclusive evidence that they did belong to the criminal classes in China, and we propose, under this section, to remove them from the State. I hold that it will be cheaper to remove them from the State than to confine them in our prisons. They can be sent back to China for fifteen or twenty dollars each, by the State.

I do not propose in all cases that they must necessarily be sent back to China. My proposition goes only to this, that they shall be removed from the State. If the people over on the Eastern side will not hear our complaints; if they say this is not an evil, and that the Chinese are as good as any other class of immigrants—that we are making a great noise and confusion about nothing—let us send over four, or five, or ten thousand of these people—those who are dangerous to the well-being of the State—belonging to the criminal and diseased classes; let us send them a brigade or two of these Chinamen, and see how they like them. There would be no surer way of changing their views upon the Chinese question. There are two hundred and thirty-four Chinese now in the State Penitentiary—thirteen are for life. Thirty-eight of these are for the second, third, fourth, and fifth times. I have here a statement from Governor Johnson, in reply to a letter of inquiry addressed to him. He gives: "Arson, first degree, one; assault, with deadly weapon, two; attempt at burglary, thirteen; burglary, forty; burglary, first degree, forty-two; burglary, second degree, thirty-nine; felony, nine; grand larceny, forty-one; kidnaping, one; murder, three; murder, first degree, eight; murder, second degree, eleven; manslaughter, five; rape, one; robbery, four; petit larceny, second offense, three."

I have made an estimate from the best sources of information I could get, and I find that we could at least send out of the State, of these dangerous and burdensome classes, not less than five thousand Chinese every year. And I hold that we can do it at less expense than we could keep them here in prison and hospitals. I hold also, that the State has the power to do it. Certainly it would be right and just, and it would

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not be a violation of the right of anybody, to send these dangerous classes back to China whence they came. There are also a number of these people, at present, in the asylums of the State. There are now, in the Stockton Insane Asylum, according to a report made by Dr. Shurtleff, forty-four insane Chinamen; and in the Napa Insane Asylum, which has only been in existence a short time, twelve Chinamen. There are in the various county hospitals quite a number of them also. There are more or less of these persons who come within what we denominate the dangerous classes, in every county and town in the State, and with whom the State has a right to deal. I say this section does not prohibit Chinese immigration; it does not settle the Chinese question, but it is the best thing we can do, and I believe the only thing which the State can do. Whether it is wise and politic to do this thing is a question for this Convention and for the Legislature hereafter to settle. The Legislature of California has never done anything upon this question, except to pass laws which, as I have shown you, were an interference with foreign commerce. One of those laws provided that the Commissioners could go on board a vessel, while the passengers were still upon the ship, and there arrest them and hold them for the payment of a tax. And it is astonishing to me that the Legislature has not seen fit to take some other action, so as to avoid interference with foreign commerce. The next section which I shall consider, is section three. It reads as follows:

"No alien, ineligible to become a citizen of the United States, shall ever be employed on any State, county, municipal, or other public work in this State, after the adoption of this Constitution."

That is a provision which it is perfectly competent for the State to adopt. That is a power which the State may reasonably exercise. It goes merely to the employment of Chinese on public works, and does not, in any regard, affect the rights of citizens. In dealing with this question I think it is important that, while we recognize the sovereign power of the General Government over the subject of intercourse with foreign nations, and while we petition the government to relieve us of this great evil, we should do all we can do ourselves. First, that we show by our acts that we have exhausted every power to find a remedy which the State has any right to apply; that we do everything which a State may lawfully and constitutionally do to rid ourselves of this great mischief, and then appeal to the justice and judgment of Congress, or of the treaty-making power of the United States. I do not understand that this treaty with China controls this question. I believe that the remedy will be found to be by an Act of Congress in modification of the treaty. A treaty could be negotiated by the consent of both countries which would settle the question, but it is not likely that such a treaty will be negotiated. The Chinese are cunning diplomatists. They now seek delay. There seems to be a settled purpose upon the part of the Government of China to find some outlet for their redundant population. There are evidences which indicate very strongly that they are fostering and encouraging emigration from China to the United States. Consequently they are adverse to changing or modifying the treaty, but Congress, under the decisions of the Supreme Court of the United States, has the power to modify a treaty. There is probably no question better settled than that the supreme legislative power of the nation has the authority to set aside a treaty. Of course it might be considered, in some instances, as an act of war, but the government has the power, and it may exercise it and take the responsibility, and I trust that Congress, in the present session, will pass an Act which will limit the further immigration of the Chinese to this country. I believe it will do it. I believe that the adjustment of political parties to-day in this country is favorable to such action. I doubt whether the treaty-making power will be able to make any impression whatever upon the Chinese Government. It is well settled that a treaty has no greater force and effect than an Act of Congress. It derives its authority and force from the same instrument—the Constitution of the United States. Upon this point I will submit the opinion of the Supreme Court of the United States, in 5 Howard, 613.

"Every power delegated to the Federal Government must be expounded in coincidence with a perfect right in the States to all they have not delegated; in coincidence, too, with the possession of every power and right necessary for their existence and preservation; for it is impossible to believe that these were ever, in intention or in fact, ceded to the General Government. Laws of the United States, in order to be binding, must be within the legitimate powers vested by the Constitution. Treaties, in order to be valid, must be made within the scope of the same powers; for there can be no authority of the United States, save what is derived mediately or immediately, and regularly and legitimately from the Constitution. A treaty, no more than an ordinary statute, can arbitrarily cede away any one right of a State, or of any citizen of a State."

It has been contended that no modification of the right of immigration to the United States should be attempted by Congress until diplomacy has exhausted its skill in negotiations with the Government of China. How long shall the people of California wait? This is a question which we cannot answer. The Orientals are slow in negotiations. In the end Congress must act upon the subject. Why not act now?

Having shown what it is proposed the State of California shall do toward the abatement of the Chinese evil, and what may be done by the National Government, it is proper to give some reasons for the limitation we ask upon Chinese immigration.

But it has not been my intention to occupy the time of the Convention now, upon this branch of the subject. ["Go on, go on," from many members.] I know that it is unnecessary to enlarge upon this subject in this presence, for the members of this Convention are well informed of the reasons for the prevalent discontent among the people of this State, arising from the presence of so large a number of these aliens. But in proposing measures for the restriction of the immigration to our shores of any class of foreigners hitherto and now admitted under treaty stipulations, it is proper that the reasons for action which may seem extraordinary to the people of other States, should be publicly and freely given, especially so when we are asking the coöperation of the whole people of the Union in the measures we propose.

We are met in the outset by the objection that the exclusion of the Chinese is a departure from the uniform and general policy of the National Government in respect to the immigration of foreigners, that from time immemorial—from the colonial times, before the adoption of the Constitution, down through the whole life of the Republic—immigration has been encouraged by the most liberal naturalization laws, and by the action of the several States, in granting to foreigners political domicile without restraint or condition, almost immediately after the arrival of the immigrant; that the United States has been the asylum of the oppressed of all lands, and our laws have welcomed and protected all who have came beneath the ægis of our Constitution. It is said that to adopt a policy of exclusion now, as against any people, under any circumstances, is not only violative of a time-honored policy, but contrary to the spirit of the age.

It must be confessed that there seems to be much force in these reflections. We know that the freedom of immigration was declared in the great charter of liberty, our Declaration of Independence, wherein the King of England is arraigned for having "endeavored to prevent the population of the States by obstructing the laws for the naturalization of foreigners, and by refusing to pass others to encourage their immigration thither." We know that immigration has been invited by the nation, and that the naturalization laws have admitted those who have come to America to citizenship upon terms the most liberal. The naturalization laws of a nation illustrate its policy upon the subject of immigration; when these are liberal, immigration is desired and encouraged; when they are stringent and full of hard conditions, immigration is discouraged and held undesirable. In the prosperous days of the Athenian Republic no foreigner could become a citizen of Athens, except by a vote of the people twice had, and then only in case the applicant received over six thousand affirmative votes at the second election. In the days of Rome's greatest power none but those foreigners who had rendered eminent service to the Roman State could become naturalized, and they only by a vote of the Senate. After wars had decimated the Athenian armies, immigration was encouraged by a relaxation of the rigor of the naturalization laws; and so in Rome. So, in all countries, the encouragement given to immigration is measured by the state of the naturalization laws.

Is Chinese exclusion really a departure from the policy of the nation? Immigration has been encouraged, but what kind of immigration? Has there been no distinction in the varieties of men who have been encouraged to come? The truth is that the invitation has been limited to white men, men of our own race and color, men of similar aspirations, hopes, desires, and aims in life. Men who assimilate with our people, and who are fit to assimilate, who build their homes among us, respect our laws, love liberty and representative government. Men who become part and parcel of our people, who follow our fortunes and brave our disasters, who stand shoulder to shoulder with us in battle, and fight for the republic, and are ready to die in her defense. These are the sort of immigrants who have been invited by our laws. The non-assimilative colored races have never been considered as desirable immigrants, nor have they ever been encouraged either by law or public sentiment. The introduction of blacks was prohibited after eighteen hundred and eight. None but white men from foreign lands have been admitted to citizenship.

The negro was not an immigrant. He came by compulsion and was enslaved. The Chinese are excluded from citizenship by the naturalization laws of the United States. Why? Why that extraordinary proviso in the treaty with China, which declares that nothing in the treaty shall be construed to confer naturalization of Chinese in the United States? There is no such provision in any treaty between the United States and any other nation. Why may not the Chinaman become a citizen? Is the prohibition without reason? Is it solely because he is not white? That may have been the reason, for our Democratic friends have always insisted that this is "a white man's government." A government of white men, by white men, for white men. But lately the white man's government naturalized, en masse, four millions of colored people—clothed them with the panoply of American citizenship, though not foreigners. Why? To enable them to preserve their liberty and enjoy the fruits of their own labor. Why is this great privilege denied the Chinese? Perhaps an answer to this question would be our justification for Chinese exclusion. If the Chinese are unfit for American citizenship, are they fit for domicile in the country? If they are unfit, for what reason? Are they so low in the scale of humanity, so degraded in character, so imbecile in mind, so corrupt in their lives, so scornful of republican institutions, so at enmity with law and justice, that it is dangerous to admit them to citizenship? then I answer, they are unfit for contact or intercourse with a free people. If they would be dangerous as citizens, are they not dangerous as denizens?

Is Chinese exclusion so unreasonable? Is the departure which we propose a great departure from the policy of the National Government? The reason that none but white men have been admitted to citizenship under our naturalization laws is founded on the great fact that the mixture of two distinct races is a calamity to both, and to the product of both. The wisdom of excluding the negro was applauded, and had the policy of exclusion been adopted earlier in the nation's history, what woe and anguish, what evils and horrors would have been avoided. The importation of the African, though not a bad man himself, was the great, supreme mistake of this nation. His enslavement was the nation's greatest crime, and through the expiation of this folly, and its consequent crime, we should learn wisdom. The sentimentalist and the theological humanitarians tell us that the Chinese coolie is here in pursuance of a great remedial plan of Almighty God, by which a nation of four hundred and fifty millions of people is to be Christianized and elevated to

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the grandeur of Anglo-Saxon civilization; that these dusky waifs who have floated over the Pacific are to be transformed into angels of light, who are to illumine the dark recesses of idolatry and superstition in China, and finally lead its millions into a knowledge of the true God. So spake the prophets of slavery, of the African slave, while he wearily carried his heavy load; but has Africa been illumined? Has not rather America been darkened? And is there not danger that instead of Christianizing China, we will, by this process, Mongolize America?

A certain class of political economists tell us that the Chinese, by their cheap energy, will promote the growth of industry and stimulate wealth, and that their exclusion is an economic mistake. Mr. Mill says that it is the office of the science of political economy to discover and elucidate the laws which govern the promotion of wealth, but there are higher and grander considerations than mere economic theories. The question of Chinese immigration, as we understand it, will not be settled by sentiment, nor by the application of economic principles. It is a subject which rises above, and includes all these and more; it comes within the domain of philosophy. To appreciate this it is necessary to contemplate the true situation on this coast, and take lessons from the experience of our people. Already two fifths of the adult male population of California is Chinese, and despite the assertions of optimists, the number is constantly, steadily increasing. It is an unassimilative population, and unfit for assimilation with people of our race. That it does not assimilate is to the advantage of our white people. Were the Chinese to amalgamate at all with our people it would be the lowest, most vile and degraded of our race, and the result of the amalgamation would be a hybrid of the most despicable, a mongrel of the most detestable that has ever afflicted the earth. It is fortunate that the Chinese are non-assimilative with our people We are confronted on the other side of the Pacific with four hundred and fifty millions of the same type and variety of men as those already here, and these have disorganized our labor system, brought thousands of our people to wretchedness and want, degraded labor to the standard of brute energy, poisoned the blood of our youth, and filled our streets with the rot of their decaying civilization. There are millions yet ready to come, and millions more determined to come. Will they come, that is the question?

If unrestricted, why will they not come? How and why have those come who are here? It is said that they have come merely on a visitation, to stay but a little while, and then return. By this description they come from the great Asian hive, swarming through the Golden Gate like empty bees, to gorge themselves upon the sweets of California flowers, and then return to the hive beyond the sea, laden with the treasures they have sipped from this hospitable land. If this were the true description, the application of economic principles would have only to be made to demonstrate the soft folly of a nation who would permit such a robbery of its resources. Many of the advocates of Chinese exclusion have insisted and endeavored to prove that the Chinese do not intend to remain. Let us not be deceived by the phenomena of this advancing and retreating tide of humanity. Many go back, but many more come, and most of those who go, return, bringing their "cousins" with them. This practice of visiting home is common to all classes of immigrants. It was so with our own Argonauts, who came hither in search of the golden fleece in forty-nine and the Spring of fifty. All expected to go home and stay at home, as soon as their fortunes were made, but here they are. When we insist upon it that the Chinese do not mean to stay, as an argument against him, we mistake the fact, and the economist makes argument against us by saying: "The Chinaman is industrious, labors for low wages, and his energy promotes the growth of your industries. He takes away nothing but the small pittance, the little wages you have paid him, and leaves with you the fruit of the labor—the development of your country—the accumulations you have made by the labor of his hands. How has he injured you? He has enriched you, and you complain. He has performed Herculean labors, and wrested from the earth great treasures. Where is the evil?" We can never convince the thrifty Yankee that Chinese immigration is an evil by the statement that he merely comes to sell his cheap labor. But leaving this to those who make the contention, I return to the question, Will the Chinese come, if not prevented by the power of the Government?

The history of the human race, so far back as that history extends, shows that the movements of men, like all human actions, are governed by certain laws. Mr. Buckle says that there is no generalization of the science of political economy so valuable as the law of population discovered by Voltaire, and afterwards appropriated by Malthus, and elaborated in his great work. It has stood the test of the severest criticism, and has emerged from the state of theory into that of an accepted canon. It is, as stated by Malthus himself, "that there is a constant tendency in all animated life to increase beyond the nourishment provided for it—and that, as applied to man particularly, the ratio of increase under ordinary conditions is greater than the increase of subsistence." If, then, a given number of the human race are placed within a certain environment, the tendency is to increase faster than the means of subsistence are capable of being increased—and unless the increase is limited by prudence, or by war or pestilence, it is only a question of time when the colony will come to that state called over-population. It is immaterial whether we accept the Mosaic account of the creation of man, or the evolution theory of Darwin with respect to the origin of the species. It is enough for our purpose to know that man exists in different types and varieties, divided into many nationalities and several races. Most writers on the subject agree that the beginning of the human race was in Central Asia, and that for all historic time the country now called China has been the most densely populated portion of the globe. The history of the race is descriptive of a westward march of mankind from the plains of Asia, through India and Continental Europe. It tells how one type of man has succeeded another, and one nation supplanted another until the first great ocean barrier was reached; how individual men of the most intelligent and enterprising cast crossed the great unknown deep and planted themselves upon this continent, to find a new or lost and forgotten race, which they have supplanted, and now, on the California shore of the Pacific, stand looking out over the broad ocean toward the land from which man started. "He has now made the circuit of the globe, and there are no more lands to conquer."

It has been well said, that through climatic causes, the developing influences of travel and scenery, the effect of varieties of food, and other causes, the man who stands upon the shores of the Pacific is no more like the man who has remained on the other side than two beings of different origin. What has caused the migrations of the human race? Why did man first move westward from the plains of Asia? Under the operation of the Malthusian law he went west for room. Westward, because to the west was land and subsistence. A learned scientist declares that it may be accepted as a law that all great migrations have one inducing cause—hunger. It is hunger, or the fear of hunger, that causes men to brave the danger and trial of migration. It is a fact of history that all great migrations have been in search of subsistence, or land from which to wrest the needs of animal life. Will the Chinese come? Yes, because they are hungry. The great fact is attested, its horrible details are described, its awful proportions are measured, that, as estimated and stated by the London *Times*, seventy millions of the people of the northern provinces of China are in a state of starvation. Seven or eight millions have already perished, and millions more must die. Can you conceive of so vast a number of human creatures starving? Imagine the greatest army ever marshaled by military chieftain; then double it, then quadruple it, then double its number again, then imagine it five times multiplied, and you begin to conceive the proportions of this myriad throng of suffering people. Will the survivors of this horror remain in China? No. Where will they go—westward? There is no room. Northward? The frozen steppes of Siberia offer nothing, and they are guarded by Russia. Where do they turn their eyes? To the far-off, mysterious land of plenty, where many of their race have gone, to the East, over the great sea, to America, to the land of plenty—California.

MR. BARBOUR. Africa is open to them.

MR. MILLER. But the Chinese do not go to Africa. It is an unknown, unexplored land, and they are not explorers. Since we have taught them to cross the ocean, America is nearer and easier of access, and in America they know there is subsistence.

Judged by all historic examples, the famine in China will result in a migration, and most likely through the Golden Gate. The Chinese have come to the condition of starvation in the northern provinces by overpopulation, by increasing beyond the power of procuring subsistence. In the destitute provinces they are passing through an experience which the survivors will dare anything to avoid the future. The Chinese ruler will no doubt aid in the peaceful migration to America of the redundant population. The nation has come to that condition that she must resort to war for the reduction of her population, or stimulate migration. Which course will be taken? Emigration is the cheapest, easiest, and the most rational. As stated by a late writer of the London *Times*: "It is probable that California is destined to witness the peaceful invasion of vast numbers of those strange aliens, unless preventive measures are at once adopted. If an armed invasion of Russia is meditated, as many suppose, and perhaps now in preparation by China, that would relieve this country of all apprehension of a very large migration, for the great wars which would then follow would relieve China of all her redundant population. If the military preparation in China, to which attention was called at the Berlin Conference by Count Shouvaloff, means war in any direction by China, it is not in this direction. It is not, however, to be taken for granted that China is destitute of military power. I think that there may be men now within this hall who will live to see China the most formidable military and naval power on the globe. In nothing do they so readily adopt modern invention and modern ideas as in military art and science. The Russians are just beginning to discover that China has vast armies well armed, drilled, and equipped. Let China once set about it and you will behold such armies and navies as the world has never seen.

It has often been said that the Chinese will continue to come because hunger is the inducing cause of migration, and the Chinese are hungry, and there is no escape for them in any direction but to the east. The situation has been shown by a recent essayist to bear a close analogy to the Irish famine of eighteen hundred and forty-six–seven.

Ireland, in eighteen hundred and forty-six, contained eight million people. In the next eight years there migrated to the United States over one million two hundred and fifty thousand. Why? why did the Irish come to America? They had a beautiful country, a rich, fertile land; the most beautiful country on the face of the globe. They were attached to it. Why did they come here? Because of the famine of eighteen hundred and forty-six and eighteen hundred and forty-seven. The migration had been from twenty thousand to fifty thousand a year, and increased in the next eight years as follows, according to Appleton's Encyclopedia: Eighteen hundred and forty-seven, one hundred and five thousand; eighteen hundred and forty-eight, one hundred and thirteen thousand; eighteen hundred and forty-nine, one hundred and sixty thousand; eighteen hundred and fifty, one hundred and sixty-four thousand; eighteen hundred and fifty-one, two hundred and twenty-one thousand; eighteen hundred and fifty-two, one hundred and sixty thousand; eighteen hundred and fifty-three, one hundred and sixty-two thousand; eighteen hundred and fifty-four, one hundred and five thousand.

These were the years when food was scarce in Ireland. The potato had been the chief resort of the people for food, but for some reason it ceased to grow. The potato rot destroyed or diminished the crop. In these years, when food was scarce, the migration quadrupled over pre-

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vious years, so that the population of Ireland became reduced down to about four millions. The Chinese may not follow this notable example, but it is probable that they will go to the east from the same causes which drove the Irish to the west. If you ask me how they will come, I will answer by asking you how have those come who are here? They have been brought here as a speculation in labor. But a few days ago parties in this business of trading in the labor of Chinese proposed to furnish Cuba with ten thousand Chinamen per annum, if guaranteed twenty-four cents per day for labor, for five years. What is to hinder them? What barrier is in the way? The Pacific Ocean. That means forty or fifty days' time, and fifteen to twenty dollars in money. The time is no matter to the Chinaman. He would not care if the voyage lasted a year, so long as he had something to eat. The money he will get by giving a mortgage on his labor.

But suppose he comes. We are asked, where is the harm? He will labor, says the advocate of Chinese immigration; he will work well and cheap; he is quiet, peaceable, industrious. Will not his labor quicken your industries, promote the development of your country, produce wealth? These are the questions which the political economists ask us to answer. Is cheap labor desirable?

I answer, cheap labor may, under certain conditions, be, in an economic sense, an advantage, but not so to us. Immigration has been a blessing to the United States, not because it cheapened labor, but because it brought within our borders, in aid of the great work of development, men who established homes, whose accumulations swelled the aggregate of the wealth of the nation; men who have become a part of the nation and contributors to Anglo-Saxon civilization; but the United States is in no need of immigration now. The country is stocked by a vigorous, intelligent, enterprising, brave, and civilized people, who now number over forty millions. It is well ascertained that such a people, under such conditions of environment, will, by natural increase alone, double their number every twenty-five years. Making all proper allowance for loss by war or pestilence, the nation, without further conquest of territory, will number within a century more than two hundred millions of people. Accepting the Malthusian theory, it is only a question of two or three centuries when the population of the United States, unless limited by individual prudence, or by war, or by pestilence, will have increased by natural increase of the present stock alone beyond the capacity of the soil to furnish subsistence; that within two hundred years this nation will be, under this process, over populated and underfed. There is no truth better understood than this so often stated, that immigration now to the United States is not an addition to population, but a substitution of the foreign element for the native. And this is especially the case as regards Chinese immigration. Even here in California, which is a sparsely settled country, capable of sustaining a population five times as large as that already here, we know that the effect of Chinese immigration is to deter white immigration from coming. The Chinaman is the result of a training in the art of low life. For thousands of years China has been filled to the verge with a redundant population. The life of the average Chinaman has been a mere struggle for animal existence. He bears with him the heredity of poverty and unrelenting toil for food through thousands of years. His physical organs have become adapted to insufficient food. There has been a process of selection going on in China under which the heavy feeders have fallen out, and under the law of the "survival of the fittest" none but those who can practice the most rigid self-denial as to food remain. They have also been trained by centuries of incessant toil to procure the maximum of subsistence from the soil.

The result of this life is a sinewy, shriveled human creature, whose muscles are as iron, whose sinews are like thongs, whose nerves are like steel wires, with a stomach case lined with brass; a creature who can toil sixteen hours of the twenty-four; who can live and grow fat on the refuse of any American laborer's table. Capable, as a late writer says, "of driving the vulture from its prey, which he consumes, and then devours the unclean bird itself." He is a human creature without sympathy; supremely selfish, for his struggle with nature has kept him busy with himself. Without aspirations, for hope of better things fled from his race centuries ago. The white man cannot compete in the field of labor with such a being as that—he cannot until he becomes such as the Chinaman is. To compete with the Chinese our people must give up their homes, abandon the family altar, tear down their school houses, blot out their civilization, and adopt the Chinese mode of life. If the white man is to compete with the Chinaman he must adopt a cheaper style of dress, he must inure himself to the cold, he must labor in the night; sleep shall not come to his pillow until the midnight bell tolls the solemn hour. He must arise at the first gray streaks of dawn and at his work. Then what shall be his food? No longer the savory meats, the pure, white bread made by willing hands. No! He must live as the Chinaman lives; work as the beast works; there can be no recreation, no rest, nothing but toil. But the economist says: "What becomes of the philosophic theory of the survival of the fittest." History does not record that the types and varieties of men who have succeeded in supplanting others of different type were the fittest, morally or intellectually. The fittest is he who can survive, that is all there is of the doctrine; not he that is the highest type of man. Turn out your finest thoroughbred horses to roam the plain with mustangs, or your best or purest strain of Durhams to graze with the broad-horned beast of Mexico, and see the operation of the law of the survival of the fittest.

The question here is not merely as to the economies of labor, but what is the effect of this immigration upon the life, civilization, and government of this country and its people? Our civilization has bred our people to a certain style of life, which to give up is to surrender all that makes life worth living. The American could not if he would in centuries become such a man as the Chinaman, and heaven forbid that he should. If the Chinaman comes and occupies the fields of labor now open to the white man, it operates in restraint of marriage among the whites, and stops white immigration. Increase of white population is thereby stopped, for the prudent, intelligent, sympathetic white man will not bring innocent beings into the world to see them suffer and starve before his eyes. He would rather die without the hope of posterity than to do that. He will not marry unless he can see a reasonable chance of maintaining wife as well as children. I repeat, therefore, that to permit unrestricted Chinese immigration supplants white population, and this cannot be too often repeated. It must result so, as far as it goes. It has so resulted, so far as it has gone. Is this wise? Is there any good sense in such a course? We have driven one nation, a regal race, from this land. Naught remains of that race but a weak, hounded, and troubled remnant, standing on the shores of the Pacific, pensively, sadly looking upon the broad expanse toward the setting sun. We have left the Indian nothing, and nothing of him scarcely remains but his sad, doleful history—a history of outrage and wrong. No mark is written upon the grave of his race but that awful and cruel word "Fate." He has gone down under this same relentless law, the survival of the fittest, and now there are those who would supinely yield to the bland, cunning, selfish Chinaman all that we have wrested from the Indian, and write over the tomb of Anglo-Saxon civilization and the sepulchre of republican liberty, the same fearful word, "Fate!"

And all this for the sake of Christianizing the heathen; all this because of the brotherhood of man. They would Mongolize this land in a vain missionary effort to bring the Chinaman to a knowledge of the true God. He has his gods whom he will not destroy. He cares for neither the missionary, nor the missionary's God. They tell us that the earth is the inheritance of all men; for all men are brothers, and each man has a right to any part of the inheritance he may choose. They quote St. Paul as authority for the fact that of one blood all the nations of the earth were made. St. Paul says that "God hath made of one blood all nations of men for to dwell on the face of the earth, and hath determined the times before appointed and the bounds of their habitation." God made men into nations, and determined the bounds of their habitations. We take the world of men as we find it. They are divided into varieties and highly differentiated types, each with the bounds of his habitation fixed. It is in the economy of Providence that man shall exist in nationalities, and that they shall be divided by the antipathies of race. Why this should be so is not for us to inquire; that it is so, is enough for us to know; and the history of man shows that, in whatever age or clime an attempt has been made to amalgamate two or more distinct races or types of men, the result has been calamitous to both, but more particularly disastrous to the superior race. I need not dwell upon this theme—all know the great fact.

In this country there cannot exist with safety to the republic, within the jurisdiction of the government, any considerable population who are not citizens. They become, for one cause or another, a disturbing element, and sooner or later must be incorporated into the nation in order to prevent collisions, or a total deprivation to such people of all human rights. The Chinese must, if they remain, become citizens or slaves. It is a result inevitable. If we must have immigration, let us choose it from the Anglo-Saxon race, or kindred varieties of men—men who will build homes and love liberty; who appreciate republican institutions and the grandeur of western civilization, and whose intelligence and loyalty to the principles of our government render them worthy of the great privilege of American citizenship.

MR. FREUD took the floor, but the hour of recess having arrived, he gave way, with the understanding that he should have the floor immediately after recess.

MR. SMITH, of Santa Clara. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

At twelve o'clock and thirty minutes P. M. the Convention took a recess until two o'clock P. M.

AFTERNOON SESSION.

The Convention reassembled at two o'clock P. M., President Hoge in the chair.

Roll called, and a quorum present.

MR. AYERS. Mr. President: I move that the Convention now resolve itself into a Committee of the Whole, the President in the chair, for the purpose of further considering the report of the Committee on Chinese.

Carried.

IN COMMITTEE OF THE WHOLE.

The CHAIRMAN. Gentlemen: The report of the Committee on Chinese is before the committee.

SPEECH OF MR. FREUD.

MR. FREUD. Mr. Chairman, and gentlemen of the committee: I wish very briefly to speak of the general nature of the Chinese problem, and in order to confine myself more particularly to the subject at hand, I will read the notes I have prepared on this part of the question. How can we solve this Chinese problem? That is to-day the great and vital question of the American Republic. If it is not so to-day, it will be in less than twenty years. It is my firm conviction, in the first place, that the Congress of the United States could completely solve this dangerous question inside of twenty-four hours, if it so desired. It therefore remains for the State of California, and for this Convention, to attempt it.

I maintain that California, as a loyal state of the American Union, has the moral right, and possesses the legal power, not alone to restrict and prohibit Chinese immigration, but even, if necessary, to remove the

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Chinese already upon our soil. I propose to clearly demonstrate to you the reason, justice, and truth of this proposition.

As a premise of my argument, I accept the doctrine laid down by Chief Justice Marshall, and sanctioned by the ablest jurists of our country. "The powers of sovereignty are divided between the Federal Government and the governments of the States. They are each sovereign with respect to the objects committed to it, and neither sovereign with respect to the objects committed to the other." Each of the thirteen original States contributed a portion of its sovereignty to the Federal Government. It reserved all the rest for itself and for its citizens. Sovereign rights were reserved to the States. Inalienable rights were reserved to the people. The Constitution of the United States confirms this fact when it says: "The powers not delegated to the United States are reserved to the States respectively, or to the people."

Chief among these reserved rights is the universal right of every State to regulate and control its own internal affairs, such as corporations and public works within its borders. Under this reserved right the new Constitution of California prohibits the employment of Chinese by such corporations, or upon such public works.

Again, every State has the avowed power to protect itself against foreign and well known dangerous classes, such as paupers, vagrants, criminals, and persons afflicted with contagious and infectious diseases. This power is a part of the police power of the State. Under this constitutional power of a State, New York and Massachusetts have been upheld by the Courts in turning back criminals from Europe. There is the same authority in California for preventing this State from being deluged with criminal elements from Canton and Hongkong. Upon this power of the State, section one of the article on Chinese is based.

Again, upon this same power of the State to protect itself, section four of the Chinese article is based. This general police power is an inherent part of every sovereignty. It has always existed in the State of California and its various municipalities. By virtue of that power, the infamous sinks of barbarism polluting the very heart of San Francisco ought long ago to have been condemned, exploded, and destroyed.

I come now to the culmination of the argument. All the reserved powers thus far enumerated are the clear and undoubted sovereign rights of every free State of the republic. They will in a degree check this Chinese immigration, but cannot stop the invasion. The question then arises, has the State no more reserved power? I think it has.

Among the reserved rights of the State I claim that there is none so prominent, essential, and constitutional as the right of the State to receive, remove, or repel any person or any people who may be dangerous to its health, to its peace, or its prosperity. No sovereign State on earth ever yielded that right. No sovereign State on earth can exist without that power. Did the American States then cede that power to the General Government? I challenge any man to show me where, or when, or in what words. The fundamental right of every State is to maintain its own existence. Self-preservation is not only the first law of nature, but also the first law of States. California has the right not only to protect but also to preserve herself. California has the right to declare the Chinese, upon her soil dangerous and detrimental to her peace, progress, and prosperity, and therefore to prohibit them hereafter from settling or residing within her borders. The Supreme Court of the United States has decided that the State has the right to exclude from its soil any and all obnoxious classes. That decision has never been reversed or revoked.

Moreover, in case of actual danger to the well-being and existence of a State, its power as against aliens is sovereign and supreme. There is nothing in the Constitution of the United States that restricts the power of a State to deal with aliens. It leaves with each State the privilege to say what aliens shall come or go. Nor is there anything in the Fourteenth Amendment to the Constitution to limit the supreme power of the State in this respect, for that amendment applies only to naturalized and native-born citizens. Nor can the Civil Rights Act be raised as a sound objection, for that bill refers to Africans and persons of African descent. Nor can the Burlingame treaty be raised as a sound objection to this power of California to deal with the Chinese. Far too much regard is paid to this one-sided treaty with China.

Nor can it be said that Chinese immigration is a regulation of commerce, and therefore a subject exclusively for Congress to deal with. The Supreme Court of the United States has often decided that the regulation of commerce was never intended to deprive the State of the power of legislating in behalf of the health, life, and safety of its citizens, even if such legislation indirectly affects the commerce of the country.

I claim now that I have established the following incontrovertible facts:

1. The Constitution of the United States is the only paramount and supreme law of the land.

2. It is a reserved right of the State to make its own Constitution and laws, subject only to the plain and explicit declarations of the United States Constitution.

3. The State has sovereign control over its people. It may grant privileges and impose restrictions. For self-preservation or self-protection, it may exclude any save citizens of other States.

4. A foreign treaty is void, so far as it is not in consonance with the Constitution of the United States, or the rights reserved to the States, or to the people.

5. The power to regulate foreign commerce does not imply the right to force upon a free State hordes of coolies of a degraded, servile, and alien race.

From these conclusions, I again declare that California has the right and the power, first: to stop Chinese immigration; and second, to remove the Chinese already on our soil. It remains now for this Convention to solve this problem, and I am in favor of going to the very verge of our utmost authority, and trust to the Supreme Court of the United States to decide if our action is in violation of the Federal Constitution. It is a problem which must be solved. We ought to do it now while we are in the ascendant, or the time may come when we will be in the minority. I care not to look upon the picture of the future of this State and country if this question is not settled soon. White labor must leave us and give place to the Chinese, or else anarchy will take the place of law and order. Let us hope that this Convention will give the subject calm and careful consideration, and arrive at a wise and just conclusion.

SPEECH OF MR. AYERS.

MR. AYERS. Mr. Chairman: It is with some degree of diffidence that I rise in this Convention to discuss before gentlemen who are veterans in constitutional debate, a question of this character, and to which I shall be obliged to bring all the light that I can, for the purpose of showing the powers of the State to exclude the Chinese. It is manifestly the object of all the sections presented by the committee, in this article, to reach exclusion; but there is only one section—that is section four—which attempts to reach this question directly, and to say that the Chinese shall be excluded from the State by the power of the State. If this section can be sustained by fair interpretations of the Constitution, and in the light of the highest decisions, we shall find our way clear to provide an effectual cure for the great evil. The task to do so is rendered difficult, because there is considerable friction in the decisions. The Courts have sometimes leaned very perceptibly to the side of the States, and sometimes to the side of Congress, as the repositories of the great powers involved in this question. But had the question of exclusion or immigration come before them with the Chinese invasion as the problem to be solved, instead of the voluntary immigration of Europeans, I opine that the decisions would have run but in one current, and that the preservation of our people from substitution by an inferior race would long since have been a fixed interpretation of the Constitution. All the decisions touching upon this subject are based upon European immigration on the Atlantic coast. It is well known that that class of immigration is the one which this country, down to the present time, has required. It has been essential to our development, to our progress, and to our prosperity. It was a homogeneous element; one which could be solved into the body of the people; one which could take its place as citizens of the republic, and each succeeding wave would ultimately find itself as much American as the wave which preceded it. But, on the other hand, the inundation with which we are threatened is one which we can never digest; one which politically we can do nothing with. The Chairman of the Committee on Chinese has taken the ground that it is incompetent for the State to pass any laws which will exclude the immigration of these people, or of any other class of foreigners. As I was the author of section four, the one which goes directly to exclusion, I would be open to censure could I not bring reasons and authorities to back me up in the position I have taken. The Chairman of the Chinese Committee has commenced by taking the position that for us to pass that section would be an interference with the powers of Congress over commerce, and therefore unconstitutional and void. In section eight, article one, of the Constitution of the United States, we find that Congress shall have power to regulate commerce with foreign nations, etc. Conceding, for the sake of argument, that section four would be a regulation of commerce, it does not follow that it is in conflict with the Federal Constitution. The power to regulate commerce is not an exclusive one in Congress. Exclusive powers are of three classes—when granted in terms expressly exclusive; when the States are prohibited from exercising them; and when exclusive in their nature. A power exclusive in its nature must be such that the States can pass no law on the subject without violating the Constitution.

The power granted to Congress to regulate commerce is not of the character designated in either of the above classes. Justice Story, in the case of Houston vs. Moore, 5 Wheaton, 48, has clearly illustrated the principle which underlies this grant of power as existing in the Federal Constitution. He says:

"The Constitution, containing a grant of powers in many instances similar to those already existing in the State governments, and some of these being of vital importance also to State authority and State legislation, it is not to be admitted that a mere grant of such powers in affirmative terms to Congress does, *per se*, transfer an exclusive sovereignty on such subjects to the latter. On the contrary, a reasonable interpretation of that instrument necessarily leads to the conclusion that the powers so granted are never exclusive of similar powers existing in the States, unless where the Constitution has expressly in terms given an exclusive power to Congress, or the exercise of a like power is prohibited to the States, or there is a direct repugnancy or incompatibility in the exercise of it by the States."

To make this position stronger and clearer, I shall quote from the decision of the United States Supreme Court, in the case of Gibbons against Ogden, 9 Wheaton, 204. The Court says:

"If a State, in passing laws on a subject acknowledged to be within its control, and, with a view to those subjects, shall adopt a measure of the same character with one which Congress may adopt, it does not derive its authority from the particular power which has been granted, but from some other which remains with the State, and may be executed by the same means. All experience shows that the same measures, or measures scarcely distinguishable from each other, may flow from distinct powers; but this does not prove that the powers are identical. Although the means used in their execution may sometimes approach each other so nearly as to be confounded, there are other situations in which they are sufficiently distinct to establish their individuality."

I cite the above authorities mainly for the purpose of refuting, at the start, the position of the Chairman of the committee, that because the power to regulate commerce is vested in Congress, section four of the article on Chinese must necessarily be unconstitutional.

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But I place the constitutionality of the proposition on a much higher and wider ground. I place it on the broad and inalienable right which every sovereign State, which every organized community has, to protect itself from injury, and to promote the welfare of its people. The police powers of a State are only limited by the character and extent of the evils which may be inflicted upon it from within, or which may threaten it from without.

I believe that public opinion in this State has emphatically pronounced upon the Chinese infliction. There is no question agitating the people of California upon which there is so unanimous an expression. The evil is in the unrestricted immigration of a race peculiar in its civilization; one that can never be digested into the body of the people; one which no process of education or contact can cause it to assimilate with us politically, socially, or morally; one which, in the lapse of centuries, should it unfortunately remain with us, would be the same as to-day, and prove an insoluble and heterogeneous element in our population; one which, by its peculiar composition, has the undoubted faculty to supplant our own people and become the conquerors of our State by a process which is more potent and irresistible than the march of victorious armies through our territories, or the successful invasion of our shores by hostile fleets.

If a State has the undoubted power to protect its people from moral and physical infection from abroad; if, under its police and quasi-commercial powers, it can shut its ports to smallpox and contagious fevers, to leprosy and elephantiasis, to foreign convicts and foreign paupers, why, I ask you, has it not the power to deny the hospitality of its territory to a race who are slowly, but surely and insidiously, substituting themselves for our own people? Is it within the line of logical reasoning that a State can protect its people from disease, but yet has not the power to save them from annihilation? Are the institutions of the country founded on so flimsy a basis that States may invoke the highest and exercise the most sweeping powers to quarantine a few unfortunate passengers afflicted with disease, but that they cannot deny the entrance to their ports of swarms of Asiatics, whose presence in their midst is fraught with evils compared with which a plague is the acme of blissful visitation?

It is no answer to say that the Chinese have the same natural rights which our own people possess. The assumption is undoubtedly true in its proper sense. They have the same inherent rights in China which our own people have here. But they cannot carry those rights with them to this country to the injury of our own people, and when they do so to the extent of destroying the field of labor to those who possess it of right, they become aggressive and injurious, and instead of being wronged by a denial of asylum, our own people are rescued from an act of injustice of tremendous scope.

Life, Mr. Chairman, is a game at which we all have to play. If we play it fairly, the losers will have no right to complain. But if the winners, who have swept the board, use their gains for the purpose of crushing the losers out of existence, they traverse the rules and assume too much. We say to them, it is all very well for you to carry off your winnings and enjoy them. That was a condition of the game and we abide by it. We accept the poverty and toil which is our lot by chance; but we forbid you from so using the wealth you have won from us as to deny us even the natural right of making a living. We shall protect you in your gains. Your wealth shall receive all the safeguards arising from established law. You can build castles, clothe yourselves in gorgeous attire, roll in stately equipages, and live upon the costliest luxuries. In the right to all these we shall see that you are not molested. But you must observe the rules of the game. You must allow us to exist in our sphere while we guarantee you immunity in yours. It is yours to luxuriate in your winnings, it is ours to subsist by the exercise of natural faculties which God has given us, and which were not included in the stakes that could be put to the hazard. Beware how you interfere with our right! When you do so the compact is broken, and you shall be left to protect your gains as best you may. You will have forfeited your right to call upon us to save you, and we shall leave you to your fate.

Whenever a community is threatened with an evil so sweeping in its character that it not only involves great immediate distress to a large class of its people, but even the ultimate displacement of the great bulk of its natural population, the right of self-preservation may be properly invoked and exercised. That right exists as well in the sovereign State as it does in the supreme government. Vattel says, in book second, chapter seven, section seventy-four: "The sovereign may forbid the entrance of his territory either to foreigners in general, or in particular cases, or to certain persons, or for certain particular purposes, according as he may think it advantageous to the State." The right I invoke is a natural right, which no government can with safety deny to any organized portion of its people, and which no respectable jurist has ever pretended did not exist in all organized communities.

Justice Barbour, in giving the opinion of the Court in the celebrated case of New York vs. Miln, defines this right as not only an unquestioned power of the State, but declares that its exercise, under proper provocation, is the "bounden and solemn duty of a State." I quote from 11 Peters, 138, in which Justice Barbour says:

"But we do not place our opinion on this ground. We choose rather to plant ourselves on what we consider impregnable positions. They are these: That a State has the same undeniable and unlimited jurisdiction over all persons and things within its territorial limits, as any foreign nation, where that jurisdiction is not surrendered or restrained by the Constitution of the United States. That by virtue of this, it is not only the right, but the bounden and solemn duty of a State, to advance the safety, happiness, and prosperity of its people, and to provide for its general welfare by any and every act of legislation which it may deem to be conducive to these ends, where the power over the particular subject, or the manner of its exercise, is not surrendered or restrained in the manner just stated. That all those powers which relate to merely municipal legislation, or what may, perhaps, more properly be called *internal police*, are not thus surrendered or restrained; and that, consequently, in relation to these, the authority of a State is complete, unqualified, and exclusive."

It has been claimed, but not successfully, that the decision in the case of New York vs. Miln was overruled in the celebrated Passenger decision. I submit to the lawyers who have carefully analyzed the majority opinions in the Passenger cases, that there is a great deal of technical refining and hair-splitting as well as irreconcilable friction in those opinions. It is a fact, too, worthy of notice, that the Court was very evenly divided, as there were five affirmative to four negative opinions rendered.

The Miln decision, however, was concurred in by six out of the seven Justices of the Supreme Court. The interpretations of the Court in that case were the unquestioned interpretations of the Federal Constitution on the power of the States over immigration for eleven years, and a whole line of decisions were predicated upon the doctrines and principles enunciated in that case.

In eighteen hundred and forty-eight, however, came the celebrated Passenger decision, from which has dated another line of opinions encroaching upon the right of the States to protect themselves from injurious immigration. But the internal history of this decision would not warrant for it the respect and prestige which it seems to have obtained. The Supreme Bench at that time was composed of nine members, and they stood, as I have said, five to four. Justices McLean, Catron, McKinley, Grier, and Wayne concurred in their conclusions, though they diverged very materially in their reasoning. The dissenting Justices were Taney, Daniel, Nelson, and Woodbury, all of whom, excepting Nelson, delivered very elaborate opinions. These opinions, in the judgment of many able constitutional lawyers, had the argument, even if the others carried off the verdict by a scratch. It is possible that the bare majority was, in this case, as majorities have often been in other cases, wrong, and the minority right. It was only a triumph of one vote, and, in a matter involving principles of so vital importance as those at stake in this judicial lottery, this fact would go far with me to lessen the value of the decision.

It certainly would not dampen my hope in the successful maintenance of the principles which I now claim as sound if they should be submitted to the highest judicial test. Especially would I feel sanguine of their favorable consideration when applied to the influx of a class of people, who, unlike those involved in that decision, can never by any process of mutation, become American, and who will forever, if they remain in our midst, continue to be an incongruous, distinctive, injurious, and disturbing element.

While on the subject of the New York and Boston Passenger decision, permit me to quote the judicial opinion of Chief Justice Taney as to its value as standard authority touching this line of subjects. I read from 17 Curtis, 219:

"If the decision now made is to come in conflict with the principles maintained in that case—that is, the Miln case—those who follow us in these seats must hereafter decide between the two cases, and determine which of them best accords with the true construction of the Constitution, and ought therefore to stand."

But even Justice McLean, who delivered the leading opinion of the majority of the bench in the Passenger cases, admits that a State has the right to protect herself from such an infliction as California is now enduring from the Mongolian irruption. I quote the following from Justice McLean's opinion, 17 Peters, 130: "In giving the commercial power to Congress, the States did not part with the power of self-preservation, which must be inherent in every organized community. They may guard against the introduction of anything which may corrupt the morals or endanger the health or lives of their citizens." And in this enunciation he is supported by Justices Grier and Wayne. I ask for no broader interpretation of the power than is there given by an unfriendly Judge to justify the adoption of my proposition in this Constitution. Chief Justice Taney, in his dissenting opinion in these cases, amplifies and emphasizes the principle so concisely interpreted by Justice McLean and reiterated by the majority Justices. I now read from 17 Curtis, page 195, from Chief Justice Taney's opinion, in which he says:

"If the people of the several States of this Union reserved to themselves the power of expelling from their borders any person, or class of persons, whom it might deem dangerous to its peace, or likely to produce a physical or moral evil among its citizens, then any treaty or law of Congress invading this right and authorizing the introduction of any person, or description of persons, against the consent of the State, would be an usurpation of power which this Court could neither recognize nor enforce. I had supposed this question not now open to dispute. It was distinctly decided in Holmes vs. Jennison, 14 Pet. 530; in Groves vs. Slaughter, 15 Peters, 449, and in Prigg vs. The Commonwealth of Pennsylvania, 16 Pet. 539.

"If these cases are to stand, the right of the State is undoubted, and it is equally clear, that, if it may remove from among its citizens any person, or description of persons, whom it regards as injurious to their welfare, it follows that it may meet them at the threshold and prevent them from entering. For it will hardly be said that the United States may permit them to enter, and compel the State to receive them, and that the State may immediately afterwards expel them. There could be no reason of policy or humanity for compelling the States, by the power of Congress, to imbibe the poison, and then leaving them to find a remedy for it by their own exertions and at their own expense. Certainly, no such distinction can be found in the Constitution, and such a diversion of power would be an inconsistency, not to say an absurdity, for which, I presume, no one will contend. If the State has the power to determine whether the persons objected to shall remain in the State

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in association with its citizens, it must, as an incident inseparably connected with it, have the right also to determine who shall enter."

I now quote from Justice Woodbury's minority opinion in the Passenger cases, 17 Curtis, 253. He says:

"The best writers on national law, as well as our own decisions, show that this power of excluding emigrants exists in all States which are sovereign. (Vattel, B. 1, C. 19, Sec. 231; 5 Howard, 525, 629; New York vs. Miln, 11 Peters, 142; Prigg vs. Pennsylvania, 16 Peters, 625, and Holmes vs. Jennison, 14 Peters, 565.)

"Those coming may be voluntary emigrants from other nations, or traveling absentees, or refugees in revolutions, party exiles, compulsory victims of power, or they may consist of cargoes of shackled slaves, or large bands of convicts, or brigands, or persons with incendiary purposes, or imbecile paupers, or those suffering from infectious diseases, or fanatics, with principles and designs more dangerous than either, or under circumstances of great ignorance, as liberated serfs, likely at once, or soon, to make them a serious burden in their support as paupers, and a contamination of public morals. There can be no doubt, on principles of natural law, of the right to prevent the entry of these, either absolutely or on such conditions as the State may deem it prudent to impose."

Again he says:

"And it is not a little remarkable, in proof that this power of exclusion still remains in the States rightfully, that while, as before stated, it has been exercised by various States in the Union, some as to paupers, some as to convicts, some as to slaves, and some as to free blacks, it never has been exercised by the General Government as to mere aliens, not enemies, except so far as included in what are called the Alien and Sedition Laws of seventeen hundred and ninety-eight. By the former, being 'An Act concerning aliens,' passed June fifteenth, seventeen hundred and ninety-eight (1 Statutes at Large, 571), power was assumed by the General Government in the time of peace to remove or expel them from the country; and that Act, no less than the latter, passed about a month after (ibid. 596), was generally denounced as unconstitutional, and suffered to expire without renewal, on the ground, among others assigned for it, that if such a power existed at all, it was in the States and not in the General Government, unless under the war power, and then against alien enemies alone."

The same Justice says:

"Considering the power to forbid as existing absolutely in a State, it is for the State, where the power resides, to decide on what is sufficient cause for it—whether municipal or economical, sickness or crime, as for example, danger of pauperism, danger to health, danger to morals, danger to property, danger to public principles by revolutions and change of government, or danger to religion. This power over the person is much less than that exercised over ships and merchandise under State quarantine laws, though the General Government regulates for duties and commerce the ships and their cargoes. If the power be clear, however, others may differ as to the expediency of the exercise of it, as to particular classes, or in a particular form; this cannot impair the power."

Again he says:

"The power of the State in prohibiting rests on a sovereign right to regulate who shall be her inhabitants—a right more vital than that to regulate commerce by the General Government, and which, as independent or concurrent, the latter has not disturbed, and should not disturb."

I think that these authorities are clear enough. If they are sound constitutional interpretations, the proposition to exclude the Chinese, as I have undertaken to do it in my amendment, is based on an unmistakable power, not only existing in the State, but on a right which the Federal Government could not contravene without committing an act of usurpation, overriding the Constitution itself. The doctrine set forth is founded in reason. If the power of exclusion exist, it should exist in the State rather than the Federal Government. (17 Curtis, 196.) It is a discretionary power to be exercised according to the judgment of the party possessing it. The State could alone exercise this power with discretion, for it would feel and know whether any particular class or description of persons is likely to produce discontent or taint the morals of its citizens, or increase their burdens, or (as in the case of the Chinese evil) wipe out American labor and reduce the State to the condition of a Chinese province.

Before leaving this branch of the subject, I desire to refer you to another opinion of Justice McLean, in which he seems to have gone even further than Chief Justice Taney in asserting for the States the right to protect themselves from the introduction of objectionable persons from abroad. I refer to the case of Groves vs. Slaughter, 15 Peters, 508, in which Justice McLean says:

"Each State has a right to protect itself against the avarice and intrusion of the slave-dealer; to guard its citizens against the inconveniences and dangers of a slave population. The right to exercise this power by a State *is higher and deeper than the Constitution.* The evil involves the prosperity, and may endanger the existence of a State. Its power to guard against or to remedy the evil rests upon the law of self-preservation—a law vital to every community, and especially to a sovereign State."

It is conceded that the great bulk of the Chinese in this State come here under contracts for service for a term of years, and that they are virtually in a state of peonage, one of the most odious forms of slavery. This fact gives great appositeness to the above citation, and the doctrine which Justice McLean there judicially affirms is wide enough to give my proposition free and full admittance into the holy of holies of the sacred constitutional circle.

The United States Supreme Court, in the cases of Gibbons vs. Ogden, and Brown vs. The State of Maryland, had laid down the rule that a State might do whatever was necessary to protect itself internally, its quarantine, police, pilot laws, etc., all relating to and connected with navigation and commerce. But in the case of New York vs. Miln, this principle was more broadly and fully enunciated. After declaring that the authority of a State is "complete, unqualified, and exclusive," in relation to those powers which refer to municipal legislation, the Court says, 11 Peters, 138:

"Every law came within this description which concerned the welfare of the whole people of a State, or any individual within; whether it related to their rights or their duties; whether it respected them as men or as citizens of the State; whether in their public or private relations; whether it related to their rights of persons or of property; or of the whole people of a State, or of any individual within it."

Again, in the same case (New York vs. Miln, 11 Peters, 148), the Court says:

"Can anything fall more directly within the police power and internal regulation of a State than that which concerns the care and management of paupers or convicts, or any other class or description of persons that may be thrown into the country, and likely to endanger its safety, or become chargeable for their maintenance?"

The principle is maintained through all the decisions, that even the paramount authority of Congress over commerce must not be permitted to interfere with the rights of an organized community of a State to protect itself from evils arising out of a traffic which may be admittedly commercial in its nature. In New York vs. Miln, the Courts deny that persons are commerce. The contrary ground is taken in the Passenger cases as to pasengers; but it is arrived at by a curious and arbitrary mode of substitution. The term "commerce," say some of the Justices, means "intercourse." The Constitution uses the word "commerce," and it requires a considerable stretch of license to strike out that word and substitute for it, or enlarge it by the addition of one which is by no means an equivalent, and which possesses an ampler and more comprehensive scope. I quote on this point from the opinion of Chief Justice Taney in the Passenger cases, 17 Curtis, 222: "The introduction of the word *intercourse* comes to this: if it means nothing more than the word *commerce*, it is merely the addition of a word without changing the argument; but if it is a word of larger meaning, it is sufficient to say that then this Court cannot substitute it for the word of more limited meaning contained in the Constitution. In either view, therefore, of the meaning to be attached to this word *intercourse*, it can form no foundation for an argument to support the power now claimed for the General Government."

It is hardly necessary to say that if the position is maintained that a State has the right to exclude from her territory any class or description of persons who are injurious to the well-being of her people, the treaty power could not invade that right. The treaty power cannot take away any of the powers belonging to the States which have not been delegated to the Federal Government, and which have been reserved to the States respectively, or to the people. By the general power to make treaties, the Constitution manifestly intended only to comprehend those subjects which are usually regulated by treaty, and cannot otherwise be regulated. It must have meant to except out of these the rights reserved to States, for it would be absurd to suppose that the President and the Senate could do by treaty what the whole government is interdicted from doing in any way. The United States Supreme Court, in the case of Holmes vs. Jennison, 14 Peters, 369, says:

"The power to make treaties is given by the Constitution in general terms, without any description of the objects intended to be embraced by it; and, consequently, it was designed to include all those subjects, which, in the ordinary intercourse of nations, had usually been made subjects of negotiation and treaty, and which are consistent with the nature of our institutions, and the distribution of powers between the General and State Governments."

This is a sufficiently clear interpretation of the extent and limitation of the treaty power, and it emphasizes the proposition that a treaty is void and inoperative as soon as it invades the domain of the rights reserved by the States.

I claim that under the interpretations of the Supreme Court of the United States, both when it was disposed to exalt the powers of the Federal Government over questions of this character, and when it ran to the other extreme, it has never attempted to deny the power of a State to protect itself from an evil, whether it had its origin from within, or was forced upon it from without. It only remains for us to show that in this instance we are dealing with an evil. I shall consider it in its political phase. The grand object of the founders of our government was to institute in this country a political system which would derive its force, power, and perpetuity from the people. The very essence of our system is luminously and strikingly defined in the memorable words of Abraham Lincoln: "A government of the people, for the people, and by the people." In order to carry out this grand definition, it is necessary that our people should continue to be homogeneous—that the race which founded this empire should be the permanent occupants of its territory, protected by the higher law of self-preservation from any invasion, peaceful or warlike, which might threaten its integrity, or its power to maintain itself on American soil. To solemnly proclaim that we have established a "government of the people, for the people, and by the people," and then to permit a race which possesses no political faculty in common with ourselves to seize the avenues of industry and compete our own people out of existence, is to reduce that aphorism to a horrible absurdity. Carried to its logical limit, and one which it will surely reach if we fail to interpose an effectual obstruction to the Chinese invasion, the time will come, when at least in this State, there will be no people out of whom the government is to come, or for or by whom it is to be administered. The fundamental law and its interpretations place upon the Chinese the badge of political proscription, and when they shall have overrun our country and competed out of existence our own people, what shall have become of our own system? Where will be its root and prop—its essence and actuality? Where shall we look for its citizens in time of peace, and for its soldiers in time of war? It will be but a hollow

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shell of its former self—a ghastly mockery of its former greatness—a body without a soul—the gibbering skeleton of a lost republic!

What greater evil could threaten this State than the one which is now in process of realization from the uncontrolled invasion of our territory by the Chinese? An incessant wail of agony is coming up from the people. The political complexion of this Convention is a deep and significant protest against the Asiatic curse. The long suffering of our people has had form and direct expression in the election of one third of the delegates on this floor, and I assume it is a fact not susceptible of contradiction that not a single member of this Convention could have been elected on the openly avowed declaration that he favored the Mongolian influx.

Let us not close our eyes to the magnitude of this question. Let us not, like the optimist ostrich, imagine there is no sirocco sweeping the desert because we have drawn our mantles around our faces and shut our eyes to a self-evident fact. Ah, no! The storm is brooding, and its terrible mutterings have been heard. The bubbles on the surface of the lake do not denote more surely the agitation at the bottom. Already gaunt want has strutted out its skeleton form in our cities. The highways of the country are alive with wanderers, houseless and homeless. The fields and the workshops are crowded with an alien and servile race, while our own people—bone of our bone, flesh of our flesh—are idle and famishing. The Chinese iron is burning into the soul of the toiling masses, who find themselves outcasts at home to make room for the conquering strangers. The evil has already passed its first stage of encroachment. It has supplanted white labor in all the humblest fields of industry. It commenced at the menial employments and has already reached the mechanical. In its insidious progress it will invade every trade and every business, and even American commerce itself may fall into the all-reaching grasp of John Comprador. American civilization cannot flourish by its side, for it will absorb and monopolize the means by which American civilization subsists. It is as impossible for our own people and the Chinese to exist together, as it is for fire to burn in the midst of water. The law of economic forces, as applied to the social system, forbids it. If the Mongolians are to have the unlimited hospitality of our territory, then, in the conflict which must ensue for existence, they will survive and our own people perish. In this conflict they are the fittest, because the cheapest. Is not a result so sweepingly destructive an evil which calls loudly for a remedy? Why, sir, the unrestricted immigration of the Chinese is the sum of all evils, for to us they are annihilation. By their vices they corrupt the morals and taint the blood of our youth; and by their virtues they turn our men and women into wanderers, paupers, and criminals. If there ever were a time and an occasion when the great right of self-preservation should be invoked and exercised, it surely is when a people are threatened with inevitable destruction—and this is such a time and such an occasion.

Will you, gentlemen, who are deeply versed in constitutional law, tell me that this great power can be legally invoked to shut out a pauper, a convict, or a leper, but that it must lie dormant in the face of an evil to which the admission of these would be a blessing? Do you mean to tell me we can guard the State from disease but not from death? Do you tell me that we can deny one pauper the hospitalities of our soil, but that we cannot shut out an alien irruption which will create paupers by the thousand in our midst? Is it possible that we can close the Golden Gate to a single foreign convict, but that we must keep it open to a human stream which is demoralizing the very fountain of society?

You cannot, you dare not answer that in the affirmative. If you were to do so, you would belie your own sense of candor. You would falsify the plain letter of the Constitution of the United States, which solemnly avers that this government was established to promote the welfare of the people. You would challenge the veracity and the understanding of every Judge who has from the Supreme Bench solemnly declared that the power rests in every organized community, in every sovereign State, to protect itself from anything that is likely to produce a physical or a moral evil among its citizens.

It has been our boast, Mr. Chairman, that California is unsurpassed in the grandeur and beauty of her scenery, in the fruitfulness of her soil, in the salubrity of her climate, and in the natural resources which she possesses to sustain a vast and prosperous population. Here, if anywhere on this broad earth, has nature invited the hand of industry to achieve that best of all rewards, a home in which neither poverty nor riches shall come to mar the even happiness of its possessor. Here, if blind avarice for inordinate wealth do not give over our fair fields and rich valleys to a servile race, we shall build up a State whose prosperity will be founded upon the even distribution of its soil among a contented and a homogeneous people. If we preserve this fair land and its industries to our own race, the future of California, measured by the progress she has made in the past, will be splendid beyond the conception of the most sanguine. Young as I am, comparatively, I have seen this State as a wilderness, and almost without a solitary American home. I have seen the turbid waters of the Sacramento when they were as clear and pellucid as those of our mountain lakes. I have crossed the site of this fair city when its houses were tents and its streets an open plain. I have seen our great commercial metropolis when canvass frames marked the places where now rise stately piles of granite, brick, and marble. Having been with the State at its American birth, grown with it from its auspicious infancy to its majestic majority, I love it with an affection as ardent and profound as the love which springs from maternal joys, or that which is inspired by the sublime sentiment of filial devotion. During all these years I have seen the insidious approaches of a blight which has gradually spread, until now it threatens to envelop and crush the industries of the whole State. By voice and pen I gave the note of warning when the danger seemed remote. By voice and pen I labored to awaken our people to a sense of the peril as it grew in proportions. By voice and pen I have continued to appeal to the patriotism of our people to throw off this insidious monster, which is folding itself around the heart of our State, to shake it off, "as shakes the sturdy forest oak its poison vine apart." The time has at last come when the people are aroused to the magnitude of the danger; and the time and the opportunity are now here when we can deal with it effectively. It is for you, gentlemen, to say whether this fair State shall be reserved as the splendid heritage of your own race—as the home of the men who are flesh of your flesh and blood of your blood; or whether it shall be given over to the unarmed but irresistible conquest of a people who are as strange to our manners and our civilization—to our progressive possibilities and our lofty aspirations—as though they had suddenly dropped upon us from another planet. On the one hand, you can make it a splendid American commonwealth, with a destiny bright and glorious beyond parallel; on the other, you can make it the mercenary Mecca of the scum of Asia—a loathsome Chinese province. You can dot our plains and valleys and mountain sides with the happy homes of our own people; or you can desecrate them by turning them over to the occupation of a servile and a despised race.

May it not, Mr. Chairman, be the tristful task of some future Childe Harold, when wandering among the ruins of our young State, to point out the remnants of our fallen temples and crumbled hearths, and truthfully exclaim that

> "Time hath not rebuilt them; but upreard
> Barbaric dwellings on their shattered site,
> Which only make more mourn'd and more endear'd
> The few last rays of their far-scattered light,
> And the crush'd relics of their vanished might."

THE CHAIRMAN. Are there any amendments to section one?

SPEECH OF MR. O'DONNELL.

MR. O'DONNELL. Mr. President and gentlemen of the Convention: We have come at last to the consideration of the question for which this Convention was mainly called into existence. Only a few days are left to us to prepare and complete a work which, I believe, is vitally connected with our existence as a nation. When we consider the wars of races which have been waged ever since the creation with more or less bitterness, we perceive that the idea of a universal brotherhood is but the dream of a fanatic. Nature and Nature's God divides mankind into distinctive races. They are made up of antagonistic elements which will no more commingle than fire and water. Nor can they be ever educated up to the point of fraternity. The Mongol will never kneel at your altars nor worship the living God. If he does it will be with a smile of contempt for that which he regards as a weakness. All our symbols of religion, all our hopes of immortality, are a delusion and a snare. To him our civilization is a fraud. In his estimation our virtues are vices, and our charities are false pretenses. All the triumphs of Saxon and Christian religion are to him mockeries. Indeed, sir, there is nothing in which Nature permits any affinity nor any sympathy between the Christian and the Pagan, the Mongol and the Caucasian. In vain, Mr. President, have your Christian churches expended millions of money to plant the cross in heathen soil. In vain have you sent missionaries to find martyrs' graves in the soil of Asia. In vain have your poets sung and your preachers appealed. Paganism, like a black pall, still shrouds the heathen in impenetrable night, where the sun of Christianity can never penetrate. Sir, I have a section that I want to go into this Constitution. I will read it:

"The right is hereby reserved to the State to protect its citizens from pestilence and plague, and, as a police regulation, to prohibit the entry of dangerous or criminal classes."

Sir, this proposed amendment involves the consideration of that provision of the Federal Constitution which declares that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." That, sir, is the language of the Federal Constitution; it is our great compact of union, and we are justly entitled to have it administered in its letter and in its spirit. The section I have offered declares that certain rights are reserved to the State—rights which are vitally essential to her existence as a member of the Federal Union. Is there anything in the Federal Constitution prohibiting this power to enact police regulations for the several States? I answer, no. There is nothing in the Federal Constitution by which, even by implication, this power is delegated to the General Government. I shall be met, sir, by the argument from the other side, that the subject of immigration and the importation of coolies is a regulation of commerce over which Congress has exclusive control. Perhaps I shall be cited to the decision of the Supreme Court of the United States in the celebrated case of Massachusetts, in which that State attempted to prevent the landing of Irish immigrants. It is true that the Federal Courts in that case decided that the State law was unconstitutional, upon the ground that the matter was a commercial regulation, and that the power to regulate commerce with foreign nations is confided to Congress by the Constitution. Mr. President, there is no analogy between the case of Massachusetts and California—no more analogy than nature has created between the Caucasian and the Mongolian races. They are entirely foreign, totally dissimilar, and strangers by the great law of nature and of God himself. In the case of Massachusetts, the question of sanitary necessity did not arise. I have the case here, but there is no use of reading it, you have heard it so often; in it the question of sanitary necessity was not raised. That is a question that never arose in the world before. It has been raised right here in the State of California. Consider, for a moment, a fact which is beyond denial, that there have been five hundred lepers sent here for the purpose of sowing that disease broadcast all over this fair land. That is a fact. We have found it in San Francisco, and we have found it in every town in the State of California. Even here, in Sacramento, there are over fifty cases of leprosy. I can, within sight of this hall, produce over twenty cases of leprosy, that horrible, incurable disease. No human power can relieve the leper from the

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slow torture, a lingering, living death; there is no cure for the leper. You must understand that most of the press of the State of California is owned by the Six Chinese Companies. They tell me that it is not contagious. They tell you the disease is not contagious. But they do say it is not infectious. I say it is not contagious, but I say it is infectious. Remember, that wherever the coolie has gone, he has spread that disease. Look at the history of the Sandwich Islands. They were the purest blooded people on the face of God Almighty's world, those Kanakas, until these Mongolians came among them. What is the case now? Why, the island to-day is almost decimated from leprosy brought over there by the coolies. Go to other countries where they have gone; the same condition exists there, and I tell you that we have got to put our feet right down and put a clause in the Constitution declaring that they shall not land here, or that the people of the State of California will rise and stop their coming to this country. [Applause.] This section must be put in the Constitution declaring that the coolies must not land on these shores in no instance. We have got to bring this question before the General Government, and the Attorney-General of the State is going to test that matter, and I will show you before I get through, why. I say, Mr. President, that this sanitary question, or necessity, did not arise in this Massachusetts case. I will also show you, before I get through, the difference between a leper and an Irishman or a German.

MR. LINDOW. You had better put that in your pipe and smoke it.

MR. O'DONNELL. May be you don't understand it. I will explain it to you afterwards. [Laughter.] The people of Massachusetts were not subjected to the danger of infection by contact with European immigrants. They were of the same family, the same genealogy, and were children of a common descent. In respect to disease, neither was an exceptional race of people, nor was either afflicted with any horrid form of disease to which the other was a stranger. Not so, sir, with the nations of Asia. Not so with the subjects of the Chinese Empire, who have no more affinity with the European race than the alligators of the Nile. They are like dogs, subject to types of disease which will not yield to our treatment, and which in our materia medica are totally unknown.

Mr. President, it is true that the power to regulate commerce is confided to Congress, by the Constitution, but commerce and immigration are not synonymous terms. "Commerce," says Webster, "is in a general interchange or mutual change of goods, wares, productions, or property of any kind, between nations or individuals, either by barter or by purchase and sale." I am unable to see that the trade in Chinese coolies is in any sense a commercial regulation; and if it be not, then the State, and not Congress, has the right to control it, and to define the limits within which it shall be carried on. The notion that it is a commercial regulation is an error, which may not be retrieved without revolution. It may array this State in opposition to the General Government; and the attempt to plant Asiatic slavery upon the free soil of California may cost more treasure and blood than the destruction of African slavery cost the nation. I have said that the exercise by a State of the power to protect her citizens from plague and pestilence is vitally necessary to her existence as a member of the Federal Union, and this is especially the fact in the case of California. She is isolated—located at a distance of more than three thousand miles from the National Capital. Her ports of entry are the doors through which the dangerous and criminal classes of Asia are entering into our very midst. She is, in fact, by her geographical position, the receiving reservoir of the scum of Asia. Suppose, as in the early history of California, she was this day deprived of communication, except at long intervals of time, with the Central Government. In those days, no man questioned the right of the State and the people to expel the dangerous classes who immigrated here from Sydney, and made California an English penal colony. There were then no questions about commercial regulation in these States; there was no question about that; but the people were under the law of self-preservation; they acted under the law of self-preservation in early days; and I tell you they have got to act under the same laws to-day. It was then the higher law that Congress recognized; and if the people or the State should again put it into execution, we need have no fear that the United States will resist our action.

Mr. Chairman, the judicial power of the United States extends to all cases affecting treaties with foreign nations. In respect to the treaty with China, now universally conceded to be infamous, which authorized Chinese immigration to the United States, I regard it as invalid because it was negotiated upon the hypothesis that Chinese subjects are eligible to American citizenship. That is the essential feature of the treaty. But the error has been exposed by the judicial power of the United States, which has decided that Mongolians are not eligible to citizenship. I ask if this decision is not conclusive of the invalidity of all that portion of the treaty which concedes the eligibility of Chinese to American citizenship; and I submit it to the consideration of the Convention, because it may suggest a remedy for the destruction of the treaty through the agency of the Federal Courts and without the intervention of Congress. History informs us that the hideous Mongol has, at intervals, migrated from his native waters into Christendom. Whenever and wherever he has appeared, our civilization has shrunk before him as before a plague. An able author and statesman asserts that: "It is believed in Europe that one of these great historic movements of the Mongolian race, that in the remote past have dispersed their peoples into less densely populated countries than their own, is now preparing. For instance, the Russians, in pressing recently upon the Asiatic borders of their empire, developed by actual reconnoissance a Chinese army, of which they were totally ignorant, two hundred and fifty thousand strong, and armed, too, with all the effective enginery of modern war, including the Krupp guns. These guns had been made by their own skilled workmen, who had been sent to Europe and secretly taught the art, and Prussian officers had drilled their armies in the use of them."

MR. TULLY. It is evident that there is no quorum present. I would move that there be a call of the House.

THE PRESIDENT. The gentleman from San Francisco is on the floor.

MR. O'DONNELL. Well, I am going to speak on this question if there is only one man here [laughter], and I am going to take my time to it, too. [Renewed laughter and applause.]

MR. KLEINE. I hope he will not be disturbed by the delegates in this Convention.

MR. O'DONNELL. No man knows to-day the strength of the Chinese military establishment. All we see or know of what is going on in China is on the shore edges. It is believed that the skeleton for an army of twenty million already exists. It is believed, further, that the idea of conquest has once again taken possession of the Chinese mind, and that the great Buddhistic family of Asiatic races can be leagued for not only a wholesale raid upon Europe, but also for a descent upon the Pacific Coast of the United States. Such a movement means a possible wiping out of Caucasian civilization. Modern war is now a matter of effective arms, and of a simple and reliable commissariat system. The Mongolian race is capable of great personal prowess. Being fatalists, they dare everything for the end they have in view. Their food is simple, easily supplied, and easily transported. Their endurance of fatigue is proverbial. Once organized and in motion they could swarm into Russia as irresistibly as the locusts of Egypt, and upon the Pacific Coast of this continent as numerous and destructive as grasshoppers. Once started, where would they stop? Civilization would retire before them as from a plague. Look at the plague spots in San Francisco to-day. Nobody lives in them but Chinese. Nobody else can live in them.

Mr. Chairman, for these and many other reasons, I am opposed to the adoption of the report of the majority of the Committee on Chinese. I shall resist any measure which permits the emigration of Asiatics to the soil of America. During our last war with Great Britain, our government found it expedient to pass a law called the Embargo Act, which put an embargo upon all commerce between the United States and England. I am in favor of the same policy of non-intercourse with China. Give us absolute non-intercourse, for in no other way can we hope for safety. Non-intercourse has for ages been the policy of China; and to enforce it literally she built a wall around her vast empire. Referring to Europeans and Americans, the Chinese stigmatized them as outside barbarians. The same measure which China meted out to us we should mete out to her. Give her back her policy of non-intercourse. Let her have no rank or recognition among the list of nations. Let us declare, sir, in the words of Holy Writ, "The heathen is joined to his idols; let him alone."

This is a question with which it is not safe for us to temporize. You cannot make treaties with savages or lepers. Charity begins at home. The first duty we owe is to our own separate humanity, as contradistinguished from the Tartar and coolie. Our own brethren have, by the higher law of nature, the first demand upon our protection. Let us legislate for them and for their widows and orphans. And if it should ever be the will of heaven to find a path for the heathen out of his gloomy jungles into the sunlight of civilization, that power will in its own good time find a Moses to lead them forth.

Mr. Chairman, I did not intend to occupy on this question but a very few moments in the first place. I know that there are very few members or delegates to this Convention but who are just as much opposed to these coolies as I am. That is my opinion; and my opinion is that they will put provisions in that Constitution that will check this immigration. We know that Christianity and Paganism cannot exist side by side. One or the other must go to the wall. I believe that every delegate in this Convention is convinced of that fact, that Christianity and Paganism cannot exist side by side. Experience has taught us that fact, and it is the duty of this Convention to put a clause in that Constitution to forbid their ever landing on these shores. I say, Mr. Chairman, it is their duty to do it. Humanity demands it. I say humanity demands it. They say if we put a clause in that Constitution saying that they cannot or shall not be allowed to land here it will be unconstitutional. How do they know it will? We must be cruel, in this case, to be kind. Look at the condition of this country to-day. Over ten thousand people in this land to-day are starving and begging their food. "Let them come," you say, "they can get work anywhere." I say it is a lie. You see them starting out every day trying to seek food for their children, and what is the result? Let them come to a farm-house and they will see a coolie there ahead of them, and the farmer will say, "We don't want you." You will find all the manufactories throughout the State carried on by the Chinese leper. They have monopolized every trade in the State. You know that to be a fact. You also know that there are over four hundred and fifty million of these human dogs nearer to us than New York. Consider that fact. Also consider this, that they are building to-day one of the most powerful navies that ever existed in the world. They have got guns of the very largest caliber. It is a fact, and you must consider that there are four hundred million of these human dogs nearer to us than New York. But what do they live on? A white man cannot live as those lepers live. If a white man works for two dollars a day they will work for one dollar a day, and make money at that. If a white man works for one dollar per day they will work for four bits per day, and make money. If a white man works at four bits a day they will work for two bits, and keep a dozen of their country cousins on that. So it is impossible for white labor to compete with those moon-eyed lepers.

Mr. Chairman, taking all these things into consideration, we have come to the conclusion, no matter what fanatics say, that a majority of the people of the State of California have demanded that section in the Constitution. We can never get any redress from Congress. It is impossible. Why? Such men as Colonel Bee, such men as this Gibson, Otis Gibson, went before the committee, the Senatorial committee that was

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sent out here to investigate that question, and they said that nine twentieths of all the people in the State of California were in favor of the coolie. I say that it is a libel upon humanity. I say it is a libel upon humanity; and for that very reason we cannot get any relief from Congress. What redress we can get is through our own vain arm. You may talk about this thing of police regulation, and if you can tax them you can take this method. I say we can do it. Let us put a clause into the Constitution so that it requires the Attorney-General of the State to defend it. Do not allow individuals to test this case, but let the State itself test it. Suppose we had put a clause in that Constitution which says that they shall not land on these shores; what of it? What of it? It is the express wish of the people of the State, and any man who says it is not, I say he lies, and I can prove it. Mr. Chairman, half the delegates of this Convention I know were elected upon that very issue. This Convention was called upon that express proposition. There was no issue before the people so essential as this Chinese question. Why, you all know as well as I do what the will of the people is. If this exists twelve months longer I tell you the streets of San Francisco will run knee deep in blood. I know it to be a fact, and you know it to be a fact. If they stave this question off, and deny to the people an opportunity, through their delegates, to put a clause in that Constitution to check this Mongolian curse, there will be trouble.

Go with me through the back alleys of San Francisco and I will give you an ocular demonstration of the misery that has been brought upon this country by these coolies. They do not come here as the white man comes to these shores. They don't come here to make a little home for themselves. They don't come here for that purpose. They don't bring their children and their families and their wives here to this country. No; they come here to get all they can get and take it home with them. How do they live there in the City of San Francisco? What has the experience of that city proven to the people of this State? It proves this: in the space—and I dare any gentleman in this house to deny the fact—between California and Pacific, and between Kearny and Stockton streets, there are seventy-nine thousand of these lepers living. I call them lepers because they are nothing else. And how do they live?

They live like hogs,
And die like dogs.

They live on the offal of the slaughter houses. That is the way they live, and no man can deny it. It is a fact that they can live on three and a quarter cents per day. Now, think of it. Three cents and a quarter per day they can live on! And in that small space there are seventy-nine thousand coolies living, in that space bounded by these four streets, and if they lived according to the law or ordinance that passed in San Francisco, called the "cubic air" law, there could only eleven thousand exist in that space. Now, think of that! In that very space, where seventy-nine thousand live, there could not but eleven thousand live under the law, if it was a solid block, four stories high. That, I think, I can prove by gentlemen in my presence. Then, it is not only that, but I tell you that these men were shipped for no other purpose than to spread that disease broadcast over the land. It is a fact. I took the reporters of the Call and the Chronicle, that nameless sheet (laughter), and the Avalanche, through Chinatown, and I showed them that there were over one hundred and fifty cases of leprosy, and I wanted this to be made public and have it written up. But the Six Chinese Companies got hold of the press, and it was quieted, and that was the last of it. But, to prove the fact, I got one in an express wagon and had his likeness taken, and carried him around in the street, and as soon as they saw that fellow, they came to the conclusion that he was a leper. They said, "That is a leper, there is no doubt of that." Well, what was the result? I went afterwards, and found eighteen in one house; I don't know as I should call it house; it was a hole two stories deep, one hundred and fifty feet from the sidewalk. There they were making cigars. Now, think of that. There were three lepers employed making cigars. I came to the conclusion that the only way to stop leprosy was to isolate all that portion of the city. One of the greatest medical men in this State, or in any other State, declared that inside of ten years, if we allow that Chinatown to exist as it is in San Francisco to-day, about three quarters of the population of San Francisco will have that leprosy. It is a fact, Mr. Chairman. I wish to God I could coax this delegation to go through Chinatown for two hours with me. I am satisfied they would put a clause in that Constitution that would prevent them from landing on these shores—I know they would. They tell me that the State has no right to prevent them. I say we have the right. We have the right to prevent any dangerous or criminal classes from landing. Why, we have the testimony of the captains of steamers that it is only the lowest class of Chinamen that come here. I have gone to the officers of these steamers and I know that to be a fact. These captains also say that they are imported here. That is the evidence of the captains and the mates of these steamers that have brought them here. Now, my fellow delegates, it is our duty to protect this coast from being overrun by these pirates. I can produce the best evidence in the world, I can produce it by the Six Chinese Companies themselves, that they are pirates and land sharks, the greater part of them. I can prove it by a gentleman right here. I can prove it by Colonel Bee, if he told the truth; but you can't get the truth out of that man. [Laughter.]

Mr. Chairman, I don't want to call any names. When these vessels landed here at one time, pretty near every vessel brought smallpox aboard it. I am a medical man, and, taking an interest in the people, I went down to look after it. I prefer my race to all other races. I went down aboard these ships as soon as they landed to inspect them. Before I got there, sometimes, they had commenced unloading their great cargo of human beings. What was the result? Before I got there, I discovered that there was smallpox on the ship, because I saw men passing on the street who were afflicted with it. They were the first that brought smallpox here. They can't deny it. And they brought it here the last time that it prevailed in San Francisco. Why, I tell you that this government has been run by the Six Chinese Companies for the last six years, and I defy any man to deny that fact. The Six Chinese Companies own this State to-day. Every government official in the State is in the control of the Six Chinese Companies. You can't go anywhere but what you find the Mongolian ahead of the white man. It is a fact. And, under the circumstances, I tell you, my fellow delegates of the Convention, it is your solemn duty that you owe to humanity, to Christianity, and to yourselves, to put a clause in that Constitution which will forever prevent another Mongolian from landing here. I tell you it is your duty—it is your solemn duty. You have seen the condition of your State last Winter, and you will see it in a worse condition this Winter, and all the misery that has been produced here in this golden land has been produced by the importation of these moon-eyed lepers. I tell you it is a fact, and it is a duty you owe to your God and to your families. Pay no attention to anything, but put a clause there, I tell you, my fellow delegates, to stop them. If you do not, now mark this prophecy, if you don't, the people of the State of California will rise en masse and they will march to the wharf and they will sink every vessel that lands here. I know this to be a fact. I know that there are twenty thousand to-day in this State, ready at a moment's warning, to rise and stop these Mongolians from landing here. [Applause.] My fellow workingmen—my fellow delegates—we have had something of this for the last fifteen years. I tell you patience ceases to be a virtue. We see, what? We have seen our boys driven to hoodlumism and our girls driven into the streets. We have seen diseases of the worst kind spread among us, and still we see these lepers flocking in by thousands and tens of thousands. I tell you it is in the interest of capital that they come here. It is the interest of capital who want to employ work to bring them here until they reduce you, my fellow men of the white race, to the same sphere with this leprous race, this black and tan race. I can't conceive the idea why these fanatics prefer this black and tan race to their own race. I don't understand it myself. You will find everywhere they go that they employ this black and tan race in preference to their own race.

Not long since, I had occasion to visit a family where I discovered a small child, which was covered all over with a perfect mass of corruption. I went in and looked at the child, and I told the mother, "The sooner that child dies the better." She looked at me. Says I:

"Madam, that child has got the leprosy; it cannot live; it must die."

"What!" says she.

Says I, "Yes."

Says she, "Is that leprosy?"

Says I, "Yes; and you have got to be very careful or you will get it."

She had never dreamed what was the matter with the child. The father was a seafaring man. He came up and visited me some days afterwards. He was running up the coast, and he had his foot bundled up; and parts of it, when I undid it, dropped off from leprosy. This was the father of the child. I took him in my office, and I immediately sent for a reporter of the Call, because I know that the Call is a just and good paper. I did condescend also to send for the reporter of that nameless sheet. They came in. I immediately placed the man in the chair, and I took off, in their presence, seven joints of the foot. Leprosy! There was a man who had a little child dying from leprosy among the white race right here in the State of California. They don't understand the disease. They say they don't see much of it around. Why? Because they don't know it when they do see it. Then you must understand that it takes six years from the time that it is innoculated into the system before it shows itself. I don't know but two thirds of this delegation here are infected with it. [Applause and laughter.]

MR. FILCHER. Will the gentleman allow me to ask a question?

MR. O'DONNELL. Certainly, certainly, sir.

MR. FILCHER. I would like to ask how old was that child you refer to?

MR. O'DONNELL. It was about eight or nine years; between eight and nine years old. [Laughter.] Any other questions you want to ask.

MR. ROLFE. Yes, I have a question.

MR. O'DONNELL. Ask any you please.

MR. ROLFE. Is it the two thirds out of the room or the one third in here that you refer to?

[Cries of "Go on!" "Go on!"]

MR. O'DONNELL. When it got out in the papers I went to work. I went to the City Physician and got him to go round with me, and showed him this case. He says: "I acknowledge it is leprosy, but what am I going to do? My hands are tied." I said: "If I was in your place I would get rid of this; I would drag it out to the light of the day." "No," he says, "I have no authority to do anything with it under the statute." Then I laid it before the Board of Supervisors, and then I brought it before the Board of Health. I got the Board of Supervisors to go through Chinatown. "Great God," they said, "I never saw such a sight before in my life." They said they had read about such a place as hell, but said this was hell on earth. [Laughter.] They admitted all these facts right there to everybody, but they said they were powerless; they couldn't do anything about it. Then I went before the Board of Health. They went with me, and they admitted the same fact. It was a fact, but what were they going to do about it. They said: "We have got nothing in the statute to relieve us of this noxious pestilence." I then told them I expected I would come up to this Convention, and I would do my best to advocate a measure or clause in the Constitution that they could get assistance from.

Now, my fellow delegates, I appeal to you in the name of humanity, for the love you owe to your race and your God, not to leave this out—not to stop until you put a clause in that Constitution that will stop them from landing here. And I tell you, if you do it—if you put a clause there to prevent them landing here, you will do the greatest deed

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you have ever done in your life. You will be a monument to the human race. And another thing, my fellow Workingmen—you will elect your men. That clause itself will carry this Constitution next May, safe, by an overwhelming majority. Put that one clause in the Constitution, and I tell you I would pledge you my life that you will carry the Constitution by a tremendous majority—that Constitution would be ratified by a tremendous majority. It is what the people consider the most essential section to be placed in the Constitution. I tell you this Convention was called here for that express purpose—to rid us forever of this noxious pestilence. That was the main object of calling this Convention. There are other questions before the Convention, I know—the question of taxation, the libel question, and this other question we have just got through with. But there are none of those so important as this one, and the moment that section is put there and adopted I tell you you need not be alarmed. Put that section there and you need not be alarmed, for the United States cannot afford to fight the State of California on a question of this kind. Another thing—it will prove to the people of the United States that these men here—this man, Colonel Bee, and this man by the name of Gibson—are libelers upon humanity; it will prove to the world that they are libelers upon humanity. They went before the Senatorial Committee, as I told you, and they swore, point-blank, that nineteen twentieths of the inhabitants of the State of California were in favor of these lepers that were spread broadcast all over the world; and this Black Book, or Blue Book they called it—it had a black cover, the one I saw—these lies have been cast broad over the land; and if you want to redeem yourselves, you can do it by going out like men and inserting that clause.

Mr. Chairman and my fellow delegates, I thank you kindly for your attention. When I came upon the floor I did not intend to continue on this question over five minutes, because I was perfectly convinced that every one of you were in favor of putting that clause in the Constitution, to satisfy the people of the State of California. I knew it was your solemn duty to save the shedding of blood. It is your duty, and you know it. You, my fellow delegates, know as well as I do, if you don't put that clause in, what the result will be; and you, yourselves, will be responsible. You, my fellow delegates of this Convention, will be responsible for every ounce of blood that will be shed in the streets of San Francisco. You know it. You know the people of California have made up their minds, and the safety of this State depends upon that clause. You know it. Pay no attention to anything outside of that. I appeal to any delegate in this Convention. Don't you know that to be the fact; do not you know that the very existence of this State depends upon that? Why, my fellow delegates, I would not dare to go back to the place where I came from, after living there twenty-eight years, without seeing that clause in the Constitution. They will accept nothing else. Why do you talk to me about the idea of taxing them? That will only tantalize them, and allow such men as Colonel Bee and this other preacher to spread their lies in regard to the people of California. I thank you kindly, Mr. Chairman and fellow delegates.

MR. AYERS. Mr. Chairman: I move that the committee rise, report progress, and ask leave to sit again.

Carried.

IN CONVENTION.

THE PRESIDENT. Gentlemen: The Committee of the Whole have instructed me to report that they have had under consideration the report of the Committee on Chinese, have made progress, and ask leave to sit again.

RECESS.

MR. SCHELL. Mr. President: I move that the Convention now take a recess until seven o'clock.

MR. HILBORN. I move we adjourn.

The motion to adjourn was lost, on a division, by a vote of 47 ayes to 68 noes.

THE PRESIDENT. The question recurs on the motion that the Convention take a recess until seven o'clock P. M.

The motion prevailed.

EVENING SESSION.

The Convention reassembled at seven o'clock P. M.

THE SECRETARY. The Convention will please come to order and elect a temporary Chairman.

MR. HUESTIS. I nominate Mr. Howard, of Los Angeles.

MR. HOWARD. I will have nothing to do with it. I nominate Mr. Larkin.

THE SECRETARY put the question, and Mr. Larkin was elected temporary Chairman, and called the Convention to order.

Roll called and a quorum present.

QUESTIONS OF PRIVILEGE—MR. BARBOUR.

MR. BARBOUR. Mr. President: I rise to a question of privilege. I hold in my hand a publication entitled the Daily Evening Post, a newspaper published in San Francisco on Saturday, December seventh, wherein is an article purporting to be correspondence from Sacramento, touching the proceedings of this Convention. I send up the article, and I ask to have it read, that which I have marked.

THE CHAIR. The Secretary will read it.

THE SECRETARY read:

"But my alarm, as I now see, was wholly groundless. The proposition to regulate by a Commission, was not, as I then supposed, originated by the enemies of the railroad, but by the Central Pacific Railroad directory itself. And I now assert my confident belief that the railroad magnates originated the scheme. Stanford is the Tallyrand of this coast, and he knows how to circumvent even honest men and make them do his bidding, even without expenditure of a single dollar. He wants a Commission, and he is perfectly willing that it shall have absolute power, even to confiscate."

MR. BARBOUR. I would not have troubled this Convention with this question of privilege, but for the extraordinary nature of the attack on myself and some of my associates on the Committee on Corporations, which appears to require some notice from some member of the Committee on Corporations. I profess to believe in the unfettered freedom of the press, and I profess to be a friend of reform, but when I see a masked battery being uncovered to rake my friends and those associated with me, I will spike the guns, if I can. What I take exceptions to is, the statement that the scheme of a Commission originated with the directory of the Central Pacific Railroad Company. I take it that this Convention will hardly believe that Messrs. Estee and Howard, and others, are the unwitting tools of the railroad company. Besides, a large majority of the Convention voted for the scheme, and yet the article makes them but a lot of hypocritical pretenders.

It says again: "They have made no real fight." What an infamous lot we must be! Let me state the history of this Commission scheme in the Committee on Corporations other than Municipal, as I remember it, so that this brazen lie may be seen and known of men. When our Committee on Corporations reached the subject-matter of railroad regulation, there were two propositions for a Commission before us—one by Mr. Campbell, of Alameda, and one by Mr. White, of Santa Cruz. We made no use of Mr. Campbell's proposition, so that is aside from this question. Mr. White is here and can speak for himself, but I vouch it to be a barefaced lie that he was used, directly or indirectly, by the railroad. Then an expression of opinion was taken, and there was not a dissenting voice from the proposition that fares and freights can be established and regulated by a general law. Then we had in Mr. Commissioner Tuttle, and his idea was to let the railroads alone. And then we discussed the subject of a Constitutional Commission, and our Chairman brought in the raw draft of a section, and I also brought in one. After discussing these a sub-committee, consisting of Messrs. White, Gregg, West, and myself, were appointed to bring in a draft of a section. We did so; and from that, and with Mr. White's plan and my plan, and from the Chairman's plan, and from suggestions by members of the committee, the section as reported was gotten up. Two of us dissented from two or three features of it, but all were in favor of a Commission. That is the plain history of the section in committee. If the Central Pacific Railroad directory ever had anything to do with getting it up I never heard of it, and I think I may safely say the same thing of every member of the committee. If the railroads were for or against it, my judgment approved it, and that was enough for me, and I think I may say the same for every other member of the committee. I do know this, that the Central Pacific Railroad Company fought the only Commission we have had in this State, and had them legislated out of office before they ever got sight of the books. One word as to the animus. I look beyond the writer of this article, to the power which controls and directs the newspapers of this coast. This is for the world outside, and the world is to be made to believe that the railroad company has played a huge practical joke on the Convention to make it take their medicine; just as my grandfather used to cheat his cattle to make them eat straw. His grain and his hay had given out and the Winter was still on, and he had nothing but a stack of straw. The cattle were too high-toned to eat straw. The old gentleman then drove the cattle away from the stack, and set his dogs on them whenever they came up to it for awhile, and then they were determined to eat the straw. So this Convention seems to have been managed. By such humbugging dodges as these, sir, it is sought to bring the Commission scheme into disrepute. The railroad company never have been and never will be in favor of a Commission. The strategy, my boy, is too transparent. And then an allusion is thrown in for the Workingmen's party, to which I belong. We are told that we will capture the next Legislature, and that the railroad company cannot control it. That is true, sir, but we will also elect the Commissioners, and our Legislature will be there to brace them and fortify them with power, if honest, and throw them out neck and heels, if dishonest; and our Governor will be there to appoint honest men in their places. Let no man be deceived by these subterfuges. It will be time enough to believe that the railroad company are in favor of the Commission when they shall use their influence to secure the ratification of the Constitution containing the provision, and not till then.

REMARKS OF MR. WHITE.

MR. WHITE. Mr. President: I wish to say a word in regard to my connection with this Commission idea. As soon as I was elected to the Convention, I undertook to read everything that was written with regard to the railroads. I spent a great deal of my time at it. I corresponded with the Secretaries of every State in the Union. Some twenty-seven of them answered. From the ideas I got, I came to the conclusion that there was only two remedies. One was to buy all the railroads out, and the other was to appoint a Commission to direct and control them, and say what the fares and freights should be. There should be nothing but absolute power. I drew a draft of a Constitution, in which I adopted the idea, before coming here at all. I will say here that I never spoke to one of the Directors, and I do not know them now. This Constitution, which I drafted and published before I left my farm in Santa Cruz, contains this section pretty much as it now stands as finally adopted, with about the same powers. I will ask the Secretary to read three sections from my proposed Constitution.

THE SECRETARY read:

"SEC. 12. The Railroad Commissioners provided for in this Constitution shall have absolute power to fix the rates of fares and freights of all railroads in this State, and shall regulate and establish them as in their judgment shall seem just and fair to the railroad owners and to the public generally.

"SEC. 13. Once in each year the Railroad Commissioners shall readjust the rates of fares and freights of all railroads in the State, and

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